

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

PEOPLE OF THE PHILIPPINES, CTA *EB* Crim. No. 146
Petitioner, (CTA Crim. Case No.
O-994)

Members:

-versus-

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

**STAR ASSET MANAGEMENT
NPL INC., MARK S.
FRONDOSO AND JOSEPH
RYAN R. SYCIP,**

Promulgated:

MAY 21 2025

Respondents.

X- - - - - X

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ assailing the Resolutions dated September 26, 2023² (first assailed *Resolution*) and February 12, 2024³ (second assailed *Resolution*), issued by the Third Division of this Court (Court in Division), which respectively dismissed the case and denied petitioner's motion for reconsideration.

¹ *En Banc (EB)* Docket, pp. 8-36.

² *Id.* at 44-53.

³ *Id.* at 70-73.

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THE PARTIES

Petitioner, People of the Philippines, is represented by the Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City, and may be served with summons and other legal processes through counsel at the Legal Division, Revenue Region No. 8B-South NCR, 2/F BIR Building, No. 313 Sen. Gil Puyat Ave., Makati City.⁴

Respondent Star Asset Management NPL Inc. (Star Asset) is a domestic corporation primarily engaged in the business of investing in or acquiring non-performing assets of financial institutions. It is registered with the BIR with Tax Identification No. 006-587-868-000 with last known address, based on BIR records, at Unit 3A Orion Building, 11th Avenue, Fort Bonifacio, Taguig City. Star Asset is one of the accused in CTA Crim. Case No. O-994.⁵

Respondents Mark S. Frondoso (Frondoso) and Joseph Ryan R. Sycip (Sycip) are the President and Treasurer, respectively, of Star Asset, based on the General Information Sheet (GIS) for the year 2017, with the last known address also at Unit 3A Orion Building, 11th Avenue, Fort Bonifacio, Taguig City. They are among the accused in CTA Crim. Case No. O-994.⁶

THE FACTS

On December 4, 2015, Letter of Authority (LOA) SN: eLA201200035448 (AUDM35/005532/2015) was issued, authorizing the examination of the books of accounts and other accounting records of Star Asset for all internal revenue taxes for taxable year (TY) 2013. The LOA was served on and received by Star Asset's authorized representative on January 6, 2016.⁷

Pursuant to the LOA, a First Request for Presentation of Records was issued and served on Star Asset on February 3, 2016.⁸


⁴ EB Docket, p. 9, Petition for Review, par. 1.

⁵ *Id.* at par. 2.

⁶ *Id.* at par. 3.

⁷ EB Docket, p. 74, Petition for Review, Annex "D".

⁸ *Id.* at 75, Petition for Review, Annex "E".

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On July 30, 2016, Star Asset executed a Waiver of Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code (NIRC), extending the period to assess until December 31, 2017.⁹

Then, the Commissioner of Internal Revenue (CIR), through Clavelina S. Nacar, then Officer-in-Charge (OIC) Regional Director of Revenue Region No. 8-Makati (RD Nacar), caused the issuance of Preliminary Assessment Notice (PAN)¹⁰ and Details of Discrepancies¹¹ on December 16, 2016, informing Star Asset of its assessed deficiency taxes for TY 2013. The PAN was served on and received by Star Asset on December 20, 2016.¹²

On January 11, 2017, RD Nacar issued a Formal Assessment Notice (FAN)¹³ and Details of Discrepancies¹⁴ against Star Asset, assessing and demanding payments of its tax liabilities of ₱47,161,037.13 for TY 2013, covering deficiency income tax and expanded withholding tax (EWT), inclusive of surcharge and interest. The FAN was served on Star Asset on January 13, 2017.¹⁵

Star Asset failed to file a protest within the thirty (30)-day period from receipt of FAN.¹⁶ Consequently, a Preliminary Collection Letter,¹⁷ a Final Notice Before Seizure,¹⁸ and a Demand Before Suit¹⁹ were issued and served on Star Asset on December 8, 2017,²⁰ December 19, 2017,²¹ and February 18, 2021,²² respectively.

On June 25, 2021, Revenue Officers Ellen Gay C. Teoxon, Rhodora C. Balazo, and Mohammad Ali Rodi filed a Joint Complaint-Affidavit with the Department of Justice (DOJ) against respondents for willful failure to pay tax under Section 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended.²³

⁹ EB Docket, p. 76, Petition for Review, Annex "F".

¹⁰ *Id.* at 77-78 Petition for Review, Annex "G".

