REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellant,	**CTA EB CRIM. NO. 111** (CTA CRIM. CASE NO. O-952) For: Violation of Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended.
- versus -	*Present:* **DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES, *JJ.***
ZIEGFRIED LOO TIAN, (No. 1013, Juan Luna Street, Brgy. 27, Zone 1, Tondo, Manila), Accused-Appellee.	Promulgated: SEP 29 2025 3:28 p.m.

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RESOLUTION

FERRER-FLORES, J.:

For this Court's resolution is plaintiff-appellant's **Motion for Reconsideration (of the Decision dated August 06, 2024)** filed on August 27, 2024,[1] with accused-appellee's **Comment/Opposition (Re: Motion for Reconsideration of the Decision Dated August 6, 2024)** filed on September 24, 2024.[2]

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[1] *Rollo*, pp. 318 to 333.
[2] *Rollo*, pp. 350 to 365.

In the instant *Motion*, plaintiff-appellant prays for the Court *En Banc* to set aside its Decision dated August 6, 2024 (**assailed Decision**),[3] which denied its *Verified Petition for Review*, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, plaintiff-appellant's *Verified Petition for Review (of the Resolution dated February 09, 2023)* is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated December 15, 2022 and February 9, 2023 in CTA Crim. Case No. O-952 are **AFFIRMED**.
>
> **SO ORDERED.**

To recall, in the assailed Decision, this Court held that the government's right to prosecute the offense has already prescribed. 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 Department of Justice (DOJ) on July 5, 2012. Following the pronouncement of the Supreme Court in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[4] (*Lim*) and Section 2 of Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), 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. Thus, the Court found that, when the *Information* was filed before this Court on October 26, 2022, more than five years have passed since the government's right to institute a criminal action prescribed.

In the present *Motion*, plaintiff-appellant argues that the principles of prescription should apply across all criminal actions, particularly, the rule that the institution of the criminal action before the DOJ interrupts the running of the five-year prescriptive period under Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended. According to plaintiff-appellant, while it is judicially sound and consistent that the courts adhere to the precedent set by *Lim* regarding prescription on criminal tax cases, it strongly asserts the view of Supreme Court Associate Justice Hugo E. Gutierrez, Jr. (Ret.), in his Separate Concurring Opinion in *Lim* – that it would be illogical to read Section 354 of the 1939 NIRC[5] (now Section 281 of the NIRC of 1997, as amended) as requiring a judicial proceeding to initiate the prescriptive period because the judicial proceedings always come after discovery; as such, the date of discovery becomes meaningless under *Lim* which is not in line with recent jurisprudence on prescription of criminal actions, in general.

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3 *Rollo*, pp. 278 to 290.
4 G.R. Nos. L-48134-37, October 18, 1990.
5 Commonwealth Act No. 466, June 15, 1939.

Plaintiff-appellant claims that *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep*[6] (*Tupaz*), a case involving a criminal violation under the NIRC, wherein the Supreme Court ruled that the filing of the criminal complaint before the DOJ tolls the running of the prescriptive period, should prevail over *Lim*.

Furthermore, plaintiff-appellant also cites the ruling in *People of the Philippines vs. Mateo A. Lee, Jr.*,[7] citing *People of the Philippines vs. Ma. Theresa Pangilinan*,[8] that there is no more distinction between cases under the Revised Penal Code and those covered by special laws with respect to interruption of the period of prescription.

Plaintiff-appellant likewise argues that the term "proceedings" should now be understood to be either executive or judicial in character. In support thereof, plaintiff-appellant cites *Luis Panaguiton, Jr. vs. Department of Justice*,[9] where it was explained that, when Act No. 3326[10] was passed on December 4, 1926, preliminary investigation of criminal offenses was conducted by justices of peace, thus the phraseology in the law, "institution of judicial proceedings for its investigation and punishment" and the prevailing rule then that the filing of the complaint with the justice of peace for preliminary investigation halts prescription. Plaintiff-appellant went on to outline several Supreme Court decisions where it was consistently held that prescription of the offense is tolled upon institution of proceedings for preliminary investigation. Plaintiff-appellant, thus, posits that the institution of criminal action refers not only to the filing of information in court but also to the filing of the complaint with the proper officer for preliminary investigation or with the office of the prosecutor. Effectively, the criminal case has not yet prescribed as the criminal action was instituted on July 5, 2012, which was within the five-year prescriptive period.

Plaintiff-appellant maintains that the filing of the *Joint Complaint-Affidavit* (JCA) with the DOJ on July 5, 2012 effectively tolled the prescriptive period and remains interrupted when the *Information* was instituted before the Court. Plaintiff-appellant reiterates that prescription has not set in as the institution of the judicial proceedings not only triggers the commencement of the prescriptive period, but also the interruption thereof.

Finally, plaintiff-appellant claims that the mere fact that time has passed should not prejudice the right of the government to collect taxes as taxes are the lifeblood of the nation.

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6 G.R. No. 127777, October 1, 1999.
7 G.R. No. 234618, September 16, 2019.
8 G.R. No. 152662, June 13, 2012.
9 G.R. No. 167571, November 25, 2008.
10 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, December 4, 1926.

Accused-appellee, on the other hand, counters that the right of the government to prosecute him had prescribed pursuant to Section 281 of the NIRC of 1997, as amended. Accused-appellee avers that the pronouncement of the Supreme Court in *Lim*[11] remains to be the prevailing jurisprudence on the matter of prescription of criminal tax violations. Furthermore, the RRCTA, the special provision governing the proceedings in the CTA, provides that the period of prescription is tolled by the filing of the Information before the CTA.

In addition, accused-appellee claims that the case must be dismissed for violation of his right to speedy disposition of cases. Accused-appellee points out that the prosecution took more than 10 years from the filing of the complaint before the DOJ to the filing of the *Information* in Court. Accused-appellee invokes *Cesar Matas Cagang vs. Sandiganbayan (Fifth Division) (Cagang),*[12] which laid down the guidelines in resolving questions involving the right to speedy disposition of cases. According to *Cagang,* the burden to prove that the accused's right to speedy disposition of cases was not violated is on the prosecution. Accused-appellee alleges that plaintiff-appellant's delay is unexplained and has no apparent reason. Since there is no justification for such inordinate delay, the case must be dismissed for violation of accused-appellee's right to speedy disposition of cases. Lastly, accused-appellee avers that he timely asserted his right to speedy disposition of cases when he filed his *Comment/Opposition* to the prosecution's *Petition for Review*.

We now resolve.

After a careful re-evaluation of the case and the arguments raised by the plaintiff-appellant in its *Motion for Reconsideration*, the Court finds the instant *Motion* bereft of merit.

As to the issue of prescription, the Court, in a long line of cases[13] has consistently adopted the pronouncement in *Lim*[14] and ruled that the commencement of the five-year prescriptive period in criminal tax cases, as provided in Section 281 of the NIRC of 1997, as amended,[15] commences from the date of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof **and** the institution of judicial

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

12 G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018.

13 *People of the Philippines vs. Ziegfried Loo Tian*, CTA EB Crim. No. 116 (CTA Crim. Case No. O-944), September 26, 2024; *People of the Philippines vs. Star Asset Management NPL, Inc., et al.*, CTA EB Crim. No. 129 (CTA Crim. Case No. O-995), April 22, 2024; *People of the Philippines vs. CTA Second Division, et al.*, CTA EB Crim. No. 093 (CTA Crim. Case Nos. O-850, O851, O-852, and O-853), August 29, 2023; and *People of the Philippines vs. Wintelecom, Inc/Hua C. Uychiyong (Treasurer)*, CTA EB Crim. No. 090 (CTA Crim Case Nos. O-800 and O-801), June 21, 2023, to name a few.

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

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

proceedings for its investigation and punishment. The period of prescription is only interrupted when proceedings are instituted against the guilty persons and shall run again in the event the proceedings are dismissed for reasons not constituting jeopardy.

In this case, the five-year prescriptive period began to run on July 5, 2012, when the case was indorsed by the CIR for preliminary investigation to the DOJ. The prosecution had until July 5, 2017 to file the requisite *Information* with the Court. However, the prosecution belatedly filed the subject *Information* with the Court in Division on **October 26, 2022**, more than five years since the government's right to institute a criminal action prescribed. Clearly, the prescription of the criminal action had long set in.

The Court is not unaware of the recent pronouncement of the Supreme Court in *People of the Philippines vs. Ulysses Palconit Consebido (Consebido),*[16] wherein the High Court, after re-examining *Lim*, categorically ruled that, for criminal offenses where the date of the commission of the violation is not known, prescription begins to run from its **discovery** and the same is tolled by the **filing of a complaint before the DOJ** and not by the filing of an Information before the Court. In the same case, the Supreme Court also pronounced that the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts,[17] shall toll the running of the prescriptive period effectively overturning the doctrine in *Republic vs. Desierto*[18] and *Corpus vs. People*.[19] In relation to such pronouncement, the Supreme Court declared that the new rule shall apply prospectively, *viz.*:

> **But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply prospectively.**
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> Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. The ruling in *Desierto* and the subsequent case of *Corpus, Jr. v. People of the Philippines*, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned. *(Emphasis supplied; citations omitted)*

While there is no explicit provision on the prospective application of the new rule in relation to the prescription of offenses under the NIRC of 1997, as amended, this Court nonetheless observes that the ruling in *Consebido*

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16 G.R. No. 258563, April 2, 2025.
17 A.M. No. 08-8-7-SC dated March 1, 2022, effective April 11, 2022.
18 G.R. No. 136506, January 16, 2023.
19 G.R. No. 255740, August 16, 2023.

effectively abandoned the doctrine in *Lim*. Inasmuch as a new doctrine has been declared by the Supreme Court pertaining to prescription of tax offenses, We find the prospective application of the same is proper.

Notably, judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.[20] When a doctrine of the Supreme Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.[21]

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

In the same vein, the new doctrine on prescription laid down in *Consebido*, a case promulgated by the Supreme Court on April 2, 2025, should not be applied to the present case which involves an offense allegedly committed on April 15, 2011. Accused-appellee cannot be prejudiced by his reliance on *Lim* which was the prevailing doctrine when the offense was allegedly committed.

Assuming *arguendo* that *Consebido* is applicable to the present case and that the government's right to prosecute the offense has not prescribed, the Court finds merit in accused-appellee's invocation of his right to the speedy disposition of his case and, thus, the dismissal of the case is still warranted. We expound.

Section 16 of Article III of the 1987 Constitution guarantees that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

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

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

22 G.R. No. 100776, October 28, 1993.

In relation thereto, the Supreme Court, in *Cagang*, laid down guidelines in determining whether the right to speedy disposition of cases has been violated, to wit:

> This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.
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> *First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.
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> *Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.
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> *Third*, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.
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> If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.
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> Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.
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> *Fourth*, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.
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> An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

> Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.
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> In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.
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> *Fifth*, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

Guided by the foregoing parameters, the Court shall determine if accused-appellee's right to the speedy disposition of his case was indeed violated.

Plaintiff-appellant has the burden of proof of justifying the delay

As explained in *Cagang*, when the delay occurs beyond the given time period and the constitutional right is invoked, the prosecution has the burden of justifying the delay.

For easy reference, below is the timeline of the various actions which led to the filing of the *Information* with this Court:

Date	Event
July 5, 2012	Referral of the JCA dated July 5, 2012 to the DOJ for Preliminary Investigation[23]
September 1, 2014	DOJ Resolution finding probable cause to file an Information with the Court[24]
May 11, 2017	DOJ Resolution denying the respondent's motion for reconsideration and affirming September 1, 2014 DOJ Resolution[25]
October 26, 2022	*Information* dated September 1, 2014 was filed before the Court[26]

As shown above, the BIR filed the JCA with the DOJ on July 5, 2012. As such, the relevant period herein is the period for the DOJ to conduct preliminary investigation.

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[23] Par. 16 of the *Petition for Review*, *Rollo*, p. 4; *See also Rollo*, pp. 32 to 46.
[24] Division Docket, pp. 10 to 19.
[25] Division Docket, pp. 7 to 9.
[26] Division Docket, pp. 5 to 6.

Sections 3 and 4 of Rule 112 of the Rules of Court provide that the existence of probable cause must be determined by the investigating prosecutor **within 10 days after investigation** and that the city prosecutor or chief state prosecutor, or the Ombudsman or his deputy shall act on the said resolution **within 10 days from receipt thereof**:

> Section 3. *Procedure*. — The preliminary investigation shall be conducted in the following manner:
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> xxx xxx xxx
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> (f) **Within ten (10) days after the investigation**, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.
>
> xxx xxx xxx
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> Section 4. *Resolution of investigating prosecutor and its review.*— If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.
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> **Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor**, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. **They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.** *(Emphasis supplied)*

There is no indication in the records when the investigation was concluded so as to reckon the 10-day period for the investigating prosecutor to determine probable cause and to establish if the same was properly observed.

The Court, however, notes that the DOJ Resolution dated May 11, 2017,[27] resolving accused-appellee's motion for reconsideration, stated that the defenses raised by the accused-appellee were mere reiterations of his defenses in his counter-affidavit and rejoinder affidavit; thus, the motion was denied and the DOJ Resolution dated September 1, 2014 was affirmed. Notably, the time interval between the two DOJ Resolutions consists of almost **three years** which was not explained by the prosecution. If it appears

[27] Division Docket, pp. 7 to 9.

that the defenses in the motion for reconsideration were mere reiterations, the resolution thereof should not have taken years.

More importantly, from the time the motion for reconsideration was resolved by the DOJ on **May 11, 2017**, still affirming its earlier finding of probable cause, it took them more than **five years** to finally file the *Information* dated September 1, 2014 on **October 26, 2022**. The Court finds such delay to be unreasonable given that, as early as May 11, 2017, there is no more question that there was probable cause for accused to stand trial and the filing of the *Information* has already been approved by the Prosecutor General. This is obviously beyond the 10-day period for the provincial or city prosecutor or chief state prosecutor to act on the resolution of the investigating prosecutor pursuant to Section 4 of Rule 112 of the Rules of Court.

Clearly, the delay occurred after the prescribed periods thereby prosecution bears the burden of proving that the delay was justified.

Plaintiff-appellant failed to justify the delay

Based on *Cagang*, the prosecution must prove the following to justify the delay: *(1)* that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *(2)* that the complexity of the issues and the volume of evidence made the delay inevitable; and, *(3)* that no prejudice was suffered by the accused as a result of the delay.

First, as established earlier, it took *(a)* **more than eight years** from the time the DOJ found probable cause to hold respondent for trial on September 1, 2014; or, *(b)* **more than five years** from the time the Motion for Reconsideration was resolved on May 11, 2017, for the *Information* to reach the Court on October 26, 2022. As such, it can be said that the procedures prescribed by the Rules of Court were not observed in this case, particularly, the prescribed periods for the prosecution to act.

Second, there was no specific allegation on the complexity of the issues nor an allegation as to the volume of evidence to justify the prolonged resolution of the probable cause determination. On the contrary, the Court observes that the prosecution already determined probable cause based on the records as evidenced by the DOJ Resolution dated September 1, 2014. Furthermore, no new issues or evidence were raised by the accused-appellee in his Motion for Reconsideration as discussed in the DOJ Resolution dated May 11, 2017. In other words, the legal and factual issues have been settled insofar as the probable cause finding is concerned. Despite this finding,

however, the prosecution failed to act within reasonable time further prolonging the disposition of accused-appellee's case.

In *Rolando Magaña Pacuribot vs. Sandiganbayan (Second Division) (Pacuribot)*,[28] the Supreme Court rejected the prosecution's argument of complexity and sheer number of transactions involved to justify the delay of **five months** in filing the Informations with the Sandiganbayan. The Supreme Court emphasized that, at that stage of the proceedings, no more pleadings or motions were expected from respondents therein, *viz.*:

> [...] However, the delays pinpointed by the Court — *i.e.*, the **Ombudsman's approval of the Resolutions drafted by the investigating officers finding probable cause, and the filing of Informations before the Sandiganbayan — are at stages of the proceedings wherein no further pleadings or motions are expected or forthcoming from the respondents.** On this point, the OSP's arguments fail.
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> The claim that the delays were necessitated by the complexity of the case and the sheer number of transactions and respondents likewise fails. **While this argument may be relevant during the investigation process,** where the investigation officer of the OMB evaluates evidence and arguments from the complainant and the respondents, **it fails to convince when the delay in question is at the stage of the Ombudsman's approval of the Resolutions finding probable cause and the filing of the Informations.** While the Ombudsman is expected to review the investigation officer's findings, **such a review is not expected to be as exhaustive as a reinvestigation of the case. At the very least, the time it will take to approve these resolutions should not balloon into delays of 48, 67, and 260 days, as they did in this case, when Section 4, Rule 112 of the Rules of Court prescribes a period of only ten (10) days.**
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> All the more should the argument of complexity of the cases be disregarded when there **is significant delay in filing the Informations before the Sandiganbayan. What further analysis of records and evidence is necessary here? The OMB's findings of fact and conclusions of law at this stage should already be determined; no further evaluation of evidence is expected to be done. Why should this stage in the proceedings incur a delay of about five (5) months**, as it did in OMB-M-C-15-0437? *(Emphasis supplied)*

In the present case, the delay was not just a matter of months but an even longer period of more than **eight years** before the *Information* reached the Court despite the Resolution of the investigating prosecutor being approved by the Prosecutor General as early as September 1, 2014. Even assuming that the period should be reckoned from the DOJ Resolution dated May 11, 2017, **five years** is still too long of a delay when there were no further pleadings or motions expected at that point of the proceedings. In other words, all that's left was the filing of the *Information* with the Court.

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[28] G.R. Nos. 247414-18, July 6, 2022.

Lastly, it cannot be said that the delay caused no prejudice to the accused. In *Marialen C. Corpuz and Antonio H. Roman, Sr. vs. Sandiganbayan (Special Fourth Division),*[29] the Supreme Court characterized "prejudice" in relation to the rights to speedy disposition of cases and speedy trial in this wise:

> In determining whether the **accused has been deprived of his right to a speedy disposition of the case** and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. **Prejudice should be assessed in the light of the interest of the defendant** that the speedy trial was designed to protect, namely: **to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired**. Of these, the most serious is the last, because the **inability of a defendant adequately to prepare his case skews the fairness of the entire system**. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, **he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility**. **His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy**. *(Emphasis and underscoring supplied)*

In addition, in *Pacuribot*, the Supreme Court found that the unjustified delays undoubtedly caused prejudice to the defendant therein. It was held therein that, while there was no showing that Pacuribot was deprived of any of his defenses as a result of the delay, he had to face the difficulties and anxieties embedded in the experience of an unduly prolonged state inquiry into his supposed guilt.

The same can be said of accused-appellee Loo Tian. As early as 2012, his guilt has already been the subject of inquiry and the same has caused disadvantages on his liberty which would necessarily put him under a cloud of anxiety, suspicion and even, hostility. Indubitably, the lengthy period of waiting for the result of the preliminary investigation caused prejudice to the accused-appellee.

Accused-appellee timely asserted his right to the speedy disposition of his case

In his *Comment/Opposition*[30] against the *Petition for Review* filed before the Court *En Banc* and in his *Comment/Opposition*[31] against the present *Motion for Reconsideration*, accused-appellee consistently invoked his right

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[29] G.R. No. 162214, November 11, 2004.
[30] *Rollo*, pp. 256 to 275.
[31] *Rollo*, pp. 350 to 365.

to the speedy disposition of his case which he claims to have been violated due to the inordinate delay of the prosecution.

Pertinently, in *Elpidio Tagaan Magante vs. Sandiganbayan (Third Division)*,[32] the Supreme Court held that it is sufficient that accused raised the constitutional infraction prior to his arraignment. The Supreme Court further elucidated that the filing of a motion for reconsideration against the adverse resolution of the Ombudsman cannot be taken as a waiver of the accused's right to speedy disposition of his case. We quote:

> **Likewise, petitioner's alleged failure to assert his right is not a veritable ground for the denial of the motion in the absence of any motion, pleading, or act on his part that contributed to the delay. It is not for him to ensure that the wheels of justice continue to turn. Rather, it is for the State to guarantee that the case is disposed within a reasonable period.** Thus, it is of no moment that petitioner herein, unlike in *Angchangco*, did not file any motion before the Ombudsman to expedite the proceeding. **It is sufficient that he raised the constitutional infraction prior to his arraignment before the Sandiganbayan.**
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> **Neither can petitioner be deemed to have waived his right to a speedy disposition of a case when he filed a motion for reconsideration against an adverse resolution of the Ombudsman** on May 31, 2015. The filing of this singular motion **cannot by itself be considered as active participation in the preliminary investigation proceeding that amounted to a waiver of a constitutional right.** At most, this can only be weighed against herein petitioner in determining whether or not the delay in his investigation was justified. The ground for the refusal of the Sandiganbayan to apply *Coscoluella* is therefore misplaced. *(Emphasis supplied)*

In the instant case, there is nothing in the records that would show that the accused-appellee actively contributed to the delay. Likewise, the filing of the motion for reconsideration on the adverse resolution of the DOJ cannot be taken as a waiver of his right to the speedy disposition of his case.

It should be noted that, when the *Information* was filed with the Court in Division on October 26, 2022 and even before the Court acquired jurisdiction over the accused-appellee, the case was already dismissed on the ground of prescription.[33] It was only on appeal before the Court *En Banc* that accused-appellee was notified of the proceedings and was given ample opportunity to raise the alleged violation of his right to the speedy disposition of his case. Notably, accused-appellee promptly raised the constitutional violation when he filed his *Comment/Opposition* against the *Petition for Review* and *Motion for Reconsideration,* both filed by the prosecution.

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[32] G.R. Nos. 230950-51, July 23, 2018.
[33] Resolution dated December 15, 2022, *Rollo*, pp. 25 to 28.

Clearly, accused-appellee timely invoked his constitutional right at the earliest opportunity and when unreasonable delay was already evident.

An accused has no duty to bring himself to trial. The accused must be spared from the rigors and expense of a full-blown trial where it is clear that inordinate and vexatious delays crept the conduct of preliminary investigation which are violative of the constitutional guarantee to speedy disposition of cases.[34] Indeed, the underlying principle of the right to speedy disposition of cases remains to be the prevention, not only of delay in the administration of justice, but also of oppression of the citizen by indefinitely suspending criminal prosecution. A violation of this right results in the grant of the radical relief of immediate dismissal of the case.[35]

All told, the Court *En Banc* finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, the plaintiff-appellant's *Motion for Reconsideration (of the Decision dated August 06, 2024)* is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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[34] *Figueroa vs. Sandiganbayan, Special Third Division*, G.R. Nos. 235965-66, February 15, 2022, citing *Baker vs. Wingo*, 407 U.S. 514 (1972) and *Tatad vs. Sandiganbayan*, G.R. Nos. 72335-39, March 21, 1988.

[35] *Peralta vs. Commission on Elections*, G.R. No. 261107, January 30, 2024, citing *People vs. Sandiganbayan (First Division)*, G.R. No. 229656, August 19, 2019.

With due respect, I join Justice Villena's C.D.O.
CATHERINE T. MANAHAN
Associate Justice

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

I join Justice Villena's C.D.O.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB Crim. No. 111** (CTA Crim. Case No. O-952)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.*
ZIEGFRIED LOO TIAN, Respondent.	Promulgated: SEP 29 2025 3:38 p.m.

x - - -

constitutes a supposed "new doctrine on prescription" that may be applied only prospectively.

Contrary to the view espoused in this Resolution, I submit that **the pronouncement in *Consebido* should be applied retroactively**, dating back to the effectivity of the National Internal Revenue Code (**NIRC**) of 1997. Section 281[2] of the NIRC of 1997, which governs the prescriptive period for criminal tax actions, expressly provides that the five (5)-year prescriptive period "shall be interrupted when proceedings are instituted against the guilty persons" and, according to *Consebido*, the proper interpretation thereof should be that the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period.

To be clear — and I take this opportunity to stress this to avoid creating further confusion and compounding its consequences — **the above ruling in *Consebido* is <u>not</u> a new doctrine on prescription.** In upholding the said interpretation, **the Supreme Court merely reaffirmed what should have been the correct construction of the relevant provision from the outset, thereby revealing, by implication, this Court's error in applying the doctrine in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[3] (Lim, Sr.), which was understood to have ruled that, in criminal tax cases such as the present one, the prescriptive period is tolled only upon the filing of the Information in court.**

At this juncture, I wish to highlight certain inaccurate assumptions, whether explicitly or implicitly stated in this Resolution that, in my humble view and with utmost due respect, must be withdrawn to ensure the fair and orderly administration of justice.

***First*, it is incorrect to assume that *Consebido* effectively abandoned *Lim, Sr.*, as the doctrines in these cases do not conflict with each other — unlike *Consebido vis-à-vis Republic of the Philippines v. The Honorable Aniano A. Desierto as Ombudsman, et al.*[4] (Desierto) and *Pastor Corpus, Jr. y Belmoro v. People of the Philippines*[5] (Corpus, Jr.), insofar as the tolling of the prescriptive periods for crimes covered**

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

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, **<u>from the discovery thereof and the institution of judicial proceedings for its investigation and punishment</u>**. (Emphasis and underscoring supplied)

3 G.R. Nos. L-48134-37, 18 October 1990 [Per C.J. Fernan, Third Division].

4 G.R. No. 136506, 16 January 2023 [Per J. Hernando, First Division].

5 G.R. No. 255740, 16 August 2023 [Per J. J.Y. Lopez, Second Division].

by the 2022 Rules on Expedited Procedure in the First Level Courts[6] (REPFLC) is concerned.

In *Consebido*, the Supreme Court held that the prescriptive period for prosecuting crimes is tolled upon the filing of a complaint with the DOJ — not when the case reaches the court. **The High Court *specifically* clarified that under Section 281[7] of the NIRC of 1997, the prescriptive period for criminal tax offenses that are not immediately known starts from the time the violation is discovered and is interrupted once a preliminary investigation begins. This interpretation ensures that the intent of the law — to set a clear time limit for the prosecution of tax violations — is properly applied.**

To reiterate, for emphasis, **the Supreme Court's ruling in *Consebido*** — that the prescriptive period for criminal tax offenses is interrupted by the institution of judicial proceedings, particularly the commencement of preliminary investigation — **constitutes the proper and authoritative interpretation of Section 281 of the NIRC of 1997.** Thus, as aforesaid, this interpretation must be applied retroactively, *i.e.*, from the time the NIRC of 1997 took effect, as may be inferred from the Supreme Court's discussion quoted below:

> ...
>
> **Notably, *Lim, Sr.* applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely noted that the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. This is no longer the case now, as observed in *Panaguiton*. Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery.** The adoption of the interpretation in *Duque* is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. **The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense.** This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.[8]
>
> ...

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6 A.M. No. 08-8-7-SC, 01 March 2022.
7 Supra at note 2.
8 Supra at note 1; Citation omitted, italics in the original text, emphasis and underscoring supplied.

From the foregoing, **it is clear that the ruling in *Lim, Sr.*** — which the CTA had long relied on to hold that preliminary investigation does not toll the running of the prescriptive period — **was based on Section 354[9] of the NIRC of 1939**. That provision was enacted at a time when preliminary investigations were conducted by justices of the peace, a procedural context that no longer applies. Having said that, the Supreme Court clarified that under Section 281[10] of the NIRC of 1997, the commencement of preliminary investigation interrupts the prescriptive period for the offense.

It bears noting that the latter portion of the decision in *Consebido,* which states that "[t]his new rule shall apply prospectively", refers only to offenses covered by the 1991 Revised Rules on Summary Procedure[11] (**RRSP**), which was supplanted by the REPFLC[12] (and thus, not to criminal tax offenses covered by the Revised Rules of the Court of Tax Appeals[13] [**RRCTA**]), *viz*:

> ...
>
> [E]ven if the commencement of preliminary investigation interrupted the running of the prescriptive period, the complaint should have been filed with the DOJ within five years from October 25, 2008, or not later than October 25, 2013. Thus, **the offense had already prescribed as early as when the Joint Complaint-Affidavit dated January 30, 2014, was filed.**
>
> In fine, the CTA *En Banc* did not err in affirming the dismissal of the Complaint.
>
> *The rule on the tolling of the prescriptive period for offenses*
>
> As discussed above, **the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the 1997 NIRC, as amended, whether its commission was immediately known or unknown at the time of the violation.**
>
> **Still, the Court deems it necessary to revisit the prevailing jurisprudence on the tolling of offenses covered by the 1991 Revised Rules on Summary Procedure as well as the 2022 Rules on Expedited Procedures in the First Level Courts.**

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9 SEC. 354. *Prescription for Violations of Any Provisions of This Code.* — All violations of any provisions of this Code shall prescribe after five 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.

10 Supra at note 2.

11 Resolution of the Court *En Banc* 1991, 15 October 1991.

12 Supra at note 6.

13 A.M. No. 05-11-07-CTA dated 22 November 2005.

In the recent case of *Republic v. Desierto*, the Court held that the rule in *Panaguiton, Jr.*, *i.e.*, prescription is tolled by the institution of proceedings for preliminary investigation, only applies to special laws that are not covered by the Revised Rules on Summary Procedure. For acts covered by special laws where the Revised Rules on Summary Procedure applies, prescription shall only be interrupted by the filing of the Information and not the commencement of preliminary investigation. This is based on Section 11 of the 1991 Revised Rules on Summary Procedure which states that "[t]he filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information: Provided, however, that in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de officio*."

The ruling in *Desierto* can be traced back to *Zaldivia v. Reyes, Jr.*, which involved a municipal ordinance. The Court held:

> Under Section 9 of the Rule on Summary Procedure, "the complaint or information shall be filed directly in court without need of a prior preliminary examination or preliminary investigation." Both parties agree that this provision does not prevent the prosecutor from conducting a preliminary investigation if he wants to. However, the case shall be deemed commenced only when it is filed in court, whether or not the prosecution decides to conduct a preliminary investigation. This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.

Subsequently, the Court pronounced in *People v. Pangilinan* that the ruling in *Zaldivia* does not apply to special laws. The Court later clarified in *Jadewell Parking Systems Corp. v. Lidua, Sr.* that "the doctrine of *Pangilinan* pertains to violations of special laws but *not* to ordinances." In *People v. Lee*, the Court explained that "*Jadewell* presents a different factual milieu as the issue involved therein was the prescriptive period for violation of a city ordinance, unlike here as well as in *[Pangilinan]* and *[the] other above-mentioned related cases*, where the issue refers to prescription of actions pertaining to violation of a special law." Thus, the Court said that *Jadewell* did not abandon the doctrine in *Pangilinan*.

The 1991 Revised Rules on Summary Procedure was supplanted by the 2022 Rules on Expedited Procedures in the First Level Courts. Rule II, Subsection B, Section 1 thereof states that "[t]he filing of criminal cases governed by the Rule on Summary Procedure shall either be by complaint or by information."

The DOJ likewise issued Circular No. 028, entitled the "2024 DOJ-NPS Rules on Summary Investigation and Expedited Preliminary Investigation," which applies when the penalty prescribed by the law is imprisonment of one day to six years, fine regardless of the amount, or both. A summary investigation shall be conducted if the prescribed penalty is imprisonment of one day to one year, fine regardless of the amount, or both. The investigating prosecutor must immediately resolve a case subject of summary investigation upon receipt of its records.

With this dilemma, the Court takes this opportunity to pronounce that the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period. While it is ideal that all cases are resolved promptly, the reality is that this is not done at all times, whether for valid reasons or not. The offended party, which is primarily the State, should not be prejudiced by any delay in the conduct of the preliminary investigation even for cases covered by summary procedure. **The Court reiterates its reasoning in *People v. Olarte* that *"it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint."***

In addition, Chief Justice Gesmundo extensively discussed the history of the pertinent laws and rules on the filing of complaint or information for criminal cases and the conduct of preliminary investigation in his Reflections. Based on an examination of these laws and rules, he aptly surmised:

> **[T]he use of the phrase "complaint or information" in Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule II, Subsection B, Section 1 of [the] 2022 Rules on Expedited Procedures in the First Level Courts**, for purposes of the tolling of the prescriptive period of offenses, must henceforth, be construed to refer to the filing of the complaint or information before the prosecution office."

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

Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. The ruling in *Desierto* and the subsequent case of *Corpus, Jr. v. People of the Philippines*, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned.[14]

...

The Supreme Court found it necessary to revisit prior pronouncements on the tolling of prescription for offenses covered by these summary procedures, especially in light of its rulings in *Desierto*, which held that prescription is interrupted by the institution of preliminary investigation only for special laws not covered by the RRSP, and *Corpus, Jr.*, which held that for light offenses, the timely filing of the information in court is necessary to toll prescription.

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[14] Supra at note 1; Citations omitted, italics in the original text, emphasis and underscoring supplied.

Clearly, the Supreme Court has now abandoned the pertinent rulings in *Desierto* and *Corpus, Jr.*, as they are inconsistent with its definitive pronouncement in *Consebido* — that the filing of a criminal complaint before the DOJ tolls the running of the prescriptive period, even for offenses covered by the REPFLC.

The same concept of jurisprudential abandonment cannot be conveniently applied between *Consebido*, on one hand, and *Lim, Sr.*, on the other, precisely because there is no inconsistency between them. For criminal tax offenses committed under the NIRC of 1939, the doctrine in *Lim, Sr.* applies, whereas for those committed under the NIRC of 1997, *Consebido* is the controlling doctrine. Unfortunate as it may be, with due respect, I am of the humble opinion that this Court erred in failing to appreciate this crucial distinction. Accordingly, for criminal tax offenses covered by the RRCTA, and not by the RRSP or the REPFLC, the definitive rule in *Consebido* must apply retroactively.

Furthermore, as stated in *Consebido*, the Supreme Court recognized that while criminal cases should ideally be resolved promptly, delays are sometimes unavoidable. Therefore, the State, as the offended party, should not be disadvantaged by delays in the DOJ's preliminary investigations. **The Supreme Court also reiterated its ruling in the 1967 case of *People of the Philippines, et al. v. Ascencion P. Olarte*[15] (Olarte), emphasizing that "it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under [their] control. All that the victim of the offense may do on [their] part to initiate the prosecution is to file the requisite complaint."**

The foregoing reiteration of the ruling in *Olarte*, coupled with the fact that the aforesaid prospective application was confined to offenses covered by the REPFLC, reveals the Supreme Court's intent to firmly settle the applicable rule on prescription of *all* criminal tax offenses committed since the effectivity of the NIRC of 1997.

It is also worth stressing that in *Consebido*, before the Supreme Court discussed the necessity of revisiting the prevailing jurisprudence on the tolling of offenses under the RRSP and the REPFLC, it had already settled the rule applicable to the parties in that case: the commencement of preliminary investigation interrupts the running of the prescriptive period. The Supreme Court upheld the CTA *En Banc*'s dismissal of the complaint not because the Information was filed

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15 G.R. No. L-22465, 28 February 1967 [Per J. J.B.L. Reyes, *En Banc*].

beyond the five (5)-year prescriptive period, but because the complaint itself was filed after the lapse of such period. In fact, the Supreme Court expressly applied the long-settled doctrine in *Olarte* in resolving the controversy in *Consebido*, which involved a criminal tax offense. On this score, respectfully, there should be no question that, with respect to criminal tax offenses, the *Consebido* doctrine applies retroactively.

***Second*, to be precise, it was not respondent, but this Court, that relied on the doctrine in *Lim, Sr.* in finding that the prosecution belatedly filed the subject Information on 26 October 2022 — more than five (5) years after the government's right to institute a criminal action had prescribed on 05 July 2017, reckoned from 05 July 2012, when the Joint Complaint-Affidavit (JCA) of the concerned Revenue Officers was referred to the DOJ for preliminary investigation.**

Respondent's reliance on the *Lim, Sr.* doctrine is immaterial because the controlling interpretation of Section 281[16] of the NIRC of 1997 rests with the Supreme Court, whose pronouncements form part of the legal system under Article 8[17] of the Civil Code of the Philippines. Even assuming that respondent invoked *Lim, Sr.* in good faith, such reliance cannot prevail over the Supreme Court's later and definitive construction in *Consebido*, which clarified that the filing of a complaint before the DOJ interrupts the prescriptive period for criminal tax offenses under the NIRC of 1997. **Once the Supreme Court clarifies the interpretation of a law, that ruling applies to all cases still pending[18], regardless of the parties' prior position or the lower court's earlier rulings to the contrary.**

Thus, this Court's consistent reliance, in a long line of cases, on the *Lim, Sr.* doctrine is of no consequence, as its decisions are not binding precedents. The principle of *stare decisis et non quieta movere*, which holds that once a case has been decided a certain way, any subsequent case involving the same legal issue should be resolved in the same manner[19], applies only to decisions promulgated by the Supreme Court.

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16 Supra at note 2.

17 Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

18 See *Jonathan Y. Dee v. Harvest All Investment Limited, et al.*, G.R. Nos. 224834 & 224871, 15 March 2017 [Per J. Perlas-Bernabe, First Division], citing *Jaime Tan, Jr., as Judicial Administrator of the Intestate Estate of Jaime C. Tan v. Hon. Court of Appeals (Ninth Special Div.), et al.*, G.R. No. 136368, 16 January 2002 [Per J. Puno, First Division]; *Oriental Assurance Corporation v. Solidbank Corporation*, G.R. No. 139882, 16 August 2000 [Per J. Panganiban, Third Division].

19 *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 174134, 30 July 2008 [Per J. Austria-Martinez, Third Division], citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R No. 149834, 02 May 2006 [Per J. Sandoval-Gutierrez, Second Division].

***Third,* I am of the opinion that this Court would err in invoking — albeit only in concept — the time-honored principle on the prescription of crimes, which holds that the interpretation most favorable to the accused should be adopted[20], to justify declaring that the better rule is to apply *Consebido* prospectively on the ground that such application would favor the accused (herein respondent). With due respect, such reasoning misconstrues the essence of this basic principle of criminal law.**

In the 1949 case of *Dominador B. Bustos v. Antonio G. Lucero, Judge of First Instance of Pampanga*[21], the Supreme Court drew a clear distinction between substantive and procedural law, thus:

> ...
>
> As applied to criminal law, **substantive law is that which declares what acts are crimes and prescribes the punishment for committing them**, as distinguished from the **procedural law which provides or regulates the steps by which one who commits a crime is to be punished**. (22 C. J. S., 49.) Preliminary investigation is eminently and essentially remedial; it is the first step taken in a criminal prosecution.
>
> ...

In a separate opinion penned by the late Chief Justice Renato C. Corona[22], it is evident that **the *pro reo* doctrine applies *only* to ambiguities in the *substantive* provisions of penal laws, particularly those defining the elements of a crime or the punishment. It does *not* extend to procedural matters, such as the computation or application of prescriptive periods**, *viz*:

> ...
>
> The fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law, is to resolve all doubts in favor of the accused. ***In dubio pro reo*. When in doubt, rule for the accused.** This is in consonance with the constitutional guarantee that the accused ought to be presumed innocent until and unless his guilt is established beyond reasonable doubt.
>
> Intimately intertwined with the *in dubio pro reo* principle is the **rule of lenity**. It is the doctrine that "**a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment.**"
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> ...

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20 *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001 [Per J. De Leon, Jr., Second Division]

21 G.R. No. L-2068 (Resolution), 08 March 1949 [Per J. Tuason, *En Banc*]; Emphasis supplied.

22 See *People of the Philippines v. Beth Temporada*, G.R. No. 173473, 17 December 2008 [Per J. Ynares-Santiago, *En Banc*]; Citations omitted, italics in the original text and emphasis supplied.

Similarly, in *Salvador Estipona, Jr. y Asuela v. Hon. Frank E. Lobrigo, Presiding Judge of the Regional Trial Court, Branch 3, Legazpi City, Albay, and People of the Philippines*[23], although the case focused on plea bargaining, the Supreme Court reiterated the distinction between substantive and procedural law, emphasizing that **procedural rules fall within its exclusive domain** and that **their interpretation does not call for the application of *pro reo***, unless they directly affect substantive rights, to wit:

> ...
>
> **The Supreme Court's sole prerogative to issue, amend, or repeal procedural rules is limited to the preservation of substantive rights, *i.e.*, the former should not diminish, increase or modify the latter.** "Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions." *Fabian v. Hon. Desierto* laid down **the test for determining whether a rule is substantive or procedural in nature**.
>
>> It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. In fact, **a particular rule may be procedural in one context and substantive in another**. It is admitted that what is procedural and what is substantive is frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.
>>
>> **In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the *judicial process for enforcing rights and duties recognized by substantive law* and for justly administering remedy and redress for a disregard or infraction of them.** If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but ***if it operates as a means of implementing an existing right then the rule deals merely with procedure***.
>
> ...

Relevantly, in *Fil-Estate Properties, Inc. and Fairways and Blue-Waters Resort and Country Club, Inc. v. Hon. Marietta J. Homena-Valencia, in her capacity as Presiding Judge of Branch 1, Regional Trial Court, Kalibo, Aklan,*

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[23] G.R. No. 226679, 15 August 2017 [Per J. Peralta, *En Banc*]; Citations omitted, italics in the original text and emphasis supplied.

and Sullian Sy Naval[24] (**Fil-Estate**), the Supreme Court explained the retroactivity of the "fresh period" rule in this wise:

> ...
>
> The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of **the general rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure**. Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.
>
> *Sps. De los Santos* reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect[.]
>
> ...

Applying the foregoing, considering that the *Consebido* doctrine on the interruption of the prescriptive period for criminal tax actions is in the nature of a procedural rule, it may be given retroactive effect to actions pending and undetermined upon its promulgation, there being no vested rights in the rules of procedure.[25]

It is thus clear that the *pro reo* doctrine, also known as the rule of lenity, applies only when there is doubt in construing the substantive provisions of a penal law — particularly those defining the elements of the crime or prescribing its penalty. It does not apply to the interpretation of procedural rules, such as those governing the computation or interruption of prescription, unless such interpretation would directly affect or impair substantive rights.

Furthermore, with due respect, the 1993 case of *Albino S. Co v. Court of Appeals and People of the Philippines*[26] (**Co**) cannot be used to support the prospective application of *Consebido* in this case, as that case involved the protection of a **substantive right** of therein accused — the constitutional safeguard against *ex post facto* laws — where retroactive application of a later judicial interpretation (*Victor Que v. People of the Philippines and Intermediate Appellate Court*[27]) would have penalized acts that, under then-prevailing official guidance (a DOJ Circular), were not considered criminal. In

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24 G.R. No. 173942 (Resolution), 25 June 2008 [Per J. Tinga, Special Second Division]; Italics in the original text and emphasis supplied.

25 See *Pfizer Inc., et al. v. Edwin V. Galan*, G.R. No. 143389, 25 May 2001 [Per C.J. Davide, Jr., First Division].

26 G.R. No. 100776, 28 October 1993 [Per C.J., Narvasa, *En Banc*].

27 G.R. Nos. 75217-18 (Resolution), 21 September 1987 [Per J., Paras, Second Division].

that context, the Supreme Court properly applied the *pro reo* principle, as the ambiguity concerned the substantive scope of the penal statute and directly implicated the elements of the offense.

In contrast with *Co*, the *Consebido* doctrine deals with the interpretation of a **procedural rule** — specifically, when the prescriptive period for criminal tax offenses under the NIRC of 1997, as amended, is interrupted. Jurisprudence consistently holds that procedural rules may be applied retroactively to cases pending and undetermined at the time of their promulgation, there being no vested rights in matters of procedure, as underscored in *Fil-Estate*. As such, the interpretation in *Consebido* does not involve a change in the definition of the crime or its penalties, but rather clarifies the judicial process for enforcing existing substantive rights. Accordingly, the *pro reo* principle finds no application unless the procedural rule's interpretation would directly impair a substantive right — a circumstance not present in this case.

In light of the Supreme Court's categorical declaration in *Consebido*, which affirmed that the established doctrine on prescription applies to criminal tax cases, I respectfully submit that this Court, sitting *En Banc*, should thoughtfully reconsider its reliance on *Lim, Sr.* and align its rulings with the prevailing doctrine. Specifically, when the records clearly show that the prescriptive period was tolled by the filing of a complaint with the DOJ for purposes of preliminary investigation, consistency with *Consebido* requires that a dismissal grounded on *Lim, Sr.* be set aside and the criminal tax case remanded for trial.

Accordingly, in this case, the five (5)-year prescriptive period began to run upon the discovery of respondent's violation of Section 254[28] of the NIRC of 1997, as amended, or willful attempt to evade or defeat the payment of value-added tax (**VAT**) for the third (3rd) quarter of the taxable year (**TY**) 2010, and the institution of judicial proceedings for preliminary investigation on **05 July 2012** — when the JCA of the concerned Revenue Officers was referred to the DOJ. That same act also interrupted or tolled the running of the prescriptive period. Thus, contrary to the Court *En Banc*'s ruling, the right of the government to institute the case against respondent had not yet prescribed when the Information was filed on **26 October 2022**.

Nonetheless, while the criminal action has not yet prescribed, the prolonged and unjustified delay of more than ten (10) years between the filing

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28 **SEC. 254.** *Attempt to Evade or Defeat Tax.*

of the JCA and the subsequent filing of the Information before the First Division constitutes a violation of respondent's right to speedy disposition of cases, thereby still warranting the dismissal of this case.

All told, I vote to (1) **PARTIALLY GRANT** petitioner's "Motion for Reconsideration (of the Decision dated August 06, 2024)", (2) **REVERSE** and **SET ASIDE** the First Division's assailed Resolutions dated 15 December 2022 and 09 February 2023 in CTA Crim. Case No. O-952, and (3) instead **DISMISS** the criminal case on the ground of violation of respondent's right to speedy disposition of cases.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice