REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA EB CRIM. NO. 143** (CTA Crim. Case No. O-943)
	Present:
-versus-	**RINGPIS-LIBAN,** *Acting P.J.,* **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: OCT 10 2025 4:30

x- x

DECISION

ANGELES, J.:

Before the Court *En Banc* is a *Verified Petition for Review (of the Resolutions dated August 04, 2023 and February 05, 2024)* [Verified Petition] filed by petitioner People of the Philippines on March 6, 2024, seeking the reconsideration of the Resolutions dated August 4, 2023 and February 5, 2024, dismissing the Petition from Relief of Judgment and denying the Motion for Reconsideration, respectively, with respondent's *Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 05 February 2024)* filed on April 24, 2024.

THE PARTIES

Petitioner Bureau of Internal Revenue (BIR), a government agency mandated to collect national revenue taxes, is represented by Commissioner of Internal Revenue (CIR) through Revenue Officers Emerita D. Tan, Carine P. Balmeo, Dominador A. Callangan, Arnel A. Boco and Adelina P. See, all of legal ages, Filipinos, and with postal address at c/o Rm. 704, BIR National Office Building, BIR Road, Diliman, Quezon City, where the summons, notices and other legal processes of this Court may be served.[1]

Respondent Ziegfried Loo Tian is registered with BIR 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 4, Tondo, Manila, where the summons, notices and other legal processes of this Court may be served.[2]

ANTECEDENT FACTS

Proceedings before the Court in Division

On October 26, 2022, petitioner filed an Information against respondent Loo Tian for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, and docketed as CTA Crim. Case No. O-943, which states:

> That on or before July 20, 2010, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, filed his Quarterly Value-Added Tax Return (VAT return), for second (2nd) quarter of taxable year 2010, knowing fully well that he is required by the law and by the rules and regulations to supply correct and accurate information within the period mentioned therein, did then and there, willfully, unlawfully and feloniously failed [sic] to supply correct and accurate information in his VAT return 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 willful failure to supply correct and accurate information resulted to the damage and prejudice of the Government in the

---

[1] *Rollo*, pp. 2-3, *Verified Petition for Review (of the Resolutions dated August 04, 2023 and February 05, 2024).*
[2] *Id.*, p. 3.

> amount of Three Million Two Hundred Ninety Three Thousand Three Hundred Twelve Pesos and Eighty Eight Centavos (Php 3,293,312.88), exclusive of interests, penalties and surcharges.
>
> CONTRARY TO LAW.[3]

On February 1, 2023, the Court in Division issued a Resolution dismissing the Information due to prescription. The pertinent portion of the Resolution states:

> **WHEREFORE**, premises considered, CTA Crim. Case No. O-943 filed against the accused, **Ziegfried Loo Tian**, is hereby **DISMISSED** on the ground of prescription.
>
> **SO ORDERED.**[4]

On March 30, 2023, the Court in Division issued a Resolution ordering that entry of judgment be issued since no appeal was filed by any of the parties.[5]

Petitioner received the Entry of Judgment on May 3, 2023 while the Department of Justice (DOJ) received the same on May 23, 2023.[6]

On July 3, 2023, petitioner posted a Petition for Relief from Judgment praying that the Resolution dated February 1, 2023 be reversed.[7]

On August 4, 2023, the Court in Division denied petitioner's Petition for Relief from Judgment for being filed out of time. The dispositive portion states:

> **WHEREFORE**, premises considered, the *Petition for Relief from Judgment* is **DISMISSED**.
>
> **SO ORDERED.**[8]

On October 10, 2023, petitioner posted a Motion for Reconsideration praying that the assailed Resolution be set aside.[9]

In the Resolution dated February 5, 2024, the Court denied the Motion for Reconsideration reiterating that the Petition for Relief from

---

[3] Docket (Crim. Case No. O-943), pp. 5-18.
[4] Division Resolution dated February 1, 2023, *Id.*, pp. 213-220.
[5] Division Resolution dated March 30, 2023, *Id.*, p. 223.
[6] *Supra* note 4, at p. 224.
[7] *Id.*, pp. 226-229.
[8] *Id.*, pp. 266-272.
[9] *Id.*, pp. 273-287.

ᏦN

Judgment was filed out of time. The dispositive portion of which is read as follows:

> **WHEREFORE**, premises considered, the *Motion for Reconsideration (of the Resolution dated August 4, 2023)* is **DISMISSED**.
>
> **SO ORDERED.**[10]

Hence, the instant Verified Petition was filed.

Proceedings Before the Court En Banc

On March 6, 2024, petitioner filed the Verified Petition. On April 24, 2024, respondent filed his *Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 05 February 2024).*[11]

In a Resolution dated May 3, 2024, the Court required the petitioner to submit a certified true copy of the assailed Resolution dated February 5, 2024 within five (5) days from notice.[12] The Court also required the respondent to file his Comment on the Verified Petition within ten (10) days from notice.[13]

On May 13, 2024, petitioner filed a Compliance attaching the certified true copy of the Resolution dated February 5, 2024.[14] On the other hand, on May 24, 2024, respondent filed a Manifestation indicating that the Comment he filed on April 24, 2024 was intended for EB-Crim-143 and not EB Crim-130.[15]

On June 13, 2024, the Court issued a Resolution indicating the following court actions: (1) note the Compliance filed by petitioner; (2) note the Manifestation filed by respondent's counsel; and (3) note the Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 05 February 2024) filed by respondent on April 24, 2024. Accordingly, the Court submitted the same for decision.[16]

Thereafter, on July 12, 2024, respondent filed his *Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 05 February 2024).* The same was noted in a Resolution dated August 6, 2024.

---

[10] *Supra* note 9, at pp. 292-296.
[11] *Rollo*, pp. 109-128.
[12] *Id.*, p. 97.
[13] *Id.*
[14] *Id.*, pp. 98-100.
[15] *Id.*, pp. 131-132.
[16] *Id.*, p. 134.

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

I. THE CTA-DIVISION ERRED WHEN IT DENIED THE MOTION FOR RECONSIDERATION ALLEGEDLY FOR HAVING ALREADY LOST ITS JURISDICTION OVER THE CASE

II. THE CTA-DIVISION ERRED WHEN IT FOUND NO PROBABLE CAUSE TO CHARGE RESPONDENT LOO TIAN[17]

Petitioner's arguments

Petitioner argues that the negligence of the counsel does not bind the client where the negligence of counsel amounts to a deprivation of due process. Petitioner claims that the DOJ's negligence in allowing the judgment to become final without informing petitioner about the receipt of the adverse judgment should not be binding on petitioner. Petitioner also argues that prescription has not set in and that the filing of the complaint with the DOJ triggered the interruption of the prescriptive period.

Respondent's counter-arguments

Respondent submits that the findings and conclusions of the Court in Division should be affirmed. Respondent maintains that the period for violation of Section 255 of the 1997 NIRC, as amended, had already prescribed and the Court did not err in dismissing the Information for failure of the prosecution to timely file the same in Court. In addition, respondent also asserts that the Information was correctly dismissed because the delay of the prosecution of more than ten (10) years from the filing of the complaint to the filing of the information violated his right to speedy disposition of cases.

Ruling of the Court

The Verified Petition is dismissed.

---

[17] Assignment of Error/s, *Verified Petition for Review (of the Resolutions dated August 04, 2023 and February 05, 2024)*, *Rollo*, p. 4.

The Verified Petition for Review was timely filed

On February 20, 2024, petitioner received the Court in Division's Resolution dated February 5, 2024, denying its Motion for Reconsideration.

Petitioner had fifteen (15) days from February 20, 2024, or until March 6, 2024, within which to file its petition for review with the Court *En Banc*, pursuant to Section 9(b), Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA).

On March 6, 2024, the petition posted the Verified Petition. Thus, the Verified Petition was timely filed.

Petitioner does not have the legal authority to file the Verified Petition for Review

The Office of the Solicitor General (OSG) is the proper party to file the instant Verified Petition. Section 10, Rule 9 of the RRCTA provides:

> **Rule 9**
> **PROCEDURE IN CRIMINAL CASES**
>
> xxx
>
> Section 10. *Solicitor General as Counsel for the People and government officials sued in their official capacity.* – **The Solicitor General shall represent the People of the Philippines** and government official sued in their official capacity **in all cases brought to the Court in the exercise of its appellate jurisdiction. The former may deputize the legal officer of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code** or other laws enforced by the Bureau of Internal Revenue, or the legal officers of the Bureau of Customs in case brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their official capacity; **Provided however, such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General**. (Emphasis supplied)

In view of the above, the OSG is the proper party to represent the People in criminal cases brought to the Court *En Banc*. While the OSG may deputize the legal officers of the BIR, they still remain under the direct control and supervision of the OSG.

In *Gonzales v. Chavez*,[18] the Supreme Court emphasized that:

> From the historical and statutory perspectives detailed earlier in this ponencia, **it is beyond cavil that it is the Solicitor General who has been conferred the singular honor and privilege of being the "principal law officer and legal defender of the Government."** One would be hard put to name a single legal group or law firm that can match the expertise, experience, resources, staff and prestige of the OSG which were painstakingly built up for almost a century. (Emphasis supplied)

This was also affirmed in *Civil Service Commission v. Asensi*,[19] where the Supreme Court held that the Solicitor General has the primary responsibility to appear for the government in appellate proceedings, it being the principal law officer and legal defender of the government.

In *JCLV Realty & Development Corp. v. Mangali*,[20] the Supreme Court discussed that:

> The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private offended party is restricted only to the civil liability. **In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the OSG. The private offended party may not take such appeal, but may only do so as to the civil aspect of the case.** (Emphasis supplied)

Similarly, in Revenue Memorandum Circular (RMC) No. 25-2010, the BIR published the full text of the Memorandum of Agreement (MOA) between the OSG and the BIR. In the MOA, the BIR recognized that the OSG has the primary responsibility to appear for the government in appellate proceedings. In addition, Section B(2)(b) of the said MOA requires the BIR to periodically submit a list of handling lawyers to the OSG for purposes of deputation, for cases appealed to the Court *En Banc*.[21]

---

[18] G.R. No. 97351, February 4, 1992
[19] G.R. No. 160657, June 30, 2004.
[20] G.R. No. 236618, August 27, 2020.
[21] *Supra* note 4, at p. 81.

V

In *People v. Tuyay*,[22] the Supreme Court held that the BIR Special Prosecutors have to attach copies of RMC 25-2010 and deputization orders from the OSG to prove that they were duly deputized and authorized by the OSG to file the petition for review.

In this case, the Verified Petition was filed by the Deputized Special Prosecutors of the BIR without any attached deputization orders from the OSG. Petitioner only attached a copy of the MOA between the OSG and the BIR.[23] Since petitioner failed to show proof of deputization by the OSG, petitioner does not have the legal authority to file the Verified Petition.

In *Cu v. Ventura*,[24] where the offended party appealed the acquittal of the accused in a criminal case, the Supreme Court reiterated that:

> In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, **an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible**. (Emphasis applied)

Considering that the Verified Petition was not filed by the OSG, the same shall be dismissed and the Court did not properly acquire jurisdiction over the instant case. Hence, the assailed Resolutions of the Court in Division have become final and executory.

The Resolution dated February 1, 2023 had already attained finality

In *National Power Corporation v. NLRC*,[25] the Supreme Court emphasized that:

> **The lawyer deputized and designated as "special attorney-OSG" is a mere representative of the OSG and the latter retains supervision and control over the deputized lawyer**. The OSG continues to be the principal counsel for the National Power Corporation, and as such, the Solicitor General is the party entitled to be furnished copies of orders, notices and decisions. **The deputized special attorney has no legal authority to**

[22] G.R. No. 206579, December 1, 2021.
[23] *Rollo*, pp. 80-83.
[24] G.R. No. 224567, September 26, 2018.
[25] G.R. Nos. 90933-61, May 29, 1997.

> **decide whether or not an appeal should be made.** (Emphasis supplied)

This was affirmed in *Republic of the Philippines v. Viaje*,[26] where the Supreme Court held that:

> The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." **But it is likewise settled that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.** In this case, records show that it was the OSG that first entered an appearance in behalf of the Republic; hence, it remains the principal counsel of record. **The appearance of the deputized counsel did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record.** Thus, the RTC properly acted within bounds when it relied on the rule that it is the notice to the OSG that is binding. (Emphasis supplied)

As such, the Supreme Court has consistently ruled that the service of decisions on the OSG is the proper basis for computing the reglementary period for filing of appeals and for determining whether a decision had attained finality.[27]

The same principles should also be applied in cases where the DOJ is the principal counsel and the BIR Special Prosecutors are deputized by the DOJ. Section 3, Rule 9 of the RRCTA provides that:

> Section 3. *Prosecution of criminal actions.* – **All criminal actions shall be conducted and prosecuted under the direction and control of the public prosecutor.** In criminal actions involving violation of the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, and violations of the Tariff and Customs Code or other laws enforced by the Bureau of Customs, **the prosecution may be conducted by their respective duly deputized legal officers.** (Emphasis supplied)

---

[26] G.R. No. 180993, January 27, 2016.
[27] *Republic of the Philippines v. Court of Appeals*, G.R. No. L-48327, August 21, 1991; *The Director of Lands v. Medina*, G.R. No. 41968, February 15, 1995; *Republic of the Philippines v. The Register of Deeds of Quezon*, G.R. No. 73974, May 31, 1995.

u

Given the above, even if the BIR Special Prosecutors are duly deputized by the DOJ, the DOJ still exercises supervision and control over the deputized BIR lawyer. Thus, the service of decisions on the DOJ is the proper basis for computing the reglementary period for filing of appeals and for determining whether a decision had attained finality.

Section 9(b), Rule 9 of the RRCTA states that:

> Section 9. *Appeal; period to appeal.* –
>
> xxx
>
> (b) **An appeal to the Court *en banc* in criminal cases 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)

In this case, the Resolution dated February 1, 2023, which dismissed the case due to prescription, was received by the DOJ on February 15, 2023.[28] Since no appeal was filed by the DOJ, the Resolution had become final and executory.

In *Gatmaytan v. Dolor*,[29] the Supreme Court stressed that:

> **Once a judgment becomes final, the court or tribunal loses jurisdiction, and any modified judgment that it issues, as well as all proceedings taken for this purpose are null and void.**
>
> This elementary rule finds basis in "public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law." Basic rationality dictates that there must be an end to litigation. Any contrary posturing renders justice inutile, reducing to futility the winning party's capacity to benefit from the resolution of a case. (Emphasis supplied)

Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the

---

[28] *Supra* note 4, at p. 221.
[29] G.R. No. 198120, February 20, 2017.

Highest Court of the land.[30] Considering that the Resolution dated February 1, 2023 had already attained finality, it is already immutable and unalterable.

The Petition for Relief from Judgment was correctly denied by the Court in Division

In *Philippine National Bank v. Spouses Victor*,[31] the Supreme Court laid down the following requirements in order for a petition for relief from judgment to prosper:

> First, no adequate remedy such as a motion for new trial or an appeal is available to the petitioner. Second, the petitioner was prevented through fraud, accident, mistake, or excusable negligence from availing said remedies. Third, the petitioner should comply with the twin-period of within 60 days from the time the petitioner learned of the judgment or final order, and not more than six months after the judgment or final order was entered, in filing the petition for relief from judgment.

In this case, petitioner failed to meet the requirements enumerated above. As discussed, petitioner, as represented by the DOJ, had the remedy of appeal when it received the Resolution dated February 1, 2023 on February 15, 2023. However, the DOJ opted not to appeal the case anymore.

In *Tuason v. Court of Appeals*,[32] the Supreme Court reiterated that:

> A petition for relief from judgment is an equitable remedy; it is allowed only in exceptional cases where there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost thru inexcusable negligence.

When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of

---

[30] *People v. Santiago y Magtuloy* citing *People v. Layag*, G.R. No. 228819, July 24, 2019.
[31] G.R. No. 207377, July 27, 2022.
[32] G.R. No. 116607, April 10, 1996.

the trial court, and he was not prevented by fraud, accident, mistake, or excusable negligence from filing such motion or taking such appeal, he cannot avail of the remedy of petition for relief.[33] Since petitioner had the remedy of appeal, which was not availed of, it can no longer avail of petition for relief from judgment.

Even assuming petitioner may avail of the remedy of petition for relief, the petition was filed out of time. Section 3, Rule 38 of the Rules of Court (ROC) provides that:

Rule 38
RELIEF FROM JUDGMENTS, ORDERS, OR OTHER PROCEEDINGS

xxx

> Section 3. *Time for filing petition; contents and verification.* – A petition provided for in either of the preceding sections of this Rule must be verified, **filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken**; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (Emphasis supplied)

The double period provided under Section 3, Rule 38, i.e., (1) 60 days after petitioner learns of the judgment, final order, or other proceeding to be set aside; and (2) not more than six months after such judgment or final order was entered, or such proceeding was taken, is jurisdictional and must be strictly complied with. Thus, a petition for relief from judgment filed beyond the reglementary period is dismissed outright.[34] The twin-period is mandatory, jurisdictional, and must be strictly complied with, otherwise, the petition may be dismissed outright.[35]

Case law instructs that when a client is represented by counsel, notice to counsel is notice to client. In the absence of a notice of withdrawal or substitution of counsel, the court will rightly assume that the counsel of record continues to represent their client. This is so because notice to counsel is an effective notice to the client, while notice to the client and not their counsel is not notice in law. Receipt of

---

[33] *Philippine Amanah Bank v. Contreras*, G.R. No. 173168, September 29, 2014.
[34] *Duremdes v. Jorilla*, G.R. No. 234491, February 26, 2020.
[35] *Supra* note 31.

V

notice by the counsel of record is the reckoning point of the reglementary period.[36]

From the foregoing, the petitioner should have complied with the following periods specified under Section 3, Rule 38 of the ROC:

(1) Until **April 15, 2023** or within sixty (60) days after February 15, 2023, the date when petitioner, through the DOJ, learned of the Resolution dated February 1, 2023.[37] Since April 15, 2023 fell on a Saturday, petitioner had until April 17, 2023 to file the petition; and

(2) Until **September 9, 2023** since the judgment was entered on March 9, 2023.[38] However, September 9, 2023 fell on a Saturday, thus, the petitioner had until **September 11, 2023** as the last day to file the petition.

Here, the petitioner filed the Petition for Relief from Judgment on July 3, 2023. Therefore, the Court in Division did not err in dismissing the petition since the petition was belatedly filed.

Once a judgment attains finality, it becomes immutable and unalterable. Let it be stressed that the right to appeal is neither a natural right nor a part of due process, it being merely a statutory privilege which may be exercised only in the manner provided by law.[39]

The Court in Division did not err in ruling that the crime has already prescribed

Even if the Court were to take cognizance of the Verified Petition, the Court in Division did not err in ruling that the crime has already prescribed. Section 281 of the NIRC, as amended, provides that:

> **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.

---

[36] *Mendez v. Sorongon* (Notice), G.R. No. 248379, June 26, 2023.
[37] Notice of Resolution dated February 8, 2023, *supra* note 4, at p. 212.
[38] Entry of Judgment, *supra* note 4, at p. 225.
[39] *Costelo v. People*, G.R. No. 234880, April 4, 2018.

> 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.

Clearly, the prescriptive period for the violation of Section 255 of the NIRC, as amended, is five (5) years. However, the issue of what interrupts the prescriptive period remains in contention. In *Lim, Sr. v. Court of Appeals*,[40] the Supreme Court ruled that:

> The Solicitor General stresses that Section 354 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 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 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.** (Emphasis supplied)

While the case was decided before the effectivity of the NIRC, the provision on the prescription of crimes under the old Tax Code is identical to the provision under the 1997 NIRC, as amended. Section 354 of the 1939 NIRC provides that:

> **SEC. 354.** ***Prescription for Violations of Any Provisions of this Code.*** - All violations of any provision of this Code shall prescribe after five (5) years.

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

> 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.

Therefore, the Supreme Court ruled that where the date of the commission of the violation is unknown, prescription shall begin to run from the date of discovery of its commission until an Information is filed in Court. In other words, the filing of the Complaint Affidavit with the DOJ does not toll the running of the prescriptive period.

However, in the recent case of *People v. Consebido,*[41] which was promulgated on April 2, 2025, the Supreme Court held that the filing of the criminal complaint before the DOJ tolls the running of the prescriptive period:

> 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.

---

[41] G.R. No. 258563, April 2, 2025.

> **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.** (Emphasis supplied)

The crux of the matter lies in how the ruling shall be applied prospectively.

In *Austria v. AAA*,[42] the Supreme Court held that the guidelines laid down in that case shall apply prospectively but it was silent as to how the ruling shall be applied prospectively. However, in *AAA261422 v. XXX261422*,[43] the Supreme Court did not apply the doctrine it laid down in *Austria v. AAA*[44] to the case since the latter was still pending before the Supreme Court at the time the *Austria* doctrine was promulgated, thus the Supreme Court stressed that:

> Clearly, what the Petition aims to appeal, based on its contents, is not AAA261422's pecuniary interest civilly speaking, but the substantive merits determinative of XXX261422's criminal liability. Ordinarily, therefore, her admitted failure to obtain the OSG's participation in her appeal of the criminal aspect of the cases a quo justifies the appellate court's dismissal of her petition, as instructed by *Austria*. But as aptly stressed during the deliberations by Associate Justice Mario V. Lopez, the esteemed ponente of *Austria*, **the guidelines therein apply prospectively and does not therefore cover the present case as the same was resolved only by the appellate court on June 25, 2020 prior to the finality of *Austria* on March 24, 2023**. To be sure, private complainant has legal standing to question the criminal aspect of the case considering the divergent decisions prior to *Austria*. **She cannot be faulted when she relied on old jurisprudence allowing her to assail the criminal aspect of the case through a petition for certiorari.** (Emphasis supplied)

In *People v. Pacificador*,[45] where at the time the accused committed the crime the prescriptive period was ten (10) years and was subsequently amended to fifteen (15) years when the case was already filed in court, the Supreme Court held that:

> It can be gleaned from the Information in this case that respondent Pacificador allegedly committed the crime charged "on or about and during the period from December 6, 1975 to January 6, 1976." Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, provides that the offenses committed under the said statute shall prescribe in fifteen (15) years. It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses

[42] G.R. No. 205275, June 28, 2022.
[43] G.R. No. 261422, November 13, 2023.
[44] *Supra* note 43.
[45] G.R. No. 139405, March 13, 2001.

> punishable under the said statute was only ten (10) years. **The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.**
>
> xxx xxx xxx
>
> It bears emphasis, as held in a number of cases, that **in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.** The said legal principle takes into account the nature of the law on prescription of crimes which is an act of amnesty and liberality on the part of the state in favor of the offender. (Emphasis supplied)

Here, the Supreme Court applied the prescriptive period at the time the offense was committed, in accordance with the settled doctrine that in the interpretation of the law on prescription of crimes that which is more favorable to the accused is to be adopted.

Additionally, the Supreme Court has held time and again that:

> **When a doctrine of this 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**. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.[46] (Emphasis supplied)

All of the foregoing supports the conclusion that when the Supreme Court declared that the ruling in *Consebido* shall apply prospectively, it intended that the doctrine would be applied to cases not yet filed with the courts as of April 2, 2025. This interpretation is more favorable to the accused.

In the Resolution dated February 1, 2023, the Court dismissed the Information pursuant to the *Lim* doctrine which was the prevailing doctrine at that time.[47] Since the *Consebido* doctrine was promulgated on April 2, 2025, the Court in Division did not err when it applied the *Lim* doctrine in dismissing the Information.

---

[46] *People v. Jabinal*, G.R. No. L-30061, February 27, 1974; *People v.* Martinado, G.R. No. 92020, October 19, 1992; Co *v. People*, G.R. No. 100776, October 28, 1993.
[47] *Rollo*, p. 53.

n

WHEREFORE, premises considered, the instant Petition for Review is **DISMISSED** for lack of merit. The Resolutions dated August 4, 2023 and February 5, 2024, rendered in CTA Crim. Case No. O-943, are hereby **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

(I join J. Villena's CDO)
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

ON LEAVE
CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB Crim. No. 143
(CTA Crim. Case No. O-943)

Present:

- versus -

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

ZIEGFRIED LOO TIAN,
Respondent.

Promulgated:
OCT 10 2025 4:30

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the present "Verified Petition for Review (of the Resolutions dated August 04, 2023 and February 05, 2024)" (**Verified Petition for Review**) for lack of merit, based on the following findings:

(1) Petitioner People of the Philippines (**petitioner**), represented by the alleged Deputized Special Prosecutors of the Bureau of Internal Revenue (**BIR**) without proof of deputization by the Office of the Solicitor General (**OSG**), lacks legal authority to file the present Verified Petition for Review;

(2) The Third Division's Resolution dated 01 February 2023, which dismissed the case due to prescription, has already attained finality and is thus immutable and unalterable, since the Department of Justice (**DOJ**), which exercises supervision

and control over deputized BIR Special Prosecutors, failed to timely appeal; and

(3) The Special Third Division correctly denied petitioner's Petition for Relief from Judgment for being filed out of time and for lack of merit.

However, I respectfully disagree with the affirmance of the Third Division's assailed Resolutions dated 04 August 2023 and 05 February 2024 (**assailed Resolutions**), which held that the government's right to prosecute the subject criminal action against respondent Ziegfried Loo Tian (**respondent**) had already prescribed. This ruling rests on the premise that the Supreme Court's declaration in *People of the Philippines v. Ulysses Palconit Consebido*[1] (**Consebido**) — that the five (5)-year prescriptive period for criminal tax offenses is tolled by the filing of a complaint before the Department of Justice (**DOJ**), rather than by the filing of an Information before the Court — constitutes a supposed "new doctrine on prescription" that may only be applied prospectively.

Contrary to the view espoused in the *ponencia*, 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**

---

[1] G.R. No. 258563, 02 April 2025 [Per J. Inting, *En Banc*].

[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].

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 the *ponencia* 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 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**

---

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].
6 A.M. No. 08-8-7-SC, 01 March 2022.
7 Supra at note 2.

> **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. <u>**The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense.**</u> 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]
>
> ...

From the foregoing, **it is clear that the ruling in *Lim, Sr.*** — which the Court of Tax Appeals (**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*:

---

8 Supra at note 1; Citation omitted, italics in the original text, emphasis and underscoring supplied.

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.

...
[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.

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 <u>the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period</u>. 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."

<u>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,</u> **<u>this new rule shall apply prospectively</u>**.

> **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.

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**

---

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

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

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 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**

---

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.

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.

***Third*, I am of the opinion that this Court would err in invoking 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**

---

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].

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.

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.**"
>
> ...

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

---

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

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, 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

---

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].

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 2022 case of *Mamerto Austria v. AAA and BBB*[26] (**Austria**) cannot be used to support the prospective application of *Consebido* in this case, as that case dealt exclusively with the **procedural standing of private complainants to appeal or question criminal judgments**. The guidelines laid down therein were expressly given prospective application because they constituted **new procedural directives** clarifying inconsistent jurisprudence on legal personality in criminal appeals. In contrast, *Consebido* did not formulate a new rule but merely clarified the existing law on prescription of criminal tax offenses. Its interpretation pertains to the tolling of prescriptive periods, which is procedural in nature and subject to retroactive application to pending cases. To apply *Austria*'s prospective approach to *Consebido* would therefore be a classification error, as it would erroneously equate a new procedural guideline on legal standing with a clarificatory ruling on an existing procedural rule. Such an extension would unduly restrict the State's right to prosecute by artificially limiting the retroactive reach of a doctrine that, by its very nature, binds all actions not yet finally resolved.

Lastly, a similar observation can be deduced (*i.e.*, that it cannot be used to support the prospective application of *Consebido* in this case) from the 2001 case of *People of the Philippines v. Arturo F. Pacificador*[27] (**Pacificador**), where the Supreme Court refused to apply retroactively the longer prescriptive period introduced by Section 11 of Republic Act (**RA**) No. 3019[28], as amended by Batas Pambansa Blg. 195[29], as this would have prejudiced therein accused by extending his criminal liability beyond the period recognized under the law prevailing at the time of commission. The Supreme Court applied the principle of *pro reo*, noting that statutes of limitation in criminal cases should be liberally construed in favor of the accused and that retroactive application of the longer prescriptive period would effectively violate the constitutional protection against *ex post facto* laws. The **prospective application** of the *Pacificador* ruling thus flowed from its **substantive impact on the accused's vested right to invoke prescription as a defense.**

---

[26] G.R. No. 205275, 28 June 2022 [Per J., M.V. Lopez, *En Banc*].
[27] G.R. No. 139405, 13 March 2001 [Per J., De Leon, Jr., Second Division].
[28] Anti-Graft and Corrupt Practices Act.
[29] AN ACT AMENDING SECTIONS EIGHT, NINE, TEN, ELEVEN, AND THIRTEEN OF REPUBLIC ACT NUMBERED THIRTY HUNDRED AND NINETEEN, OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT.

In contrast with *Pacificador*, 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 255[30] of the NIRC of 1997, as amended, or willful failure to supply correct and accurate information in his quarterly value-added tax (**VAT**) return for the second (2nd) 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 of the JCA and the subsequent filing of the Information before the Third Division constitutes a violation of respondent's right to speedy disposition of cases, thereby still warranting the dismissal of this case.

---

[30] **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

All told, I vote to (1) **PARTIALLY GRANT** petitioner's Verified Petition for Review, (2) **REVERSE** and **SET ASIDE** the Special Third Division's assailed Resolutions dated 04 August 2023 and 05 February 2024, in CTA Crim. Case No. O-943, 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