¹¹ *Id.* at 79-81, Petition for Review, Annex "G-1".

¹² *Id.* at 10, Petition for Review, par. 10.

¹³ *Id.* at 82-83, Petition for Review, Annex "H".

¹⁴ *Id.* at 84-85, Petition for Review, Annex "H-1".

¹⁵ *Id.* at 11, Petition for Review, par. 11.

¹⁶ *Id.* at 11, Petition for Review, par. 12.

¹⁷ *Id.* at unpagd, Petition for Review, Annex "I".

¹⁸ *Id.* at 89, Petition for Review, Annex "J".

¹⁹ *Id.* at 91-92, Petition for Review, Annex "K".

²⁰ *Id.* at 11, Petition for Review, par. 13.

²¹ *Id.* at 11, Petition for Review, par. 14.

²² *Id.* at 11, Petition for Review, par. 15.

²³ *Id.* at 96-100, Petition for Review, Annex "N".

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On March 9, 2022, the DOJ issued a Resolution ²⁴ approving the filing of an Information against respondents for violating Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended. On December 6, 2022, the Information²⁵ was filed and raffled to the First Division, with the accusatory portion stating:

That on or about 18 February 2021, in Taguig City, and within the jurisdiction of this Honorable Court, accused MARK S. FRONDOSO and JOSEPH RYAN R. SYCIP, being the President and Treasurer, respectively, of Star Asset Management NPL Inc., which is engaged in the business of investing in and acquiring non-performing assets of financial institutions, with Tax Identification No. 006-587-868-000, and who is required by law, rules and regulations to file an accurate income tax return and to pay the correct income tax, did then and there knowingly, willfully and unlawfully fail to pay the deficiency income tax in the amount of TWENTY-NINE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND ONE HUNDRED SIXTY-ONE and 24/100 (P29,989,161.24) PESOS, exclusive of surcharge and interest, for taxable [year] 2013, despite receipt of the Preliminary Assessment Notice, with Details [of] Discrepancies, on 20 December 2016, and Formal Assessment Notice, with Details of Discrepancies, and Assessment Notice, on 13 January 2017, including prior and post-notices and demands to pay, the last of which being the Demand Before Suit dated 14 February 2021, and without filing any protest, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.

CONTRARY TO LAW.

On December 13, 2022, respondents filed a *Motion for Consolidation* ²⁶ and a *Motion to Dismiss/Motion to Quash Information -with- Motion to Hold Issuance or Quash Warrants of Arrest*.²⁷

On January 25, 2023, the First Division directed petitioner to amend the caption of the Information and to submit, within five days from notice, the original or certified true copies of the following:

- (1) Prosecutor's Resolution dated March 9, 2022;
- (2) Investigation Data Form;
- (3) Letter Referral dated June 25, 2021;

²⁴ *Id.* at 131–137, Petition for Review, Annex “O”; Division Docket, pp. 7–13.

²⁵ Division Docket, pp. 5–6.

²⁶ *Id.* at 128–133.

²⁷ *Id.* at 135–165.

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- (4) Joint Complaint-Affidavit dated June 25, 2021; and
- (5) Joint Counter-Affidavit dated September 20, 2021.

The resolution of respondents' *Motion for Consolidation and Motion to Dismiss/Motion to Quash Information -with- Motion to Hold Issuance or Quash Warrants of Arrest*, both filed on December 13, 2022, was held in abeyance pending petitioner's compliance.²⁸

On February 7, 2023, petitioner filed its *Compliance (On the Resolutions of the Honorable Court of Tax Appeals dated 25 January 2023 and 01 February 2023)*,²⁹ which the First Division deemed sufficient compliance on March 13, 2023.³⁰ Petitioner was granted five days from notice to file a comment/opposition to respondents' *Motion for Consolidation and Motion to Dismiss/Motion to Quash Information -with- Motion to Hold Issuance or Quash Warrants of Arrest*. However, petitioner failed to file a comment on respondents' *Motion to Dismiss/Motion to Quash Information -with- Motion to Hold Issuance or Quash Warrants of Arrest*.³¹

Pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated May 23, 2023, the case was transferred to the Court in Division on June 2, 2023.³²

On June 6, 2023, the Court in Division ruled that the Information was defective, as the facts charged therein did not constitute an offense. The Court in Division directed petitioner to file an Amended Information and held in abeyance the resolution of respondents' *Motion to Hold Issuance or Quash Warrants of Arrest*.³³

On June 26, 2023, petitioner filed a *Compliance (On the Resolution of the Honorable Court of Tax Appeals dated 06 June 2023)*.³⁴



²⁸ *Id.* at 168–169, Resolution.

