REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner, - versus - **ZIEGFRIED LOO TIAN,** (No. 1013, Juan Luna Street, Brgy. 27, Zone 1, Tondo, Manila), Respondent.	**CTA EB CRIM. NO. 103** (CTA CRIM. CASE NO. O-946) For: Violation of Section 255, Paragraph 1, of the National Internal Revenue Code (NIRC) of 1997, as amended. *Present:* **DEL ROSARIO, *P.J.*,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.* Promulgated: AUG 29 2024

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DECISION

FERRER-FLORES, J.:

Before this Court is the **Amended Petition for Review (of the Resolution dated January 31, 2023)** *(Amended Petition for Review)* filed on April 11, 2023 via registered mail by the **People of the Philippines (petitioner)** against accused **Ziegfried Loo Tian (respondent)** appealing the Resolution dated December 12, 2022 (**1st assailed Resolution**),[1] finding no probable cause to issue a warrant of arrest and dismissing the Information on the ground of prescription, and the Resolution dated January 31, 2023 (**2nd**

[1] *Rollo*, pp. 25 to 31.

assailed Resolution),[2] denying the motion for reconsideration, both rendered by the then First Division of this Court[3] (**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-946, is **DISMISSED**.
>
> **SO ORDERED**.

2nd assailed Resolution

> **WHEREFORE**, the prosecution's Motion for Reconsideration is **DENIED**.
>
> xxx xxx xxx
>
> **SO ORDERED.**

THE ANTECEDENT FACTS

On October 26, 2022, an *Information*[4] was filed against respondent for violation of Section 255, paragraph 1, of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which reads:

> That on or before April 20, 2011, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, filed his Quarterly Value-Added Tax Return (VAT return), for the first (1st) quarter of taxable year 2011, 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 VAT return by stating in the entry fields of the said return the word "exempt", when in truth and in fact said accused is not exempted as he failed to comply with the substantiation and reporting requirement under the tax law and revenue regulations, which willful failure to supply correct and accurate information resulted to the damage and prejudice of the Government in the amount of Three Million Three Hundred Forty Four Thousand Four Hundred Thirty Pesos and Seventy Seven Pesos *[sic]* (Php 3,344,430.77), exclusive of interests, penalties and surcharges.

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2 *Rollo*, pp. 32 to 35.
3 Composed of Presiding Justice Roman G. Del Rosario, Associate Justice Catherine T. Manahan, and Associate Justice Marian Ivy F. Reyes-Fajardo.
4 Division Docket, p. 5.

Thereafter, the Court issued the *1st assailed Resolution* on December 12, 2022 finding no probable cause to issue a warrant of arrest on the ground of prescription of the offense charged and dismissed the Information on the same ground.[5]

Aggrieved, petitioner moved for reconsideration[6] which was still denied for lack of merit on January 31, 2023 through the *2nd assailed Resolution* issued by the Court in Division.[7]

Hence, this Petition.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On February 20, 2023, petitioner filed the *Verified Petition for Review.*[8]

Thereafter, on March 14, 2023, the Court directed petitioner to file the proof of receipt of the *2nd assailed Resolution.*[9]

Petitioner then filed its *Manifestation with Motion* on March 15, 2023[10] praying that the title of the case be corrected from "BUREAU OF INTERNAL REVENUE" to "PEOPLE OF THE PHILIPPINES" as the plaintiff-appellant. On April 3, 2023, this Court directed the petitioner to submit an Amended Petition for Review with the correctly identified petitioner and reiterated its order to file the proof of date of receipt of the assailed Resolution.[11]

On March 28, 2023, petitioner submitted the required proof of date of receipt of the *2nd assailed Resolution* through its *Compliance (Resolution dated March 14, 2023).*[12]

In compliance with the Minute Resolution dated April 3, 2023, petitioner filed the instant *Amended Petition for Review* reflecting the corrected title of the case.[13]

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5 *Rollo*, pp. 25 to 31.
6 *Motion for Reconsideration (of Resolution dated December 12, 2022),* attached to petitioner's *Formal Entry of Appearance with Motion for Reconsideration,* Division Docket, pp. 219 to 233.
7 *Rollo*, pp. 32 to 35.
8 Filed via registered mail on February 20, 2023 and received by the Court on February 23, 2023; *Rollo*, pp. 1 to 19.
9 *Rollo*, p. 226.
10 Filed via registered mail on March 15, 2023 and received by the Court on March 21, 2023; *Rollo*, pp. 227 to 229.
11 *Rollo*, p. 233.
12 Filed via registered mail March 28, 2023 and received by the Court on April 4, 2023; *Rollo*, pp. 234 to 241.
13 Filed via registered mail on April 11, 2023 and received by the Court on April 17, 2023; *Rollo*, pp. 244 to 263.

On April 24, 2023, the Court noted petitioner's *Compliance (Resolution dated March 14, 2023)* and the *Amended Petition for Review* and directed respondent to file his comment thereon.[14]

Meanwhile, the counsel for respondent filed a *Notice of Appearance*[15] on July 12, 2023, which was noted by the Court on July 17, 2023.[16]

On July 27, 2023, respondent filed his *Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 31 January 2023)*.[17]

The Court noted respondent's *Comment/Opposition* on August 22, 2023. On even date, the case was also submitted for decision.[18]

THE ISSUE

In petitioner's *Amended Petition for Review,* the sole error raised was that the Court in Division erred when it found no probable cause to charge respondent Loo Tian for Section 255, paragraph 1, of the NIRC of 1997, as amended, or deliberate failure to supply correct and accurate information in his value added-tax (VAT) return for the first quarter of taxable year (TY) 2011.

THE ARGUMENTS

Petitioner interposes the following arguments in support of its petition:

A. Prescription has not set in as the period of discovery and the institution of judicial proceedings for violation of Section 255, paragraph 1, 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, on July 5, 2012, or the date of filing of complaint with the Department of Justice (DOJ); and,

B. Respondent should be held liable for deliberate failure to supply correct and accurate information in his VAT return for the first quarter of TY 2011 in violation of Section 255, paragraph 1, of the NIRC of 1997, as amended.

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[14] *Rollo*, p. 492.
[15] *Rollo*, pp. 493 to 495.
[16] *Rollo*, p. 497.
[17] *Rollo*, pp. 497 to 516.
[18] Minute Resolution dated August 22, 2023, *Rollo*, p. 517.

On the other hand, respondent counter-argues that:

A. The right of the government to prosecute him has prescribed under Section 281 of the NIRC of 1997, as amended; and,

B. The case must be dismissed for violation of the accused's right to speedy disposition of cases as the prosecution took more than ten (10) years from the filing of the complaint to the filing of the Information in the Court of Tax Appeals (CTA).

THE RULING OF THE COURT

The *Amended Petition for Review* lacks merit.

The instant Petition for Review was timely filed.

Records show that, on January 5, 2023,[19] petitioner received the *1st assailed Resolution* dismissing the case on the ground of prescription, to which petitioner moved for reconsideration on January 10, 2023.[20]

On January 31, 2023, the Court in Division issued the *2nd assailed Resolution* denying petitioner's *Motion for Reconsideration*, which resolution was received by the latter on February 3, 2023.[21]

Section 9(b) of Rule 9 of the Revised Rules of Court of Tax Appeals (RRCTA) provides:

> SEC. 9. *Appeal; period to appeal.* — xxx xxx xxx
>
> (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)*

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[19] *Notice of Resolution* dated December 19, 2022, Division Docket, p. 211.
[20] *Formal Entry of Appearance with Motion for Reconsideration*, Division Docket, pp. 221 to 233.
[21] *Notice of Resolution* dated February 2, 2023, Division Docket, p. 235.

Based on the foregoing, petitioner had fifteen (15) days from receipt of the *2nd assailed Resolution* on February 3, 2023, or until **February 18, 2023**, within which to file its Petition for Review. Since February 18, 2023 fell on a Saturday, petitioner had until **February 20, 2023** (Monday), the next working day, to file the Petition before the Court *En Banc*.

Petitioner, thus, timely filed the instant *Verified Petition for Review* on **February 20, 2023**.

The Court shall now proceed to the main issue in the present petition.

The government's right to prosecute the case has already prescribed.

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.[22]

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 (5) years.

