

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, CTA EB CRIM. NO. 123
Petitioner, (CTA Crim. Case No. O-931)

Present:

- versus -

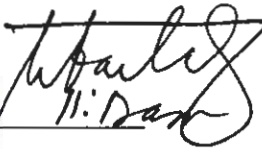
DEL ROSARIO, P.J.;
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

ANTONIO VALERIANO M.
BERNARDO,
(A.V.M. BERNARDO ENGINEERING)
(AT LARGE: Address: No. 604 T.
Santiago St., Lingunan, Valenzuela City,
Metro Manila),

Promulgated:

Respondent.

APR 16 2024



x ----- x

DECISION

FERRER-FLORES, J.:

Before the Court *En Banc* is the Petition for Review (of the Resolution dated April 27, 2023)¹ filed on May 23, 2023 via registered mail and received by this Court on May 30, 2023, by the petitioner People of the Philippines (petitioner) against respondent Antonio Valeriano M. Bernardo (respondent), assailing the Resolution dated February 21, 2023² (1st assailed Resolution) and Resolution dated April 27, 2023³ (2nd assailed Resolution), issued by the Court's Second Division (Court in Division), granting the respondent's *Consolidated Motion to Quash* thereby dismissing the Information on the ground of prescription.

The dispositive portions of the assailed resolutions read, as follows:

¹ Rollo, pp. 1-20.
² Rollo, pp. 26-30.
³ Rollo, pp. 43-47.

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1st Assailed Resolution:

WHEREFORE, premises considered, the accused's *Consolidated Motion to Quash* is **GRANTED**.

Accordingly, this case is **DISMISSED** on the ground of prescription.

SO ORDERED.

2nd Assailed Resolution:

WHEREFORE, premises considered, plaintiff's *Motion for Reconsideration (of the Resolution dated February 28, 2023)* is **DENIED** for lack of merit.

Accordingly, plaintiff's *Manifestation and Motion* is **NOTED without action**.

SO ORDERED.

Petitioner prays that the Court: (1) reverse and set aside the 1st and 2nd assailed Resolutions; (2) order the issuance of Warrant of Arrest against the respondent; and, (3) set the case for arraignment and Pre-Trial for petitioner's violation of Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended.⁴

THE FACTS

On September 9, 2022, an *Information*⁵ was filed against the respondent for violation of Section 254 (Attempt to Evade or Defeat Tax) of the NIRC of 1997, as amended, the accusatory portion of which reads:

That on or about the the (sic) 28th day of May 2013 in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO VALERIANO M. BERNARDO, Filipino citizen, and a registered taxpayer with Tax Identification Number (TIN) 147-851-256, a registered sole owner of the business enterprise under the name and style "A.V.M. Bernardo Engineering", who derived income from his business for the taxable year 2012, and therefore required under

⁴ **SEC. 254. Attempt to Evade or Defeat Tax.** - Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand pesos (P30,000) but not more than One hundred thousand pesos (P100,000,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

⁵ Docket, pp. 5-7.

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the National Internal Revenue Code (NIRC) of 1997, as amended, to file his return and pay the correct tax, did then and there wilfully, unlawfully and feloniously attempt to evade or defeat tax by filing a fraudulent income tax return for the taxable year 2012 through his willful and deliberate intentional substantial underdeclaration of his gross income by indicating therein a gross income of Fourteen Million Two Hundred Thirty Four Thousand Five Hundred Seventy Pesos and 52/100 Centavos (Php14,234,570.52) only, when in truth and in fact, his correct gross income for the said year is Twenty Six Million Five Hundred Eighty Four Thousand Two Hundred Thirty Six and 62/100 Centavos (Php26,584,236.62) resulting in basic income tax deficiency in the amount of Four Million Two Hundred Sixty Five Thousand Seven Hundred Fifty Nine Pesos and 47/100 (Php4,265,759.47), exclusive of interests and surcharges, to the damage and prejudice of the government.

CONTRARY TO LAW.

On September 19, 2022, the Court in Division issued the Resolution finding the existence of probable cause and directed the issuance of the warrant of arrest against respondent.⁶ The bail bond for respondent's provisional liberty was fixed in the amount of Twenty-Four Thousand Pesos (P24,000.00).⁷

On September 21, 2022, a Warrant of Arrest against the respondent was issued.⁸

On October 13, 2022, a Return of Warrant of Arrest was filed by Junrey C. Singgit, Police Staff Sergeant, e-Warrant Officer, Valenzuela City Police Station, Mc Arthur Highway, Karuhatan, Valenzuela City, stating that respondent was not found at the given address.⁹ Consequently, the Court, having noted the return of warrant of arrest, ordered the issuance of the Alias Warrant of Arrest against the respondent in the Resolution dated October 18, 2022.¹⁰ The Alias Warrant of Arrest was issued on October 25, 2022.¹¹

On December 5, 2022, respondent voluntarily submitted himself to the jurisdiction of the Court in Division and posted the required bail bond in the amount of Twenty-Four Thousand Pesos (P24,000.00) for his provisional liberty.¹² The arraignment and Pre-Trial of the respondent were set on March 29, 2023.¹³

⁶ Docket, pp. 129-131.

⁷ *Id.*, p. 131.

⁸ Docket, p. 132.

⁹ Docket, p. 134.

¹⁰ Docket, p. 140.

¹¹ Docket, p. 146.

¹² Docket, p. 148.

¹³ *Ibid.*

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On January 10, 2023, petitioner filed its *Pre-Trial Brief*.¹⁴

On the other hand, respondent, before his arraignment, filed, on January 18, 2023, a *Consolidated Motion to Quash* for CTA Crim. Case Nos. O-931, O-932, O-933, and O-934, arguing that the period to institute criminal actions, for the said cases, has already prescribed.¹⁵

On January 26, 2023, the Court directed the petitioner to file its comment on respondent's *Consolidated Motion to Quash*;¹⁶ thus, on January 31, 2023, petitioner filed its *Comment/Opposition [Re: Consolidated Motion to Quash dated January 9, 2023]*.¹⁷

On February 21, 2023, the Court in Division promulgated the 1st assailed Resolution granting the respondent's *Consolidated Motion to Quash* and dismissing CTA Crim. Case No. O-931 on the ground of prescription.¹⁸

On March 14, 2023, petitioner filed its *Motion for Reconsideration (of the Resolution dated February 21, 2023)*.¹⁹

In the Resolution, dated March 24, 2023, the Court ordered respondent to file his comment; and, considering the Court's Resolution dated February 21, 2023, the arraignment of the respondent and Pre-Trial, previously set on March 29, 2023, were cancelled.²⁰

On March 24, 2023, respondent filed his *Opposition (To Plaintiff's Motion for Reconsideration dated 7 March 2023)*.²¹

On April 27, 2023, the Court in Division promulgated the 2nd assailed Resolution denying the petitioner's *Motion for Reconsideration (of the Resolution dated February 21, 2023)* for lack of merit.²²

On May 23, 2023, petitioner filed the instant Petition for Review.²³

¹⁴ Docket, pp. 166-170.

¹⁵ Docket, pp. 177-183.

¹⁶ Docket, p. 186.

¹⁷ Docket, pp. 187-195.

¹⁸ Docket, pp. 199-203.

¹⁹ Docket, pp. 211-220.

²⁰ Docket, p. 224.

²¹ Docket, pp. 225-233.

²² Docket, pp. 242-246.

²³ *Rollo*, pp. 1-20, *supra*.

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On June 6, 2023, respondent filed his Opposition (To Petitioner's Petition for Review).²⁴

On June 19, 2023, this case was submitted for decision.²⁵

ISSUE

The petitioner's lone assignment of error in the instant Petition for Review is:

THE CTA-SECOND DIVISION ERRED WHEN IT DISMISSED THE CASE AGAINST RESPONDENT BERNARDO FOR VIOLATION OF SECTION 254 OR ATTEMPT TO EVADE OR DEFEAT TAX FOR TAXABLE YEAR 2012 ON THE GROUND OF PRESCRIPTION.

Petitioner maintains that prescription has not set in, as the period of discovery and the institution of judicial proceedings for the violation of Section 254 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 prescriptive period on February 18, 2016, the date of filing of the *Complaint* with the Department of Justice.

Petitioner cites the cases of *Republic vs. Cojuangco, Jr.*,²⁶ *Tupaz vs. Ulep*,²⁷ and *Lim vs. Court of Appeals*,²⁸ to bolster its claim that in cases where the commission of the offense is not known, as in the present case, the five (5) year prescriptive period commences from the discovery and institution of judicial proceedings. Petitioner, however, claims that the running of the five (5) year prescriptive period is interrupted when a complaint is filed before the proper officer, for the purpose of conducting the requisite preliminary investigation, banking on the provisions of Act No. 3326,²⁹ Section 281 of the NIRC of 1997, as amended,³⁰ and Section 1, Rule 10, Prosecution of Offenses

²⁴ *Rollo*, pp. 153-160.

²⁵ *Rollo*, p. 161.

²⁶ G.R. No. 139930, June 26, 2012.

²⁷ G.R. No. 127777, October 1, 1999.

²⁸ G.R. No. L-48134-37, October 18, 1990.

²⁹ 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.

³⁰ SECTION 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.

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of the Revised Rules of Criminal Procedures³¹ as well as the case of *People vs. Mateo A. Lee, Jr.*³²

Respondent, on the other hand, reiterates the rulings in the 1st and 2nd assailed Resolutions of the Court in Division in opposing the present petition.

RULING OF THE COURT *EN BANC*

The Court *En Banc* denies the present Petition for Review.

We find the petitioner's arguments to be the same arguments raised in its *Comment/Opposition [Re: Consolidated Motion to Quash dated January 9, 2023]* and/or *Motion for Reconsideration (of the Resolution dated February 21, 2023)* filed before the Court in Division.

Timeliness of the Petition for Review

Before proceeding to the merits of the arguments of the petitioner, the Court *En Banc* deems it necessary to delve on the timeliness of filing of the instant Petition for Review.

Records show that, on March 1, 2023,³³ petitioner received a copy of the assailed 1st assailed Resolution on which it timely filed, through registered mail, a *Motion for Reconsideration* on March 7, 2023.

On April 27, 2023, the Court in Division issued the 2nd assailed Resolution denying petitioner's *Motion for Reconsideration* which the latter received on May 8, 2023.³⁴ Consequently, petitioner had fifteen (15) days from his receipt, or until May 23, 2023, within which to file a Petition for Review before the Court *En Banc*.

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.

³¹ **Section 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. (Boldfacing and underlining supplied)

³² G.R. No. 234618, September 16, 2019.

³³ Notice of Resolution, Docket, p. 198.

³⁴ Notice of Resolution, Docket, p. 241.

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On May 23, 2023, petitioner timely filed through registered mail the instant Petition for Review and received by this Court on May 30, 2023.

We shall now proceed to the merits of the instant petition.

**The Information was filed beyond
the five (5)-year prescriptive period**

Relevant to the resolution of this case is Section 281 of the NIRC of 1997, as amended, which states:

SECTION 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. (Boldfacing supplied)

A reading of the above provision shows that the period of prescription for the offense charged for all violations of any provision of the NIRC of 1997, as amended, is five (5) years. The provision also states that prescription shall begin to run from the day 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. Further, the period of prescription is 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.

The commencement of the prescriptive period in criminal tax cases, as provided in Section 354 of then 1939 NIRC (now Section 281 of the NIRC of 1997, as amended), has been interpreted by the Supreme Court in the case of *Lim vs. CA*,³⁵ as follows:

[T]he Solicitor General stresses that Section 354 speaks not only of the 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 punishment."** In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation

³⁵ *Supra.*

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 Case Nos. 1790 and 1971 were indorsed to the Fiscal's Office for preliminary investigation. **Inasmuch as preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**

XXX XXX XXX

As Section 354 stands in the statute book (and to this day 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.**

XXX XXX XXX

Unless amended by the legislature, Section 354 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. (Boldfacing and underlining supplied)

We find the interpretation of the Supreme Court in the *Lim case* applicable in the case at bar. Generally, "*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*", the government's right to file an action will not prescribe, however, beyond the said period, prescription will set in.

Records show that the *Joint Complaint-Affidavit* of Revenue Officer Gina D. Floreza and Grace G. Marohomsalic³⁶ was referred by then Commissioner of Internal Revenue Kim S. Jacinto-Henares to the Secretary of the Department of Justice Emmanuel Caparas, on February 18, 2016, for preliminary investigation.³⁷ Given that such proceeding necessarily entails the investigation and consequent punishment of the subject offense, the five (5)-year prescriptive period begins to run on such date. The prosecution, therefore, had until February 18, 2021 to file the requisite Information with the Court. Accordingly, when the prosecution filed the Information on September 6, 2022 with the Court in Division, the government's right to file an action has already prescribed.

³⁶ Docket, pp. 22-33.
³⁷ Docket, pp. 18-20.

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We reiterate, with approval, the findings of the Court in Division when it ruled the issue on prescription in its 2nd assailed Resolution in this wise:

Plaintiff believes that the phrase "when proceedings are instituted against the guilty persons" is the filing of a complaint with the DOJ; hence, when it filed a Joint Complaint-Affidavit with the DOJ, the prescriptive period was interrupted at the same time.

Plaintiff is mistaken.

To properly interpret Section 281, We have to look not only at jurisprudence involving criminal tax cases but also at the rules of this Court in ascertaining what constitutes an 'institution of proceedings against the guilty persons.'

Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that criminal actions are instituted before this Court by filing information in the name of the People of the Philippines. Such institution of criminal action interrupts the running of the period of prescription, viz.:

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*)

This negates petitioner's claim that the filing of a Joint Complaint-Affidavit with the DOJ for preliminary investigation shall be considered as the institution of criminal action that interrupts the running of the period of prescription.

Instead, the prescriptive period shall be interrupted with the institution of criminal action before the Court by filing information.

Such interpretation of Section 281 of the NIRC of 1997 has been settled in the landmark case of Lim:

...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**



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for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years.

(Boldfacing supplied; italics on the original)

Following *Lim* and its interpretation of Section 281, the Information should be filed within the 5-year prescriptive period from the filing of the complaint (if the date of the commission of the offense is not known); otherwise, the prescriptive period shall lapse.

Hence, petitioner's interpretation that the filing of a Joint Complaint-Affidavit before the DOJ for preliminary investigation on February 18, 2016 commenced and interrupted the 5-year prescriptive period is illogical. It negates any possible efficacy of the prescriptive period, which renders the provision ineffectual. It must be emphasized that statutes must be construed in such a way as to give effect to the intention of the lawmakers so as to give a sensible meaning to the language of the statute and to avoid nonsensical or absurd results.

In fine, the time of discovery and the institution of judicial proceedings for preliminary investigation on February 18, 2016, commenced the running of the 5-year prescriptive period. Counting five (5) years from February 18, 2016, the prescriptive period lapsed on February 18, 2021. Thus, the Information filed in Court on September 6, 2022 was filed out of time.

Considering that the filing of the Information has been barred by prescription, the Court in Division has no jurisdiction over the case which justifies the dismissal thereof.

We find the rulings in *Republic vs. Cojuangco, Jr.* and *Romualdez vs. Marcelo*,³⁸ cited by petitioner, not applicable in the instant case because the said cases do not involve the prescriptive period for the filing of criminal **tax** case. In *Republic vs. Cojuangco, Jr.*, the case pertains to the prescriptive period for instituting a case for the recovery of ill-gotten wealth acquired during the Marcos era pursuant to Act No. 3326³⁹ while in *Romualdez vs. Marcelo*, the case involves violation of Section 7 of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act. Instead, the case of *Lim vs. CA* is befitting as found by the Court in Division.

Jurisdiction is conferred by law and the lack of it affects the very authority of the Court to take cognizance of and to render judgment on the action; otherwise, the inevitable consequence would make the Court's discretion a "lawless" thing.⁴⁰

³⁸ G.R. Nos. 165510-33, July 28, 2006.

³⁹ 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.

⁴⁰ *Municipality of Sta. Fe vs. Municipality of Aritao*, G.R. No. 140474, September 21, 2007.

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WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The 1st and 2nd assailed Resolutions promulgated on February 21, 2023 and April 27, 2023, respectively, in CTA Crim. Case No. O-931 are **AFFIRMED**.

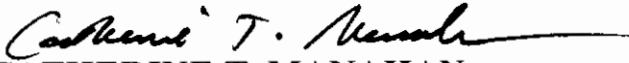
SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

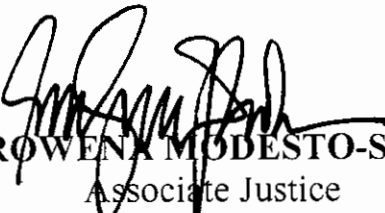
We concur:


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

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MARIAN IVY R. 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