

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES, CTA EB CRIM. NO. 102
Petitioner, (CTA Crim. Case No. O-938)

Present:

- versus -

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

ZIEGFRIED LOO TIAN,
(No. 1013, Juan Luna Street,
Brgy. 27, Zone 1, Tondo, Manila),
Respondent.

Promulgated:

AUG 30 2024

x ----- x

DECISION

BACORRO-VILLENA, L:

Before the Court *En Banc* is a "Verified Petition for Review (of the Resolution dated January 31, 2023)"¹ (**Verified Petition for Review**) filed *via* registered mail on 20 February 2023 by petitioner People of the Philippines (**petitioner**), pursuant to Rule 43² of the Rules of Court (**ROC**), as amended³, in accordance with Rule 9⁴,

¹ Rollo, pp. 1-224, with annexes.

² Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.

³ A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.

⁴ Procedure in Criminal Cases.

Section 9(b)⁵ of the Revised Rules of the Court of Tax Appeals (RRCTA). It seeks the reversal and setting aside of the Resolution dated 12 December 2022⁶ (**first assailed Resolution**) and Resolution dated 31 January 2023⁷ (**second assailed Resolution**) of the Court's First Division⁸, in CTA Case No. O-938 entitled *People of the Philippines v. Ziegfried Loo Tian*.

The first assailed Resolution dismissed the case on the ground of prescription of the offense charged, while the second assailed Resolution denied petitioner's Motion for Reconsideration⁹ (MR) thereto for lack of merit. The dispositive portions of the first and second assailed Resolutions read as follows:

First Assailed Resolution dated 12 December 2022

...

WHEREFORE, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription of the offense charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case No. O-938, is **DISMISSED**.

SO ORDERED.

...

Second Assailed Resolution dated 31 January 2023

...

WHEREFORE, the prosecution's Motion for Reconsideration is **DENIED**.

✓

⁵ SEC. 9. *Appeal; Period to Appeal.* —

...

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a **petition for review as provided in Rule 43 of the Rules of Court** within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. (Emphasis supplied)

⁶ Division Docket, pp. 213-219.

⁷ Id., pp. 244-247.

⁸ The First Division is composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Catherine T. Manahan and Associate Justice Marian Ivy F. Reyes-Fajardo, as Members.

⁹ Division Docket, pp. 232-241.

The Formal Entry of Appearance of the Deputized Special Prosecutors for the Bureau of Internal Revenue as counsel for plaintiff is hereby **NOTED**.

Henceforth, let all notices, processes and orders of this Court, motions, pleadings and other papers relative to the above-entitled case be directly served to plaintiff's counsel at:

BUREAU OF INTERNAL REVENUE
7th Floor, Room 704 Prosecution Division
BIR National Office Building
BIR Road, Diliman, Quezon City

SO ORDERED.

...

PARTIES OF THE CASE

Petitioner is represented by the Bureau of Internal Revenue (**BIR**), the government agency mandated to collect national revenue taxes, and is represented by the Commissioner of Internal Revenue (**CIR**) through Revenue Officers (**ROs**) Emerita D. Tan (**Tan**), Carine P. Balmeo (**Balmeo**), Dominador A. Callangan (**Callangan**), Arnel A. Boco (**Boco**) and Adelina P. See (**See**), with office address at Room 704, BIR National Office Building, BIR Road, Diliman, Quezon City.¹⁰

Respondent Ziegfried Loo Tian (**respondent/Loo Tian**), on the other hand, is registered with the BIR Revenue District Office (**RDO**) No. 29 - Tondo, San Nicolas, Manila with Taxpayer Identification Number (**TIN**) 193-647-148-000. He is the sole proprietor of Golden Taste Food Services & General Merchandising engaged in the business of food catering and/or wholesale of general merchandise, with business address at No. 1013 Juan Luna St., Brgy. 27, Zone 1, Tondo, Manila.¹¹ 

¹⁰ Paragraph 5, **PARTIES**, Verified Petition for Review (of the Resolution dated January 31, 2023), *supra* 1, p. 2.
¹¹ Par. 6, *id.*

FACTS OF THE CASE

On 26 October 2022, petitioner, through the Department of Justice (DOJ), filed an Information¹² before this Court against respondent for violation of Section 255¹³ of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion thereof reads:

...

That on April 15, 2011, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, filed his Annual Income Tax Return (ITR), for taxable year 2010, knowing fully well that he is required by the law and by the rules and regulations to supply correct and accurate information within the period mentioned therein, did then and there, willfully, unlawfully and feloniously failed to supply correct and accurate information in his ITR by stating in the entry fields of the said return the word "Please see attached", when in truth and in fact there is nothing attached to the said return, which willful failure to supply correct and accurate information resulted to the damage and prejudice of the Government in the amount of Fifty Two Million Two Hundred Ninety Nine Thousand Eight Hundred Twenty Five Pesos and Seventy One Centavos (Php 52,299,825.71), exclusive of interests, penalties and surcharges.

...

Petitioner attached the following supporting documents to the Information:

1. Certified True Copy of the Resolution dated 11 May 2017¹⁴, signed by Prosecution Attorney Jayvee Laurence B. Bandong, with recommending approval of CP Emilie Fe M. Delos Santos, Officer-in-Charge of the Anti-Fraud Division, and approved by Prosecutor General Victor C. Sepulveda;
2. Certified True Copy of the Resolution dated 01 September 2014¹⁵, signed by Prosecution Attorney Jayvee Laurence B. Bandong, with recommending approval of Senior Assistant

¹² Division Docket, pp. 5-6.

¹³ SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

¹⁴ Division Docket, pp. 7-9.

¹⁵ Id., pp. 10-19.

State Prosecutor Susan F. Dacanay, Chairperson of the Task Force on BIR, and approved by Prosecutor General Claro A. Arellano;

3. Certified True Copy of the National Prosecution Service (NPS) Investigation Data Form dated 05 July 2012;¹⁶
4. Certified True Copy of the Referral Letter dated 05 July 2012¹⁷ of the then BIR Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**), addressed to then Secretary of Justice Leila De Lima (**Secretary De Lima**); and,
5. Certified True Copy of the Joint Complaint-Affidavit (JCA) dated 05 July 2012¹⁸ of ROs Tan, Balmeo, Callangan, Boco and See, with attached Annexes “A” to “T-104”, inclusive of sub-markings.¹⁹

On 12 December 2022, the First Division rendered the first assailed Resolution²⁰, dismissing the case on the ground of prescription of the offense charged. Aggrieved, petitioner filed an MR²¹ thereto, but the First Division denied the same for lack of merit in the second assailed Resolution.²²

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the First Division’s rulings, on 20 February 2023, petitioner filed *via* registered mail the present Verified Petition for Review²³ before the Court *En Banc*, docketed as CTA EB Crim. No. 102. The Court *En Banc* received the same on 23 February 2023.

On 15 March 2023, petitioner filed a “Manifestation with Motion”²⁴, praying that the title of the case be corrected from “BUREAU OF INTERNAL REVENUE” to “PEOPLE OF THE

¹⁶ Id., p. 20.
¹⁷ Id., pp. 21-22.
¹⁸ Id., pp. 23-37.
¹⁹ Id., pp. 38-211.
²⁰ Supra at note 6.
²¹ Supra at note 9.
²² Supra at note 7.
²³ Supra at note 1.
²⁴ *Rollo*, pp. 226-229.

PHILIPPINES” as plaintiff-appellant. The Court *En Banc* noted and partially granted the same in its Resolution dated 26 May 2023.²⁵ Accordingly, the title of the present case was amended pursuant to Section 9(b)²⁶, Rule 9 of the RRCTA, in relation to Section 6²⁷, Rule 43 of the ROC, as amended, to state: “**PEOPLE OF THE PHILIPPINES, Petitioner, vs. ZIEGFRIED LOO TIAN, (No. 1013, Juan Luna Street, Brgy. 27, Zone 1, Tondo, Manila), Respondent.**”

Thereafter, on 12 July 2023, respondent’s counsel, De Ramos and Bantigue Law Office, filed a Notice of Appearance²⁸, which the Court *En Banc* noted in a Minute Resolution dated 17 July 2023.²⁹

On 27 July 2023, respondent filed his “Comment/Opposition (*Re: Verified Petition for Review of the Resolution dated 31 January 2023*)”³⁰ on the present petition.

Accordingly, the Court *En Banc* submitted the case for decision in a Minute Resolution dated 31 August 2023.³¹

ISSUE

The main issue for the Court *En Banc*’s determination is whether or not the First Division erred in finding no probable cause to charge

²⁵ Id., pp. 233-235.
²⁶ SEC. 9. *Appeal; Period to Appeal.* —
...
(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. (Emphasis supplied)
²⁷ SEC. 6. *Contents of the Petition.* — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis supplied)
²⁸ Rollo, pp. 236-237.
²⁹ Id., p. 240.
³⁰ Id., pp. 241-260.
³¹ Id., p. 261.

respondent for violation of Section 255³² of the NIRC of 1997, as amended, or deliberate failure to supply correct and accurate information in his Annual Income Tax Return (ITR) for the taxable year (TY) 2010.

ARGUMENTS

Petitioner raises the following arguments in support of the present Verified Petition for Review:

1. Prescription has not set in as the period of discovery and the institution of judicial proceedings for violation of Section 255³³ of the NIRC of 1997, as amended, not only triggers the commencement of the prescriptive period but, at the same time, triggers the interruption of the same prescriptive period; and,
2. Respondent should be held liable for deliberate failure to supply correct and accurate information in his Annual ITR for TY 2010 in violation of Section 255 of the NIRC of 1997, as amended.

Respondent, on the other hand, counter-argues that:

1. The right of the government to prosecute him has prescribed under Section 281³⁴ of the NIRC of 1997, as amended; and,
2. The case must be dismissed for violation of his right to speedy disposition of cases as petitioner took more than ten (10) years from the filing of the JCA to the filing of the Information in Court.

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We find it propitious to first determine whether the Court *En Banc* has jurisdiction over the present petition. 

³² Supra at note 13.

³³ Supra at note 13.

³⁴ SEC. 281. *Prescription for Violations of any Provision of this Code.*

THE COURT *EN BANC* HAS
JURISDICTION OVER THE PRESENT
PETITION.

The First Division issued the second assailed Resolution denying petitioner’s MR³⁵ on 31 January 2023. Petitioner received the said assailed Resolution on 03 February 2023.³⁶

Under Section 2(f)³⁷, Rule 4 in relation to Section 9(b)³⁸, Rule 9³⁹ of the RRCTA, petitioner had fifteen (15) days from 03 February 2023, or until **18 February 2023**, within which to file its appeal before this Court. However, since 18 February 2023 fell on a Saturday, petitioner had until 20 February 2023, the next working day, to file its appeal before the Court *En Banc*.

Accordingly, on **20 February 2023**, petitioner timely filed *via* registered mail the present Verified Petition for Review.⁴⁰ Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

After a thorough consideration of the arguments raised by the parties *vis-à-vis* the pertinent laws, rules and regulations, the Court *En Banc* finds no merit in the present Verified Petition for Review.

PETITIONER’S RIGHT TO PROSECUTE
RESPONDENT FOR DELIBERATE
FAILURE TO SUPPLY CORRECT AND
ACCURATE INFORMATION HAS
ALREADY PRESCRIBED. 

³⁵ Supra at note 9.

³⁶ See Notice of Resolution dated 02 February 2023, Division Docket, p. 246.

³⁷ **SEC. 2. Cases Within the Jurisdiction of the Court *En Banc*.** — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

...
(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;

³⁸ Supra at note 5.

³⁹ Supra at note 4.

⁴⁰ Supra at note 1.

In resolving the issue of the prescription of the offense charged, the following factors should be considered: (1) the period of prescription for the offense charged; (2) the time when the prescriptive period starts to run; and, (3) the time when the prescriptive period is interrupted.⁴¹

The *first* and *second considerations* are undisputed. The issue, however, arises with the *third consideration*.

For an orderly disposition of the issues, We will briefly address the *first* and *second considerations* before proceeding to the *third*.

- I. THE PRESCRIPTIVE PERIOD FOR DELIBERATE FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION UNDER SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, IS FIVE (5) YEARS UNDER SECTION 281 OF THE NIRC OF 1997, AS AMENDED.

Regarding the *first consideration*, i.e., prescriptive period of the offense charged, Section 281 of the NIRC of 1997, as amended, governs the prescriptive period for criminal tax actions and provides as follows:

...

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. 

⁴¹ See *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government*, G.R. Nos. 165510-33, 28 July 2006, citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division) and The People of the Philippines*, G.R. No. 109376, 20 January 2000.

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.⁴²
...

The above provision clearly states that the prescriptive period for all violations of the NIRC of 1997, as amended, including the offense charged in this case (i.e., deliberate failure to supply correct and accurate information under Section 255⁴³ of the NIRC of 1997, as amended), is **five (5) years**.

- II. SINCE THE DAY OF THE COMMISSION OF DELIBERATE FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION IS UNKNOWN AT THE TIME, THE PRESCRIPTIVE PERIOD BEGINS TO RUN UPON ITS DISCOVERY AND THE INSTITUTION OF JUDICIAL PROCEEDINGS FOR ITS INVESTIGATION AND PUNISHMENT.

With regard to the ***second consideration***, i.e., the time when the prescriptive period starts to run, Section 281⁴⁴ of the NIRC of 1997, as amended, provides for two (2) reckoning points for when the prescriptive period begins to run:

1. If the day of the commission is known, prescription begins to run from the day of the commission of the violation of the law; or,
2. If the day of the commission is unknown, from its discovery and the institution of judicial proceedings for its investigation and punishment. *j*

⁴² Italics in the original text and emphasis supplied.

⁴³ Supra at note 13.

⁴⁴ Supra at p. 9.

As can be gleaned from the First Division's assailed Resolutions, the date of the tax offense's commission in this case is unknown. Therefore, the applicable reckoning point is the date of discovery of the violation and the institution of judicial proceedings for its investigation and punishment.

A plain reading of the Information⁴⁵ reveals that the alleged violation of Section 255⁴⁶ of the NIRC of 1997, as amended, is that respondent "willfully, unlawfully and feloniously failed to supply correct and accurate information in his ITR by stating in the entry fields of the said return the word 'Please see attached', when in truth and in fact there is nothing attached to the said return [...]."

Since the crime of deliberate failure to supply correct and accurate information involves an omission and misrepresentation by respondent, the date of the commission of the violation is unknown until it is discovered. Thus, the Court *En Banc* agrees with the First Division's finding that the prescriptive period commences from the discovery of the violation and the institution of judicial proceedings for its investigation and punishment.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*⁴⁷ (**Lim, Sr.**), the Supreme Court discussed the commencement of the prescriptive period where the day of the commission of the violation is unknown and what is contemplated by the term "judicial proceedings", to wit:

...

With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of *discovery* of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed. 

⁴⁵ Supra at note 12.

⁴⁶ Supra at note 13.

⁴⁷ G.R. Nos. L-48134-37, 18 October 1990; Citation omitted, italics in the original text, and emphasis and underscoring supplied.

On behalf of the Government, the Solicitor General counters that the crime of filing false returns can be considered "discovered" only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment and therefore required the petitioners to pay P1,237,190.55 in deficiency taxes that the tax infractions were discovered.

Not only that. The Solicitor General stresses that **Section 354 [now Section 281] 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 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 [now Section 281] 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.

...

Clearly from the foregoing, where the date of the commission of the violation is unknown, the five (5)-year prescriptive period begins to run from: (1) the discovery of the violation; and, (2) the institution of judicial proceedings of its investigation and punishment, *i.e.*, when the tax offense is indorsed to the Prosecutor's Office for preliminary investigation.

In this case, due to the nature of the deliberate failure to supply correct and accurate information charge against respondent, the date of the commission of the violation is unknown. Therefore, the five (5)-year prescriptive period began to run from the discovery of the violation and, subsequently, when the case was indorsed by the CIR, then Commissioner Henares, for preliminary investigation in her Referral Letter dated 05 July 2012⁴⁸, addressed to the Department of Justice (DOJ) through then Secretary De Lima.

Additionally, the BIR's designated ROs, who initiated the criminal complaint against respondent, executed the JCA on 05 July 2012⁴⁹, as indicated on the document. Furthermore, in the Certification⁵⁰ of State Prosecutor Cesar D. Calubag (**State Prosecutor Calubag**), found on the last page of the JCA, ROs Tan, Balmeo, Callangan, Boco and See subscribed and swore to the JCA in his presence on that same date.

Clearly, for purposes of reckoning the five (5)-year prescriptive period, Commissioner Henares' Referral Letter and State Prosecutor Calubag's Certification both confirm that respondent's alleged offense of deliberate failure to supply correct and accurate information in his Annual ITR for TY 2010 was indorsed to the DOJ for preliminary investigation on 05 July 2012.

Applying the ruling in *Lim, Sr.*, since a preliminary investigation is a proceeding for the investigation and punishment of a crime, the five (5)-year prescriptive period commenced on **05 July 2012**.

III. THE PRESCRIPTIVE PERIOD FOR DELIBERATE FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION IS INTERRUPTED BY THE FILING OF THE INFORMATION BEFORE THE COURT OF TAX APPEALS (CTA).

As earlier mentioned, the present controversy lies with the *third consideration*, i.e., the time when the prescriptive period is interrupted. 

⁴⁸ Supra at note 17.

⁴⁹ Supra at note 18, p. 36.

⁵⁰ Supra at note 18, p. 37.

Petitioner claims that the discovery and the institution of judicial proceedings not only trigger the commencement of the prescriptive period but also interrupt it, pursuant to Section 281⁵¹ of the NIRC of 1997, as amended. In support of this theory, petitioner cites Section 1, Rule 110 of the Revised Rules on Criminal Procedure (**RRCP**), which provides:

...

SEC. 1. Institution of Criminal Actions. — Criminal actions shall be instituted as follows:

- (a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.
- (b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws.

...

Petitioner thus maintains that prescription has not set in, as the filing of the JCA with the DOJ for the conduct of a preliminary investigation triggered both the commencement and interruption of the prescriptive period.

We cannot subscribe to petitioner's theory.

As early as 1990, the Supreme Court has held in *Lim, Sr.* that the prescriptive period is interrupted by the filing of the Information in court. Specifically, the High Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281⁵² of the NIRC of 1997, as amended) to mean that **tax cases** /

⁵¹ Supra at p. 9.

⁵² Supra at p. 9.

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, viz:⁵³

...

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 [now Section 281] 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 [now Section 281] 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.

...

Then, in 2005, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the RRCTA, which provides that the prescriptive period for violations of the NIRC of 1997, as amended, among others, is interrupted by the filing of an Information before the Court, consistent with the pronouncement in *Lim, Sr.* Specifically, Section 2, Rule 9 of the RRCTA reads:

...

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

⁵³

Supra at note 47; Citation omitted, italics in the original text and emphasis supplied.

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.⁵⁴

...

It is clear from the foregoing jurisprudence and RRCTA provision that criminal cases falling within the jurisdiction of the Court in Division are instituted by filing an Information before the said Court. This particular mode of 'institution' of the criminal action shall interrupt the running of the prescriptive period.

Thus, petitioner's reliance on Section 1, Rule 110 of the RRCP is misplaced. It should also be noted that under Section 3⁵⁵, Rule 1 of the RRCTA, the ROC (as amended) in the Philippines, including the RRCP, only apply suppletorily to the provisions of the RRCTA. Since Section 2, Rule 9 of the RRCTA above explicitly states that criminal actions are instituted by filing an Information with the Court in Division, it is precisely the filing of the Information before the Court in Division that interrupts the prescriptive period.

In light of the aforementioned discussions, the running of the five (5)-year prescriptive period is interrupted by filing the Information with the Court, not by filing the complaint with the DOJ.

As the First Division correctly found, petitioner's right to prosecute respondent for the alleged violation of Section 255⁵⁶ of the NIRC of 1997, as amended, or deliberate failure to supply correct and accurate information in his Annual ITR for TY 2010, has already prescribed.

Counting from the discovery of the violation of the NIRC of 1997, as amended, and the institution of the judicial proceedings for its preliminary investigation—specifically, the CIR's referral of the case to

⁵⁴ Emphasis supplied and italics in the original text.

⁵⁵ SEC. 3. *Applicability of the Rules of Court.* — The Rules of Court in the Philippines shall apply suppletorily to these Rules.

⁵⁶ Supra at note 13.

the DOJ on 05 July 2012—the subject Information⁵⁷ should have been filed before this Court within five (5) years therefrom, or until 05 July 2017. Clearly, when the subject Information was filed before this Court on 26 October 2022, more than five (5) years had passed since the government’s right to institute a criminal action prescribed.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.⁵⁸ Evidently, in this case, prescription has automatically set in when petitioner failed to file the subject Information within the five (5)-year prescriptive period provided under Section 281⁵⁹ of the NIRC of 1997, as amended.

All told, the Court *En Banc* finds no compelling reason to reverse the First Division’s assailed Resolutions.

WHEREFORE, with the foregoing considerations, the present “Verified Petition for Review (of the Resolution dated January 31, 2023)” filed by petitioner People of the Philippines on 20 February 2023 is hereby **DENIED** for lack of merit. Accordingly, the First Division’s assailed Resolutions dated 12 December 2022 and 31 January 2023 in CTA Crim. Case No. O-938 are **AFFIRMED**.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

⁵⁷ Supra at note 12.

⁵⁸ *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.

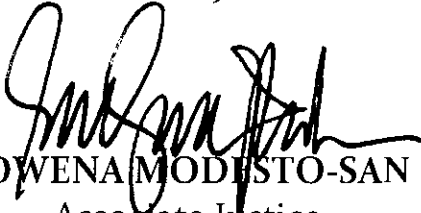
⁵⁹ Supra at p. 9.

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

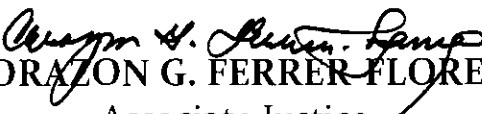
ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

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.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', is positioned above the printed name.

ROMAN G. DEL ROSARIO

Presiding Justice