The *first* consideration may be found in Section 281 of the NIRC of 1997, as amended, which provides for the **five (5)- 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,**

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

> **from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.**
>
> **The prescription shall be interrupted when proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
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> The term of prescription shall not run when the offender is absent from the Philippines. *(Emphasis supplied)*

Inasmuch as respondent was charged for violation of Section 255 of the NIRC of 1997, as amended, the applicable prescriptive period is **five (5) years** as provided above.

Second: The day of the commission of the subject violation is unknown; hence, the prescriptive period began to run upon its discovery and the institution of judicial proceedings on July 5, 2012.

As to the *second* consideration (i.e., commencement of the prescriptive period), Section 281 of the NIRC of 1997, as amended, provides for two (2) reckoning points from when the period of prescription begins to run:

> (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.

In the assailed Resolutions, the Court in Division applied the second rule which the petitioner likewise avers in its *Amended Petition for Review* to be applicable.

A perusal of the Information shows that the violation alleged therein is that the accused "willfully, unlawfully and feloniously failed to supply correct and accurate information in his VAT return by stating in the entry fields of the said return the word "exempt", when in truth and in fact said accused is not exempted [...]". Such being an omission and misrepresentation on the part of the accused, the day of the commission of the violation is unknown until the same is discovered. Thus, the Court *En Banc* agrees with the finding of the Court in Division that the commencement of the prescriptive period is

from the discovery of the commission *and* the institution of judicial proceedings for its investigation and punishment.

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[23] (*Lim* case), the Supreme Court discussed the commencement of the prescriptive period where the day of the commission of the violation is not known 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.
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> 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 ₱1,237,190.55 in deficiency taxes that the tax infractions were discovered.
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> Not only that. The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also **institution of judicial proceedings**. Note the conjunctive word 'and' between the phrases 'the discovery thereof' and 'the institution of judicial proceedings for its investigation and proceedings.' In other words, in addition to the fact of discovery, there must be a judicial proceeding for the 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.**
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> XXX
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> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases,** such as the present ones, **are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court docs not exceed five (5) years.** *(Emphasis supplied)*

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

Based on foregoing discussions, if the day of the commission of the violation of the law is not known, the five (5)-year prescriptive period begins to run from:

(1) *Discovery*; **and**,
(2) *Institution of judicial proceedings* (i.e., offense is indorsed to the Prosecutor's Office for preliminary investigation).

In the instant case, since, by the nature of the violation charged against the accused, the day of the commission of the violation was not known, the prescriptive period began to run when the violation was discovered and the case was indorsed by the Commissioner of Internal Revenue (CIR) for preliminary investigation to the DOJ on **July 5, 2012**.

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

The present controversy is with the *third* consideration, particularly, when the period of prescription is interrupted.

Petitioner claims that the discovery and the institution of judicial proceedings not only trigger the commencement of the prescriptive period but also trigger the interruption of the same prescriptive period pursuant to Section 281 of the NIRC of 1997, as amended. It likewise invokes Section 1 of Rule 110 of the Revised Rules on Criminal Procedure which provides:

> SECTION 1. Institution of criminal actions. — Criminal actions shall be instituted as follows:
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> (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.

As such, petitioner maintains that prescription has not set in as the filing of the complaint with the DOJ for the conduct of preliminary investigation triggered both the commencement and interruption of the running of the prescriptive period.

This Court cannot subscribe to such interpretation.

As early as 1990, the Supreme Court has held in the *Lim* case[24] that the prescriptive period is interrupted by the filing of 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 (5) years.

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, *inter alia*, is interrupted by the filing of an Information before the Court, consistent with the pronouncement in the *Lim* case.[25] Particularly, 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 is 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 RRCTA[26] and that the latter specifically provides that criminal actions

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

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.

Counting from the discovery of the violation of the NIRC of 1997 and the institution of the judicial proceeding for preliminary investigation (i.e., CIR's referral of the case to the DOJ) on **July 5, 2012**, the Information should have been filed before this Court within five (5) years from July 5, 2012, or until **July 5, 2017**. Clearly, when the instant Information was filed before this Court on **October 26, 2022**, more than five (5) years have passed since the government's right to institute a criminal action prescribed.

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

WHEREFORE, premises considered, petitioner's *Amended Petition for Review (of the Resolution dated January 31, 2023)* is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated December 12, 2022 and January 31, 2023 in CTA Crim. Case No. O-946 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice