REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB CRIM. NO. 076** (CTA CRIM. CASE NOS. O-700, O-702 & O-703)
	Present:
- **versus** -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
ULYSSES PALCONET CONSEBIDO, Respondent.	***Promulgated:*** JAN 27 2021 4:20 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review*[1] filed on March 4, 2020 by petitioner, People of the Philippines, under Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal and setting aside of the Resolutions dated November 8, 2019[2] and February 6, 2020[3], both rendered by the First Division of this Court (Court in Division)[4] in CTA Crim Case Nos. O-700, O-702, & O-703, entitled *"People of the Philippines,*

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[1] EB Docket, pp. 1 to 15.
[2] EB Docket, pp. 16 to 20.
[3] EB Docket, pp. 30 to 33.
[4] Composed of Presiding Justice Roman G. Del Rosario, Associate Justice Esperanza R. Fabon-Victorino (retired), and Associate Justice Catherine T. Manahan.

Plaintiff, versus Ulysses Palconet Consebido, Accused", the dispositive portions of which, respectively read as follows:

Resolution dated November 8, 2019:

> "**WHEREFORE**, the three (3) separate Motions to Quash Informations, all dated July 22, 2019 filed by accused, are hereby **GRANTED**. Consequently, the Criminal Case Nos. O-700, O-702 and O-703 are hereby **DISMISSED** on ground of prescription.
>
> **SO ORDERED**."

Resolution dated February 6, 2020:

> "**WHEREFORE**, the Motion for Reconsideration (of the Resolution dated November 8, 2019) filed by the prosecution is **DENIED**, for lack of merit.
>
> **SO ORDERED**."

THE FACTS

Respondent Ulysses Palconet Consebido was charged in CTA Criminal Case Nos. O-700, O-702, and O-703, under three (3) separate *Informations*[5] filed on March 18, 2019, for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The *Informations* read as follows:

Crim. Case No. O-700

> "The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **ULYSSES PALCONET CONSEBIDO** for willful failure to supply correct and accurate information in his Annual Income Tax Return in violation of Section 255, in relation to Sections 24 (A) and Section 51 (A)

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[5] Division Docket (CTA Crim. Case No. O-700), pp. 8 to 10; Division Docket (CTA Crim. Case No. O-702), pp. 8 to 10; Division Docket (CTA Crim. Case No. O-703), pp. 8 to 10.

(1a), of the National Internal Revenue Code of 1997, as amended, committed as follows:

> 'That on or about **March 10, 2009**, in Roxas, Palawan and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, doing business under the name and style SEVEN DIGIT CONSTRUCTION AND SUPPLIES, and at that time required by law, rules and regulations to file his annual income tax return did, then and there, willfully, unlawfully and substantially fail to supply correct and accurate information with respect to his true and correct income, as said accused substantially under declared his income for taxable year 2008 which resulted in basic deficiency income tax of ₱22,809,373.10 for taxable year 2008, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'
>
> CONTRARY TO LAW."

<u>**Crim. Case No. O-702**</u>

"The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **ULYSSES PALCONET CONSEBIDO** for willful failure to file quarterly VAT return in violation of Section 255, in relation to Section 114, of the National Internal Revenue Code of 1997, as amended, committed as follows:

> 'That on or about **January 25, 2009**, in Roxas, Palawan and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, doing business under the name and style SEVEN DIGIT CONSTRUCTION AND SUPPLIES, and at that time required by law, rules and regulations to file his quarterly Value-Added Tax (VAT) return did, then and there, willfully, unlawfully and feloniously fail to file his quarterly VAT return for the 4th quarter of taxable year 2008, which resulted in the basic deficiency quarterly VAT of **₱3,541,038.49** for the 4th

quarter of taxable year **2008**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'

CONTRARY TO LAW."

Crim. Case No. O-703

"The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **ULYSSES PALCONET CONSEBIDO** for willful failure to file quarterly VAT return in violation of Section 255, in relation to Section 114, of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about **April 25, 2009,** in Roxas, Palawan and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, doing business under the name and style SEVEN DIGIT CONSTRUCTION AND SUPPLIES, and at that time required by law, rules and regulations to file his quarterly Value-Added Tax (VAT) return did, then and there, willfully, unlawfully and feloniously fail to file his quarterly VAT return for the 1st quarter of taxable year 2009, which resulted in the basic deficiency quarterly VAT of **₱2,390,147.03** for the 1st quarter of taxable year **2009**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'

CONTRARY TO LAW."

In the Resolutions dated April 4, 2019[6], April 8, 2019[7], and April 29, 2019[8], issued in CTA Crim. Case Nos. O-702, O-703 and O-700, respectively, the Court in Division found probable cause to issue warrants of arrest against respondent Ulysses Palconet Consebido.

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[6] Division Docket (CTA Crim. Case No. O-702), pp. 369 to 371.
[7] Division Docket (CTA Crim. Case No. O-703), p. 369.
[8] Division Docket (CTA Crim. Case No. O-700), pp. 371 to 372.

On July 15, 2019[9], respondent voluntarily appeared and submitted himself to the jurisdiction of the Court in Division, and posted the required cash bail bond[10] for his provisional liberty.

On the same day, the Court issued separate Resolutions for CTA Crim. Case Nos. O-700, O-702 and O-703, accepting and approving the cash bond. The Court in Division likewise set the arraignment of the accused and the Pre-Trial Conference on August 14, 2019; while the Preliminary Conference was set on August 7, 2019 for the marking of the parties' exhibits.[11]

On July 25, 2019, respondent separately filed three (3) *Motions to Quash Informations*[12] in CTA Crim. Case Nos. O-700, O-702 and O-703, arguing that the government's right to file an action has already prescribed; and praying that the *Informations* be quashed on the ground of prescription. On the same day, respondent filed a *Motion for Consolidation of Cases*[13] praying that CTA Crim. Case Nos. O-700, O-702 and O-703 be consolidated.

During the hearing held on July 31, 2019, the Court in Division consolidated CTA Crim Case No. O-700 with CTA Crim Case Nos. O-702 and O-703; and granted petitioner a period of ten (10) days to file comment/opposition to respondent's *Motions to Quash Informations.*[14]

On August 6, 2019, petitioner filed its consolidated *Comment (On Accused's Motion to Quash Information)*[15] arguing that tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation

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[9] Division Docket (CTA Crim. Case No. O-700), pp. 377 to 380; Division Docket (CTA Crim. Case No. O-702), pp. 375 to 378; Division Docket (CTA Crim. Case No. O-703), pp. 374 to 377.

[10] Division Docket (CTA Crim. Case No. O-700), p. 381; Division Docket (CTA Crim. Case No. O-702), p. 379; Division Docket (CTA Crim. Case No. O-703), p. 378.

[11] Division Docket (CTA Crim. Case No. O-700), pp. 388 to 389; Division Docket (CTA Crim. Case No. O-702), pp. 385 to 386; Division Docket (CTA Crim. Case No. O-703), pp. 383 to 384.

[12] Division Docket (CTA Crim. Case No. O-700), pp. 390 to 394; Division Docket (CTA Crim. Case No. O-702), pp. 387 to 391; Division Docket (CTA Crim. Case No. O-703), pp. 385 to 389.

[13] Division Docket (CTA Crim. Case No. O-700), pp. 395 to 397.

[14] *Minutes of the Hearing* held on July 31, 2019, Division Docket (CTA Crim. Case No. O-700), pp. 402 to 403.

[15] Division Docket (CTA Crim. Case No. O-700), pp. 627 to 631.

and punishment does not exceed five (5) years; that CTA Crim. Case Nos. O-700, O-702 and O-703 have not yet prescribed because the prescriptive period is suspended by reason of the timely filing of the Joint-Complaint Affidavit before the Department of Justice (DOJ) for preliminary investigation and said prescription will only run again if the Court dismisses the case on ground not constituting jeopardy.

On August 9, 2019, petitioner filed its *Pre-Trial Brief*[16].

In the Resolution[17] dated August 14, 2019, the Court in Division submitted respondent's *Motions to Quash Informations* for resolution; while the arraignment of the accused and the Pre-Trial of the cases set on August 14, 2019 were cancelled until further orders from the Court in Division.

On November 8, 2019, the Court in Division rendered the assailed Resolution[18], granting respondent's *Motions to Quash Informations*; and dismissing CTA Crim. Cases Nos. O-700, O-702, and O-703, on the ground of prescription.

On November 29, 2019, petitioner filed its *Motion for Reconsideration (of the Resolution dated November 8, 2019)*[19]. In the assailed Resolution[20] dated February 6, 2020, the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

Petitioner then filed the instant *Petition for Review* before the Court *En Banc* on March 4, 2020.[21]

In the Resolution dated June 5, 2020,[22] petitioner was directed to submit a certified true copy of Revenue Delegation Authority Order (RDAO) No. 2-2007, within five (5) days from notice. On June 23, 2020, petitioner filed its *Compliance*[23], submitting the certified true copy of RDAO No. 2-2007.

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[16] Division Docket (CTA Crim. Case No. O-700), pp. 633 to 652.
[17] Division Docket (CTA Crim. Case No. O-700), p. 655.
[18] Division Docket (CTA Crim. Case No. O-700), pp. 657 to 661; EB Docket, pp. 16 to 20.
[19] Division Docket (CTA Crim. Case No. O-700), pp. 662 to 669; EB Docket, pp. 21 to 28.
[20] Division Docket (CTA Crim. Case No. O-700), pp. 672 to 675; EB Docket, pp. 30 to 33.
[21] EB Docket, pp. 1 to 15.
[22] EB Docket, pp. 40 to 41.
[23] EB Docket, pp. 42 to 43.

In the Resolution dated July 7, 2020,[24] respondent was directed to file his comment to the instant *Petition for Review* within ten (10) days from receipt thereof. On October 19, 2020, respondent filed his *Comment (On the PETITION FOR REVIEW dated November 29, 2019)*.[25]

In the Resolution dated October 29, 2020, the instant case was deemed submitted for decision.[26] Hence, this Decision.

THE ISSUES

In the instant *Petition for Review*, petitioner invokes the following grounds, *to wit*:

> **"I.**
>
> **The Honorable CTA First Division erred when it applied Section 281 of the NIRC and the pronouncement in the Lim case when it dismissed CTA Criminal Case Nos. O-700, O-702 and O-703 on the ground of prescription.**
>
> **II.**
>
> **The Honorable CTA First Division erred when it failed to consider that the filing of criminal complaint for preliminary investigation with the DOJ tolled or interrupted the running of the prescriptive period.**
>
> **III.**
>
> **The Honorable CTA First Division erred when it strictly applied the five (5) day rule to file a Motion for Reconsideration under the Revised Guidelines for Continuous Trial of Criminal Cases resulting in the denial of the Petitioner-Plaintiff's Motion for Reconsideration dated November 29, 2019."**[27]

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[24] EB Docket, pp. 49 to 50.
[25] EB Docket, pp. 51 to 56.
[26] EB Docket, pp. 58 to 59.
[27] EB Docket, p. 5

Petitioner's arguments:

Petitioner argues that the Court in Division erred when it applied Section 281 of the NIRC of 1997, as amended, and the pronouncement in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[28] (or Lim case).

It is petitioner's position 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 does not exceed five (5) years.

Further, petitioner insists that the Court in Division committed reversible error when it failed to consider that the filing of the criminal complaint for preliminary investigation with the DOJ tolled or interrupted the running of the prescriptive period.

Petitioner posits that the Supreme Court has long established the issue that the running of the prescriptive period is suspended by the filing of the complaint with the prosecutor's office. According to petitioner, the five-year prescription began to run when the BIR filed the Complaint Affidavit of the investigating Revenue Officers with the DOJ on January 30, 2014 and that the said filing tolled the running of the five (5) year prescription pursuant to Section 1, Rule 110 of the Revised Rules of Criminal Procedure, as amended.

Petitioner likewise claims that the Court in Division erred when it denied petitioner's *Motion for Reconsideration* without passing on the merits of the case. Allegedly, petitioner's *Motion for Reconsideration* should not be dismissed based on stringent adherence to the rules on the period to appeal under A.M. No. 15-06-10-SC as the same admits of exception circumstance in consideration of substantial justice.

Respondent's counter- arguments:

Respondent claims that the instant *Petition* was filed in violation of Rule 43 of the Rules of Court and Rule 9 of the RRCTA.

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

According to respondent, the assailed Resolution dated November 8, 2019 has attained finality in view of petitioner's failure to file a motion for reconsideration within the time provided in the rules.

A judgment that lapses into finality becomes immutable and unalterable; and that the same can neither be modified nor disturbed by courts in any manner even if the purpose of the modification is to correct perceived errors of fact or law.

Further, respondent insists that prescription began when the case was referred to the DOJ for preliminary investigation.

THE COURT *EN BANC'S* RULING

The instant *Petition for Review* is bereft of merit.

The Court in Division's Resolution dated November 8, 2019 has become final and unappealable in view of petitioner's failure to file its Motion for Reconsideration on time.

In the assailed Resolution, the Court in Division denied petitioner's *Motion for Reconsideration* for having been filed out of time.

Petitioner, however, insists that its *Motion for Reconsideration* should not be dismissed based on stringent adherence to the rules on the period to appeal as the same admits of exception circumstance in consideration of substantial justice.

We sustain the ruling of the Court in Division.

A.M. No. 15-06-10-SC or the *Revised Guidelines for Continuous Trial of Criminal Cases* (or Revised Guidelines) which became effective on September 1, 2017 and is applicable to all newly-filed criminal cases in the Court of Tax Appeals, pertinently provides as follows:

"REVISED GUIDELINES FOR CONTINUOUS TRIAL OF CRIMINAL CASES

I. Applicability

The Revised Guidelines for Continuous Trial of Criminal Cases (Revised Guidelines) **shall apply to all newly-filed criminal cases**, including those governed by Special Laws and Rules, in the First and Second Level Courts, the Sandiganbayan and **the <u>Court of Tax Appeals</u>** as of effectivity date. The Revised Guidelines shall also apply to pending criminal cases with respect to the remainder of the proceedings.

Unless otherwise specifically provided herein, the Revised Guidelines shall not apply to criminal cases filed under the Rule on Summary Procedure.

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III. Procedure

xxx xxx xxx

2. Motions

xxx xxx xxx

(c) *Meritorious Motions.* - Motions that allege plausible grounds supported by relevant documents and/ or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious motions, such as:

xxx xxx xxx

v. **Motion to quash information** on the grounds that the facts charged do not constitute an offense, lack of jurisdiction, extinction of criminal action or liability, or double jeopardy under Sec. 3, par. (a), (b), (g), and (i), Rule 117;

xxx xxx xxx

> The **motion for reconsideration of the resolution of a meritorious motion shall be filed within a <u>non-extendible period of five (5) calendar days</u> from receipt of such resolution**, and the adverse party shall be given an equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. Thereafter, the motion for reconsideration shall be resolved by the court within a non-extendible period of five (5) calendar days from the expiration of the five (5)-day period to submit the comment.
>
> **Motions that do not conform to the requirements stated above shall be considered unmeritorious and shall be denied outright.**"

Based on the foregoing, a motion for reconsideration of the resolution of a meritorious motion should be filed within a non-extendible period of five (5) days from receipt of the adverse resolution; otherwise, the said motion shall be denied outright.

In the instant case, respondent separately filed three (3) *Motions to Quash Informations*[29] arguing that the government's right to file an action has already prescribed. Acting on the said *Motions*, the Court in Division issued the assailed Resolution dated November 8, 2019 granting respondent's *Motions* and dismissing the subject consolidated cases on the ground of prescription.

Considering that respondent's *Motions to Quash Informations* are <u>meritorious motions</u> pursuant to Item III(2)(c)(v) of the Revised Guidelines, petitioner has a non-extendible period of five (5) days from receipt of the adverse Resolution to file its motion for reconsideration.

It is not disputed that petitioner received the assailed Resolution on November 14, 2019[30]. Hence, petitioner had period of

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[29] Division Docket (CTA Crim. Case No. O-700), pp. 390 to 394; Division Docket (CTA Crim. Case No. O-702), pp. 387 to 391; Division Docket (CTA Crim. Case No. O-703), pp. 385 to 389.

[30] par. 1, *Motion for Reconsideration (of the Resolution dated November 8, 2019),* Division Docket (CTA Crim. Case No. O-700), p. 662; *Notice of Resolution*, Division Docket CTA (Crim. Case No. O-700), p. 656.

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five (5) days therefrom or **until November 19, 2019**, to file its motion for reconsideration before the Court in Division. However, since the subject *Motion for Reconsideration* was filed only on November 29, 2019, the same was clearly filed out of time.

Time and again, it has been held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[31] The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[32]

Correspondingly, in view of petitioner's failure to file a timely motion for reconsideration, the assailed Resolution dated November 8, 2019 has therefore become final and unappealable.

As regards petitioner's assertion that the period to appeal admits of exception in consideration of substantial justice, the same deserves scant consideration.

It must be stressed that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[33]

Accordingly, the Court *En Banc* finds no reversible error committed by the Court in Division in denying petitioner's motion for reconsideration.

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[31] *CIR vs. Fort Bonifacio Development Corporation,* G.R. No. 167606, August 11, 2010.
[32] *Ibid.*
[33] *Lazaro, et al. vs. Court of Appeals, et al.,* G.R. No. 137761, April 6, 2000.

The subject criminal violations had already prescribed.

Even assuming *arguendo* that petitioner's *Motion for Reconsideration* before the Court in Division was filed on time, the instant case should still be denied on the ground of prescription.

In the assailed Decision, the Court in Division ruled that the right of the government to institute the cases against petitioner had already prescribed.

On the other hand, petitioner argues that the running of the prescriptive period was interrupted by the filing of the criminal complaint for preliminary investigation with the DOJ. Further, petitioner insists 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 does not exceed five (5) years.

We find petitioner's arguments untenable.

Section 281 of NIRC of 1997, as amended, governs the prescriptive period for the filing of criminal actions under the Tax Code, to wit:

> "SEC. 281. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribed 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."
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> xxx xxx xxx *(Emphasis supplied)*

Based on the foregoing, the five-year prescriptive period for criminal violation under the NIRC of 1997, commences to run from the day of the violation, 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. It 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.

In interpreting the commencement of the prescriptive period under Section 281 of the NIRC of 1997, as amended, the Lim case, is instructive, to wit:

> "Not only that. The Solicitor General stresses that Section 354 speaks not only of the discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "**<u>and</u>**" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and punishment." **In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation 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 1971 were indorsed to the Fiscal's Office for preliminary investigation. **<u>Inasmuch as a preliminary investigation is a proceeding for investigation</u> and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced**.
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> xxx xxx xxx
>
> ...**As Section 354 stands in the statute book (and to this day has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the <u>period from the discovery and institution of judicial proceedings for its investigation and punishment, up</u>**

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

Based on the foregoing, the Supreme Court considered both the fact of discovery of the offense and the institution of judicial proceeding for investigation and punishment as significant in determining the commencement of the five-year prescriptive period under Section 354 of the 1939 Tax Code. It is likewise provided that the preliminary investigation is considered a proceeding for investigation and punishment of a crime which commences the period for prescription. It is further stated 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, up to the filing of the information in court does not exceed five (5) years.

It bears noting that the wording of Section 354 of the 1939 Tax Code is identical to that of Section 281 of the NIRC of 1997, as amended. Accordingly, the foregoing interpretation given by the Supreme Court to the former provision still holds true to the present case.

Further, in Revenue Memorandum Circular (RMC) No. 101-90[34] November 26, 1990, it is provided that the five-year prescriptive period under the Tax Code does not commence to run by a mere fact of discovery. This must be coupled by judicial proceedings, such as

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[34] SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 (now Section 281) of the Tax Code.*

preliminary investigation before the Prosecutor's Office, before the five-year limitation period begins to run.

Applying Section 281 of the NIRC of 1997, as amended, and taking into consideration the *Lim* case and RMC No. 101-90, We sustain the Court in Division's finding that the filing of the Complaint Affidavit with the DOJ on January 30, 2014[35] constitutes as the judicial proceeding for investigation which commences the five-year prescriptive period. Accordingly, counting five (5) years from January 30, 2014, the prescriptive period lapsed on January 30, 2019. Clearly, the prescription had already set in when petitioner separately filed the three *Informations*[36] before the Court in Division on March 18, 2019.

With respect to petitioner's contention that criminal cases are practically imprescriptible, the same deserves scant consideration.

As explained in the *Lim case*, while tax cases are practically imprescriptible, such doctrine only applies 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".*** Conversely, where the period from the institution of judicial proceedings for the investigation until the filing of the information in court exceeds five (5) years, then the government's right to institute criminal action has prescribed. As discussed earlier, considering that in the instant case, the period from the filing of the preliminary investigation with the DOJ up to the filing of the *Informations* before the Court in Division exceeded five (5) years, petitioner is barred from instituting the subject tax cases against respondent.

Such being the case, We see no cogent reason to deviate from the findings and conclusions of the Court in Division in dismissing CTA Crim. Case Nos. O-700, O-702 and O-703 on the ground of prescription.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the

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[35] Division Docket (CTA Crim. Case No. O-700), pp. 170 to 171.

[36] Division Docket (CTA Crim. Case No. O-700), pp. 8 to 10; Division Docket (CTA Crim. Case No. O-702), pp. 8 to 10; Division Docket (CTA Crim. Case No. O-703), pp. 8 to 10.

assailed Resolutions dated November 8, 2019 and February 6, 2020, both rendered by the Court in Division in CTA Crim. Case Nos. O-700, O-702 and O-703 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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