

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. 114
(CTA Crim. Case No. O-973)

Present:

- versus -

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

LOGISTICS.COM
CORPORATION, JOVAN G.
TRIAS, ARMAN R. ONG and
ERMA O. AUNARIO,
Diezmo Road, Pulo, Cabuyao
City, Laguna,

Respondents.

Promulgated:

NOV 08 2024

x ----- x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is an “Amended Verified Petition for Review (of the Resolution dated March 6, 2023)”¹ (**Amended Verified Petition for Review**) filed by petitioner People of the Philippines (**petitioner/prosecution**), pursuant to Rule 43² of the Rules of Court.

¹ Filed on 18 July 2023, *rollo*, pp. 73-114, with annexes.

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

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(ROC), as amended³, in accordance with Rule 8⁴, Section 4(b)⁵ of the Revised Rules of the Court of Tax Appeals (RRCTA). It seeks the reversal and setting aside of the Resolution dated 30 January 2023⁶ (**first assailed Resolution**) and Resolution dated 06 March 2023⁷ (**second assailed Resolution**) of the Court's First Division⁸, in CTA Case No. O-973 entitled *People of the Philippines v. Logistics.com Corporation, Jovan G. Trias, Arman R. Ong and Erma O. Aunario*.

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

First Assailed Resolution dated 30 January 2023

...

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-973, is **DISMISSED**.

SO ORDERED.

...

Second Assailed Resolution dated 06 March 2023

...

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



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

⁴ *Procedure in Civil Cases*.

⁵ **SEC. 4. Where to Appeal; Mode of Appeal.** —

...

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by **petition for review as provided in Rule 43 of the Rules of Court**. The Court *en banc* shall act on the appeal. (Emphasis supplied)

⁶ Division Docket, pp. 101-107.

⁷ *Id.*, pp. 132-135.

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

⁹ Division Docket, pp. 108-129, with annexes.

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

Henceforth, let all notices, processes and orders of this Court, motions, pleadings and other papers relative to the above-entitled case be directly served to [petitioner's] counsels, Deputized Special Prosecutors Catherine Rose R. Tortoles, Jamaica Kay S. Dela Cruz and Jimlan S. Ismael, at:

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

SO ORDERED.
...

PARTIES OF THE CASE

Petitioner is represented by the Bureau of Internal Revenue (**BIR**), the government agency mandated to collect national revenue taxes, and is represented by the Commissioner of Internal Revenue (**CIR**) through Revenue Officers (**ROs**) Clemente Tenorio (**Tenorio**), Marilyn Buendicho (**Buendicho**), Amapola Jane C. San Juan (**San Juan**), Michele A. Delos Santos (**Delos Santos**), Mark M. Secretario (**Secretario**) and Don Johnson Guevarra (**Guevarra**), with office address at Room 704, BIR National Office Building, BIR Road (now, Senator Miriam P. Defensor-Santiago Avenue), Diliman, Quezon City.¹⁰

Respondent Logistics.com Corporation (**respondent corporation**) is a domestic corporation registered with the Securities and Exchange Commission (**SEC**) on 01 October 2004, under Registration No. CS200415538. It is engaged in the business of freight and cargo forwarding, hauling, carrying, handling, warehousing, distributing, loading and unloading of general cargoes and all classes of goods, wares and merchandise. It is also registered with the BIR under Taxpayer Identification Number (**TIN**) 233-910-632-000, with its office address at Diezmo Rd. Pulo, Cabuyao City, Laguna, where it may be served summons and other court processes.¹¹

¹⁰ Paragraph 8, PARTIES, "Amended Verified Petition for Review (of the Resolution dated March 6, 2023)", *supra* at note 1, p. 75.
¹¹ Par. 9, *id.*

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Respondents Jovan G. Trias (**Trias**), Arman R. Ong (**Ong**) and Erma O. Aunario (**Aunario**) (collectively, "**respondents**"), are being sued in their capacities as respondent corporation's President, General Manager and Treasurer, respectively.

FACTS OF THE CASE

On 05 December 2022, the prosecution filed an Information¹² against respondents for violation of Section 255¹³ of the National Internal Revenue Code (**NIRC**) of 1997, as amended, the accusatory portion thereof reads:

...

That on or about March 16, 2016 and thereafter, in Cabuyao City, Laguna, and within the jurisdiction of this Honorable Court, accused Logistics.com Corporation, a registered taxpayer engaged in the retail business of freight and cargo forwarders, hauling, carrying, handling, warehousing, distributing, loading and unloading of general cargoes and all classes of goods, wares and merchandise, with obligation under the law to pay the correct income tax for the taxable year 2010, through its president, accused Jovan G. Trias, its general manager, accused Arman R. Ong, and treasurer, accused Erma O. Aunario, did then and there, willfully, unlawfully, and feloniously fail to pay its correct income tax with the Bureau of Internal Revenue for taxable year 2010 in the amount of Thirty One Million Two Hundred Seventy Two Thousand Nine Hundred Sixty Six and 72/100 Pesos (Php31,272,966.72), exclusive of surcharges and interest, despite service of notices and demand letters for them to pay the said tax including the Final Notice Before Seizure dated March 16, 2016, to the damage and prejudice of the Government[.]

...

The prosecution attached the following supporting documents to the Information:

1. Certified True Copy of the Resolution dated 02 August 2019¹⁴, signed by Assistant State Prosecutor Alejandro C. Daguiso, with recommending approval of Senior Deputy State 

¹² Division Docket, pp. 5-6.

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

¹⁴ Division Docket, pp. 7-16.

Prosecutor Miguel F. Gudio, Jr., and approved by Prosecutor General Benedicto A. Malcontento;

- 2. Certified True Copy of the National Prosecution Service (NPS) Investigation Data Form dated 28 February 2019;¹⁵
- 3. Certified True Copy of the Referral Letter dated 26 February 2019¹⁶ of the then BIR Commissioner Caesar R. Dulay (**Commissioner Dulay**), addressed to then Secretary of Menardo I. Guevarra (**Secretary Guevarra**); and,
- 4. Certified True Copy of the Joint Complaint-Affidavit (JCA) dated 28 February 2019¹⁷ (filed with the Department of Justice [DOJ] on even date) of ROs Tenorio, Buendicho, San Juan, Delos Santos, Secretario and Guevarra, with attached Annexes “A” to “M-19”, inclusive of sub-markings.¹⁸

On 30 January 2023, the First Division rendered the first assailed Resolution¹⁹, dismissing the case outright on the ground of prescription of the offense charged. Petitioner filed an MR²⁰ thereto on 13 February 2023, but the First Division denied the same (1) for being filed beyond 

¹⁵ Id., p. 17.
¹⁶ Id., pp. 18-19.
¹⁷ Id., pp. 20-27.
¹⁸ Id., pp. 28-99.

Annex	Document/s
A	General Information Sheet (GIS)
B	Letter of Authority (LOA) dated 06 September 2011
C	First Request for Presentation of Records dated 07 September 2011
D	First Notice dated 22 September 2011
E	Subpoena Duces Tecum
F	Preliminary Assessment Notice (PAN)
F-1	Registry Return Receipt
G	Formal Letter of Demand (FLD) dated 23 October 2013
G-1	Details of Discrepancies
G-2 to G-7	Audit Results/Assessment Notices (ANs)
H	Final Decision on Disputed Assessment (FDDA) dated 28 July 2015
H-1	Registry Return Receipt
I	Preliminary Collection Letter (PCL) dated 12 February 2016
I-1	Registry Return Receipt
J	Final Notice Before Seizure (FNBS) dated 16 March 2016
J-1	Registry Return Receipt
K	Warrant of Dstraint and/ or Levy (WDL)
L to M-19	Warrants of Garnishment (WoGs)

¹⁹ Supra at note 6.
²⁰ Supra at note 9.

the non-extendible period of five (5) calendar days under Item III(2)(c)²¹ of the Revised Guidelines for Continuous Trial of Criminal Cases²² (**Revised Guidelines**) and (2) for lack of merit in the second assailed Resolution.²³

PROCEEDINGS BEFORE THE COURT EN BANC

Unsatisfied with the First Division’s rulings, on 24 March 2023, petitioner filed a “Verified Petition for Review (of the Resolution dated March 06, 2023)”²⁴ (**Verified Petition for Review**) before the Court *En Banc*, docketed as CTA EB Crim. No. 114.

In a Resolution dated 11 July 2023²⁵, the Court *En Banc* gave petitioner a period of five (5) days to file an amended Verified Petition for Review, incorporating the correct designation of the parties (*i.e.*, People of the Philippines as “Petitioner” instead of “Plaintiff-Appellant” and Logistics.com Corporation, Trias, Ong and Aunario as “Respondents” instead of “Accused-Appellees”)²⁶, proper representation

²¹ III. Procedure
...
2. Motions
...
(c) *Meritorious Motions.* — Motions that allege plausible grounds supported by relevant documents and/or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious motions, ... :
...
The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution[.]
Motions that **do not conform** to the above requirements shall be considered **unmeritorious** and shall be denied outright. (Emphasis and underscoring supplied)
²² A.M. No. 15-06-10-SC dated 25 April 2017.
²³ *Supra* at note 7.
²⁴ *Rollo*, pp. 1-67, with annexes.
²⁵ *Id.*, pp. 69-72.
²⁶ See Sections 5 and 8, Rule 43 of the Rules of Court (**ROC**), as amended.
Sec. 5. *How appeal taken.* – Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.
Upon the filing of the petition, the petitioner shall pay to the clerk of court of the Court of Appeals the docketing and other lawful fees and deposit the sum of P500.00 for costs. Exemption from payment of docketing and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen (15) days from notice of the denial.
...
Sec. 8. *Action on the petition.* – The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice, or dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. (Emphasis and underscoring supplied)

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of petitioner²⁷, and a compliant Verification and Certification Against Forum Shopping together with the original or certified true copy of the First Division's first and second assailed Resolutions.

In compliance with the Court *En Banc*'s directive, petitioner filed *via* registered mail an Amended Verified Petition for Review²⁸ on 18 July 2023.²⁹ The Court *En Banc* noted the same and directed respondents to file their comment thereon within ten (10) days from notice.³⁰

On 12 October 2023, respondents filed *via* registered mail their "Comment (To the Amended Verified Petition For Review dated July 18, 2023)"³¹ on the present petition.³²

Accordingly, the Court *En Banc* submitted the case for decision in a Minute Resolution dated 09 November 2023.³³

ISSUE

The main issue for the Court *En Banc*'s determination is whether the First Division erred in dismissing the case and not proceeding to determine the existence of probable cause to charge respondent corporation for violation of Section 255³⁴ of the NIRC of 1997, as amended, or willful failure to pay deficiency income tax (IT) for the taxable year (TY) 2010.

²⁷

See Section 10, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA).

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. He 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 deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General. (Emphasis and underscoring supplied)

²⁸

Supra at note 1.

²⁹

Received by the Court *En Banc* on 21 July 2023.

³⁰

See Minute Resolution dated 24 August 2023, *rollo*, p. 118.

³¹

Id., pp. 119-122.

³²

Received by the Court *En Banc* on 18 October 2023.

³³

Rollo, p. 125.

³⁴

Supra at note 13.

ARGUMENTS

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

1. Petitioner timely filed its MR³⁵ on the first assailed Resolution³⁶ on 13 February 2023, as the applicable rule in this case is the fifteen (15)-day period under Section 1³⁷, Rule 15 of the RRCTA, rather than the five (5)-day period under Item III(2)(c)³⁸ of the Revised Guidelines;
2. Prescription has not set in as the period of discovery and the institution of judicial proceedings for violation of Section 255³⁹ of the NIRC of 1997, as amended, not only triggers the commencement of the prescriptive period but, at the same time, triggers the interruption of the same prescriptive period; and,
3. Respondent corporation should be held liable for deliberate failure to pay IT for TY 2010 in violation of Section 255 of the NIRC of 1997, as amended.

Respondents, on the other hand, counter that petitioner’s right to prosecute has already prescribed as the subject Information⁴⁰ was filed only on 05 December 2022 (beyond the five (5)-year prescriptive period under Section 281⁴¹ of the NIRC of 1997, as amended, which is reckoned from the finality of the assessment).

RULING OF THE COURT EN BANC

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the present petition.

³⁵ Supra at note 9.
³⁶ Supra at note 6.
³⁷ SEC. 1. *Who may and when to file motion.* — Any 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 the notice of the decision, resolution or order of the Court in question. (Emphasis and underscoring supplied)
³⁸ Supra at note 21.
³⁹ Supra at note 13.
⁴⁰ Supra at note 12.
⁴¹ SEC. 281. *Prescription for Violations of any Provision of this Code.*

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

In the first assailed Resolution⁴², the First Division denied petitioner's MR⁴³ for being filed out of time.

Petitioner, however, argues that the five (5)-day period mentioned in Item III(2)(c)⁴⁴ of the Revised Guidelines does not apply to the present case, particularly since the subject MR is not one filed against a resolution on a meritorious motion. Therefore, petitioner asserts that it was not required to file the MR within five (5) calendar days from receipt of the First Division's first assailed Resolution.

We agree with petitioner.

Under Section (2)(f), Rule 4 of the RRCTA, the Court *En Banc* has jurisdiction over appeals from decisions or resolutions on MRs promulgated by the Court in Division in its exclusive original jurisdiction over violations of the NIRC of 1997, as amended, *viz*:

...

SEC. 2. Cases within the jurisdiction of the Court *en banc*. — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

...

(f) Decisions, resolutions, or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs[.]⁴⁵

...

⁴² Supra at note 6.

⁴³ Supra at note 9.

⁴⁴ Supra at note 21.

⁴⁵ Italics in the original text and emphasis supplied.

Meanwhile, under Section 9(b), Rule 9 of the RRCTA, parties seeking to protest such a decision or resolution of the Court in Division must file a petition for review before the Court *En Banc* within 15 days from receipt of said issuance, to wit:

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

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days.⁴⁶

...

In this case, petitioner filed the subject Information⁴⁷ before the First Division to charge respondent with violation of Section 255⁴⁸ of the NIRC of 1997, as amended. It, thus, falls under Section (2)(f), Rule 4 of the RRCTA.⁴⁹

Furthermore, on 06 March 2023, the First Division issued the second assailed Resolution⁵⁰, denying petitioner's MR⁵¹ (on the first assailed Resolution⁵²). Petitioner received it on 09 March 2023⁵³, giving it until 24 March 2023 within which to file a Petition for Review before the Court *En Banc*. Since the Verified Petition for Review⁵⁴ was filed on 24 March 2023, it was timely filed.

Lastly, contrary to the First Division's ruling, petitioner's MR (on the first assailed Resolution) was not filed out of time as the applicable reglementary period for filing an MR is 15 days under Section 1, Rule 15 of the RRCTA and not five (5) days under Item III(2)(c)⁵⁵ of the Revised Guidelines.



⁴⁶ Italics in the original text and emphasis supplied.
⁴⁷ Supra at note 12.
⁴⁸ Supra at note 13.
⁴⁹ Supra at p. 9.
⁵⁰ Supra at note 7.
⁵¹ Supra at note 9.
⁵² Supra at note 6.
⁵³ See Notice of Resolution dated 07 March 2023, Division Docket, p. 131.
⁵⁴ Supra at note 24.
⁵⁵ Supra at note 21.

Section 1, Rule 15 of the RRCTA provides the general rule that an aggrieved party may file an MR to assail any issuance of this Court within 15 days from receipt of said issuance.

On the other hand, Item III(2)(c) of the Revised Guidelines specifically deals with the filing of an MR against a resolution on a “meritorious motion” in criminal cases. The said provision reads as follows:

...
III. Procedure
...

2. Motions
...

(c) **Meritorious Motions.** — Motions that allege plausible grounds supported by relevant documents and/or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious motions, **such as:**

- i. Motion to withdraw information, or to downgrade the charge in the original information, or to exclude an accused originally charged therein, filed by the prosecution as a result of a reinvestigation, reconsideration, and review;
- ii. Motion to quash warrant of arrest;
- iii. Motion to suspend arraignment on the ground of an unsound mental condition under Sec. 11 (a), Rule 116;
- iv. Motion to suspend proceedings on the ground of a prejudicial question where a civil case was filed prior to the criminal case under Sec. 11 (b), Rule 116;
- v. Motion to quash information on the grounds that the facts charged do not constitute an offense, lack of jurisdiction, extinction of criminal action or liability, or double jeopardy under Sec. 3, par. (a), (b), (g), and (i), Rule 117;
- vi. Motion to discharge accused as a state witness under Sec. 17, Rule 119;
- vii. Motion to quash search warrant under Sec. 14, Rule 126, or motion to suppress evidence; and



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viii. Motion to dismiss on the ground that the criminal case is a Strategic Lawsuit against Public Participation (SLAPP) under Rule 6 of the Rules of Procedure for Environmental Cases.

...

The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution[.]

Motions that **do not conform** to the above requirements shall be considered **unmeritorious** and shall be **denied outright**.⁵⁶

...

Although the list of “meritorious motions” under the Revised Guidelines is not exhaustive, as indicated by the phrase “such as” in Item III(2)(c) afore-cited, the types of motions for which the Revised Guidelines mandate a non-extendible five (5)-day reglementary period for filing an MR on the Court’s resolution should be limited to those expressly enumerated or similar in nature.

As inferred from the enumeration of “meritorious motions,” the Revised Guidelines create an exception to the general rule by shortening the reglementary period for filing an MR on the Court’s resolution regarding these specific motions from 15 days to five (5) days. This reduction aims to prevent potential delays and ensure the continuous trial of criminal cases, particularly when the Court denies such motions or finds no grounds for granting them.

However, with respect to a resolution dismissing a case on the ground of prescription, rendered by the Court *motu proprio* or without initiation by either party, an MR on such a resolution does not fall under “meritorious motions,” as defined under the Revised Guidelines. This is because it constitutes a final order that effectively terminates the proceedings. In this instance, the rationale for applying a shorter reglementary period does not apply, as the Court has already determined that the case should not proceed to trial.

It is also important to emphasize that the five (5)-day reglementary period under the Revised Guidelines applies solely to filing an MR on the specific meritorious motions expressly listed

⁵⁶ Italics in the original text, emphasis and underscoring supplied.

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therein, as the Supreme Court underscored in *Merle Bautista Palacpac v. Sandiganbayan [Fifth Division] and the Office of the Special Prosecutor [The Ombudsman]*⁵⁷ (**Palacpac**), where it ruled in this wise:

...

[U]nder Section 3(2)(c) of the Revised Guidelines, the meritorious motions that can be filed before the courts are as follows:

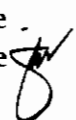
c. *Meritorious Motions*. — Motions that allege plausible grounds supported by relevant documents and/or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious motions, such as:

...

v. Motion to quash information on the grounds that the facts charged do not constitute an offense, lack of jurisdiction, extinction of criminal action or liability, or double jeopardy under Sec. 3, pars. (a), (b), (g), and (i), Rule 117[.]

Here, petitioner's ground in seeking the quashal of the Information is the alleged failure of the Ombudsman to substantially conform with Section 3 (e) of Rule 117 of the Rules of Court. **Although Section 3 (e) is one of the grounds to quash the Information under Rule 117 of the Rules of Court, it fails, however, to qualify as a meritorious motion following the Revised Guidelines.**

While the Court adheres to petitioner that the use of "*such as*" in Section 2 (c) of the Revised Guidelines, in defining meritorious motions, only indicates or enumerates examples of it without exclusion of all others, a reading of subparagraph (v) of the same section expressly enumerates the grounds for a motion to quash information to be qualified as a meritorious motion: the facts charged do not constitute an offense, lack of jurisdiction, extinction of criminal action or liability, or double jeopardy under Section 3, paragraphs (a), (b), (g), and (i), Rule 117. Following the rules of statutory construction, the express mention of one person, thing, or consequence implies the exclusion of all others — *expressio unius est exclusio alterius*.

In other words, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters because the legislature would not make a specific enumeration in a statute 

⁵⁷

G.R. No. 249243 (Notice), 16 January 2023; Citations omitted, italics in the original text and emphasis supplied.

if its intention is not to restrict the meaning and confine the terms to those expressly mentioned.

...

In *Palacpac*, the Supreme Court also compared the five (5)-day period for filing an MR on meritorious motions under the Revised Guidelines with the 15-day period for filing an MR under the 2018 Revised Internal Rules of the Sandiganbayan. The High Court held that the 15-day reglementary period applies when the assailed resolution is in the nature of a decision or final order, as follows:

...

[T]he Sandiganbayan did not err when it ruled that the motion should have been filed on or before August 5, 2019; that when the motion was filed only on August 15, 2019, it was already way beyond the five-day reglementary period provided under the Revised Guidelines.

Notably, the Motion for Reconsideration was filed to seek reconsideration of the Sandiganbayan’s first assailed Resolution dated July 24, 2019. The first assailed Resolution is neither a decision nor a final order as required in the 2018 Revised Internal Rules of the Sandiganbayan (2018 Revised Rules). Thus, the 2018 Revised Rules which provides for a 15-day reglementary period within which to file a motion for reconsideration of a decision or final order finds no application in the case.⁵⁸

...

Applying the foregoing by analogy, since the first assailed Resolution⁵⁹ in this case constitutes a decision or final order (dismissing the case the ground of prescription) and it was issued *motu proprio*—not to resolve any of the meritorious motions mentioned in the Revised Guidelines—the applicable reglementary period for filing an MR should still be the general rule of 15 days, as stipulated under Section 1, Rule 15 of the RRCTA.

Thus, with the timely filing of petitioner’s MR⁶⁰ (on the first assailed Resolution) as well as the Verified Petition for Review⁶¹ (*vis-à-vis* the present Amended Verified Petition for Review⁶²), the Court *En Banc* validly acquired jurisdiction over this case. 

⁵⁸ Supra at note 57; Citations omitted, emphasis and underscoring supplied.
⁵⁹ Supra at note 6.
⁶⁰ Supra at note 9.
⁶¹ Supra at note 24.
⁶² Supra at note 1.

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However, while petitioner may have filed both its MR⁶³ (on the first assailed Resolution⁶⁴) and Verified Petition for Review⁶⁵ (*vis-à-vis* the present Amended Verified Petition for Review⁶⁶) on time, the same cannot be said of the subject Information.⁶⁷

THE SUBJECT INFORMATION WAS
BELATEDLY FILED, HENCE
PETITIONER'S RIGHT TO PROSECUTE
RESPONDENTS FOR WILLFUL
FAILURE TO PAY DEFICIENCY
INCOME TAX (IT) HAS ALREADY
PRESCRIBED.

Petitioner insists that prescription has not yet set in as the prescriptive period in this case was tolled upon the filing of the JCA⁶⁸ against respondents before the DOJ on 28 February 2019.

We disagree.

In resolving the issue of the prescription of the offense charged, the following factors should be considered: (1) the period of prescription for the offense charged; (2) the time when the prescriptive period starts to run; and, (3) the time when the prescriptive period is interrupted.⁶⁹

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

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

⁶³ Supra at note 9.

⁶⁴ Supra at note 6.

⁶⁵ Supra at note 24.

⁶⁶ Supra at note 1.

⁶⁷ Supra at note 12.

⁶⁸ Supra at note 17.

⁶⁹ See *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government*, G.R. Nos. 165510-33, 28 July 2006, citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division) and The People of the Philippines*, G.R. No. 109376, 20 January 2000.

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- I. THE PRESCRIPTIVE PERIOD FOR WILLFUL FAILURE TO PAY DEFICIENCY INCOME TAX (IT) UNDER SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED; IS FIVE (5) YEARS UNDER SECTION 281 OF THE NIRC OF 1997, AS AMENDED.

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

...

SEC. 281. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribe after five (5) years.**

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

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.⁷⁰

...

The above provision clearly states that the prescriptive period for all violations of the NIRC of 1997, as amended, including the offense charged in this case (i.e., willful failure to pay deficiency tax under Section 255⁷¹ of the NIRC of 1997, as amended), is **five (5) years.** 

⁷⁰ Italics in the original text and emphasis supplied.

⁷¹ Supra at note 13.

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- II. THE PRESCRIPTIVE PERIOD FOR WILLFUL FAILURE TO PAY DEFICIENCY INCOME TAX (IT) UNDER SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, BEGINS TO RUN UPON THE FINALITY OF THE ASSESSMENT.

With regard to the *second consideration*, i.e., the time when the prescriptive period starts to run, Section 281⁷² of the NIRC of 1997, as amended, provides for two (2) reckoning points for when the prescriptive period begins to run:

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

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*⁷³ (**Lim, Sr.**), the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with willful refusal to pay the taxes due within the allotted period, viz:

...
Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allot[t]ed period. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-**barred. 
...

⁷² Supra at p. 16.

⁷³ G.R. Nos. L-48134-37, 18 October 1990; Emphasis and underscoring supplied.

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The Supreme Court further applied this interpretation in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and the People of the Philippines*⁷⁴ (**Tupaz**), where it held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, *viz*:

...

We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with **failure to pay deficiency income tax** after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals*, we stated that[,] **by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because **prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.**

...

A plain reading of the subject Information⁷⁵ reveals that the alleged violation of Section 255⁷⁶ of the NIRC of 1997, as amended, is that respondents "willfully, unlawfully and feloniously fail[ed] to pay its correct income tax with the [BIR] for [TY] 2010 in the amount of Thirty One Million Two Hundred Seventy Two Thousand Nine Hundred Sixty Six and 72/100 Pesos (Php31,272,966.72), exclusive of surcharges and interest, despite service of notices and demand letters for them to pay the said tax including the Final Notice Before Seizure dated March 16, 2016[.]"

Clearly, the commission of the tax offense is known. Therefore, the applicable reckoning point is the date of the commission of the violation, *i.e.*, failure to pay deficiency tax, specifically the date when the deficiency tax assessment became final.

⁷⁴ G.R. No. 127777, 01 October 1999; Citations omitted, italics in the original text and emphasis supplied.

⁷⁵ Supra at note 12.

⁷⁶ Supra at note 13.

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As alleged in the JCA⁷⁷ filed by ROs Tenorio, Buendicho, San Juan, Delos Santos, Secretario and Guevarra, the Formal Letter of Demand⁷⁸ (FLD) with Details of Discrepancies⁷⁹ and Assessment Notices (ANs)⁸⁰ were issued and served *via* registered mail upon respondent corporation on 23 October 2013. Respondent corporation subsequently filed a Protest Letter dated 27 May 2014 against the FLD. In response to the protest, on 28 July 2015, BIR Regional Director Jose N. Tan (RD Tan) issued a Final Decision on Disputed Assessment⁸¹ (FDDA), which respondent corporation received on **05 August 2015**, as shown in the Registry Return Receipt.⁸²

Per DOJ Resolution dated 02 August 2019⁸³, respondent corporation allegedly failed to file an appeal to this Court within the thirty (30)-day reglementary period from receipt of the FDDA on 05 August 2015, as provided under Section 228⁸⁴ of the NIRC of 1997, as amended, and Section 3.1.4⁸⁵ of Revenue Regulations (RR) No. 12-99⁸⁶, as amended by RR No. 18-2013.⁸⁷ As such, the subject deficiency IT assessment became final, executory and demandable on **05 September 2015** (the day after the last day for filing a judicial appeal) and on such 

⁷⁷ Supra at note 17.

⁷⁸ Annex G, Division Docket, pp. 40-41.

⁷⁹ Annex G-1, id., pp. 42-43.

⁸⁰ Annexes G-2 to G-7, id., pp. 44-49.

⁸¹ Annex H, id., pp. 50-53.

⁸² Annex H-1, id., p. 54.

⁸³ Supra at note 14.

⁸⁴ SEC. 228. *Protesting of Assessment.* — ...

...
If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable**. (Emphasis and underscoring supplied)

⁸⁵ SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* — ...

...
3.1.4 *Disputed Assessment.* — ...

...
If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) **appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision**; or (ii) elevate his protest through request for reconsideration to the Commissioner **within thirty (30) days from date of receipt of the said decision**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner. (Emphasis and underscoring supplied)

⁸⁶ Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

⁸⁷ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

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date the offense is “committed” for purposes of the five (5)-year prescriptive period.

III. THE PRESCRIPTIVE PERIOD FOR
WILLFUL FAILURE TO PAY DEFICIENCY
INCOME TAX (IT) IS INTERRUPTED BY
THE FILING OF THE INFORMATION
BEFORE THE COURT OF TAX APPEALS
(CTA).

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

Petitioner claims that the filing with the DOJ of the JCA against respondents for the conduct of preliminary investigation on **28 February 2019** not only triggered the commencement of the prescriptive period but also interrupted it, pursuant to Section 281⁸⁸ of the NIRC of 1997, as amended. In support of this theory, petitioner cites Section 1, Rule 110 of the Revised Rules on Criminal Procedure (RRCP), which provides:

...

Sec. 1. Institution of criminal actions. — Criminal actions shall be instituted as follows:

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

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

...

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Petitioner further cites *People of the Philippines v. Mateo A. Lee, Jr.*⁸⁹ (**Lee, Jr.**), which quoted *People of the Philippines v. Ma. Theresa Pangilinan*⁹⁰ (**Pangilinan**), to support its claim that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation and that this interruption applies equally to cases under special laws and those governed by the Revised Penal Code (**RPC**).

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

We cannot subscribe to petitioner's theory.

As early as 1990, the Supreme Court has held in *Lim, Sr.* that the prescriptive period is interrupted by the filing of the Information in court. Specifically, the High Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281⁹¹ of the NIRC of 1997, as amended) to mean that **tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the Information in court does not exceed five (5) years, viz:**⁹²

...

The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 [now Section 281] stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years.**

...

⁸⁹ G.R. No. 234618, 16 September 2019.

⁹⁰ G.R. No. 152662, 13 June 2012.

⁹¹ Supra at p. 16.

⁹² *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*, supra at note 73; Citation omitted, italics in the original text and emphasis supplied.

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Unless amended by the Legislature, Section 354 [now Section 281] stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.

...

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

...

SEC. 2. *Institution of Criminal Actions.* — All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other 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.⁹³

...

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

Thus, petitioner's reliance on Section 1, Rule 110 of the RRCP is misplaced. It should also be noted that under Section 3⁹⁴, Rule 1 of the 

⁹³ Emphasis supplied.

⁹⁴ SEC. 3. *Applicability of the Rules of Court.* — The Rules of Court in the Philippines shall apply suppletorily to these Rules.

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RRCTA, the ROC in the Philippines, including the RRCP, only apply suppletorily to the provisions of the RRCTA. Since Section 2, Rule 9 of the RRCTA above explicitly states that criminal actions are instituted by filing an Information with the Court in Division, it is precisely the filing of the Information before the Court in Division that interrupts the prescriptive period.

Regarding petitioner's reliance on the Supreme Court's rulings in *Lee, Jr.* and *Pangilinan*, it is crucial to note that those cases were based on the principle that offenses under special laws are generally governed by Act No. 3326⁹⁵, as amended by Act No. 3763.⁹⁶ This statute was specifically enacted to establish prescriptive periods for violations of special laws that lack their own provisions on such matters.

However, Section 2, Rule 9 of the RRCTA provides the rule that the CTA—the Court responsible for prosecuting alleged violations of the NIRC of 1997, as amended—must adhere to. This rule is the controlling authority regarding the prescriptive period in this context. General rules apply in a supplementary manner only when special rules do not address the relevant issue or procedure.⁹⁷ Since the RRCTA contains a specific rule on interrupting the prescriptive period for prosecuting violations of the NIRC of 1997, as amended, the corresponding rules in both the RRCP and Act No. 3326, as amended by Act No. 3763, do not apply in this instance.

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

As the First Division correctly determined, petitioner's right to prosecute respondents for the alleged violation of Section 255⁹⁸ of the 

⁹⁵ AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

⁹⁶ AN ACT TO AMEND SECTION ONE OF ACT NUMBERED THIRTY-THREE HUNDRED AND TWENTY-SIX, ENTITLED "AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN," AS AMENDED BY ACT NUMBERED THIRTY-FIVE HUNDRED AND EIGHTY-FIVE, FIXING TWO MONTHS AS THE TERM FOR THE PRESCRIPTION OF VIOLATIONS OF THE REGULATIONS AND CONDITIONS OF PUBLIC CONVENIENCE OF THE PUBLIC SERVICE COMMISSION.

⁹⁷ See *Philippine Deposit Insurance Corporation v. Manu Gidwani*, G.R. No. 234616, 20 June 2018; *Government Service Insurance System (GSIS) and Winston F. Garcia, in his capacity as President and General Manager of the GSIS v. Dinnah Villaviza, et al.*, G.R. No. 180291, 27 July 2010.

⁹⁸ Supra at note 13.

NIRC of 1997, as amended, or willful failure to pay deficiency tax, has already prescribed.

Counting from the finality of the assessment—the day after the last day for filing a judicial appeal, which was **05 September 2015**—the Information⁹⁹ should have been filed before this Court within five (5) years therefrom, or **until 04 September 2020**. Clearly, when the subject Information was filed before this Court on **05 December 2022**, more than two (2) years had already passed since the government’s right to institute a criminal action prescribed.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the DOJ, it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.¹⁰⁰

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. It serves as a safeguard against the abuse of power by unscrupulous public officials, including the possibility of initiating vexatious, arbitrary, and oppressive investigations.¹⁰¹

Again, given that the Information¹⁰² was filed on **05 December 2022**, beyond the five (5)-year prescriptive period under Section 281¹⁰³ of the NIRC of 1997, as amended, that ended on **04 September 2020**, petitioner’s right to initiate this case against respondents had already expired by the time of filing. Consequently, this justifies the dismissal of the case on the ground of prescription.

⁹⁹ Supra at note 12.
¹⁰⁰ See *People of the Philippines v. Diego G. Martinez*, CTA Crim. Case No. O-672, 25 January 2024.
¹⁰¹ Id.
¹⁰² Supra at note 12.
¹⁰³ Supra at p. 16.

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Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.¹⁰⁴ Evidently, in this case, prescription set in automatically when petitioner failed to file the Information within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

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

WHEREFORE, with the foregoing considerations, the present "Amended Verified Petition for Review (of the Resolution dated March 6, 2023)" filed by petitioner People of the Philippines on 18 July 2023 is hereby **DENIED** for lack of merit. Accordingly, the First Division's assailed Resolutions dated 30 January 2023 and 06 March 2023 in CTA Crim. Case No. O-973 are **AFFIRMED**.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

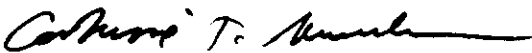
WE CONCUR:

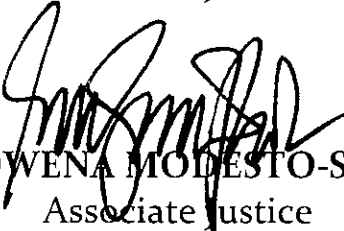

ROMAN G. DEL ROSARIO
Presiding Justice

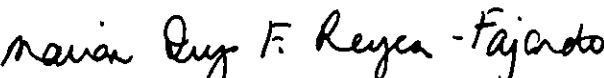

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

¹⁰⁴

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


CATHERINE T. MANAHAN
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

ON OFFICIAL BUSINESS
CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE
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