REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellant,

- versus -

SKI CONSTRUCTION GROUP, INC., CLAUDIO B. ALTURA, ALBERT ALTURA and CORNELIO V. CAEDO,
Accused-Appellees.

CTA Crim. Case No. **A-17**

For: Violation of Section 255 in relation to Section 253(d) and 256 of the NIRC of 1997, as amended

Members:

BACORRO-VILLENA, *Acting Chairperson*, *and*
CUI-DAVID, *JJ.*

Promulgated:
DEC 19 2023
4:n p.n.

x - x

RESOLUTION

BACORRO-VILLENA, J.

For the Court's resolution is plaintiff-appellant's "Motion for Reconsideration (to the Decision dated July 17, 2023)"[1] (**MR**) filed on 04 August 2023[2], with accused-appellee Albert Altura's (**Altura**'s) "Comment/Opposition on Plaintiff-Appellant's Motion for Reconsideration"[3] (**Comment/Opposition**) filed on 13 September 2023.[4]

As will be recalled, the Court rendered a decision in the above-captioned case. The dispositive portion of the assailed Decision[5] reads:

1 Division Docket, pp. 159-166.
2 Received by the Court on 15 August 2023.
3 Division Docket, pp. 170-173.
4 Received by the Court on 18 September 2023.
5 Division Docket, pp. 147-158.

> ...
>
> **WHEREFORE**, the foregoing considered, plaintiff-appellant's appeal filed on 11 November 2022 is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated 03 June 2021 and 30 September 2022, respectively, rendered by the Regional Trial Court of Makati City, Branch 59 in RTC Criminal Case No. 20-00206 entitled *People of the Philippines v. SKI Construction Group, Inc., Claudio B. Altura, Albert Altura, and Cornelio V. Caedo* are **AFFIRMED**.
>
> **SO ORDERED.**
>
> ...

In maintaining the Regional Trial Court of Makati City, Branch 59's (**RTC's**) decision, this Court agreed that the criminal action against accused-appellees has already prescribed based on the Supreme Court's ruling in *Emilio Lim Sr., et al. v. Court of Appeals, et al.*[6] (**Lim**). In the assailed Decision, this Court thus, held:

> ...
>
> In applying the above provision, the Supreme Court in *Lim* explained the difference in treatment between tax evasion with a clear commission date and an offense, the commission of which was only subsequently discovered, to wit:
>
> > ...
> >
> > **On behalf of the Government, the Solicitor General counters that the crime of filing false returns can be considered "discovered" only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained.** It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment and therefore required the petitioners to pay P1,237,190.55 in deficiency taxes that the tax infractions were discovered.
> >
> > Not only that. The Solicitor General stresses that Section 354 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

6 G.R. Nos. L-48134-37, 18 October 1990.

> punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.
>
> But according to the Lim spouses, that argument had precisely been raised, considered and found without merit in the case of *People vs. Ching Lak* which had perfunctorily dismissed the Government's position in this wise:
>
>> Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, *suffice it to state that the theory is not supported by any provision of law and we need not elucidate thereon.*
>
> 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.
>
> ...

It is clear from Section 281 of the NIRC of 1997, as amended, and in the Supreme Court's discussions in *Lim* that, as regards the prescription of tax evasion, cases involving clandestine commissions of tax evasion and those which have an ascertainable date of commission (such as in the case of willful failure to pay) have varying reckoning dates.

...

On the other hand, in cases where the date of commission is readily available, prescription shall begin to run from the crime is committed. If a taxpayer thus fails to file a tax return on the date it is due, the crime of tax evasion, through failure to file a return, is immediately committed upon the lapse of the due date. The same can be said when after an assessment for deficiency taxes has been instituted by the BIR and a final demand has been made upon the taxpayer to pay its deficiencies on a certain date, the taxpayer fails or refuses to pay regardless without perfecting an appeal. In such case, the commission of willful failure to pay is already certain since the BIR's demand has already become final, executory and no longer subject to judicial review.

In the case at bar, although it is alleged that accused-appellee SKI failed to file a correct or accurate return, the BIR made no finding of

> fraud. Instead, it pursued an audit of accused-appellee SKI until the former issued a FAN on 13 January 2014.
>
> As alleged in the Joint Complaint-Affidavit, filed before the Department of Justice (**DOJ**), the FAN demanded that payment be made within 30 days from the date of the FAN or until 12 February 2014. Applying the principles in *Lim*, when the period of payment had lapsed without any payment being made, a perceived offense of tax evasion due to willful failure to pay was apparently committed by accused-appellee SKI and its responsible officers on 13 February 2014. Counting five (5) years from the date of the apparent commission of the said offense, an Information for the same should have been filed with the RTC by 13 February 2019. Therefore, when the Information was filed on 15 January 2020, the offense charged in the Information had already prescribed pursuant to Section 281 of the NIRC of 1997, as amended.[7]
>
> ...

In the present MR, plaintiff-appellee raises the following arguments: *first*, the criminal action has not yet prescribed following the case of *People of the Philippines v. Virgilio B. Castillo*[8] (**Castillo**), a case previously promulgated by this Court sitting *En Banc*; and, *second*, the allegations in the complaint satisfies the elements of tax evasion.

On the other hand, in the Comment/Opposition, accused-appellee Altura agrees completely with the Court's findings that the offense charge has already prescribed.

We resolve.

Plaintiff-appellant's arguments are a mere rehash of those already raised before both the RTC and this Court. In other words, these issues were already fully considered and found to be lacking merit.

As regards plaintiff-appellant's reliance on *Castillo*, the Court reiterates that Its decisions promulgated either through one of its divisions or sitting *en banc* are not binding precedent. In the assailed Decision, the Court, therefore, stated:

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7 Citations omitted, emphasis, italics and

8 CTA EB Crim. No. 053, 08 June 2021.

> ...
>
> The principle of *stare decisis* as a tool statutory construction only applies to decisions reached by the Supreme Court as explained *United Coconut Planters Bank v. Spouses Walter Uy and Lily Uy* where the Supreme Court stated that, "...the doctrine of *stare decisis* becomes operative only when judicial precedents are set by pronouncements of this Court...". On this note, plaintiff-appellant is reminded of Article 8 of the New Civil Code of the Philippines (**NCCP**) which states, "[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." Such judicial decisions however, must be interpreted to mean only those rendered by the Supreme Court, being the final arbiter of all legal questions properly brought before it.[9]
>
> ...

As a mere reiteration of our previous findings would be an exercise in futility, the Court is inclined to deny summarily the instant motion following the case of *Ortigas & Company Limited Partnership v. Tirso Velasco et al.*[10] (**Ortigas**) wherein the Supreme Court ruled:

> ...
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, ART. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
>
> ...

Having failed to present its arguments in a new light, the same time having been squarely addressed in the assailed Decision, plaintiff-

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9 Citations omitted, emphasis and italics in the original text.

10 G.R. No. 109645, 04 March 1996.

appellant's MR must necessarily fail as nothing contained therein warrants further consideration by the Court.

WHEREFORE, the foregoing considered, plaintiff-appellant's "Motion for Reconsideration (to the Decision dated July 17, 2023)" filed on 04 August 2023 is hereby **DENIED**. Accordingly, the Court's Decision dated 17 July 2023 is hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice