REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB CRIM. NO. 119** (CTA Crim. Case No. O-954)
	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, (No. 1013, Juan Luna Street, Brgy. 27, Zone 1, Tondo, Manila) Respondent.	Promulgated: AUG 14 2024 4:12 pm

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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a "Verified Petition for Review (of the Resolution dated April 05, 2023)"[1] (**Verified Petition for Review**) filed *via* registered mail on 12 May 2023 by petitioner People of the Philippines (**petitioner/prosecution**), pursuant to Rule 43[2] of the Rules of Court (**ROC**), as amended[3], in accordance with Rule 9[4], Section 9(b)[5] of the Revised Rules of the Court of Tax Appeals

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[1] *Rollo*, pp. 1-243, with annexes.
[2] *Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.*
[3] A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.
[4] *Procedure in Criminal Cases.*
[5] **SEC. 9.** *Appeal; period to appeal.* —

(**RRCTA**). It seeks the reversal and setting aside of the Resolution dated 26 January 2023[6] (**first assailed Resolution**) and Resolution dated 05 April 2023[7] (**second assailed Resolution**) of the Court's Third Division[8], in CTA Case No. O-954 entitled *People of the Philippines v. Ziegfried Loo Tian*.

The first assailed Resolution dismissed the case on the ground of prescription of the offense charged, while the second assailed Resolution denied petitioner's Motion for Reconsideration[9] (**MR**) thereto for lack of merit. The dispositive portions of the first and second assailed Resolutions read as follows:

First Assailed Resolution dated 26 January 2023

...

WHEREFORE, CTA Crim. Case No. 954 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

...

Second Assailed Resolution dated 05 April 2023

...

WHEREFORE, the Formal Entry of Appearance is hereby **NOTED**. Let this and all other issuances from this Court related to this case be sent to the Bureau of Internal Revenue at the address provided.

Meanwhile, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

...

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

6 Division Docket, pp. 213-216.

7 Id., pp. 237-239.

8 The Third Division is composed of Associate Justice Ma. Belen M. Ringpis-Liban, as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, as Members.

9 Division Docket, pp. 221-230.

PARTIES OF THE CASE

Petitioner is represented by the Bureau of Internal Revenue (**BIR**), the government agency mandated to collect national revenue taxes, and is represented by the Commissioner of Internal Revenue (**CIR**) through Revenue Officers (**ROs**) Emerita D. Tan (**Tan**), Carine P. Balmeo (**Balmeo**), Dominador A. Callangan (**Callangan**), Arnel A. Boco (**Boco**) and Adelina P. See (**See**), with office address at Room 704, BIR National Office Building, BIR Road, Diliman, Quezon City.[10]

Respondent Ziegfried Loo Tian (**respondent/Loo Tian**) is registered with the BIR Revenue District Office (**RDO**) No. 29 - Tondo, San Nicolas, Manila with Taxpayer Identification Number (**TIN**) 193-647-148-000. He is the sole proprietor of Golden Taste Food Services & General Merchandising engaged in the business of food catering and/or wholesale of general merchandise, with business address at No. 1013 Juan Luna St., Brgy. 27, Zone 1, Tondo, Manila.[11]

FACTS OF THE CASE

On 26 October 2022, the prosecution filed an Information[12] against respondent for violation of Section 254[13] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, the accusatory portion thereof reads:

> ...
>
> That on or before April 20, 2011, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, required by law to file his Quarterly Value-Added Tax Return (VAT return), did, then and there, willfully, unlawfully and feloniously attempt to evade and defeat payment of VAT for the first (1st) quarter of taxable year 2011, by stating in the entry fields of the said return the word "exempt", when in truth and in fact said accused is not exempted as he failed to comply with the substantiation and reporting requirement under the tax law and revenue regulations, which resulted to deficiency tax in the amount of Three Million Three Hundred Forty Four Thousand

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10 Paragraph 5, PARTIES, Verified Petition for Review (of the Resolution dated April 23, 2023), supra 1, p. 2.

11 Par. 6, id.

12 Division Docket, pp. 5-6.

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

> Four Hundred Thirty Pesos and Seventy Seven Pesos (Php 3,344,430.77), exclusive of interests, penalties and surcharges to the damage and prejudice of the Government of the Republic of the Philippines.
>
> ...

The prosecution attached the following supporting documents to the Information:

1. Certified True Copy of the Resolution dated 11 May 2017[14], signed by Prosecution Attorney Jayvee Laurence B. Bandong, with recommending approval of CP Emilie Fe M. Delos Santos, Officer-in-Charge of the Anti-Fraud Division, and approved by Prosecutor General Victor C. Sepulveda;

2. Certified True Copy of the Resolution dated 01 September 2014[15], signed by Prosecution Attorney Jayvee Laurence B. Bandong, with recommending approval of Senior Assistant State Prosecutor Susan F. Dacanay, Chairperson of the Task Force on BIR, and approved by Prosecutor General Claro A. Arellano;

3. Certified True Copy of the National Prosecution Service (**NPS**) Investigation Data Form dated 05 July 2012;[16]

4. Certified True Copy of the Referral Letter dated 05 July 2012[17] of the then BIR Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**), addressed to then Secretary of Justice Leila De Lima (**Secretary De Lima**); and,

5. Certified True Copy of the Joint Complaint-Affidavit (**JCA**) dated 05 July 2012[18] of ROs Tan, Balmeo, Callangan, Boco and See, with attached Annexes "A" to "T-104", inclusive of sub-markings.[19]

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14 Division Docket, pp. 7-9.
15 Id., pp. 10-19.
16 Id., p. 20.
17 Id., pp. 21-22.
18 Id., pp. 23-37.
19 Id., pp. 38-211.

On 26 January 2023, the Third Division rendered the first assailed Resolution[20], dismissing the case on the ground of prescription of the offense charged. Aggrieved, petitioner filed an MR[21] thereto, but the Third Division denied the same for lack of merit in the second assailed Resolution.[22]

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the Third Division's rulings, on 12 May 2023, petitioner filed *via* registered mail the present Verified Petition for Review[23] before the Court *En Banc*, docketed as CTA EB Crim. No. 119. The Court *En Banc* received the same on 18 May 2023.

Thereafter, on 12 July 2023, respondent's counsel, De Ramos and Bantigue Law Office, filed a Notice of Appearance[24], which the Court *En Banc* noted in a Minute Resolution dated 17 July 2023.[25]

On 27 July 2023, respondent filed his "Comment/Opposition *(Re: Verified Petition for Review of the Resolution dated 05 April 2023)*"[26] on the present petition.

Accordingly, the Court *En Banc* submitted the case for decision in a Minute Resolution dated 14 August 2023.[27]

ISSUE

The main issue for the Court *En Banc*'s determination is whether or not the Third Division erred in finding no probable cause to charge respondent for violation of Section 254[28] of the NIRC of 1997, as amended, or willful attempt to evade or defeat the payment of VAT for the first (1st) quarter of the taxable year (**TY**) 2011.

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20 Supra at note 6.
21 Supra at note 9.
22 Supra at note 7.
23 Supra at note 1.
24 *Rollo*, pp. 246-247.
25 Id., p. 250.
26 Id., pp. 251-270.
27 Id., p. 271.
28 Supra at note 13.

ARGUMENTS

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

1. Prescription has not set in as the period of discovery and the institution of judicial proceedings for violation of Section 254[29] of the NIRC of 1997, as amended, not only triggers the commencement of the prescriptive period but, at the same time, triggers the interruption of the same prescriptive period; and,

2. Respondent should be held liable for willful attempt to evade or defeat the payment of VAT for the first (1st) quarter of TY 2011 in violation of Section 254 of the NIRC of 1997, as amended.

Respondent, on the other hand, counter-argues that:

1. The right of the government to prosecute him has prescribed under Section 281[30] of the NIRC of 1997, as amended; and,

2. The case must be dismissed for violation of his right to speedy disposition of cases as petitioner took more than ten (10) years from the filing of the JCA to the filing of the Information in Court.

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We find it propitious to first determine whether the Court *En Banc* has jurisdiction over the present petition.

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

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29 Supra at note 13.

30 **SEC. 281.** *Prescription for Violations of any Provision of this Code.*

The Third Division issued the second assailed Resolution denying petitioner's MR[31] on 05 April 2023. Petitioner received the said assailed Resolution on 27 April 2023.[32]

Under Section 2(f)[33], Rule 4 in relation to Section 9(b)[34], Rule 9[35] of the RRCTA, petitioner had fifteen (15) days from 27 April 2023, or until 12 May 2023, within which to file its appeal before this Court.

Accordingly, on 12 May 2023, petitioner timely filed *via* registered mail the present Verified Petition for Review.[36] Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

After a thorough consideration of the arguments raised by the parties *vis-à-vis* the pertinent laws, rules and regulations, the Court *En Banc* finds no merit in the present Verified Petition for Review.

PETITIONER'S RIGHT TO PROSECUTE RESPONDENT FOR TAX EVASION HAS ALREADY PRESCRIBED.

In resolving the issue of the prescription of the offense charged, the following factors should be considered: (1) the period of prescription for the offense charged; (2) the time when the prescriptive period starts to run; and, (3) the time when the prescriptive period is interrupted.[37]

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31 Supra at note 9.

32 See Notice of Resolution dated 18 April 2023, Division Docket, p. 236.

33 **SEC. 2.** *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

...

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

...

34 Supra at note 5.

35 Supra at note 4.

36 Supra at note 1.

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

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

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

I. THE PRESCRIPTIVE PERIOD FOR TAX EVASION UNDER SECTION 254 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, IS FIVE (5) YEARS UNDER SECTION 281 OF THE NIRC OF 1997, AS AMENDED.

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

> ...
> SEC. **281**. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribe after five (5) years.**
>
> **Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.**
>
> **The prescription shall be interrupted when proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines.[38]
>
> ...

The above provision clearly states that the prescriptive period for all violations of the NIRC of 1997, as amended, including the offense charged in this case (*i.e.*, tax evasion under Section 254[39] of the NIRC of 1997, as amended), is **five (5) years.**

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38 Italics in the original text and emphasis supplied.
39 Supra at note 13.

II. SINCE THE DAY OF THE COMMISSION OF TAX EVASION IS UNKNOWN AT THE TIME, THE PRESCRIPTIVE PERIOD BEGINS TO RUN UPON ITS DISCOVERY AND THE INSTITUTION OF JUDICIAL PROCEEDINGS FOR ITS INVESTIGATION AND PUNISHMENT.

With regard to the ***second consideration***, *i.e.*, the time when the prescriptive period starts to run, Section 281[40] of the NIRC of 1997, as amended, provides for two (2) reckoning points for when the prescriptive period begins to run:

1. If the day of the commission is known, prescription begins to run from the day of the commission of the violation of the law; or,

2. If the day of the commission is **unknown**, from its discovery **and** the institution of judicial proceedings for its investigation and punishment.

As can be gleaned from the Third Division's assailed Resolutions, the date of the tax offense's commission in this case is unknown. Therefore, the applicable reckoning point is the date of discovery of the violation and the institution of judicial proceedings for its investigation and punishment.

A plain reading of the Information[41] reveals that the alleged violation of Section 254[42] of the NIRC of 1997, as amended, is that respondent "willfully, unlawfully and feloniously attempt[ed] to evade and defeat payment of VAT for the first (1st) quarter of [TY] 2011, by stating in the entry fields of the said return the word 'exempt', when in truth and in fact [respondent] is not exempted [...]."

Since the crime of tax evasion involves an omission and misrepresentation by respondent, the date of the commission of the violation is unknown until it is discovered. Thus, the Court *En Banc* agrees with the Third Division's finding that the prescriptive period

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40 Supra at p. 8.
41 Supra at note 12.
42 Supra at note 13.

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

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[43] (**Lim, Sr.**), the Supreme Court discussed the commencement of the prescriptive period where the day of the commission of the violation is unknown and what is contemplated by the term "judicial proceedings," to wit:

> ...
>
> With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of *discovery* of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.
>
> On behalf of the Government, the Solicitor General counters that **the crime of filing false returns can be considered "discovered" only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment** and therefore required the petitioners to pay P1,237,190.55 in deficiency taxes that the tax infractions were discovered.
>
> Not only that. The Solicitor General stresses that **Section 354 [now Section 281] speaks not only of discovery of the fraud but also institution of judicial proceedings.** Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. **It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and**

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43 G.R. Nos. L-48134-37, 18 October 1990; Citation omitted, italics in the original text, and emphasis and underscoring supplied.

> **punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**
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> ...
>
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 [now Section 281] stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.**
>
> ...

Clearly from the foregoing, where the date of the commission of the violation is unknown, the five (5)-year prescriptive period begins to run from: (1) the discovery of the violation; and, (2) the institution of judicial proceedings of its investigation and punishment, *i.e.*, when the tax offense is indorsed to the Prosecutor's Office for preliminary investigation.

In this case, due to the nature of the tax evasion charge against respondent, the date of the commission of the violation is unknown (as earlier stated). Therefore, the five (5)-year prescriptive period began to run from the discovery of the violation and, subsequently, when the case was indorsed by the CIR, then Commissioner Henares, for preliminary investigation in her Referral Letter dated 05 July 2012[44], addressed to the Department of Justice (**DOJ**) through then Secretary De Lima.

Additionally, the BIR's designated ROs, who initiated the criminal complaint against respondent, executed the JCA on 05 July 2012[45], as indicated on the document. Furthermore, in the Certification[46] of State Prosecutor Cesar D. Calubag (**State Prosecutor Calubag**), found on the last page of the JCA, ROs Tan, Balmeo,

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44 Supra at note 17.
45 Supra at note 18, p. 36.
46 Supra at note 18, p. 37.

Callangan, Boco and See subscribed and swore to the JCA in his presence on that same date.

Clearly, for purposes of reckoning the five (5)-year prescriptive period, Commissioner Henares' Referral Letter and State Prosecutor Calubag's Certification both confirm that respondent's alleged offense of tax evasion in the payment of VAT for the first (1st) quarter of TY 2011 was indorsed to the DOJ for preliminary investigation on 05 July 2012.

Applying the ruling in *Lim, Sr.*, since a preliminary investigation is a proceeding for the investigation and punishment of a crime, the five (5)-year prescriptive period commenced on **05 July 2012**.

III. THE PRESCRIPTIVE PERIOD FOR TAX EVASION IS INTERRUPTED BY THE FILING OF THE INFORMATION BEFORE THE COURT OF TAX APPEALS (CTA).

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

Petitioner claims that the discovery and the institution of judicial proceedings not only trigger the commencement of the prescriptive period but also interrupt it, pursuant to Section 281[47] of the NIRC of 1997, as amended. In support of this theory, petitioner cites Section 1, Rule 110 of the Revised Rules on Criminal Procedure (**RRCP**), which provides:

> ...
> **SEC. 1.** *Institution of Criminal Actions.* — Criminal actions shall be instituted as follows:
>
> (a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

47 Supra at p. 8.

> (b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.
>
> The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws.
>
> ...

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

We cannot subscribe to petitioner's theory.

As early as 1990, the Supreme Court has held in *Lim, Sr.* that the prescriptive period is interrupted by the filing of the Information in court. Specifically, the High Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281[48] of the NIRC of 1997, as amended) to mean that **tax cases are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, <u>up to the filing of the Information in court</u> does not exceed five (5) years**, *viz*:[49]

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

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48 Supra at p. 8.

49 *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*, supra at note 43; Citation omitted, italics in the original text and emphasis supplied.

> **investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.**
>
> ...
>
> **Unless amended by the Legislature, Section 354 [now Section 281] stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government.** In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.
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> ...

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

> ...
> SEC. 2. *Institution of Criminal Actions.* — **All criminal actions before the Court in Division** in the exercise of its original jurisdiction **shall be instituted by the filing of an information in the name of the People of the Philippines**. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.**[50]
>
> ...

It is clear from the foregoing jurisprudence and RRCTA provision that criminal cases falling within the jurisdiction of the Court in Division are instituted by filing an Information before the said Court.

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50 Emphasis supplied and italics in the original text.

This particular mode of 'institution' of the criminal action shall interrupt the running of the prescriptive period.

Thus, petitioner's reliance on Section 1, Rule 110 of the RRCP is misplaced. It should also be noted that under Section 3[51], Rule 1 of the RRCTA, the ROC (as amended) in the Philippines, including the RRCP, only apply suppletorily to the provisions of the RRCTA. Since Section 2, Rule 9 of the RRCTA above explicitly states that criminal actions are instituted by filing an Information with the Court in Division, it is precisely the filing of the Information before the Court in Division that interrupts the prescriptive period.

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

As the Third Division correctly found, petitioner's right to prosecute respondent for the alleged violation of Section 254[52] of the NIRC of 1997, as amended, or tax evasion, has already prescribed.

Counting from the discovery of the violation of the NIRC of 1997, as amended, and the institution of the judicial proceedings for its preliminary investigation—specifically, the CIR's referral of the case to the DOJ on **05 July 2012**—the subject Information[53] should have been filed before this Court within five (5) years therefrom, or **until 05 July 2017**. Clearly, when the subject Information was filed before this Court on **26 October 2022**, more than five (5) years had passed since the government's right to institute a criminal action prescribed.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[54] Evidently, in this case, prescription has automatically set in when petitioner failed to file the subject Information within the five (5)-year

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

52 Supra at note 13.

53 Supra at note 12.

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

prescriptive period provided under Section 281[55] of the NIRC of 1997, as amended.

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

WHEREFORE, with the foregoing considerations, the present "Verified Petition for Review (of the Resolution dated April 05, 2023)" filed by petitioner People of the Philippines on 12 May 2023 is hereby **DENIED** for lack of merit. Accordingly, the Third Division's assailed Resolutions dated 26 January 2023 and 05 April 2023 in CTA Crim. Case No. O-954, are **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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55 Supra at p. 8.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON OFFICIAL BUSINESS
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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