



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**IMELDA SZE, SZE KOU FOR, &
TERESITA NG,**

Petitioners,

G.R. No. 210238

Present:

*PERALTA, C.J., Chairperson,
CAGUIOA, Working Chairperson,
REYES, J. JR.,
LAZARO-JAVIER, and
LOPEZ, * JJ.*

- versus -

**BUREAU OF INTERNAL
REVENUE, represented by the
COMMISSIONER OF INTERNAL
REVENUE,**

Respondents.

Promulgated:

JAN 06 2020

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DECISION

REYES, J. JR., J.:

The Facts

The respondent Bureau of Internal Revenue (BIR) issued Revenue Regulation 8-2001 or the Voluntary Assessment Program (VAP), granting taxpayers the privilege of last priority in the audit and investigation of all internal revenue taxes for the taxable year December 31, 2000, and all prior years under certain conditions. Chiat Sing Cardboard Corporation (Chiat Corp.) availed of the VAP and was issued a certificate of qualification for 1999 and 2000. The BIR clarified that availment of the VAP should not be

* On official leave.

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construed to cover up any fraud or illegal acts that the taxpayer may commit as it is a mere privilege.¹

On March 25, 2003, the BIR issued a Letter of Authority (LOA) for the examination of accounting books and records of Chiat Corp. for all internal revenue taxes for 1999 and 2000. Chiat Corp.'s Master Payroll, Beth Tugade (Tugade) received the LOA, but the required documents were not presented. On May 5, 2003, Tugade received the BIR's second notice and final notice, and still the records were not presented.²

Due to Chiat Corp.'s refusal to present its accounting records, the BIR conducted an investigation and discovered that Chiat Corp.: (1) underdeclared its sales amounting to ₱160,588,321.63 and ₱113,578,182.69; (2) underdeclared its income amounting to ₱10,663,130.96 and ₱5,678,909.13 for 1999 and 2000, respectively; (3) derived income from undeclared importation of raw materials; (4) the underdeclared sales and income should have been subjected to VAT and income tax; (5) deliberately and wilfully misdeclared its taxable base to evade payment of correct internal revenue liabilities; (6) failed to withhold taxes on labor cost it claimed amounting to ₱427,010,000.00; (7) failed to rectify its income, value-added and withholding tax returns, which should reflect the actual and correct taxable base; and (8) understated the payment of its correct tax liabilities by more than 30%.³

Thereafter, the BIR issued a Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD), and Final Assessment Notice (FAN). Despite these notices, Chiat Corp. failed to interpose any protest; thus, the BIR's assessment for deficiency taxes for 1999 and 2000 amounting to ₱33,847,574.18 became final, executory and demandable.⁴

On May 19, 2005, the BIR charged the officers of Chiat Corp., petitioners Imelda T. Sze (Sze), Sze Kou For (For), and Teresita A. Ng (Ng), with tax evasion and/or tax fraud for violation of Sections 27(A), 31, 32, 56(A)(1), 79(A)(B), 80(A), 81, 106, 114(A)(B), in relation to Sections 251, 253(d), 254, 255, and 256 of the National Internal Revenue Code of 1997 (NIRC).⁵

Petitioners Sze, For, and Ng denied the accusations against them and claimed, among other allegations, that: (1) there was no factual and legal basis for the charges; (2) the filing was premature and violated their rights to due process; (3) they did not receive the notices; (4) they were not responsible for any underdeclaration, misdeclaration or importation; (5) they

¹ *Rollo*, pp. 26-27.

² *Id.* at 27-28.

³ *Id.* at 28-29.

⁴ *Id.* at 29-30.

⁵ *Id.* at 26.

were not responsible for the preparation and filing of tax returns; (6) Chiat Corp. has no assets to satisfy the assessed taxes; (7) Chiat Corp. notified the BIR of the termination of business as of December 2004; and (8) the BIR presumed that Chiat Corp. manufactured the raw materials into final products and sold them.⁶

The State Prosecutor dismissed the complaint on July 12, 2006. The BIR moved for reconsideration, which was denied on November 29, 2006. The BIR filed a petition for review before the Department of Justice (DOJ), which denied the same in a resolution dated April 27, 2007. The DOJ also denied the BIR's motion for reconsideration on June 17, 2010. The BIR elevated the case before the Court of Appeals (CA) through a petition for *certiorari*.⁷

The CA Decision

In its May 31, 2012 Decision,⁸ the CA gave due course to the petition after finding that the records showed sufficient evidence of probable cause for tax evasion and violation of the NIRC. Chiat Corp. failed to present countervailing evidence to refute the documents and other importation records from different government agencies.⁹

The CA held that the DOJ abused its discretion when it failed to consider various documents from the Department of Trade and Industry's Bureau of Import Services, the BIR's Audit Information Tax Exemption Incentive Division, and the Bureau of Custom's Management Information System Technology Group.¹⁰

The CA observed that Chiat Corp. filed an application for retirement of business after applying for VAP. The CA found this move as suspicious, if not an indication of bad faith.¹¹

The CA resolved that probable cause was sufficiently established, and ordered the DOJ to file the corresponding Information with the proper court.¹²

Chiat Corp. moved for reconsideration, which the CA denied in its November 26, 2013 Resolution.¹³ Undeterred, petitioners Sze, For, and Ng filed this petition for review on *certiorari* before the Court.

⁶ Id. at 30-31, 34-35, 38.

⁷ Id. at 52.

⁸ Penned by Associate Justice Angelita A. Gacutan, with Associate Justices Magdangal M. De Leon and Francisco P. Acosta, concurring; id. at 25-65.

⁹ Id. at 60

¹⁰ Id. at 62.

¹¹ Id. at 60-61.

¹² Id. at 64.

¹³ Id. at 66-67.

The Issue Presented

Whether or not the CA erred in finding probable cause for violation of the NIRC.

The Court's Ruling

While this petition is pending, the petitioners manifested to the Court that pursuant to the May 31, 2012 CA Decision, an Amended Information in Criminal Case Nos. O-385 to O-392 were filed against them in the Court of Tax Appeals (CTA). They moved to quash the Amended Information due to prescription and double jeopardy. On July 8, 2015, the CTA issued a resolution dismissing all the cases on the ground of prescription. The CTA resolution became final and executory, and an entry of judgment was later issued. The petitioners aver that with this development, the issues in their petition have become moot and academic.¹⁴

The BIR confirmed in its Manifestation and Comment, that the DOJ complied with the CA's decision and filed criminal Information against Sze, For, and Ng. On July 8, 2015, the CTA promulgated a resolution dismissing Criminal Case Nos. O-385 to O-392 due to prescription.¹⁵

In its Reply, the petitioners reiterated that the propriety of the CA's decision in finding probable cause was rendered moot and academic by the CTA decision dismissing the Amended Information against them.¹⁶

Section 281 of the Tax Reform Act of 1997¹⁷ states that the prescriptive period for violation of the law is five years.

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.

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¹⁴ Id. at 92-93.

¹⁵ Id. at 119.

¹⁶ Id. at 139-141.

¹⁷ Republic Act 8424, AN ACT AMENDING THE NIRC, AS AMENDED, AND FOR OTHER PURPOSES. Approved on December 11, 1997.

The CTA explained that Revenue Memorandum Circular 101-90 provides that an offense under the tax code is considered discovered only after the manner of commission and the nature and extent of fraud has been definitely ascertained. This occurs when the BIR renders its final decision and requires the taxpayer to pay the deficiency tax.¹⁸

The CTA determined that the FLD and the FAN for taxable years 1999 and 2000 were served on Chiat Corp. on February 7, 2005. Chiat Corp. did not file a protest, resulting in the finality, demandability, and executory nature of the assessment for deficiency taxes. Counting 30 days from the service of the FLD and the FAN, the violations were considered discovered on March 9, 2005. The BIR's revenue officers filed their joint affidavit in the DOJ for preliminary investigation on May 26, 2005. However, the original Information was only filed in court on April 23, 2014, which exceeded the five-year prescriptive period. Therefore, the action had prescribed.¹⁹

The Court observed that the Public Prosecutor did not appeal or move for reconsideration of the CTA's decision; thus rendering it final and executory.

The Court dismisses the petition for being moot and academic.

In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*,²⁰ the Court defined moot and academic as:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced. (Citation omitted)

Here, the dismissal of the criminal cases on the ground of prescription rendered the issue on the propriety of the CA's decision in finding probable cause as moot and academic. Thus, the Court finds it appropriate to abstain from passing upon the merits of this petition where legal relief is neither needed nor called for.

¹⁸ *Rollo*, p. 97.

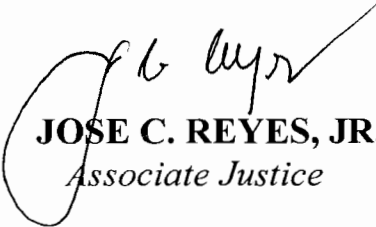
¹⁹ *Id.* at 97-98.

²⁰ 728 Phil. 535, 540 (2014).

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WHEREFORE, the petition is **DISMISSED** for being moot and academic.

SO ORDERED.



JOSE C. REYES, JR.
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

(On Official Leave)
MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

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