REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-versus-

STAR ASSET MANAGEMENT NPL INC., MARK S. FRONDOSO AND JOSEPH RYAN R. SYCIP,
Respondents.

CTA *EB* Crim No. 129
(CTA Crim Case No. O-995)

Members:

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

Promulgated: OCT 21 2024 3:10 pm

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RESOLUTION

CUI-DAVID, J.:

For this Court's resolution is petitioner's ***Motion for Reconsideration (of the Decision dated April 22, 2024)*** filed on May 8, 2024, with respondents' *Comment/Opposition [Re: Motion for Reconsideration dated 7 May 2024]* received by the Court on June 4, 2024 and *Compliance/Manifestation* dated July 1, 2024.

Petitioner's *Motion for Reconsideration (Motion)* assails the *Decision* of the Court in the above-captioned case promulgated on April 22, 2024, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **DISMISSED** on the ground of prescription of the offense and for being moot and academic.

SO ORDERED.

Petitioner argues that the Court misinterpreted *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals* (*Lim*)[1] and that the five (5)-year prescriptive period is interrupted by the filing of the Complaint-Affidavit with the Department of Justice (**DOJ**), pursuant to *Tupaz v. Ulep* (*Tupaz*).[2] According to petitioner, considering that the date of commission of the crime is February 12, 2017,[3] the filing of the Complaint-Affidavit on June 25, 2021, is within the five (5)-year prescriptive period.

In their *Comment*, respondents argue that the five-year prescriptive period specified under Section 281 of the NIRC of 1997, as amended, lapsed on February 13, 2022, but the *Information* was only filed with the Court in Division on December 6, 2022.

The *Motion* is bereft of merit.

While the *Tupaz* case[4] did consider the filing date of the complaint with the DOJ to determine whether the criminal action was instituted within the five (5)-year prescriptive period, the Supreme Court, in approving the Revised Rules of the Court of Tax Appeals (**RRCTA**) in 2005, clarified that it is the filing of the information in Court that interrupts the running of the prescriptive period under Section 2, Rule 9[5] thereof, consistent with the principles established in the *Lim* case,[6] as enunciated by the Supreme Court.[7]

Accordingly, the interpretation in the *Lim* case is controlling. In that case, it was stated that failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with a willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

JW

[1] G.R. Nos. 48134-37, October 18, 1990.
[2] G.R. No. 127777, October 1, 1999.
[3] The Court previously ruled that the date of commission of the crime is on February 13, 2017.
[4] *Supra* at note 2.
[5] RULE 9 - PROCEDURE IN CRIMINAL CASES

...

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*]
[6] *Supra* at note 1.
[7] *People v. SKI Construction Group, Inc.*, C.T.A. Crim. Case No. O-1137, June 13, 2024.

> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' **refusal to pay the deficiency income taxes due**, again both parties are in accord that by their nature, the violations as charged **could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. ...
>
> We hold for the Government. Section 51 (b) of the Tax Code provides:
>
>> "(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.*" (*Emphasis on the original*)
>
> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. [*Emphasis and underscoring supplied.*]

To reiterate, as to what interrupts prescription, Section 281 of the NIRC of 1997, as amended, provides that it is "when proceedings are *instituted* against the guilty persons." This is explained in *Lim* to mean *the time when the Information is filed with the Court.*[8]

In counting the prescriptive period, the Court maintains its discussion in the assailed *Decision, viz.*:

> Upon perusing the records, no original copies of the Assessment Notices were provided. However, assuming this Court gives probative value to the photocopies of the Assessment Notices that petitioner presented, this will show that the Assessment Notices were personally served and received by respondent Star Asset on **January 13, 2017**.

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

Moreover, it was alleged in the Complaint-Affidavit that:[9]

> 10. Thereafter, on 11 January 2017, the Formal Assessment Notice (FAN) and Details of Discrepancies, were issued by then OIC-Regional Director CLAVELINA S. NACAR assessing and demanding payments of the tax liabilities for taxable year 2013 in the total amount of Php47,161,037.13 representing deficiency on Income Tax and Expanded Withholding Tax, inclusive of surcharge and interest. **Said FAN was served on STAR ASSET on 13 January 2017.**

Petitioner persistently invokes that the assessment has become final, executory, and unappealable because respondents failed to file a protest within 30 days from receipt of the FAN.[10]

Accordingly, since no protest was filed within 30 days from January 13, 2017, or until February 12, 2017, the FAN attained finality *upon the lapse* of the period on **February 13, 2017**, in accordance with Section 228 of the NIRC of 1997, as amended.[11]

...

Thus, pursuant to *Lim* and RMC No. 101-90, petitioner had five (5) years counted from February 13, 2017, or until **February 13, 2022**, to file the *Information* in Court. The *Information* dated March 9, 2022, was filed with this Court only on **December 6, 2022**.

Clearly, the government's right to institute a criminal action against respondents-accused had already prescribed for *more than nine (9) months* when the *Information* was filed on **December 6, 2022**.

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[9] Par. 10, Joint Complaint-Affidavit, Annex "N", Petition for Review, *EB* Docket, p. 67; Details of Discrepancies, Annex "P," *EB* Docket, p. 87.

[10] Petition for Review, pars. 45-47, *EB* Docket, pp. 20-22.

[11] SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

... ...

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, **the assessment shall become final**.

Accordingly, the Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, in light of the foregoing, petitioner's ***Motion for Reconsideration (of the Decision dated April 22, 2024)*** is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
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

(Inhibited)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice