

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	CTA EB CRIM. NO. 113 (CTA CRIM. CASE NO. O-925) For: Violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.
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Present:

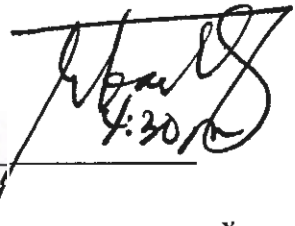
- versus -

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

FAIVO PASCUAL BARTOLOME,
Respondent.

Promulgated:

JUN 01 2026



x - - - - - x

DECISION

FERRER-FLORES, J.:

Before this Court is the **Verified Petition for Review (of the Resolution dated February 21, 2023) (Verified Petition)** filed on March 15, 2023 via registered mail by the **People of the Philippines (petitioner)** against accused **Faivo Pascual Bartolome (respondent)** appealing the Resolution dated December 28, 2022 (*1st assailed Resolution*),¹ dismissing the case on the ground of prescription, and the Resolution dated February 21, 2023 (*2nd assailed Resolution*),² denying the *Motion for Reconsideration (of the*

¹ *Rollo*, pp. 20 to 25.

² *Id.* at 27 to 30.

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Resolution dated December 28, 2022), both rendered by the then First Division of this Court³ (Court in Division).

The dispositive portions of the assailed Resolutions read as follows:

1st assailed Resolution

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-925, is **DISMISSED**.

SO ORDERED.

2nd assailed Resolution

WHEREFORE, the prosecution's Motion for Reconsideration (of the Resolution dated December 28, 2022) is **DENIED**.

XXX XXX XXX

SO ORDERED.

ANTECEDENT FACTS

On September 6, 2022, an *Information*⁴ was filed against respondent for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which reads:

That on or about November 17, 2014 and thereafter, in Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **FAIVO PASCUAL BARTOLOME**, a registered taxpayer required by law to file his tax return at the time or times required by law, rules and regulations and to pay the corresponding tax, as provided under the NIRC of 1997, as amended, did then and there, willfully, unlawfully and knowingly fail to pay deficiency **Value-Added Tax (VAT)** for the taxable year 2010, in the amount of One Million One Hundred Fifty Thousand Nine Hundred Forty Two and 88/100 (P1,150,942.88), exclusive of increments, despite final assessment notice, including prior and post notice and demands to pay, the last being the Formal Letter of Demand and Assessment Notices dated November 17, 2014 issued by the Bureau of Internal Revenue to the damage and prejudice of the Government.

CONTRARY TO LAW.



³ Composed of (Ret.) Presiding Justice Roman G. Del Rosario, (Ret.) Associate Justice Catherine T. Manahan, and Associate Justice Marian Ivy F. Reyes-Fajardo.

⁴ Docket, p. 5.

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Petitioner filed an *Amended Information*⁵ in compliance with the directive of the Court in Division to amend the *Information* to address the failure to state that the unpaid deficiency tax is exclusive of charges and penalties.⁶

Thereafter, the Court in Division issued the *1st assailed Resolution* on December 28, 2022, dismissing the above *Information* for failure of petitioner to timely file the *Information* in Court within the five-year prescriptive period.⁷

Aggrieved, petitioner filed its *Motion for Reconsideration (of the Resolution dated December 28, 2022)*,⁸ which was still denied for lack of merit through the *2nd assailed Resolution* issued by the Court in Division on February 21, 2023.⁹

Hence, this *Verified Petition*.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Petitioner filed the instant *Verified Petition* on March 15, 2023.¹⁰

The Court *En Banc* dismissed the case for failure of petitioner to attach a Verification and Certification of Non-Forum Shopping and for lack of authority.¹¹ Petitioner then filed its *Motion for Reconsideration (of the Resolution promulgated on June 2, 2023)* on June 14, 2023, claiming that it attached the required *Verification and Certification Against Forum Shopping dated March 15, 2023*. Petitioner attached photocopies of the *Verification and Certification Against Forum Shopping* and the *Memorandum of Agreement* between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General (OSG).

In the Resolution dated April 17, 2024, the Court *En Banc* ordered petitioner to submit the original copy of the *Verification and Certification Against Forum Shopping* within five days from notice.¹² Petitioner filed its *Compliance with Submission* on May 3, 2024. 

⁵ Docket, pp. 80 to 81.

⁶ *Id.* at 64.

⁷ Docket, pp. 84 to 89.

⁸ *Motion for Reconsideration (of Resolution dated December 28, 2022)*, attached to petitioner's *Formal Entry of Appearance with Motion for Reconsideration*, Docket, pp. 90 to 101.

⁹ Docket, pp. 105 to 108.

¹⁰ *Rollo*, pp. 1 to 16.

¹¹ Resolution dated June 2, 2023, *Id.* at 41 to 44.

¹² *Rollo*, pp. 76 to 80.

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On October 2, 2024, the Court *En Banc* granted petitioner's *Motion for Reconsideration* and ordered respondent to file his comment on the *Verified Petition*. The Court also ordered the change in the designation of the parties in the title of the instant case from "Plaintiff-Appellant" to "Petitioner" and from "Accused-Appellee" to "Respondent".¹³

On February 19, 2025, the Judicial Records Division (JRD) of the Court issued a Records Verification stating that no return card has been received by the Court with regard to the service of the Resolution dated October 2, 2024.¹⁴ The JRD issued another Records Verification on March 24, 2025 stating that respondent failed to comment on petitioner's *Verified Petition*.¹⁵ Thus, on June 3, 2025, the Court *En Banc* issued a minute resolution submitting the case for decision.¹⁶

ISSUES

Petitioner raised the following assignment of errors:

- I. The Court in Division erred when it denied the *Motion for Reconsideration* for being filed out of time; and,
- II. The Court in Division erred when it found no probable cause to charge respondent Bartolome for Section 255 of the NIRC of 1997, as amended, or willful failure to pay deficiency VAT for taxable year (TY) 2010.

ARGUMENTS

Petitioner interposes the following arguments in support of its petition:

- A. Its *Motion for Reconsideration* was timely filed as the 15-day period for filing of the Motion pursuant to pertinent provisions of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, is the proper rule applicable to this case;
- B. Prescription has not set in, as the period of discovery and the institution of judicial proceedings for violation of Section 255 of the NIRC of 1997, as amended, against respondent, not only triggers the commencement of the prescriptive period but, at the same time, triggers the interruption of the same

¹³ *Id.* at 92 to 95.

¹⁴ *Id.* at 96.

¹⁵ *Id.* at 99.

¹⁶ *Id.* at 100.

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prescriptive period, on October 12, 2012, or the date of filing of complaint with the Department of Justice (DOJ); and,

- C. Respondent should be held liable for willful failure to pay deficiency VAT for TY 2010 in violation of Section 255 of the NIRC of 1997, as amended.

RULING OF THE COURT

The *Verified Petition for Review* lacks merit.

***Timeliness of the filing of the Motion
for Reconsideration of the 1st assailed
Resolution***

Section 1 of Rule 15 of the RRCTA provides that "[a]ny aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."

In the *Motion for Reconsideration* filed before the Court in Division, petitioner reckoned the 15-day period to file the said motion from receipt of the BIR Prosecution Division on January 6, 2023.¹⁷ A scrutiny of the records would show, however, that the DOJ received the *1st assailed Resolution* on January 5, 2023.¹⁸

At first glance, there should be no conflict considering that, at the time the *1st assailed Resolution* was issued on December 28, 2022, there were no special prosecutors to speak of. It was only on January 23, 2023 that the counsels from the BIR Prosecution Division filed their *Formal Entry of Appearance*. Thus, the 15-day reglementary period to file a Motion for Reconsideration should simply be reckoned from the date of receipt by the DOJ, as principal prosecutor, on January 5, 2023. Counting 15 days therefrom, petitioner had until January 20, 2023 within which to file a motion for reconsideration against the *1st assailed Resolution*.

Clearly, petitioner's *Motion for Reconsideration* filed before the Court in Division in relation to the *1st assailed Resolution* was belatedly filed on January 23, 2023.

¹⁷ Docket, pp. 95 to 101.

¹⁸ Notice of Resolution dated January 4, 2023, Docket, p. 83.

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Even if this Court is to consider the effect of the deputization of the BIR Prosecution Division, such deputization should not affect the counting of the 15-day reglementary period. The Supreme Court has clarified that the period to file a motion for reconsideration should be reckoned from the receipt of the principal counsel and not from the receipt of the deputized counsel. In these cases, the Supreme Court held that the OSG, the principal counsel therein, remains to be the principal counsel and the service of legal processes to it is decisive. In the recent case of *Claudine Monette Baldovino-Torres vs. Jasper A. Torres*,¹⁹ the Supreme Court reiterated these rulings, viz.:

The Court finds no merit in the contention that the OSG filed its Motion for Reconsideration out of time in the RTC. Admittedly, the public prosecutor in charge of the case, who was deputized by the OSG to appear on its behalf, received a copy of the RTC Decision on March 20, 2017. On the other hand, the OSG received its copy only on April 4, 2017.

In the case of *National Power Corporation v. National Labor Relations Commission* (NAPOCOR), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG.** In holding so, the Court emphasized **that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer.** As a consequence, **copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.**

The NAPOCOR case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**

In the same vein, **the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision on April 4, 2017.** Consequently, the filing by the OSG of its Motion for Reconsideration questioning the RTC Decision on April 18, 2017 was well within the reglementary period for filing such motion. **The counting of the period for its filing should be reckoned from the date of receipt of the assailed decision by the OSG and not by the public prosecutor.** This is because the public prosecutor acted as a mere representative of the OSG which, in turn, retained supervision and control over the former. (Emphasis and underscoring supplied; citations omitted)

¹⁹ *Baldovino-Torres vs. Torres*, G.R. No. 248675, July 20, 2022, citing the cases of *National Power Corp. vs. National Labor Relations Commission*, G.R. Nos. 90933-61, May 29, 1997 and *Commissioner of Customs vs. Court of Tax Appeals*, G.R. No. 132929, March 27, 2000.

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Based on the foregoing jurisprudential pronouncements, when the party is represented by several counsels, such as when the principal counsel deputizes another lawyer from the government agency it represents, it is the receipt of the principal counsel that is binding and the date from which the 15-day period is counted.

Verily, this Court will still find the *Motion for Reconsideration* filed before the Court in Division out of time and hold that the *1st assailed Resolution* has become final, executory and no longer appealable. Consequently, the same is already immutable and may no longer be modified in any respect.

In the case *People of the Philippines vs. Benedicta Mallari, et al.*,²⁰ the Supreme Court ruled that the Resolution dated December 14, 2009 rendered by CTA First Division had already attained finality because of petitioner's failure to file a motion for reconsideration within the 15-day reglementary period allowed under the CTA's revised internal rules. As a result, it now becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the Court that rendered it or by the Highest Court of the land.

In fine, this Court can no longer entertain the present *Verified Petition* as petitioner's *Motion for Reconsideration* before the Court in Division was filed out of time; thus, it already lost its right to appeal. Failure to interpose a timely appeal deprives the appellate body of any opportunity to alter the final judgment, more so to entertain the appeal.

Even assuming arguendo that the *Motion for Reconsideration* filed before the Court in Division was timely filed, and thus, the Court can entertain this *Petition*, the same will still be denied since the government's right to prosecute the case has already prescribed.

Prescription of the government's right to prosecute the case

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 is interrupted.²¹

²⁰ G.R. No. 197164, December 4, 2019.

²¹ *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan*.

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There is no dispute as to the *first* and *second* considerations. The issue, however, lies with the *third* consideration.

For an orderly disposition of the issues, however, the Court will briefly discuss the *first* and *second* considerations before proceeding to the *third* consideration.

First: The prescriptive period of subject violation under the NIRC of 1997, as amended, is five years.

The first consideration may be found in Section 281 of the NIRC of 1997, as amended, which provides for the five-year prescriptive period 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.

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. (*Emphasis supplied*)

Inasmuch as accused-appellee was charged with violation of Section 255 of the NIRC of 1997, as amended, the applicable prescriptive period is five years as provided above.

Second: Prescription begins to run from the day of the commission of the violation of the law, if known.

As to the *second* consideration (i.e., commencement of the prescriptive period), Section 281 of the NIRC of 1997, as amended, provides for two reckoning points when the period of prescription begins to run: 

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- (1) If the day of 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.

The Court *En Banc* agrees with the Court in Division in applying the first rule.

Records show that the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) dated November 17, 2014 was received by accused on November 20, 2014.²²

In the instant case, since the day of the commission of the crime is known, the prescriptive period began to run on **December 21, 2014**, or upon the lapse of the 30-day period for accused to file his protest to the FLD/FAN. It is on this date that the FLD/FAN became due and demandable.

Third: The prescriptive period was interrupted by the filing of the Information with the CTA.

As already discussed, petitioner mainly argues that the period of prescription was interrupted upon the filing of the complaint before the DOJ for purposes of conducting preliminary investigation.

In the *1st assailed Resolution*, the Court in Division held that the prescriptive period to file a criminal case for violations of the NIRC of 1997, as amended, is tolled only when the *Information* is filed before the Court.

This Court adopts and reiterates the ruling of the Court in Division.

As early as 1990, the Supreme Court has held in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*²³ (Lim case) that the prescriptive period is interrupted by the filing of the Information in Court. Specifically, it was declared therein 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 five years.

²² Docket, pp. 43 to 53.

²³ G.R. Nos. L-48134-37, October 18, 1990.

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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, is interrupted by the filing of an Information before the Court, consistent with the pronouncement in the *Lim* case.²⁴ Specifically, Section 2 of 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 laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

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

Based on the foregoing, criminal cases falling within the jurisdiction of the Court in Division are instituted by the filing of the Information before the said Court. Such institution of the criminal action before the Court shall interrupt the running of the period of prescription.

Evidently, petitioner's reliance on Rule 110 of the Revised Rules on Criminal Procedure is misplaced considering that it only applies suppletorily to the RRCTA²⁵ and that the latter specifically provides that criminal actions are instituted by the filing of an Information before the CTA which filing shall interrupt the running of the prescriptive period.

In view of the foregoing disquisitions, the running of the prescriptive period is interrupted by the filing of the Information before the Court and not by the filing of the complaint before the DOJ.

As correctly found by the Court in Division, the right to prosecute the criminal action herein has prescribed.

²⁴ *Ibid.*

²⁵ Section 3 of Rule 1 of the RRCTA provides that "[t]he Rules of Court in the Philippines shall apply suppletorily to these Rules."

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The Court, in a long line of cases²⁶ has consistently adopted the pronouncement in the *Lim* case²⁷ and ruled that the commencement of the five-year prescriptive period in criminal tax cases, as provided in Section 281 of the NIRC of 1997, as amended,²⁸ commences from the date of the commission of the violation of the law, or 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 period of prescription is only interrupted when proceedings are instituted against the guilty persons and shall run again in the event the proceedings are dismissed for reasons not constituting jeopardy.

In this case, the five-year prescriptive period began to run on December 21, 2014, upon the lapse of the 30-day period for accused to file his protest to the FLD/FAN. The prosecution, thus, had until December 21, 2019 to file the requisite *Information* with the Court. Plaintiff, however, belatedly filed the subject *Information* with the Court in Division on September 6, 2022. Clearly, the prescription of criminal action had long set in.

The Court is not unaware of the recent pronouncement of the Supreme Court in *People of the Philippines vs. Ulysses Palconit Consebido* (Consebido case),²⁹ wherein the Supreme Court, after re-examining the *Lim* case, categorically ruled that the filing of the complaint before the prosecution office and the conduct of summary investigation should toll the running of the prescriptive period. In the same case, the Supreme Court also pronounced that the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts,³⁰ shall toll the running of the prescriptive period effectively overturning the doctrine in *Republic vs. Desierto*³¹ and *Corpus vs. People*.³² In relation to such pronouncement, the Supreme Court declared that the new rule shall apply prospectively, viz.:

But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply prospectively.

²⁶ *People of the Philippines vs. Ziegfried Loo Tian*, CTA EB Crim. No. 116 (CTA Crim. Case No. O-944), September 26, 2024; *People of the Philippines vs. Star Asset Management NPL, Inc., et al.*, CTA EB Crim. No. 129 (CTA Crim. Case No. O-995), April 22, 2024; *People of the Philippines vs. CTA Second Division, et al.*, CTA EB Crim. No. 093 (CTA Crim. Case Nos. O-850, O-851, O-852, and O-853), August 29, 2023; and *People of the Philippines vs. Wintelecom, Inc/Hua C. Uychiyong (Treasurer)*, CTA EB Crim. No. 090 (CTA Crim Case Nos. O-800 and O801), June 21, 2023, to name a few.

²⁷ G.R. No. L-48134-37, October 18, 1990.

²⁸ A replica of then Section 354 of the 1939 NIRC.

²⁹ G.R. No. 258563, April 2, 2025.

³⁰ A.M. No. 08-8-7-SC dated March 1, 2022, effective April 11, 2022.

³¹ G.R. No. 136506, January 16, 2023.

³² G.R. No. 255740, August 16, 2023.

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Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. The ruling in *Desierto* and the subsequent case of *Corpus, Jr. v. People of the Philippines*, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned. (*Emphasis supplied; citations omitted*)

While there is no explicit provision on the prospective application of the new rule in relation to the prescription of offenses under the NIRC of 1997, as amended, this Court nonetheless observes that the ruling in the *Consebido* case effectively abandoned the doctrine in the *Lim* case. Inasmuch as a new doctrine has been declared by the Supreme Court pertaining to prescription of tax offenses, the Court finds the prospective application of the same is proper.

Notably, judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.³³ When a doctrine of the Supreme Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.³⁴

For instance, in *Albino S. Co vs. Court of Appeals and the People of the Philippines* (Co case),³⁵ a case involving the issuance of a bouncing check in violation of Batas Pambansa Bilang (B.P. Blg.) 22 allegedly committed in 1983, the Supreme Court held that the “Court’s decision of September 21, 1987 in *Que v. People*, 154 SCRA 160 (1987)— i.e., that a check issued merely to guarantee the performance of an obligation is nevertheless covered by B.P. Blg. 22 — should not be given retrospective effect to the prejudice of the petitioner and other persons similarly situated, who relied on the official opinion of the Minister of Justice that such a check did not fall within the scope of B.P. Blg. 22.”

In the same vein, the new doctrine on prescription laid down in the *Consebido* case, a case promulgated by the Supreme Court on April 2, 2025, should not be applied to the present case which involves an offense allegedly committed on November 17, 2014. Respondent cannot be prejudiced by his reliance on the case of *Lim*, which was the prevailing doctrine when the offense was allegedly committed.

³³ *Conchita Carpio-Morales, in her capacity as the Ombudsman, vs. Court of Appeals (Sixth Division) and Jejomar Erwin S. Binay, Jr.*, G.R. Nos. 217126-27, November 10, 2015.

³⁴ *People of the Philippines vs. Jose Jabinal y Carmen*, G.R. No. L-30061, February 27, 1974, as reiterated in *Carpio-Morales vs. Court of Appeals*, G.R. Nos. 217126-27, November 10, 2015, and *People of the Philippines vs. Martinado y Aguillon*, G.R. No. 92020, October 19, 1992, among others.

³⁵ G.R. No. 100776, October 28, 1993.

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It bears emphasis, as held in a number of cases, that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted. The said legal principle takes into account the nature of the law on prescription of crimes which is an act of amnesty and liberality on the part of the state in favor of the offender.³⁶

In fine, the Court *En Banc* finds no compelling reason to reverse the Court in Division's assailed Resolutions.

ACCORDINGLY, petitioner's **Verified Petition for Review (of the Resolution dated February 21, 2023)** is **DISMISSED**. Consequently, the assailed Resolutions dated December 28, 2022 and February 21, 2023 in CTA Crim. Case No. O-925 are **AFFIRMED**.

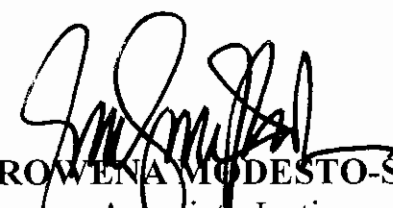
SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice


With Separate Concurring Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

³⁶ *People of the Philippines vs. Arturo F. Pacificador*, G.R. No. 139405, March 13, 2001.

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ON LEAVE

MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

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.



MA. BELEN M. RINGPIS-LIBAN

Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB Crim. No. 113
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Present:

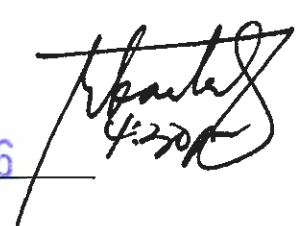
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RINGPIS-LIBAN, P.J.,
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FERRER-FLORES, *and*
ANGELES, JL.

FAIVO PASCUAL BARTOLOME,
Respondent.

Promulgated:

JUN 01 2026



X ----- X

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

With due respect, I vote to dismiss the “Verified Petition for Review (of the Resolution dated February 21, 2023)”¹ (**Petition for Review**) filed *via* registered mail² by petitioner People of the Philippines (**petitioner**) on 15 March 2023 for petitioner’s lack of authority to file the same. Specifically, the deputized Special Prosecutors of the Bureau of Internal Revenue (**BIR**) filed the Petition for Review without submitting any deputation order/s issued by the Office of the Solicitor General (**OSG**).

Nevertheless, even ignoring petitioner’s procedural lapse, I concur with the *ponencia* that the instant Petition be denied as the crime charged had already prescribed. 

¹ Rollo, pp. 1-37, with annexes.

² Received by the Court on 21 March 2023.

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PETITIONER'S COUNSEL LACKS LEGAL
PERSONALITY TO FILE THE INSTANT
PETITION FOR REVIEW.

Under the law, the OSG is mandated to represent the government in all criminal proceedings before the Supreme Court and the Court of Appeals. Section 35(1), Chapter 12, Title III, Book III of the 1987 Administrative Code of the Philippines³ reads:

...

SECTION 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It **shall** have the following specific powers and functions:

(1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.⁴

Consonant with the law, under Section 10, Rule 9 of the Revised Rules of the Court of Tax Appeals⁵ (RRCTA), which governs the conduct of proceedings in the Court of Tax Appeals (CTA), the OSG shall represent the People of the Philippines and government officials sued in their official capacity in all cases brought before the CTA in the exercise of its appellate jurisdiction, viz:

...

SEC 10. *Solicitor General as counsel for the People and government officials sued in their official capacity.* — **The Solicitor General shall represent the People of the Philippines and government officials sued in their official capacity in all cases brought to the Court in the exercise of its appellate jurisdiction. The former may deputize the legal officers of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, or the legal officers of the Bureau of Customs in cases brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their official capacity: *Provided, however, such duly***

³ Administrative Code of 1987. Executive Order No. 292, 25 July 1987.

⁴ Emphases supplied.

⁵ A.M. No. 05-11-07-CTA, 22 November 2005.

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deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General.⁶

...

As can be seen in the above provision, the OSG is allowed to deputize legal officers of the BIR to appear on its behalf, provided that such deputized legal officers remain at all times under the direct control and supervision of the OSG.

There is no doubt that the BIR possesses a clear interest in the prosecution of violations of the National Internal Revenue Code (NIRC) of 1997, as amended. Section 220⁷ of the said law expressly provides that “[c]ivil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue[.]” This provision recognizes the authority of BIR legal officers to institute and prosecute tax-related actions on behalf of the Government.

However, in the case of *People of the Philippines v. Court of Tax Appeals-Third Division, L.M. Camus Engineering Corporation, and Lino D. Mendoza*,⁸ citing *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*⁹ (**La Suerte**), the Supreme Court made it abundantly clear that the NIRC of 1997, as amended, did not dispense with the requirement that the OSG represent the Republic in appellate proceedings before this Court. Thus, while the BIR may prosecute tax violations at the trial level, representation of the State in appellate proceedings remains vested in the OSG.

The act of deputation is an exception to the general rule that the OSG shall represent the government in criminal proceedings, as such, it operates only upon compliance with certain conditions. *First*, the OSG must issue an express authorization identifying the legal officers who are being deputized. *Second*, the cases involved must fall within the official functions or jurisdiction of offices to which deputized legal officers belong. *Finally*, even 

⁶ Emphases supplied.

⁷ SEC. 220. *Form and Mode of Proceeding in Actions Arising under this Code.* — Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

⁸ G.R. Nos. 251270 and 251291-301, 05 September 2022.

⁹ G.R. No. 144942 (Resolution), 04 July 2002.

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after deputization, the OSG must retain supervision and control over deputized legal officers with respect to conduct of cases.¹⁰

In fact, Paragraph B(2)(b)¹¹ of Revenue Memorandum Circular (RMC) No. 25-2010,¹² which circularizes the Memorandum of Agreement (MOA) between BIR and OSG, mandates that for appealed cases before this Court, the BIR must submit the name of the lawyer to be deputized, with the OSG retaining direct control and supervision throughout the proceedings.

A review of the Petition for Review¹³ (and its attachments) shows no participation, much less, control and supervision, on the part of the OSG. The Petition for Review was signed by Special Prosecutors Catherine Rose R. Tortoles and Jamaica Kay S. Dela Cruz, yet nothing in the records shows that the OSG deputized them to appear and act on its behalf in this case. Even more telling is the BIR's failure to furnish the OSG with a copy of the Petition for Review — a procedural lapse that betrays the absence of coordination, and more gravely, the absence of authority to represent the State in these proceedings.

Notably, petitioner challenges the dismissal of the criminal case on the ground of prescription. That challenge indisputably concerns the criminal aspect (*i.e.*, the State's power to prosecute and maintain the penal action). Without the OSG's conformity, the petition is dismissible for lack of standing. Hence, apart from the *ponencia's* finding that the present Petition for Review may no longer be entertained due to the belated filing of the Motion for Reconsideration before the First Division, I vote to dismiss the present Petition for Review on this ground.

As regards the *ponencia's* conclusion that the offense had prescribed under Section 281¹⁴ of the NIRC of 1997, as amended, I likewise concur in the result, *albeit* on grounds that reflect a reconsideration of my earlier position. 

¹⁰ *Republic of the Philippines, represented by Philippine Economic Zone Authority v. Heirs of Cecilio and Moises Cuizon*, G.R. No. 191531, 06 March 2013.

¹¹ B. *Handling Cases*
...
2. Cases appealed before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals *En Banc*.
...

¹² b. The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.
Publishing the Full Text of the Memorandum of Agreement Between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General.

¹³ *Supra* at note 1.

¹⁴ 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.

PETITIONER'S RIGHT TO PROSECUTE HAS
ALREADY PRESCRIBED.

In the *ponencia* of my esteemed colleague Associate Justice Corazon G. Ferrer-Flores, it was ruled that the First Division did not err in ruling that the government's right to prosecute has already prescribed. Counting five (5) years from the commission of the crime on 21 December 2014, *i.e.*, the day after the last day for filing a protest against the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) dated 17 November 2014, petitioner had until 21 December 2019 to prosecute the crime. Thus, the crime had already prescribed when the Information was filed before the First Division on 06 September 2022.

While the *ponencia* recognized the recent case of *People of the Philippines v. Ulysses Palconit Consebido*¹⁵ (**Consebido**) wherein the Supreme Court categorically declared that the filing of the criminal complaint before the Department of Justice (**DOJ**) tolls the running of the prescriptive period for NIRC offenses, it likewise declined to retroactively apply the same due to the "time-honored principle that laws on prescription of crimes must be construed in favor of the accused."

Instead, the *ponencia* applied the then-controlling doctrine in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*¹⁶ (**Lim, Sr.**) that it is the filing of the Information with the court that tolls the running of the prescriptive period and not the commencement of preliminary investigation.

I previously espoused the view that because it constitutes the proper and authoritative interpretation of Section 281¹⁷ of the NIRC of 1997, the pronouncement in *Consebido* should be applied retroactively, dating back to the effectivity of the NIRC of 1997.¹⁸ Upon further reflection, however, I find sufficient doctrinal basis to revisit that position.

¹⁵ G.R. No. 258563, 02 April 2025.
¹⁶ G.R. Nos. L-48134-37, 18 October 1990.
¹⁷ Supra at note 14.
¹⁸ In, among others: *People of the Philippines v. Lemuel Sibuma Consolacion*, C.T.A. EB Crim. Case No. 150 (C.T.A. Crim. Case No. O-983), 29 May 2025; *People of the Philippines v. Ziegfried Loo Tian*, C.T.A. EB Crim. Case No. 116 (C.T.A. Crim. Case No. O-944) (Resolution), 16 July 2025; *People of the Philippines v. Ziegfried Loo Tian*, C.T.A. EB Crim. Case No. 112 (C.T.A. Crim. Case No. O-957) (Resolution), 04 August 2025; *People of the Philippines v. Shelmark Builders Phils., Inc.*, C.T.A. EB Crim. Case No. 138 (C.T.A. Crim. Case No. O-1054), 22 October 2025; *People of the Philippines v. PGU General Merchandise, Inc., Fook Seong Yong and Rocelle Francisco*, C.T.A. EB Crim. Case No. 144 (C.T.A. Crim. Case No. O-1081), 18 November 2025; and *People of the Philippines v. Logistics.com Corporation, Jovan G. Trias, Arman R. Ong and Erma O. Aunario*, C.T.A. EB Crim. Case No. 114 (C.T.A. Crim. Case No. O-973) (Resolution), 24 February 2026.

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In *Consebido*, the Supreme Court held that the prescriptive period for prosecuting crimes is tolled upon the filing of a complaint with the DOJ — not when the case reaches the court. **It specifically clarified that under Section 281¹⁹ of the NIRC of 1997, the prescriptive period for criminal tax offenses that are not immediately known starts from the time the violation is discovered and is interrupted once a preliminary investigation begins. This interpretation ensures that the intent of the law — to set a clear time limit for the prosecution of tax violations — is properly applied.**

First. Insofar as criminal tax offenses are concerned, *Consebido* is controlling. However, it also introduces a doctrinal clarification that carries significant procedural ramifications, as will be explained below.

In *Consebido*, the Supreme Court clarified that, under Section 281 of the NIRC of 1997, as amended, the prescriptive period operates in a harmonized manner such that the commencement of a preliminary investigation interrupts prescription. The Court was explicit:

...
Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery. The adoption of the interpretation in *Duque* is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. **The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense.**²⁰
...

Consebido likewise categorically declared that the filing of the criminal complaint before the DOJ tolls the running of the prescriptive period for NIRC offenses:

...
As discussed above, the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the 1997 NIRC, as amended, whether its commission was immediately known or unknown at the time of the violation.²¹
...

¹⁹ Supra at note 14.
²⁰ Supra at note 15; Emphasis supplied.
²¹ Id.

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This clarification, while now controlling, necessarily interfaces with longstanding procedural formulations on when a criminal action is “instituted” for purposes of interrupting prescription. Section 1²² of Rule 110 of the Revised Rules on Criminal Procedure (RRCP) clearly provides that criminal actions shall be instituted by the filing of a complaint for purposes of conducting a preliminary investigation.

Second. It must be recognized, however, that the RRCTA’s “**institution-by-Information**” formulation creates a genuine interpretive tension when applied to criminal cases before the CTA.

While *Consebido* squarely addresses criminal tax offenses and applied the “**institution-by-complaint**” formulation to the offense involved in that case, criminal prosecutions before the CTA remain specifically governed by the RRCTA, duly approved by the Supreme Court *En Banc* in 2005 and later revised in 2008. Rule 9, Section 2 of the RRCTA provides:

...

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 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.²³

...

It cannot be denied that the foregoing provision, as plainly worded, may reasonably lead an accused, litigants, and even the prosecution to understand that the **filing of an Information** before this Court is the 

²² 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 period of prescription of the offense charged unless otherwise provided in special laws.

²³ Italics in the original text, emphasis and underscoring supplied.

operative act that both institutes the criminal action and tolls prescription, at least within this Court’s original criminal jurisdiction. This understanding materially differs from *Consebido*, where “institution” occurs upon filing of the complaint with the prosecutor or the DOJ.

Thus, for criminal cases before the CTA predating *Consebido*, there exists a genuine interpretive tension between:

- 1. *Consebido*’s clarified reading of Section 281²⁴ of the NIRC of 1997, as amended; and
- 2. the RRCTA’s express “institution-by-Information” formulation in the CTA.

A genuine interpretive tension arises from the coexistence of two (2) seemingly inconsistent rules governing the interruption of the prescriptive period in criminal tax cases before the CTA. On one hand, the RRCTA expressly provides that a criminal action is instituted upon the filing of an Information before this Court, and that such institution interrupts prescription. On the other hand, *Consebido* clarifies that, for offenses under the NIRC of 1997, as amended, prescription is tolled upon the filing of a criminal complaint for purposes of preliminary investigation before the prosecutor or the DOJ.

This divergence creates uncertainty as to the precise point at which prescription is interrupted. For the accused, this uncertainty proves material and consequential, as it determines whether criminal liability has already been extinguished. An accused who relied on the plain language of the RRCTA could reasonably believe that prescription would only be interrupted upon the filing of the Information. However, the subsequent doctrinal clarification in *Consebido* advances the reckoning point of interruption to an earlier stage in the proceedings, thereby altering the legal landscape.

In this context, doubt arises not only from competing textual interpretations, but also from a supervening doctrinal development that affects the accused’s substantive right to invoke prescription. This lack of clarity undermines fair notice and raises the risk that an accused may face prosecution despite a reasonable belief that the prescriptive period had already lapsed under the previously understood rule.

²⁴ Supra at note 14.

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Third. Because prescription extinguishes criminal liability and operates as a substantive right, any uncertainty in its application must be strictly construed against the State and liberally in favor of the accused. Accordingly, the Court must resolve the doubt in favor of the accused.

Prescription emanates from the liberality of the State. Any bar to or cause of interruption in the operation of prescriptive periods cannot simply be implied nor derived by mere implication. Any diminution of this endowment must be directly and expressly sanctioned by the source itself, the State. **Any doubt on this matter must be resolved in favor of the grantee thereof, the accused.**²⁵

The RRCTA, promulgated by the Supreme Court *En Banc*, expressly treated criminal actions before this Court as “instituted” by the filing of an Information and declared that such institution interrupts prescription. In fact, *Lim, Sr.* and the RRCTA are 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.*;²⁶
2. *People of the Philippines v. Juanchito D. Bernardo, et al.*;²⁷
3. *People of the Philippines v. Ulysses Falconet Consebido*;²⁸
4. *People of the Philippines v. Ulysses Falconet Consebido*;²⁹ and,
5. *People of the Philippines v. Virgilio B. Castillo*;³⁰

Division

1. *People of the Philippines v. R-Jell Marketing & Construction Company, et al.*;³¹
2. *People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)*;³²
3. *People of the Philippines v. GH Resources and Training Services, Inc., et al.*;³³
4. *People of the Philippines v. The Property Forum Phils., Inc., et al.*;³⁴
and 

²⁵ *Benjamin (“Kokoy”) T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, et al.*, supra at note 51.

²⁶ CTA EB Crim. No. 078 (CTA Crim. Case No. O-731), 29 September 2021.

²⁷ CTA EB Crim. No. 079 (CTA Crim. Case No. O-733), 07 July 2021.

²⁸ CTA EB Crim. No. 076 (CTA Crim. Case Nos. O-700, O-702 & O-703), 27 January 2021.

²⁹ CTA EB Crim. No. 069 (CTA Crim. Case No. O-701), 06 January 2021.

³⁰ CTA EB Crim. No. 053 (CTA Case No. O-663), 08 July 2020.

³¹ CTA Crim. Case Nos. O-850, O-851, O-852 & O-853, 15 March 2022 (Resolution).

³² CTA Crim. Case Nos. O-800 & O-801, 22 February 2022 (Resolution).

³³ CTA Crim. Case No. O-818, 17 February 2022 (Resolution).

³⁴ CTA Crim. Case No. O-875, 23 June 2021 (Resolution).

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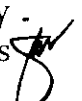
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5. *People of the Philippines v. Chiatsing Cardboard Corp., et al.*³⁵

Consebido later held that, for NIRC offenses, the filing of the criminal complaint for preliminary investigation tolls prescription, thereby **effectively modifying the operative understanding of “institution” for purposes of interruption in criminal cases before this Court.**

Given this doctrinal shift in the operative tolling point, prudence, fair notice and the liberal construction of prescription (in favor of the accused) all coalesce to limiting the new rule to post-*Consebido* cases. This approach aligns with *Consebido*’s express directive on prospectivity, even if its discussion arose in the context of offenses governed by the Revised Rules on Summary Procedure (RRSP) and the 2022 Rules on Expedited Procedures in the First Level Courts (REPFLC).³⁶

Furthermore, jurisprudence supports the view that, consistent with the spirit of the law and legislative intent, **any change in the interpretation of prescription laws must operate liberally in favor of the accused.** Accordingly, such interpretive changes must apply prospectively when they affect substantive rights, as *Consebido* itself recognized in relation to offenses under the RRSP and REPFLC.

Previously, in several CTA *En Banc* cases,³⁷ I acknowledged a contrary view that the ruling in *Consebido* should apply retroactively to all cases 

³⁵ CTA Crim. Case Nos. O-385, O-386, O-387, O-388, O-399, O-390, O-391 & O-392, 08 July 2015 (Resolution).
³⁶ *Consebido* abandons *Pastor Corpus, Jr. y Belmore v. People of the Philippines*, G.R. No. 255740, 16 August 2023.

³⁷ *People of the Philippines v. AJ Corinthian Hauling Corporation, et al.*, CTA EB Crim. Case No. 165 (CTA Crim. Case No. O-1150); *People of the Philippines v. Logistics.com Corporation, et al.*, CTA EB Crim. Case No. 114 (CTA Crim. Case No. O-973) (Resolution), 24 February 2026; *People of the Philippines v. Diego G. Martinez*, CTA EB Crim. Case No. 147 (CTA Crim. Case No. O-672), 06 February 2026; *People of the Philippines v. AJ Corinthian Hauling Corporation, et al.*, CTA EB Crim. Case No. 164 (CTA Crim. Case No. O-1151), 05 February 2026; *People of the Philippines v. AJ Corinthian Hauling Corporation, et al.*, CTA EB Crim. Case No. 162 (CTA Crim. Case No. O-1148); *People of the Philippines v. Faivo Pascual Bartolome*, CTA EB Crim. Case No. 149 (CTA Crim. Case No. O-984), 02 December 2025; *People of the Philippines v. PGU General Merchandise, Inc., et al.*, CTA EB Crim. Case No. 144 (CTA Crim. Case No. O-1081), 18 November 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 132 (CTA Crim. Case No. O-940), 14 November 2025; *People of the Philippines v. Shelmark Builders Phils., Inc. and Santiago C. Barangan*, CTA EB Crim. Case No. 138 (CTA Crim. Case No. O-1054), 22 October 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 143 (CTA Crim. Case No. O-943), 10 October 2025; *People of the Philippines v. Faivo Pascual Bartolome*, CTA EB Crim. Case No. 140 (CTA Crim. Case No. O-985) (Resolution), 09 October 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 118 (CTA Crim. Case No. O-951) (Resolution), 03 October 2025; *People of the Philippines v. PGU General Merchandise, Inc., et al.*, CTA EB Crim. Case No. 145 (CTA Crim. Case No. O-1082), 01 October 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 112 (CTA Crim. Case No. O-957), 04 August 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 116 (CTA Crim. Case No. O-944), 16 July 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 102 (CTA Crim. Case No. O-938), 30 May 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 119 (CTA Crim. Case No. O-954), 30 May 2025; *People of the Philippines v. Lemuel Sibuma Consolacion*, CTA EB Crim. Case No. 150 (CTA Crim. Case No. O-983), 29 May 2025; *People of the Philippines v. Star Asset Management NPL, Inc., et al.*, CTA EB Crim. Case No. 146 (CTA Crim. Case No. O-994), 21 May 2025.

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governed by the NIRC of 1997, reckoned from its effectivity. This view posits that the ruling merely affirms the proper interpretation of Section 281³⁸ of the said law from its inception, rather than establishes a new doctrine on prescription. Notably, in *Consebido*, the Supreme Court upheld the CTA *En Banc*'s dismissal of the complaint not because the Information was filed beyond the five (5)-year prescriptive period, but because the complaint itself was filed after the lapse of such period. The Supreme Court, in resolving the controversy in *Consebido*, which involved a criminal tax offense, expressly applied the long-settled doctrine in *People of the Philippines, et al. v. Ascencion P. Olarte* (G.R. No. L-22465, 28 February 1967) that the commencement of preliminary investigation interrupts the running of the prescriptive period.

Nevertheless, more compelling doctrinal considerations support the prospective application of *Consebido*. Such application accords with the higher interest of upholding the *in dubio pro reo* doctrine and protecting the substantive rights of the accused. It recognizes the practical and legal implications of the Supreme Court-approved RRCTA, particularly its "institution-by-Information" formulation, which created a genuine interpretive tension when applied to criminal cases before the CTA. In light of this tension, the CTA must resolve any doubt regarding the existence, bar, or interruption of the prescriptive period in favor of the accused.

The foregoing principle traces its roots as early as *The People of the Philippine Islands v. Juan Moran, et al.*³⁹ (**Moran**), where the Supreme Court cited Fiore, an eminent professor of international law and author of "Irretroactivity and Interpretation of Statutes," and leaned towards his interpretation that regardless of the nature of the law on prescription, any new construction of prescription law must be applied if it is more favorable to the accused, but not if it is more prejudicial, considering that prescription affects the very substance of criminal prosecutions:

...

After examining the different opinions of the writers on the matter, Fiore has come, as seen from the above quotation, to the conclusion that, whether the statute relative to prescription be considered as of a procedural or formal, or substantive, nature, **the new statute must be applied if it is less severe or more favorable to the accused, but not if it is more prejudicial, notwithstanding the general rule that all procedural laws are retroactive in regard to prescription.** In view of the special motion filed by the accused on May 2, 1922, it does not matter and it is of no importance, so far as the question herein raised is concerned, whether the provision contained in section 71 of Act No. 3030 be considered as of a

³⁸ Supra at note 14.

³⁹ G.R. No. 17905, 27 January 1923; Emphasis supplied.

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substantive, procedural, or adjective character, because applying the principles above enunciated, the result is the same, and **the more severe law in the matter of prescription** extends, as Fiore says, the field of the criminal action and **affects the very substance thereof, because it determines the basis and the sphere of the rights to punish.**

...

Thus, the Supreme Court concluded by saying that:

...

[N]o period of prescription having been fixed in the former law, those offense were imprescriptible, and the offender could be prosecuted and punished at any time and indefinitely, even ten, twenty, or more years after the commission thereof, whereas the new law, that is, Act No. 3030 in providing the period of one year for the prescription, has, in effect, shortened the time of prescription fixed in the old law by virtue of the silence thereof, reducing it to one year and has established less difficult conditions for the application of the same as regards those offenses, which is evidently more favorable and lenient to the violators of the said former law, and, as Fiore says in one of the paragraph above quoted from his book, **the reduction made by the new law implies a recognition on the part of the sovereign power that the greater severity of the former law, as regards the substance of the criminal action, is unjust, and it would contradict itself if it would attempt to enforce its right under the conditions of the former law which has already been regarded by the conscientious public opinion as juridically burdensome, and, therefore, unjust, and the sovereign power cannot exercise the right to punish except within the limits regarded by it as just at the time of exercising it.**⁴⁰

...

This portion of *Moran* went on to be cited by the Supreme Court in later and even more recent cases interpreting the laws on prescription in criminal offenses.

Promulgated at the same time as *Moran* was the case of *The People of the Philippine Islands v. Norberto Parel*⁴¹ (**Parel**), where the Court, likewise citing Fiore, declared that changes in the law on prescription must not be applied retroactively if the same would prejudice the accused:

...

[W]hen the new prescriptive law is more rigid than the former, whether as to the admissibility of the prescription itself or as to the conditions and time required for its effectiveness, care must be taken that law is not applied to crimes committed before its enactment, not because the accused has acquired any right so to prevent its application, but



⁴⁰ Id.; Emphasis supplied.
⁴¹ G.R. No. 18260, 27 January 1923; Emphasis supplied.

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for the reasons that we have already stated. What right can the accused have to endeavor to prevent that which the sovereign power has the right to do in order to preserve public order? Let us not talk therefore of vested rights of the accused, but let us say it, and with emphasis, that **the reason for the irretroactivity of the more severe law is found in the principle that the sovereign power cannot, without committing an injustice, apply the more severe prescriptive provisions**; and those provisions cannot be justly applied if they have not been previously promulgated. And the right itself to punish does not arise except by virtue of a law promulgated and in force at the time of the commission of the crime. The more rigid the prescriptive law the more enlarged the field of criminal prosecution and this affects the substance thereof, because it fixes the basis and the sphere of the right to punish. And can all of these be done by the sovereign power without any law? Can that power, without doing an injustice, extend the effects of the new law to said acts committed before its enactment? For the same reasons which prevent the sovereign power from punishing those acts that have not expressly been made punishable as crimes by the former law or from imposing the more severe penalties provided in the new law when such acts have been committed before those penalties were established by legislative enactment, so also it cannot enlarge the criminal action (that is to say, its right to punish) by a subsequent law and apply to acts executed before its enactment the less favorable provisions of prescription therein established . . .

For the reasons stated, we come to the conclusion that, as a matter of justice which must regulate all the elements of a criminal action, that **the accused must be given the benefit of the provisions of the new law when more favorable to him** and that, unless there should be a final and conclusive judgment at the time, we must also admit in matters of prescription that the new law, when less severe, should be applied. The same principle applies when the modifications introduced by the law refer to the prescription of the penalty, because in its substance the prescription of the penalty is equivalent to the prescription of the criminal action. (Fiore, *Irretroactividad e Interpretacion de las Leyes*, pp. 426-428.)
...

Parel remains to be good law and was recently cited in the 2024 case of *Dexter Bargado y Morgado v. People of the Philippines*.⁴²

Additionally, subsequent cases have reaffirmed that prescription is a matter of substantive law.

In the 1954 case of *The People of the Philippines v. Pascual Castro*,⁴³ the Supreme Court declared that prescription is a substantive provision of law: 

⁴² G.R. No. 271081, 29 July 2024.
⁴³ G.R. No. L-6407, 29 July 1954; Emphasis supplied.

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...

Hence, the rule provides that the plea of prescription should be set up before arraignment, or before the accused pleads to the charge, as otherwise the defense would be deemed waived; but, as was well said in the Moran case, this rule is not of absolute application, especially when it conflicts with a **substantive provision of the law, such as that which refers to prescription of crimes.** Since, under the Constitution, the Supreme Court has only the power to promulgate rules concerning pleadings, practice and procedure, and the admission to the practice of law, and cannot cover substantive rights (section 13, article VII, of the Constitution), **the rule we are considering cannot be interpreted or given such scope or extent that would come into conflict or defeat an express provision of our substantive law. One of such provisions is article 89 of the Revised Penal Code which provides that the prescription of crime has the effect of totally extinguishing the criminal liability.**

...

The conclusion that prescription is a matter of substantive law was reiterated in the 1992 case of *Luz M. Zaldivia v. Hon. Andres B. Reyes, Jr., et al.*,⁴⁴ as well as in the 2013 case of *Jadewell Parking Systems Corporation v. Hon. Judge Nelson F. Lidua, Sr., et al.*,⁴⁵ both were cases discussed in *Consebido*:

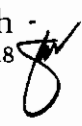
...

[I]f there be a conflict between the Rule on Summary Procedure and Section 1 of Rule 110 of the Rules on Criminal Procedure, the former should prevail as the special law. And if there be a conflict between Act No. 3326 and Rule 110 of the Rules on Criminal Procedure, the latter must again yield because **this Court, in the exercise of its rule-making power, is not allowed to “diminish, increase or modify substantive rights” under Article VIII, Section 5(5) of the Constitution. Prescription in criminal cases is a substantive right.**⁴⁶

...

Accordingly, any change in its interpretation that adversely affects the accused must be applied prospectively.

Furthermore, the Supreme Court has repeatedly emphasized that laws on prescription must be liberally construed in favor of the accused.

In the 1989 case of *People of the Philippines v. Mizpah R. Reyes*,⁴⁷ which was cited in the 1992 case of *People of the Philippines v. Napoleon Duque*,⁴⁸ 

⁴⁴ G.R. No. 102342, 03 July 1992.

⁴⁵ G.R. No. 169588, 07 October 2013.

⁴⁶ Emphasis supplied.

⁴⁷ G.R. Nos. 74226-27, 27 July 1989.

⁴⁸ G.R. No. 100285, 13 August 1992.

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the Supreme Court ruled that in the interpretation of the law on prescription of crimes, that which is most favorable to the accused is to be adopted:

...

However, the law on prescription of crimes rests on a more fundamental principle. Being more than a statute of repose, **it is an act of grace whereby the state, after the lapse of a certain period of time, surrenders its sovereign power to prosecute the criminal act.** While the law on prescription of civil suits is interposed by the legislature as an impartial arbiter between two contending parties, the law on prescription of crimes is an **act of amnesty and liberality on the part of the state** in favor of the offender [People v. Moran, *supra*, at p. 405]. **Hence, in the interpretation of the law on prescription of crimes, that which is most favorable to the accused is to be adopted.** [People v. Moran, *supra*; People v. Parel, 44 Phil. 437 (1923); People v. Yu Hai, 99 Phil. 725 (1956)].⁴⁹

...

This doctrine was reiterated in the 2001 case of *People of the Philippines v. Arturo F. Pacificador*⁵⁰ (**Pacificador**):

...

It bears emphasis, as held in a number of cases, that **in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.** The said legal principle takes into account the nature of the law on prescription of crimes which is an **act of amnesty and liberality on the part of the state in favor of the offender.** In the case of *People v. Moran*, this Court amply discussed the nature of the statute of limitations in criminal cases, as follows:

The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence, it is that **statutes of limitation are to be liberally construed in favor of the defendant**, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a **recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed - and positive periods in which it destroys proofs of guilt.**

...

⁴⁹

Emphasis supplied.

⁵⁰

G.R. No. 139405, 13 March 2001; Emphasis supplied and italics in the original text.

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Citing *Pacificador*, the Supreme Court, in the 2006 case of *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, et al.*,⁵¹ declared that any doubt on the bar or cause of interruption of prescriptive periods must be resolved in favor of the accused:

...

Indeed, there is no reason why we should deny petitioner the benefits accruing from the liberal construction of prescriptive laws on criminal statutes. **Prescription emanates from the liberality of the State. Any bar to or cause of interruption in the operation of prescriptive periods cannot simply be implied nor derived by mere implication.** Any diminution of this endowment must be directly and expressly sanctioned by the source itself, the State. **Any doubt on this matter must be resolved in favor of the grantee thereof, the accused.**

The foregoing conclusion is logical considering the nature of the laws on prescription. The exceptions to the running of or the causes for the interruption of the prescriptive periods may and should not be easily implied. The prescriptive period may only be prevented from operating or may only be tolled for reasons explicitly provided by the law.

...

In light of these principles, while *Consebido* supplies the authoritative construction of Section 281⁵² of the NIRC of 1997, as amended — holding that the filing of a complaint for preliminary investigation tolls prescription — this Court's own rules (*i.e.*, the RRCTA) create reasonable interpretive doubt when applied to pre-*Consebido* prosecutions such as this case. In faithful adherence to the principle that doubts in criminal prosecutions, especially those affecting prescription, must be resolved in favor of the accused, I have reconsidered and am now of the view that *Consebido* must be applied prospectively.

In the present case, the offense was deemed committed on 21 December 2014. Accordingly, the five (5)-year prescriptive period lapsed on 21 December 2019. I concur with the *ponencia* that the doctrine in *Lim, Sr.* applies because the alleged offense, the filing of the complaint with the DOJ, and the filing of the Information before the First Division, all occurred well before the promulgation of *Consebido*. As exhaustively discussed, *Consebido* must be applied prospectively from its promulgation on 02 April 2025. Thus, applying *Lim, Sr.*, the five (5)-year prescriptive period had already run its course when the Information was filed before the First Division on 06 September 2022, two (2) years, eight (8) months and sixteen (16) days after the prescriptive period expired on 21 December 2019.



⁵¹ G.R. Nos. 165510-33 (Resolution), 28 July 2006; Emphasis supplied.
⁵² *Supra* at note 14.

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All told, I **VOTE** to **DISMISS** the Petition for Review for lack of standing due to absence of the OSG’s conformity.

I **CONCUR** that the criminal action has prescribed. While *Consebido* supplies the authoritative construction of Section 281⁵³ of the NIRC of 1997, as amended, that the filing of a complaint for preliminary investigation tolls prescription, this Court’s own rules (*i.e.*, the RRCTA) create a reasonable interpretive doubt as applied to pre-*Consebido* prosecutions. In faithful adherence to the principle that doubts in criminal prosecution, particularly those affecting prescription, should be resolved in favor of the accused, I agree that the *ponencia*’s result may be sustained.



JEAN MARIE A. BACORRO-VILLENA
Associate Justice

⁵³ Supra at note 14.