REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA EB CRIM. NO. 121** (CTA Crim. Case No. O-934)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
ANTONIO VALERIANO M. BERNARDO, (A.V.M. BERNARDO ENGINEERING) (AT LARGE: Address: No. 604 T. Santiago St., Lingunan, Valenzuela City, Metro Manila), *Respondent.*	Promulgated: JUN 03 2024 4:10 pm

x- -x

RESOLUTION

ANGELES, J.:

For resolution is petitioner's *Motion for Reconsideration (of the Resolution [sic] dated January 26, 2024)* [Motion] filed on February 14, 2024 via registered mail, which was received by the Court on February 19, 2024, with respondent's *Opposition* (To Petitioner's Motion for Reconsideration dated 14 February 2024) filed on February 22, 2024.

On January 26, 2024, the Court rendered its *Decision* denying the *Petition for Review* filed by the petitioner. The dispositive portion states:

> **WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Resolutions dated

February 28, 2023 and April 27,2023, rendered in CTA Crim. Case No. O-934 are hereby **AFFIRMED.**

SO ORDERED.

On February 14, 2024, petitioner People of the Philippines filed the instant *Motion*. Petitioner prays: (1) that the *Decision* dated January 26, 2024 denying the *Petition for Review* on the ground of prescription be set aside; and (2) issue an order/resolution for setting the case for arraignment and Pre-Trial.

On February 22, 2024, respondent filed his *Opposition (To Petitioner's Motion for Reconsideration dated February 14, 2024)* [Opposition].

Petitioner's arguments

In its *Motion*, petitioner argued that the filing of the complaint with the prosecution's office tolls the running of the prescription period for actions involving violations of special laws. It reiterates that prescription has not set in, as the prescriptive period on this began to run on February 18, 2016, when the BIR filed a complaint for violation of Sections 254 and 255 of the 1997 NIRC against respondent Bernardo with the Department of Justice (DOJ), but at the same time, prescription was interrupted for the same reason that the proceedings were instituted on the same date[1]. Petitioner further argued that taxes are the lifeblood of the government and that the mere fact that time has passed should not prejudice the right of the government to collect taxes. Just like the respondent, the State also has the right to due process which must not be curtailed[2].

Respondent's arguments

In his *Opposition,* respondent stated that petitioner's *Motion* is a mere rehash of the arguments contained in its *Petition for Review,* which the Court has taken into consideration before it issued the disputed *Decision* dated January 26, 2024[3]. Further, respondent argued that petitioner has stated in its *Motion*, that it conforms with the court's use of Section 2 Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), thus there is no reason to disturb the above-quoted *Decision.*

---

[1] Paragraph 22, *Motion for Reconsideration* dated February 14, 2024.
[2] Paragraph 19, *Motion for Reconsideration* dated February 14, 2024.
[3] Paragraph 2, *Opposition* dated February 21, 2024.

Ruling of the Court

As alleged in petitioner's *Motion,* it received the *Decision* on January 30, 2024. Petitioner had fifteen (15) days, or until February 14, 2024 within which to file its motion for reconsideration. On February 14, 2024, petitioner filed the instant *Motion*. Hence, the same was timely filed.

There is no compelling reason to reverse the Court's *Decision* dated January 26, 2024.

Under Article 91 of the Revised Penal Code, as a general rule, prescriptive periods for criminal offenses are tolled by the filing of a criminal complaint, or information. Article 91, in relation to Section 281 of the 1997 NIRC, as amended, further provides:

> 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 date 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. (Emphasis supplied)

By virtue of Section 281, of the 1997 NIRC, as amended, all violations of any provision of 1997 NIRC shall prescribe after five (5) years. The running of the five-year prescriptive period shall be interrupted when proceedings are instituted against the guilty persons. Section 281 speaks not only of the discovery of the criminal violation but also institution of judicial proceedings for the investigation and punishment of a crime.

Based on the *Information*, the respondent was charged of violation of Section 254 for willful attempt to evade or defeat tax and Section 255 for willful failure to supply correct and accurate

r

information in his 2013 income tax return. The Court notes that the *Joint Complaint-Affidavit* of the revenue officers of the BIR was filed on February 18, 2016 for purposes of preliminary investigation, from which date, the prescriptive period likewise commenced. Petitioner maintains that it also interrupted the prescriptive period. The resolution of the DOJ finding probable cause to warrant the indictment of the respondent was issued on July 28, 2017 and the *Information* was only filed on September 06, 2022.

In the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al*[5], the Supreme Court held that:

> xxx xxx xxx
>
> 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 Case 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 punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**
>
> xxx xxx xxx
>
> 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) <u>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.</u>** [Emphasis and Underscoring Supplied].

Clearly from the foregoing, the right to file criminal action will prescribe if the *Information* is filed in court beyond the five-year

---

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

r

prescriptive period reckoned from the discovery and institution of judicial proceedings for investigation and punishment. In the instant case, it shows that the date of discovery together with the institution of judicial proceedings for preliminary investigation began to run on February 18, 2016 when the *Joint-Complaint Affidavit* was filed with the DOJ. Counting five years therefrom, the prescriptive period lapsed on February 18, 2021. Unfortunately, the *Information* was only filed on September 06, 2022, which exceeds the five-year period.

The above discussion is consistent with Section 2, Rule 9 of the RRCTA which provides that criminal actions before the Court of Tax Appeals are instituted by the filing of the *Information* and that the institution of the criminal action interrupts the running of the period of prescription, *to wit*:

> Section 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 Republic 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 criminal actions shall interrupt the running of the period of prescription**. (Emphasis supplied)

The RRCTA clearly states that criminal actions are instituted upon filing of the *Information* with the Court, and such filing of the *Information* shall interrupt the running of the prescriptive period. It must be noted that the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court should not exceed five (5) years. This is consistent with the ruling of the Supreme Court in *Lim, Sr. vs. Court of Appeals*.

Petitioner's claim that the five (5) year prescriptive period had commenced and at the same time interrupted upon filing of the complaint with the DOJ is mistaken. To interpret that the prescriptive period under Section 281 will both begin and be interrupted by the filing of the complaint for preliminary investigation at the DOJ will defeat the purpose of fixing the period in filing criminal actions.

As held by the Supreme Court, prescription of actions is a valued rule in all civilized states from the beginning of organized society. It is a rule of fairness since, without it, the plaintiff can postpone the filing of his action to the point of depriving the defendant, through the passage of time, of access to defense witnesses who would have died or left to live elsewhere, or to documents that would have been discarded or could no longer be located[7]. As pointed out by the Court, the issues raised by the petitioner in its *Motion* are mere reiterations of the arguments contained in the *Petition for Review* which were thoroughly discussed by the Court in Division. The right of the State to prosecute the accused has already prescribed under Section 281 of the 1997 NIRC, as amended. Hence, there is no ground to reconsider the *Decision* dated January 26, 2024.

WHEREFORE, premises considered, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

On Official Business
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[7] *Republic of the Philippines vs. Eduardo M. Cojuangco, Jr. et.al.*, G.R. No. 139930, June 26, 2012.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice