

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, CTA *EB* Crim. No. 140
Petitioner, (CTA Crim. Case No. O-985)

Present:

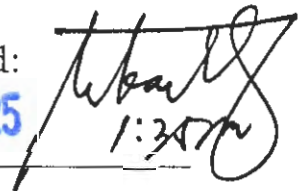
-versus-

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

FAIVO PASCUAL BARTOLOME,
Respondent.

Promulgated:

MAR 11 2025

A handwritten signature in black ink is written over a blue date stamp that reads 'MAR 11 2025'. Below the signature, the time '1:30 PM' is handwritten.

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D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review posted on February 5, 2024 by People of the Philippines assailing the Resolutions dated August 9, 2023¹ and January 12, 2024² promulgated by this Court's First Division (Court in Division) in CTA Crim. Case No. O-985, entitled "*People of the Philippines vs. Faivo Pascual Bartolome.*" The dispositive portions of which respectively read:

Resolution dated August 9, 2023:

"WHEREFORE, premises considered, CTA Crim. Case No. O-985 is **DISMISSED** on the ground of prescription.

¹ EB Docket, pp. 17 to 23.

² EB Docket, pp. 24 to 27.

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SO ORDERED.”

Resolution dated January 12, 2024 :


“**WHEREFORE**, premises considered, the plaintiff’s *Motion for Reconsideration (of the Resolution dated August 9, 2023)* is **DENIED** for lack of merit.

SO ORDERED.”

FACTS

On December 5, 2022, the People of the Philippines, as plaintiff, filed an Information against accused Faivo Pascual Bartolome for willful failure to pay taxes under Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, quoted as follows:

“That on or about December 14, 2016, in Laoag City, Ilocos Norte, and within the jurisdiction of the Honorable Court, accused, FAIVO PASCUAL BARTOLOME, owner and proprietor of Dashma Computer Systems and Services, and Ilocostop Convenience Stores, who is engaged in the wholesale and/or retail of electronics and in customer services, and in the operation of convenience stores, with Tax Identification Number 129-864-120-000 and who is required by law, rules and regulations to pay the correct amount of value-added tax pursuant to Section 105 and 106 of the National Internal Revenue Code (NIRC) of 1997, as amended, did then and there, knowingly, willfully and unlawfully fail and refuse to pay deficiency value-added tax in the amount of Two Million Four Hundred Thirty-Seven Thousand One Hundred Fifty-Four and 63/100 (Php 2,437,154.63) Pesos, exclusive of interest and surcharge, for taxable year 2012, despite the receipt of the Preliminary Assessment Notice with details of discrepancies, on December 14, 2015 and of the Formal Letter of Demand and Final Assessment Notice with details of discrepancies, January 5, 2016, including prior and post notices and demands to pay, the last of which being the Second Collection Letter dated December 14, 2016 and his failure to file a valid protest on the said assessment within the prescribed period, to the damage and prejudice of the Government of the Philippines in the aforesaid amount, exclusive of interest and surcharge.

CONTRARY TO LAW.” 

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After a review of the Information and the attached supporting documents, the Court issued a Resolution dated January 10, 2023³ finding probable cause to issue a warrant of arrest against accused Faivo Pascual Bartolome.

A Warrant of Arrest was issued on January 10, 2023 ordering the arrest of accused Faivo Pascual Bartolome.

On February 14, 2023, a cash bail bond was filed by accused Faivo Pascual Bartolome with the Regional Trial Court (RTC) of Laoag City.


On February 21, 2023, the Clerk of Court of the RTC of Laoag City posted and transmitted the bail documents of the accused including the duly-approved cash bond of accused and the Order of Release signed by the Executive Judge of RTC of Laoag City, Myra Sheila M. Nalupta, dated February 4, 2023.

On March 10, 2023, the Court issued a Resolution taking note of the said transmittal and the cash bail bond posted by the accused in the amount of Php60,000.00 and ordered the parties to file their respective pre-trial briefs within five (5) days from notice.

Both parties failed to file their pre-trial briefs within the time prescribed by the Court as indicated in the Records Verification dated May 2, 2023. In a Resolution dated May 26, 2023, the Court ordered both parties to show cause within five (5) days from notice why no sanction should be imposed for failure to comply with the Court's Resolution dated March 10, 2023.

On June 13, 2023, plaintiff filed a Manifestation with Motion for Leave to Admit Pre-Trial Brief which the Court admitted in the Resolution dated June 30, 2023. In this same Resolution, the Court re-set the pre-trial conference and arraignment of the accused on August 16, 2023 which was later on re-set to September 6, 2023.

Meanwhile, accused still failed to file his pre-trial brief as indicated in the Records Verification dated July 12, 2023

³ Division Docket, pp. 49 to 52. 

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On August 9, 2023, the Court in Division issued the assailed Resolution dismissing CTA Crim. Case No. O-985 on the ground of prescription because the criminal complaint against accused was filed beyond the five (5)-year prescriptive period provided by law. We quote the relevant portions of the assailed Resolution dated August 9, 2023 where the Court in Division narrated the facts leading up to the conclusion of prescription, thus:

“Clearly, when the offense charged involves a taxpayer’s refusal to pay the taxes due, the date of commission of which is known, the five-year prescriptive period begins to run from the date the assessment notices became final and executory and continues to run until the filing of the *Information* in Court.


In this case, the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) with Details of Discrepancies for deficiency value-added tax (VAT) was issued on December 21, 2015, and the accused’s accounting staff received the same on January 5, 2016.

On January 25, 2016, the accused filed a protest on the FLD/FAN but failed to meet the requirements of a valid protest under Revenue Regulations (RR) No. 18-2013; hence, he was given ten days from receipt of the letter reply to file another protest.

On March 10, 2016, the accused filed another protest that the plaintiff received on March 14, 2016. In a letter dated March 29, 2016, the BIR denied the accused’s March 10, 2016 request for the same was filed out of time, making the assessment final, executory and demandable.

Hence, the BIR served Collection Letters on August 5, 2016 and December 14, 2016, to the accused to demand payment of his deficiency taxes, which were both unheeded.

Under Section 228 of the NIRC, the cause of action accrued after the BIR served the notice and demand to pay, *i.e.*, FLD/FAN, to the accused on January 5, 2016. Even with the demand to pay, the accused still refused to pay his deficiency taxes within the allotted period, as stated in the FLD/FAN. Neither did the accused file a valid protest within thirty (30) days from January 5, 2016, or until February 4, 2016, making the assessment final and executory on **February 5, 2016**. Hence, the BIR posted the accused’s tax case for enforcement of collection on March 17, 2016.

Applying *Lim* and *Tupaz*, the five-year prescriptive period to indict the accused for failure to pay tax lapsed on **February 5, 2021**. Thus, the right of the government to institute the case against the accused had already prescribed 

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when the Information was filed before this Court on December 6, 2022.

WHEREFORE, premises considered, CTA Crim. Case No. O-985 is **DISMISSED** on the ground of prescription.

SO ORDERED.”

On August 30, 2023, plaintiff People of the Philippines posted a Motion for Reconsideration (of the Resolution dated August 9, 2023) challenging the Court’s Resolution dated August 9, 2023 and insisting that the criminal action against accused was instituted within the five (5)-year prescriptive period.

No comment/opposition was filed by accused.⁴


On January 12, 2024, the Court issued a Resolution denying petitioner’s Motion for Reconsideration and reiterated its ruling in the Resolution dated August 9, 2023.

Petitioner received the Resolution dated January 12, 2024 on January 19, 2024 and subsequently posted a Petition for Review with the Court *En Banc* on February 5, 2024 docketed as CTA *EB* Crim. No. 140 (*People of the Philippines vs. Faivo Pascual Bartolome*).

In a Minute Resolution dated March 8, 2024, the Court directed respondent to file a comment within ten (10) days from notice.

Records Verification Notice dated April 18, 2024 showed that respondent failed to file a comment/opposition to petitioner’s Petition for Review.

On May 23, 2024, the Court submitted petitioner’s Petition for Review for decision.

⁴ Records Verification dated October 16, 2023, Division Docket, p. 123. 

ISSUE/ASSIGNED ERROR

Petitioner filed the Petition for Review on the sole ground that the criminal action against respondent Faivo Pascual Bartolome was instituted within the five (5)-year prescriptive period.

Arguments of Petitioner

Petitioner does not dispute the findings of facts of the Court in Division but disagrees with the date when the five (5)-year prescriptive period of criminal tax cases is suspended or interrupted. It maintains that the criminal action was deemed instituted when the complaint for preliminary investigation was filed with the Department of Justice (DOJ) and not with the court. It proffers the interpretation that Section 281 of the 1997 NIRC, as amended, refers to the filing of the criminal complaint with the DOJ as the act which interrupts the running of prescription. It further cites Section 1 of Rule 110 of the Revised Rules of Criminal Procedure which supposedly states that the criminal action shall be instituted by “filing the complaint with the *proper officer* for the purpose of conducting the requisite preliminary investigation.”

Using this theory, petitioner contends that the filing of the Joint Complaint-Affidavit before the DOJ for preliminary investigation on October 23, 2020 interrupted the running of prescription and remains suspended when the Information was instituted before the Court. Thus, petitioner concludes that the criminal action for willful non-payment of tax was instituted within the five (5)-year prescriptive period and prays that the Court reverse its ruling and instead decide the case on the merits instead of dismissing the same due to a technicality.

THE COURT *EN BANC*'S RULING

We shall first rule on the timeliness of the filing of the instant appeal.

Records show that petitioner received a copy of the assailed Resolution dated January 12, 2024 on January 19, 2024⁵ denying its Motion for Reconsideration. It had fifteen (15)

⁵ Division Docket, p. 126. 

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days from receipt thereof to file a Petition for Review with the Court *En Banc* pursuant to Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended.⁶

Counting from January 19, 2024, petitioner had until February 3, 2024⁷ to file a Petition for Review with the Court *En Banc*.

On February 5, 2024⁸ petitioner posted its Petition for Review which is well within the period prescribed by law, hence, timely filed.

Ruling now on the substantive issue of the case, we find the same to be without merit.

Section 281 of the 1997 NIRC, as amended, governs the prescriptive period for filing criminal violations of the said Code, *viz.*

“SECTION 281. *Prescription for Violations of any Provision of this Code.* — All violations of any provision of this Code shall **prescribe after five (5) years.**

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

The term of prescription shall not run when the offender is absent from the Philippines.” (*Emphases supplied*)

⁶

**“Rule 8
Procedure in Civil Cases**

Section 3. *Who may appeal; period to file petition.-*

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. xxx xxx xxx”

⁷ February 3, 2024 fell on a Saturday.

⁸ February 5, 2024 fell on a Monday. *an*

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In the same vein, Section 2, Rule 9 of the RRCTA also provides, thus:

“Section 2. Institution of criminal actions. – All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

The institution of the criminal action shall interrupt the running of the period of prescription.” (*Emphasis supplied*)

In relation to the application of the afore-cited provisions especially on issues involving the prescriptive period of criminal tax cases, this Court finds it highly relevant to determine the crime charged against the accused because Section 281 of the 1997 NIRC, as amended, provides that the five (5)-year prescriptive period shall commence to run on “the day of the **commission of the violation of the law**, and if the same be not known at the time, from the discovery thereof.”

The present case involves a violation of Section 255 of the 1997 NIRC, as amended, quoted as follows:

“SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.”

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The facts show that accused was charged with willful failure to pay the taxes due. A Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) with Details of Discrepancies for deficiency value-added tax for taxable year 2012 as issued on December 21, 2015 and received by the accused on January 5, 2016.

A protest was filed by accused on January 25, 2016 which was considered by the Bureau of Internal Revenue (BIR) as insufficient as it failed to meet the requirements of a valid protest under Revenue Regulations No. 18-2013 pursuant to the denial letter dated March 29, 2016. The BIR then gave the accused a period of ten (10) days from receipt of the denial letter within which to file another protest letter. The accused filed another protest letter on March 10, 2016 which was received by the BIR on March 15, 2016. This protest was subsequently denied by the BIR because the protest was filed beyond the ten (10)-day period prescribed by the BIR making the deficiency taxes final, executory and demandable.⁹ The BIR then issued Collection Letters on August 5, 2016 and December 14, 2016 to demand the payment of the alleged deficiency taxes.

The Court in Division ruled in the assailed Resolution dated August 9, 2023 that counting from the receipt of the FLD/FAN on January 5, 2016, the assessment became final and executory on February 5, 2016 because the accused failed to file a valid protest thereto within thirty (30) days from January 5, 2016. Thus, the five-year prescriptive period commences to run from February 5, 2016.

To repeat, petitioner contends that the filing of the criminal complaint with the DOJ on October 23, 2020 interrupted the running of the five (5)-year prescriptive period so counted from February 5, 2016, the right to charge accused for the crime of willful failure to pay taxes had not yet prescribed.

In light of the relevant rules and jurisprudence, the Court disagrees with the contention of petitioner and finds that it is the filing of the Information in Court that suspends the running of the five (5)-year prescriptive period.

⁹ Letter dated March 29, 2016 addressed to accused Faivo Pascual Bartolome and signed by the Assistant Regional Director, Eduardo L. Pagulayan, Division Docket, p. 44. 

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In the case of *Emilio E. Lim, and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*,¹⁰ the Supreme Court, interpreting the above-quoted Section 281 of the 1997 NIRC, as amended (previously Section 354 of the NIRC), ruled that for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment up to the filing of the **information in court** does not exceed five (5) years, the government's right to file an action will not prescribe. We quote portions of this Supreme Court decision as follows:

“...As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that **tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years.**

xxx

xxx

xxx

Unless amended by the Legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.” (*Emphasis supplied*)

It is clear that in cases involving the violation of refusal to pay taxes under Section 255 of the 1997 NIRC, as amended, the period of prescription starts to run from the day of the commission of the offense, or if the same be not known at the time, from the discovery thereof, and it shall be interrupted upon the institution of judicial proceedings. In the case of *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105 and People of the Philippines*,¹¹ the Supreme Court declared that a crime involving failure to pay deficiency taxes is deemed committed after service of notice and demand for payment of deficiency taxes, and we quote:

“We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim Sr. vs. Court of Appeals*, we stated that by its

¹⁰ G.R. Nos. 48134-37, October 18, 1990.

¹¹ G.R. No. 127777, October 1, 1999. *an*

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nature, the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer, Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. **This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.** (Emphasis supplied)

As regards interruption of the five (5)-year prescriptive period, Section 281 of the 1997 NIRC, as amended, mentions the "institution of judicial proceedings" which refers to the filing of the Information in Court.

Records show that the filing of the Information against the accused was filed in Court only on December 5, 2022 which is way beyond the five (5)-year prescriptive period provided under Section 281 of the 1997 NIRC, as amended, and implemented by Section 2, Rule 9 of the RRCTA. The Court in Division correctly dismissed the criminal case due to prescription.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* filed by People of the Philippines is **DENIED** for lack of merit.

Accordingly, the Court in Division's Resolutions dated August 9, 2023 and January 12, 2024 in CTA Criminal Case No. O-985 are hereby **AFFIRMED**.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

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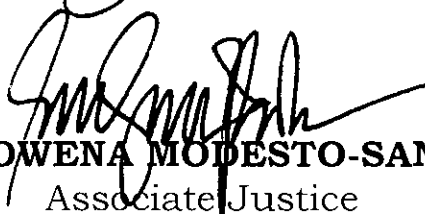
MA. BELEN M. RINGPIS-LIBAN

Associate Justice



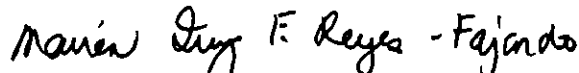
JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice



CORAZON G. FERRER-FLORES

Associate Justice



HENRY S. ANGELES

Associate Justice



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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO

Presiding Justice