

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

CTA Crim. Case No. O-685

For: Violation of Section 255
of the NIRC of 1997, as amended

Present:

- versus -

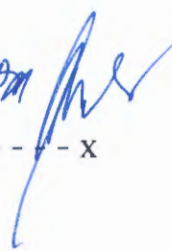
BACORRO-VILLENA, Acting Chairperson, and,
CUI-DAVID, JJ.

REMEDIOS DE JUAN
PENSOTES,

Accused.

Promulgated:

AUG 22 2022


2:15 PM


X

X

DECISION

BACORRO-VILLENA, J.:

At bar is a criminal action filed against accused Remedios De Juan Pensotes (**accused**) for violation of Section 255¹ of the National Internal Revenue Code (NIRC) of 1997, as amended, for her alleged willful failure to supply correct and accurate information in her Income Tax Return (ITR) for taxable year (TY) 2007. 

¹ **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) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

...

Accused is a resident citizen and a single proprietor, doing business under the name and style of RJP International Trading Construction and General Services (RJP).²

On 01 March 2019, an Information³ was filed against accused, which reads as follows:

...

The undersigned Senior Assistant State Prosecutor of the Department of Justice hereby accuses **REMEDIOS DE JUAN PENSOTES** of the offense of Willful Failure to Supply Correct and Accurate Information for taxable year 2007 in violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

“That on or about April 15, 2008 and thereafter, in Makati City, and within the jurisdiction of this Honorable Court, the above-named accused, as duly registered taxpayer and sole proprietor of RJP International Trading Construction and General Services, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in her Income Tax Return for taxable year 2007 by then and there declaring only the amount of Three Hundred Sixty Seven Thousand Fifty Pesos And Seventy Five Centavos (P367,050.75) despite other sources of taxable income not reported therein arising from RJP International Trading Construction and General Services['] transactions with the Philippine National Police (PNP) in 2007 in the amount of Sixty Six Million Four Hundred Twenty Four Thousand Eight Hundred Forty Nine Pesos and Ninety Nine Centavos (P66,424,849.99) thus failing to pay the proper income tax due for taxable year 2007, to the damage and prejudice of the Government resulting in deficiency tax in the amount of Nineteen Million Nine Hundred Ninety Seven Thousand Five Hundred Twenty Three Pesos and Seven Centavos (P19,997,523.07), exclusive of surcharges and interests.

CONTRARY TO LAW.” 

...

² Minutes of Preliminary Conference dated 10 June 2019, Division Docket, Volume I, p. 196; Pre-Trial Order 15 July 2019, id., p. 399.

³ Id., pp. 8-10.

During the arraignment, accused pleaded not guilty⁴ to the aforesaid charge. She, however, admitted that she is the same “Remedios De Juan Pensotes” being charged in the said Information.⁵

After the Preliminary Conference⁶ that was held on 10 June 2019 and upon plaintiff’s filing of the Pre-Trial Brief⁷ on 21 June 2019 (without accused’s pre-trial brief), the Court issued the Pre-Trial Order⁸ on 15 July 2019.

EVIDENCE FOR THE PLAINTIFF

On 17 July 2019, plaintiff presented its first witness, Revenue Officer (RO) III Gerrico A. Chico (**Chico**) who testified by direct examination through his Judicial Affidavit⁹ that: (1) their group conducted an investigation on the tax liabilities of accused when he was still an RO I at the National Investigation Division (NID) of the Bureau of Internal Revenue (BIR); (2) sometime in 2011, he, together with Rodrigo B. Dulay (**Dulay**), Mercedita A. Dizon (**Dizon**) and Romy Carandang (**Carandang**), conducted an investigation on accused; (3) their investigation was prompted by an NID Memo Assignment No. KJH/SCD 2011-09-19-1046 dated 19 September 2011¹⁰, with attached news article from the website of Manila Standard Today dated 01 September 2011¹¹, regarding the retired Philippine National Police (PNP) officials’ alleged overpricing of repairs [of twenty-eight (28) light armored vehicles] in 2007; (4) after the issuance of the said NID Memo Assignment, they issued an access letter dated 13 October 2011¹² to the PNP to secure certified true copies of its service contracts with accused for TYs 2008, 2009 and 2010 together with the pertinent schedules and proof of payment; (5) thereafter, they received a reply from the PNP – Logistics Support Service (PNP-LSS) dated 21 October 2011¹³, with attached Certificate of Registration¹⁴ of RJP issued by the

⁴ Certificate of Arraignment dated 20 May 2019, id., p. 179.
⁵ Identity Admission of the Accused dated 20 May 2019, id., p. 180. See also Minutes of Preliminary Conference dated 10 June 2019, id., p. 195 and Pre-Trial Order dated 15 July 2019, id., p. 399.
⁶ Minutes of Preliminary Conference, id., pp. 188-198.
⁷ Id., pp. 201-209.
⁸ Id., pp. 399-408.
⁹ Exhibits “P-23” and “P-23-A”, id., pp. 218-229.
¹⁰ Referring to Exhibit “P-7” which was, however, denied admission.
¹¹ Referring to Exhibits “P-10” and “P-10-a” which were, however, denied admission.
¹² Referring to Exhibit “P-12” which was, however, denied admission.
¹³ Exhibit “P-14”, Division Docket, Volume II, p. 819.
¹⁴ Exhibit “P-8”, id., p. 812.

Procurement Service of the Department of Budget and Management (PS-DBM) relative to its registration with the Philippine Government Electronic Procurement System (PhilGEPS); (6) subsequently, they issued another access letter to PNP dated 11 November 2011¹⁵ to secure certified true copies of its service contracts with accused for TY 2007, together with purchase orders, inventories and check payments related to such transaction; (7) they received a reply from the PNP-LSS dated 21 November 2011¹⁶ with attached service contract¹⁷ and other allied documents¹⁸; (8) thereafter, they evaluated and compared the sales declared by accused in her 2007 Audited Financial Statements (AFS) and ITR *vis-à-vis* PNP's purchases from RJP *per* copies of voucher and sales invoices submitted by the former; (9) they discovered that accused deliberately failed to declare her correct tax base for TY 2007; (10) on 29 February 2012, they prepared a Memorandum of Investigation¹⁹ to report their findings and to recommend the issuance of a Letter of Authority (LOA); (11) they also recommended the filing of criminal charges against accused and executed their Joint Complaint-Affidavit dated 26 April 2012²⁰ for tax evasion and willful failure to supply correct and accurate information in her ITR for TY 2007, pursuant to Sections 254²¹ and 255²² of the NIRC of 1997, as amended, respectively; (12) later, then Commissioner of Internal Revenue (CIR), Kim S. Jacinto-Henares (Henares), issued an LOA dated 26 March 2012²³; (13) it was CIR Henares who authorized the filing of criminal actions against accused, as evidenced by a letter²⁴ referring the case to the Secretary of Justice (SOJ); (14) they also executed a Joint Reply-Affidavit²⁵ and Memorandum²⁶ before the Department of Justice (DOJ); and, (15) they filed the criminal complaint against accused for willful attempt to evade or defeat taxes

¹⁵ Exhibit "P-13", *id.*, p. 818.

¹⁶ Exhibit "P-15", *id.*, p. 820.

¹⁷ Exhibit "P-9", *id.*, p. 813.

¹⁸ Exhibits "P-20-a", "P-20-b", "P-20-c", "P-20-p", "P-20-q", "P-20-r", "P-20-s", "P-20-t", "P-20-u", "P-20-v", "P-20-w" and "P-20-x", (*id.*, pp. 831-833 and 848-856) were admitted in evidence while Exhibits "P-20" and "P-20-d" to "P-20-o" were denied admission.

¹⁹ Exhibit "P-21", *id.*, pp. 857-860.

²⁰ Exhibit "P-3", *id.*, Volume I, pp. 24-33.

²¹ **Sec. 254. Attempt to Evade or Defeat Tax.** – Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

²² *Supra* at note 1.

²³ Exhibit "P-22", Division Docket, Volume II, p. 861.

²⁴ Exhibit "P-2", *id.*, Volume I, pp. 22-23.

²⁵ Exhibit "P-4", *id.*, pp. 108-135.

²⁶ Exhibit "P-5", *id.*, Volume II, pp. 778-809.

and willful failure to supply correct and accurate information because a person should declare all his or her income and pay the corresponding tax due thereon pursuant to Sections 24²⁷ and 74(A)²⁸ of the NIRC of 1997, as amended, respectively.

On cross-examination, Chico further testified that: (1) the alleged transaction that was not reported is accused's transaction with the PNP²⁹; (2) the said transaction is subject to withholding tax³⁰ and PNP is a withholding agent³¹; (3) the Disbursement Voucher³² indicates that the transaction was subjected to five percent (5%) and one percent (1%) withholding taxes³³; (4) he has no personal knowledge as to any communication sent to accused's accountant³⁴; and, (5) the document with the heading "FL Capili & Associates"³⁵ is just part of the financial statements.³⁶ Plaintiff did not conduct a redirect examination.³⁷

On 31 July 2019, plaintiff then presented its second witness, RO Dulay, who, aside from corroborating Chico's testimony, further testified through his Judicial Affidavit³⁸ that: (1) after receiving the reply from PNP-LSS dated 21 November 2011, they also received a Memorandum from Revenue District Office (RDO) No. 50, dated 08 December 2011³⁹, with the attached Annual ITR⁴⁰ for TY 2017; (2) they also obtained a certification with the attached [Balance Sheet as of 31 December 2006] Income Statement and Schedule of Income for the year ended 31 December 2007 of RJP⁴¹ and Certificate of Creditable Tax Withheld at Source for TY 2007 from the Philippine Navy⁴²; (3) aside

²⁷ **Sec. 24. Income Tax Rates.** –

...
²⁸ **Sec. 74. Declaration of Income Tax for Individuals.** –
(A) *In General* -

...
²⁹ TSN dated 17 July 2019, pp. 7-8.

³⁰ Id., p. 8.

³¹ Id., p. 9.

³² Referring to Exhibit "P-20-d" which was, however, denied admission.

³³ TSN dated 17 July 2019, pp. 9-10.

³⁴ Id., p. 17.

³⁵ Exhibit "P-19", Division Docket, Volume II, pp. 826-829.

³⁶ TSN dated 17 July 2017, p. 17.

³⁷ Id., p. 19.

³⁸ Exhibits "P-24" and "P-24-A", Division Docket, Volume I, pp. 414-429.

³⁹ Exhibit "P-16", id., Volume II, p. 821.

⁴⁰ Exhibit "P-17", id. pp. 822-824.

⁴¹ Exhibit "P-19", supra at note 35.

⁴² Exhibit "P-18", Division Docket, Volume II, p. 825. Note that the said document was incorrectly marked as Exhibit "P-19".

from preparing a Memorandum of Investigation⁴³, they also prepared a computation of under-declaration of income for TY 2007 and computation of deficiency income tax⁴⁴ (IT); (4) for TY 2007, accused only declared ₱10,823,888.40 as her revenues; (5) however, *per* audit of documents that the PNP submitted, it should have been ₱77,248,738.39, thus there appears a substantial under-declaration of sales/revenues in the amount of ₱66,424,849.99; and, (6) the computation of accused's deficiency IT is presented in the Joint Complaint-Affidavit.⁴⁵

On cross-examination, Dulay testified that: (1) the basis for the computation of the income *per* audit of ₱77,248,738.99 is the certified true copy of the sales invoice issued by RJP⁴⁶; (2) PNP is a withholding agent and it correctly withheld taxes from its transaction with RJP⁴⁷; (3) their assessment is only for IT and not for value-added tax (VAT)⁴⁸; (4) for IT, the taxpayer is to compute the tax due based on gross amount but is allowed to deduct the creditable withholding tax (CWT)⁴⁹; (5) he is not aware as to who prepared accused's ITR⁵⁰; (6) Exhibit "P-20"⁵¹ or the supplementary schedule was prepared by him and is not part of the AFS⁵²; and, (7) he did not include the said supplementary schedule in his Judicial Affidavit as the same was not certified unlike the source documents.⁵³

On 16 September 2019, plaintiff presented its third witness, Sonia Agres Lopez (**Lopez**), who testified by direct examination through her Judicial Affidavit⁵⁴ that: (1) she is currently the Chief of the Document Processing Division of Revenue Region (RR) No. 8A – Makati City; (2) she is to testify on the documents attached to the Memorandum dated 08 December 2011⁵⁵; (3) the said Memorandum was issued because Atty. Sixto C. Dy, Jr. (Atty. Dy), the Officer-in-Charge (OIC)-Chief of

⁴³ Exhibit "P-21", *id.*, *supra* at note 19.

⁴⁴ Exhibits "P-3-a" and "P-3-b", *id.*, Volume I, pp. 29-30.

⁴⁵ Exhibit "P-3", *id.*, pp. 24-33.

⁴⁶ TSN dated 03 July 2019, p. 9.

⁴⁷ *Id.*, p. 13.

⁴⁸ *Id.*, p. 14.

⁴⁹ *Id.*, p. 15.

⁵⁰ *Id.*, p. 16.

⁵¹ Referring to RJP International Trading Construction and General Services Summary of Sales/Income for taxable year 2007. However, Exhibit "P-20" was denied admission.

⁵² TSN dated 03 July 2019, p. 18.

⁵³ The question asked during redirect examination was subsequently withdrawn thus respondent no longer conducted recross-examination, *id.*, pp. 19 and 21.

⁵⁴ Exhibits "P-25" and "P-25-A", Division Docket, Volume II, pp. 639-644.

⁵⁵ Exhibit "P-16", *supra* at note 39.

the NID, then issued an access letter dated 11 November 2011⁵⁶ addressed to RR No. 8 RDO No. 50 South Makati, pursuant to the investigation they are conducting on accused, as provided in NID Memo Assignment No. KJH/SCD 2011-09-19-1046; and, (4) attached to the said Memorandum is accused's Annual ITR⁵⁷ and Certificate of Creditable Tax Withheld at Source⁵⁸, both for TY 2007, and [Balance Sheet as of 31 December 2006] Income Statement and Schedule of Income for the year ended 31 December 2007 of RJP.⁵⁹

On cross-examination, Lopez further testified that: (1) the access letter was forwarded to their office since they are the ones processing the documents⁶⁰; (2) she prepared the Memorandum dated 08 December 2011 but it was signed by the Revenue District Officer or the Assistant Revenue District Officer;⁶¹ and, (3) she was the one who certified the attached documents.⁶² On redirect examination, Lopez confirmed that the originals of the subject documents were already transferred to their warehouse but the same are based on the records of the BIR.⁶³ Accused did not conduct any recross-examination.⁶⁴

The presentation of its fourth witness, Reynaldo Michael EM Agoncillo III (**Agoncillo**) followed. Through his Judicial Affidavit⁶⁵, he testified that: (1) he is a Commissioned Officer of the PNP; (2) he authenticated the documents submitted by PNP-LSS to the BIR when he was still the Assistant Chief FMD/Procurement Office of the PNP Headquarters Support Service (**PNP-HSS**); (3) included in his duties and responsibilities is to authenticate photocopied documents submitted by suppliers after being determined to be the winning bidder (or the supplier which has the lowest and acceptable calculated bid); and, (4) the ones presented to him during the hearing are the documents he authenticated and submitted to the BIR.

On cross-examination, Agoncillo further testified that: (1) he authenticated the document by verifying with the original before

⁵⁶ Exhibit "P-11", Division Docket, Volume II, p. 816.
⁵⁷ Exhibit "P-17", supra at note 40.
⁵⁸ Exhibit "P-18", supra at note 42.
⁵⁹ Exhibit "P-19", supra at note 41.
⁶⁰ TSN of 16 September 2019, p. 15.
⁶¹ Id., p. 16.
⁶² Id., pp. 16 and 20-21.
⁶³ Id., p. 22.
⁶⁴ Id.
⁶⁵ Exhibits "P-26" and "P-26-A", Division Docket, Volume II, pp. 617-621.

affixing his signature on the photocopy⁶⁶; and, (2) he does not have personal knowledge with respect to the entries made in the documents he certified.⁶⁷ On redirect examination, Agoncillo confirmed his manner of authenticating the documents and that he is aware of the contents thereof.⁶⁸ Accused did not conduct any recross-examination.⁶⁹

On 30 October 2019, plaintiff presented its fifth witness, Mary Joyce Anne S. Sierra (**Sierra**), who testified by direct examination, through her Judicial Affidavit⁷⁰, that: (1) she occupies the position of RO I and she is assigned to the BIR NID; (2) she personally served the Preliminary Assessment Notice (**PAN**) dated 04 July 2017⁷¹ on 14 October 2019 and it was Gemma Abayon (**Abayon**), who received the same as accused was not around then; (3) the PAN's service was witnessed by two barangay officials; (4) to show diligent effort to serve the PAN, the same was personally served again on 18 October 2019 but no one was at the designated address to receive, as attested to by two barangay officials and as evidenced by a Barangay Certification⁷² with attached blotter report; (5) accused did not file a reply (to the PAN); and, (6) before the hearing started, she personally served the PAN on accused for the third time. Accused did not conduct any cross-examination.⁷³

Police Chief Superintendent Manuel H. Cachero (**Cachero**) was plaintiff's sixth witness and he testified that: (1) he is the former Director of PNP-LSS⁷⁴; (2) at the time, he oversees the processes and records concerning logistics⁷⁵; (3) he issued a letter-reply dated 21 October 2011⁷⁶ with attached documents⁷⁷; and, (4) the said documents were compiled in compliance with the request of the BIR.⁷⁸ Accused did not conduct any cross-examination.⁷⁹

⁶⁶ TSN of 16 September 2019, p. 27.

⁶⁷ Id., pp. 27 and 29-31.

⁶⁸ Id., pp. 31-32.

⁶⁹ Id., p. 32.

⁷⁰ Exhibits "P-29" and "P-29-A", Division Docket, Volume II, pp. 904-909.

⁷¹ Exhibit "P-28", id., pp. 866-868.

⁷² Exhibit "P-27", id., pp. 862-865.

⁷³ TSN dated 30 October 2019, p. 12.

⁷⁴ Id., p. 14.

⁷⁵ Id., p. 15.

⁷⁶ Exhibit "P-14", Division Docket, Volume II, p. 819.

⁷⁷ TSN dated 30 October 2019, pp. 15-16.

⁷⁸ Id., p. 17.

⁷⁹ Id.

Plaintiff then presented its seventh and last witness, Kenneth Neil A. Piloton (**Piloton**), who testified that: (1) he is currently the custodian of PNP – Commission on Audit (**PNP-COA**) Administrative Support⁸⁰; (2) the documents were authenticated in accordance with the duly established procedure of PNP-COA⁸¹; and, (3) they no longer have the original of these documents as the same were already submitted to their central office.⁸²

On cross-examination, Piloton confirmed that he is not Superintendent Varga⁸³, the subject of the subpoena *ad testificandum*.⁸⁴ However, the Court noted that he was substituted for Lyndon G. Sorilla⁸⁵, the witness named in plaintiff’s Pre-Trial Brief.⁸⁶

On 21 November 2019, plaintiff filed its Formal Offer of Evidence⁸⁷ (FOE), to which accused filed her Comment/Opposition⁸⁸ on 28 November 2019. On 16 December 2019, plaintiff filed a Reply with Manifestation⁸⁹ while accused filed a Manifestation⁹⁰ on 23 December 2019. In compliance with the Court’s Resolution dated 16 January 2020⁹¹, accused filed a Comment/Opposition⁹² on 24 January 2020. Thus, on 14 February 2020⁹³, the Court admitted all of plaintiff’s documentary evidence, except certain exhibits⁹⁴ for failure to present the originals for comparison.

⁸⁰ Id., p. 20.

⁸¹ Id., p. 22.

⁸² Id.

⁸³ Counsel for accused could have been referring to Police Chief Superintendent Percival G. Barba, who is among those subject of the Subpoena Duces Tecum & Ad Testificandum (Division Docket, Volume II, p. 567).

⁸⁴ TSN dated 30 October 2019, p. 23.

⁸⁵ Should be spelled as Lyndon G. Zorilla.

⁸⁶ TSN dated 30 October 2019, p. 23.

⁸⁷ Division Docket, Volume II, pp. 738-765.

⁸⁸ Id., pp. 869-873.

⁸⁹ Id., pp. 877-880.

⁹⁰ Id., pp. 874-875.

⁹¹ Id., pp. 884-889.

⁹² Id., pp. 890-891.

⁹³ See Resolution dated 14 February 2020, id., pp. 894-895.

⁹⁴

Exhibit	Description
“P-7”	NID Memo Assignment No. KJH/SCD 2011-09-19-1046 dated September 19, 2011.
“P-8”	Certificate of Registration of RJP International Trading Construction and General Services with the Procurement Service of the Department of Budget and Management under the Philippine Government Electronic Procurement System (PhilGEPS) on October 2, 2007.
“P-9”	Philippine National Police (PNP) Certificate of Accreditation No. 2007-033 of RJP International Trading Construction and General Services.

On 24 February 2020, accused filed a Motion for Leave to File Demurrer to Evidence⁹⁵, to which plaintiff filed a Comment/Opposition⁹⁶ on 02 March 2020. Also, on 05 March 2020, plaintiff also filed a Motion for Reconsideration (of the Resolution dated February 14, 2020)⁹⁷ (MR), to which accused filed a Comment/Opposition⁹⁸ on 13 July 2020.

"P-10"	Printout of newspaper article from the website of the Manila Standard Today dated September 1, 2011.
"P-10-a"	Printout of newspaper article from the website of the Manila Standard Today dated September 1, 2011 (2 nd page).
"P-12"	Access Letter dated October 13, 2011 addressed to PDG Nicanor A. Bartolome, Chief of the Philippine National Police.
"P-20"	RJP International Trading Construction and General Services Summary of Sales/Income for taxable year 2007.
"P-20-d"	PNP Disbursement Voucher amounting to P399,707.00.
"P-20-e"	Sales Invoice of RJP International Trading Construction and General Services dated February 19, 2007 amounting to P399,707.00.
"P-20-f"	PNP Headquarters Support Service's Purchase Order dated February 9, 2007 to RJP International Trading Construction and General Services, amounting to P399,707.00.
"P-20-g"	Delivery Receipt of RJP International Trading Construction and General Services, dated February 19, 2007 amounting to P399,707.00.
"P-20-h"	Letter addressed to the Chairman, HSS Bids and Awards Committee, Headquarters Support Services, Camp Crame, Quezon City dated February 8, 2007 by RJP International Trading Construction and General Services.
"P-20-i"	PNP Disbursement Voucher amounting to P2,022,500.00.
"P-20-j"	Check pay to the order of RJP International Trading Construction and General Services dated March 13, 2007.
"P-20-k"	PNP Headquarters Support Service's Purchase Order dated March 2, 2007 to RJP International Trading Construction and General Services amounting to P2,022,500.00.
"P-20-l"	Sales Invoice of RJP International Trading Construction and General Services amounting to P2,022,500.00 (2 pages).
"P-20-m"	Delivery Receipt of RJP International Trading Construction and General Services amounting to P2,022,500.00 (2 pages).
"P-20-n"	Letter addressed to the Chairman, HSS Bids and Awards Committee, Headquarters Support Services, Camp Crame, Quezon City dated March 1, 2007 by RJP International Trading Construction and General Services.
"P-20-o"	Inspection Report Form dated March 7, 2007.
"P-20-t"	PNP Disbursement Voucher dated December 27, 2007 amounting to P53,900,000.00.
"P-20-u"	Check amounting to P50,531,250.00 dated December 27, 2007 issued to RJP International Trading Construction and General Services.
"P-20-v"	Sales Invoice of RJP International Trading Construction and General Services dated December 27, 2007 amounting to P53,900,000.00.
"P-20-w"	Official Receipt of RJP International Trading Construction and General Services dated January 17, 2008 amounting to P50,531,250.00.
"P-20-x"	Work Order PNP Logistics Support Service amounting to P53,900,000.00.

⁹⁵ Division Docket, Volume II, pp. 896-899.
⁹⁶ Id., Volume III, pp. 921-924.
⁹⁷ Id., pp. 926-930.
⁹⁸ Id., pp. 936-938.

Thus, on 24 August 2020⁹⁹, the Court partially reconsidered and admitted into evidence plaintiff's Exhibits "P-8", "P-9", "P-20-t", "P-20-u", "P-20-v", "P-20-w" and "P-20-x".¹⁰⁰ As to the documents which were still denied admission¹⁰¹, plaintiff filed a Tender of Excluded Evidence.¹⁰²

⁹⁹ See Resolution dated 24 August 2020, id., pp. 940-947.

¹⁰⁰

Exhibit	Description
"P-8"	Certificate of Registration of RJP International Trading Construction and General Services with the Procurement Service of the Department of Budget and Management under the Philippine Government Electronic Procurement System (PhilGEPS) on October 2, 2007.
"P-9"	Philippine National Police (PNP) Certificate of Accreditation No. 2007-033 of RJP International Trading Construction and General Services.
"P-20-t"	PNP Disbursement Voucher dated December 27, 2007 amounting to P53,900,000.00.
"P-20-u"	Check amounting to P50,531,250.00 dated December 27, 2007 issued to RJP International Trading Construction and General Services.
"P-20-v"	Sales Invoice of RJP International Trading Construction and General Services dated December 27, 2007 amounting to P53,900,000.00.
"P-20-w"	Official Receipt of RJP International Trading Construction and General Services dated January 17, 2008 amounting to P50,531,250.00.
"P-20-x"	Work Order PNP Logistics Support Service amounting to P53,900,000.00.

¹⁰¹

Exhibit	Description
"P-7"	NID Memo Assignment No. KJH/SCD 2011-09-19-1046 dated September 19, 2011.
"P-10"	Printout of newspaper article from the website of the Manila Standard Today dated September 1, 2011.
"P-10-a"	Printout of newspaper article from the website of the Manila Standard Today dated September 1, 2011 (2 nd page).
"P-12"	Access Letter dated October 13, 2011 addressed to PDG Nicanor A. Bartolome, Chief of the Philippine National Police.
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"P-20-k"	PNP Headquarters Support Service's Purchase Order dated March 2, 2007 to RJP International Trading Construction and General Services amounting to P2,022,500.00.
"P-20-l"	Sales Invoice of RJP International Trading Construction and General Services amounting to P2,022,500.00 (2 pages)
"P-20-m"	Delivery Receipt of RJP International Trading Construction and General Services amounting to P2,022,500.00 (2 pages).

On 16 October 2020, accused filed a Demurrer to Evidence with prior Leave of Court¹⁰³ (**Demurrer**) to which plaintiff filed a Comment/Opposition¹⁰⁴ on 29 October 2020. On 09 December 2020, the Court granted plaintiff's Tender of Excluded Evidence and denied accused's Demurrer.¹⁰⁵

Later, accused filed an MR¹⁰⁶ to the denial of Demurrer. However, for failure to provide proof of service, the same was merely noted without action.¹⁰⁷ Further, due to accused's and her counsel's failure to attend the hearing on 17 February 2021, the Court granted plaintiff's plea to consider accused's presentation of evidence as waived.¹⁰⁸

Still later, accused filed an "Omnibus Motion 1. Motion for Reconsideration of the Order dated February 17, 2021 2. Motion to Act on the Filed Motion for Reconsideration dated January 3, 2021. 3. Motion to Defer Submission of Memorandum"¹⁰⁹ (**Omnibus Motion**). After the filing of plaintiff's "Manifestation with Comment/Opposition (to the Omnibus Motion)"¹¹⁰, the Court granted accused's Omnibus Motion but denied his MR (on the denial of Demurrer).¹¹¹

EVIDENCE FOR THE ACCUSED

On 14 March 2022, accused presented herself as her own witness. On the witness stand where she identified her Judicial Affidavit¹¹², she testified that: (1) the allegation that she did not include 77 Million Peso-worth of sales is not true; (2) being a trader, she had to deduct the cost of the goods sold; (3) in 2007, she entrusted everything to her

"P-20-n"	Letter addressed to the Chairman, HSS Bids and Awards Committee, Headquarters Support Services, Camp Crame, Quezon City dated March 1, 2007 by RJP International Trading Construction and General Services.
"P-20-o"	Inspection Report Form dated March 7, 2007.

¹⁰² Division Docket, Volume III, pp. 948-953.
¹⁰³ Id., pp. 955-960.
¹⁰⁴ Id., pp. 968-975.
¹⁰⁵ See Resolution dated 09 December 2020, id., pp. 978-995.
¹⁰⁶ Id., pp. 996-1002.
¹⁰⁷ See Order dated 17 February 2021, id., pp. 1004-1005.
¹⁰⁸ Id.
¹⁰⁹ Id., pp. 1015-1018.
¹¹⁰ Id., pp. 1052-1057.
¹¹¹ See Resolution dated 15 July 2021, id., pp. 1062-1072.
¹¹² Id., pp. 1077-1081.


staff as she was already a senior citizen at that time; (4) she was surprised with the filing of the case against her as she had no slight intention or even a hint that she failed to supply correct and accurate information in her ITR considering that BIR issued to her Tax Clearances for the years 2006, 2007, 2008, 2009 and 2011; and, (5) she executed a Counter-Affidavit and Rejoinder-Affidavit in relation to this case.¹¹³

On cross-examination, accused stated that: (1) she could no longer recall the amount of sales she declared in her 2007 ITR as the same was filed about fifteen (15) years ago and she is now already eighty-one (81) years old¹¹⁴; (2) her accountant supplied to her the ITRs for 2006, 2007, 2008, 2009 and 2011; and, (3) and she has copies of the Tax Clearances issued to her by the BIR.¹¹⁵ Plaintiff did not conduct any redirect examination.¹¹⁶

On 28 March 2022, accountant, Flor Capili (**Capili**), a supposed witness for accused, failed to assume the witness stand as she could no longer be located. Nevertheless, since the proposed testimony of Capili is only with respect to her execution of a certification, which has been formally offered by plaintiff and was admitted as part of its evidence, the latter stipulated on the existence of the said document.¹¹⁷

Subsequently, plaintiff filed a Supplemental Memorandum¹¹⁸ on 20 April 2022 to its previously filed Memorandum.¹¹⁹ On the other hand, accused filed a Memorandum¹²⁰ on 04 May 2022. Thus, the Court submitted the case for decision on 31 May 2022.¹²¹

ISSUE

In the Pre-Trial Order, this issue¹²² has been submitted for this Court's resolution — 

¹¹³ However, the Court notes that accused failed to formally offer the documentary evidence identified by accused.
¹¹⁴ TSN dated 14 March 2022, p. 9.
¹¹⁵ Id., p. 10.
¹¹⁶ Id., pp. 10-11.
¹¹⁷ See Order dated 28 March 2022, Division Docket, Volume III, p. 1127.
¹¹⁸ Id., pp. 1132-1160.
¹¹⁹ Id., pp. 1030-1041.
¹²⁰ Id., pp. 1163-1171.
¹²¹ See Resolution dated 31 May 2022, id., p. 1173.
¹²² Id., Volume I, p. 401.

WHETHER ACCUSED REMEDIOS DE JUAN PENSOTES IS CRIMINALLY LIABLE BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

ARGUMENTS FOR THE PLAINTIFF

Plaintiff argues that as a resident citizen engaged in business (being the proprietor of RJP) and deriving income from sources within the Philippines, accused is subject to IT under Section 24(A)(1)(a)¹²³ of the NIRC of 1997, as amended. In addition, accused is also required to declare in her ITR all income she had earned and to pay the corresponding tax due thereon, as provided in Section 51(A)(1)(a)¹²⁴ of the same law. According to plaintiff, the requirement to file ITR carries the corresponding obligation to provide accurate information therein.

Plaintiff adds that, as someone engaged in business and RJP's sole owner, accused should have been well-aware of the contracts she herself had entered into with PNP (since they involved big amounts). The fact that she was dealing with the government should have also cautioned her from supplying incorrect and incomplete information. For her failure to comply with requirements of the law, being aware of the same, it could only be deemed that her actuations were intentional and deliberate.

Plaintiff emphasizes that the vouchers, checks, purchase orders, delivery receipts and sales invoices obtained from PNP show that accused indeed and actually received income amounting to ₱77,248,738.39. However, accused declared only ₱10,823,888.40 as her taxable sales in the ITR. Considering the totality of the documentary and testimonial evidence proffered by plaintiff, it is clear that accused

¹²³ **Sec. 24. Income Tax Rates.** —
(A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* —
(1) An income tax is hereby imposed:
(a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C), and (D) of this Section, derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein;
...
¹²⁴ **Sec. 51. Individual Return.** —
(A) *Requirements.* -
(1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
(a) Every Filipino citizen residing in the Philippines;
...

failed to report sales amounting to ₱66,424,849.99. Thus, there is no doubt that accused willfully failed to supply correct and accurate information in her ITR and failed to pay the correct taxes due thereon.

According to plaintiff, it was able to adduce competent and sufficient evidence showing that accused earned substantial income and what was declared in her ITR is significantly lower than what her transactions with PNP shows. Consequently, accused failed to supply the correct and accurate information in her 2007 ITR, warranting her conviction for the offense charged in the Information.

Plaintiff also contends that, despite accused's oft-repeated denial that she did not willfully fail to supply correct and accurate information in her ITR, there is no single piece of evidence offered to prove such defense. Even conceding that accused was made to believe by her accountant that she was able to comply with her tax obligations, the same is not sufficient to disprove the fact that her failure to supply correct and accurate information was willful because Section 3(d)¹²⁵, Rule 131 of the Rules of Court, as amended, presumes that a person takes ordinary care of his concerns. Hence, accused, being an experienced businessperson since 1994, she was supposed to know and understand her tax obligations. Such lack of concern is tantamount to deliberate ignorance, conscious avoidance and intentional disregard of her tax responsibilities to the government.

Plaintiff also argues that, in accused's last-ditch effort to justify her non-declaration of correct and accurate information in her ITR, she submitted photocopies of alleged Tax Clearances issued by the BIR. Assuming without admitting that these Tax Clearances indeed exist and were issued to her, the same are irrelevant as they are intended for "Bidding and Collection Purposes" only. Plaintiff adds that this type of clearance is issued to all prospective government bidders in accordance with the requirements of Republic Act (RA) No. 9184¹²⁶ and Executive Order (EO) No. 398.¹²⁷ This, however, does not

¹²⁵ **Sec. 3. Disputable presumptions.** – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:


...
(d) That a person takes ordinary care of his or her concerns;

¹²⁶ AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES.

preclude the BIR from subsequently assessing taxpayers for deficiency taxes and filing a criminal case.

As to the civil aspect, plaintiff contends the same is deemed instituted herewith pursuant to Section 7(b)(1)¹²⁸ of RA No. 9282.¹²⁹ Through the PAN dated 04 July 2017¹³⁰ and third-party information from PNP such as vouchers, checks, purchase orders, delivery receipts and sales invoices, plaintiff was able to prove accused's civil liability.

ARGUMENTS FOR THE ACCUSED

On the other hand, accused counters that the period to file the present criminal action has already prescribed. Here, the BIR referred the Joint Complaint-Affidavit to the DOJ on 26 April 2012. As such, the five (5)-year prescriptive period commenced to run on the said date hence the BIR had only until 26 April 2017 within which to file the requisite Information with the Court. However, as the same was filed only on 01 March 2019, the case should be dismissed on the ground of prescription. 

¹²⁷ DIRECTING TIMELY AND COMPLETE PAYMENT OF TAXES AS A PRECONDITION FOR ENTERING INTO, AND AS A CONTINUING OBLIGATION IN CONTRACTS WITH THE GOVERNMENT, ITS DEPARTMENTS, AGENCIES AND INSTRUMENTALITIES.

¹²⁸ *Sec. 7. Jurisdiction.* - The CTA shall exercise:

...
b. Jurisdiction over cases involving criminal offenses as herein provided:

1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized.

¹²⁹ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

¹³⁰ Exhibit "P-28", supra at note 71.

In addition, accused argues that the receipt of notices by an unauthorized person cannot be deemed as receipt by the taxpayer. Here, the LOA was received by a certain Jess C. Hualde (**Hualde**), who, plaintiff claimed, to be her housekeeper.


Moreover, accused claims that plaintiff failed to prove that there was willful failure to supply correct and accurate information in her ITR. In the case at bar, it was stipulated that Exhibit P-19¹³¹ was made by the accountant of accused and she was not the one who prepared her ITR. During that time, accused was already 67 years old and due to her age, she relied too much on her accountant. In any case, accused claims that she had no reason to doubt the accuracy of the information in her ITR considering that the BIR issued Tax Clearances to her for the years 2006, 2007, 2008, 2009 and 2011.

Accused further contends that with the denial of plaintiff's numerous documentary evidence, it consequently failed to prove the amount of income that accused should have reported in her ITR. Lastly, accused avers that the witnesses for plaintiff had no personal knowledge of the facts they have testified on.

RULING OF THE COURT

The Court deems it proper to rule first on accused's contention that the filing of the instant criminal action is already barred by prescription.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and, (3) the time the prescriptive period was interrupted.¹³²

Section 281 of the NIRC of 1997, as amended, reads as follows: 

¹³¹ Referring to the supposed audit report with the attached Balance Sheet as of 31 December 2006 and Income Statement and Schedule of Income for the year ended 31 December 2007 of RJP.

¹³² *Panfilo O. Domingo v. The Sandiganbayan (Second Division), et al.*, G.R. No. 109376, 20 January 2000.

...

Sec. 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.¹³³

...

From the above, it is undisputed that the period of prescription for the offense charged is 5 years.

With respect to the reckoning period of when prescription starts to run and interrupted, the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*¹³⁴ (**Lim**) governs considering that offense charged herein is a violation of the NIRC of 1997, as amended.

In *Lim*, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) to mean that tax cases 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 5 years, viz:

...

Not only that. The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the

¹³³

Emphasis supplied.

¹³⁴

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

investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.

...

The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **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.**

...

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.¹³⁵

...

Such ruling that the filing of information in Court interrupts the running of prescriptive period is also consistent with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals¹³⁶ (RRCTA), which reads as follows:

...

SEC. 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

¹³⁵

Supra; Citation omitted, emphasis supplied and italics in the original text.

¹³⁶

A.M. No. 05-11-07-CTA dated 22 November 2005.

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. (Rules of Court, Rule 110, sec. 2a; n)

The institution of the criminal action shall interrupt the running of the period of prescription.¹³⁷


...

From the foregoing, the period of prescription for a tax case begins to run from the discovery *and* institution of proceedings for its investigation and shall only be tolled by the filing of an information therefor with this Court.

Here, plaintiff's witnesses, Chico and Dulay, among others, executed and filed a Joint Complaint-Affidavit against accused on 26 April 2012 for preliminary investigation.

On 21 June 2017, the DOJ issued a Resolution¹³⁸ finding probable cause against accused for violation of Section 255¹³⁹ of the NIRC of 1997, as amended, or on the charge of willful failure to supply accurate information but was dismissed insofar as the charge of violating Section 254¹⁴⁰ thereof, or the offense of willful attempt to evade tax. Consequently, the subject Information charging accused for violating Section 255 of the NIRC of 1997, as amended, was issued with even date of 21 June 2017.

However, the said Information was filed only on 01 March 2019, or only after more than six (6) years and ten (10) months from the filing of Joint Complaint-Affidavit on 26 April 2012, which was way beyond the prescriptive period of 5 years under Section 281 of the NIRC of 1997, as amended, and as interpreted in *Lim*.

Clearly, the filing of the instant criminal action against accused had long prescribed. 

¹³⁷ Emphasis supplied.

¹³⁸ Exhibit "P-1", Division Docket, Volume I, pp. 11-21.

¹³⁹ Supra at note 1.

¹⁴⁰ Supra at note 21.

It is noted that *Lim* is consistently applied in a plethora of criminal cases decided by this Court, whether acting *En Banc* and in Division, to wit:

En Banc

1. *People of the Philippines v. Juanchito D. Bernardo, et al.*¹⁴¹;
2. *People of the Philippines v. Juanchito D. Bernardo, et al.*¹⁴²;
3. *People of the Philippines v. Ulysses Falconet Consebido*¹⁴³;
4. *People of the Philippines v. Ulysses Falconet Consebido*¹⁴⁴; and,
5. *People of the Philippines v. Virgilio B. Castillo.*¹⁴⁵

Division

1. *People of the Philippines v. R-Jell Marketing & Construction Company, et al.*¹⁴⁶;
2. *People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)*¹⁴⁷;
3. *People of the Philippines v. GH Resources and Training Services, Inc., et al.*¹⁴⁸;
4. *People of the Philippines v. The Property Forum Phils., Inc., et al.*¹⁴⁹; and,
5. *People of the Philippines v. Chiatsing Cardboard Corp., et al.*¹⁵⁰

The observance of the reckoning period for prescription of offenses in *Lim* is further supported by the Supreme Court case of *Alfredo Montelibano, et al. v. The Honorable Felix S. Ferrer, et al.*¹⁵¹, where it was held that in reenacting statutes, the legislature is presumed to be aware of the construction placed thereon by the Supreme Court, to wit:

...

... On the contrary, considering that said provisions of the Charter of the City of Manila had been consistently construed in the manner

¹⁴¹ CTA EB Crim. No. 078 (CTA Crim. Case No. O-731), 29 September 2021.
¹⁴² CTA EB Crim. No. 079 (CTA Crim. Case No. O-733), 07 July 2021.
¹⁴³ CTA EB Crim. No. 076 (CTA Crim. Case Nos. O-700, O-702 & O-703), 27 January 2021.
¹⁴⁴ CTA EB Crim. No. 069 (CTA Crim. Case No. O-701), 06 January 2021.
¹⁴⁵ CTA EB Crim. No. 053 (CTA Case No. O-663), 08 July 2020.
¹⁴⁶ CTA Crim. Case Nos. O-850, O-851, O-852 & O-853, 15 March 2022 (Resolution).
¹⁴⁷ CTA Crim. Case Nos. O-800 & O-801, 22 February 2022 (Resolution).
¹⁴⁸ CTA Crim. Case No. O-818, 17 February 2022 (Resolution).
¹⁴⁹ CTA Crim. Case No. O-875, 23 June 2021 (Resolution).
¹⁵⁰ CTA Crim. Case Nos. O-385, O-386, O-387, O-388, O-399, O-390, O-391 & O-392, 08 July 2015 (Resolution).
¹⁵¹ G.R. No. L-7899, 23 June 1955; Emphasis supplied.

above indicated, before being incorporated in the Charter of the City of Bacolod, **the conclusion is inevitable that the framers of the latter had reproduced the former with intent of adopting, also its settled interpretation by the judicial department** (*In re Dick*, 38 Phil. 41, 77).

In the interpretation of reenacted statutes the court will follow the construction which they received when previously in force. The legislature will be presumed to know the effect which such status originally had, and by reenactment to intend that they should again have the same effect...

...

. . . Since it may be presumed that the legislature knew a construction, long acquie[s]ced in, which had been given by the courts to a statute reenacted by the legislature, there is a presumption of an intention to adopt the construction as well as the language of the prior enactment. It is accordingly a settled rule of statutory construction that when a statute or a clause or provision thereof has been construed by a court of last resort, and the same is substantially reenacted, the legislature may be regarded as adopting such construction. (50 Am. Jur. 461)

...

Where plaintiff's right to file instant criminal action has prescribed, accused's criminal liability is necessarily extinguished pursuant to Article 89(5) of the Revised Penal Code (RPC) which reads as follows:

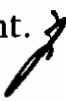
...

ART. 89. *How Criminal Liability is Totally Extinguished.* — Criminal liability is totally extinguished:

...

5. By prescription of the crime.

...

Considering the termination or absence of criminal liability by prescription, no civil liability *ex delicto* could thus arise from something that is no longer legally existent. 

With the foregoing, the Court finds no needful purpose or use to resolve the other issues raised by the parties.

WHEREFORE, premises considered, CTA Crim. Case No. O-685 filed against accused Remedios De Juan Pensotes is hereby **DISMISSED** on the ground of prescription. Accordingly, the cash bail bond posted by accused Remedios De Juan Pensotes is hereby **DISCHARGED** and is to be **RELEASED** to her upon presentation of proper documents, in accordance with usual accounting rules and regulations.

No pronouncement as to civil liability *ex delicto*.

SO ORDERED.



JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:


LANEE S. CUI-DAVID
Associate Justice


ATTESTATION

I attest 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's Division.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, 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's Division.


ROMAN G. DEL ROSARIO
Presiding Justice