²⁹ *Id.* at 170–171.

³⁰ *Id.* at 204–205, Resolution.

³¹ *Id.* at 206, Records Verification.

³² *Id.* at 216, Notice of Resolution.

³³ *Id.* at 209–215, Resolution.

³⁴ *Id.* at 218–221.

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On June 29, 2023 and July 10, 2023, respondents filed a *Manifestation -with- Urgent Motion*³⁵ and a *Supplemental Motion to Dismiss/Motion to Quash Information -with- Motion for Partial Reconsideration [Re: Resolution dated 6 June 2023]*,³⁶ respectively.

On August 7, 2023, petitioner filed a *Comment/Opposition (to the Supplemental Motion to Dismiss/Motion to Quash Information with Motion for Partial Reconsideration dated 10 July 2023)*.³⁷

On September 26, 2023, the Court in Division issued the first assailed *Resolution* with the following dispositive portion:

WHEREFORE, the Court **RESOLVES** to:

1. **GRANT** accused's Motion to Dismiss/ Motion to Quash Information -with- Motion to Hold Issuance or Quash Warrants of Arrest and Supplemental Motion to Dismiss/Motion to Quash Information;

2. **DENY** accused's Motion for Partial Reconsideration [Re: Resolution dated 6 June 2023];

3. **QUASH** the original and amended Information in CTA Crim. Case No. O-994;

4. **DISMISS** CTA Crim. Case No. O-994 solely because:
(1) the facts charged therein do not constitute an offense; and
(2) prescription of criminal action; and,

5. **MOOT** accused's Manifestation with Urgent Motion.

SO ORDERED.

On October 27, 2023, petitioner filed a *Motion for Reconsideration (of the Resolution dated 26 September 2023)*,³⁸ while respondents filed their *Comment/Opposition [Re: Motion for Reconsideration dated 27 October 2023]*³⁹ on November 13, 2023.

On February 12, 2024, the Court in Division issued the second assailed *Resolution* denying petitioner's motion for reconsideration. The dispositive portion reads:

³⁵ *Id.* at 222–226.

³⁶ *Id.* at 228–256.

³⁷ *Id.* at 261–280.

³⁸ *Id.* at 295–308.

³⁹ *Id.* at 311–330.



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WHEREFORE, the prosecution's Motion for Reconsideration (Of the Resolution dated 26 September 2023) posted on October 27, 2023 is **DENIED**.

SO ORDERED.

On March 5, 2024, petitioner filed a *Motion for Extension of Time (to File Petition for Review)*,⁴⁰ which the Court *En Banc* granted on March 21, 2024.⁴¹ Petitioner was given an additional 15 days from March 6, 2024, or until March 21, 2024, to file the petition for review.

On March 21, 2024, petitioner filed this *Petition for Review*.⁴²

On July 4, 2024, petitioner was directed to submit the Affidavit of Service of the *Petition for Review* within five days from notice.⁴³

On July 31, 2024, petitioner filed a *Motion to Admit (with Compliance)*.⁴⁴ which the Court *En Banc* granted in a Resolution dated December 9, 2024.⁴⁵ Respondents were then directed to file comment within ten days from notice.

Respondents filed a *Motion for Extension of Time to File Comment/Opposition* ⁴⁶ on December 23, 2024, which was granted given the filing of respondents' *Comment/Opposition (Re: Petition for Review dated 21 March 2024)*⁴⁷ on January 2, 2025.⁴⁸

On January 23, 2025, the Court *En Banc* submitted the case for decision.⁴⁹

THE ISSUES

Petitioner submits the following issues for the Court *En Banc*'s resolution:


⁴⁰ *EB* Docket, pp. 1–4.

⁴¹ *Id.* at 7-A, Notice of Resolution.

⁴² *Supra* note 1.

⁴³ *EB* Docket, p. 152, Notice of Resolution.

⁴⁴ *Id.* at 154–157.

⁴⁵ *Id.* at 162–164.

⁴⁶ *Id.* at 165–168.

⁴⁷ *Id.* at 172–220.

⁴⁸ *Id.*, unpagd, Notice of Resolution dated January 23, 2025.

⁴⁹ *Id.*, unpagd.

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Whether or not the Court *a quo* erred in dismissing the information docketed as CTA Crim. Case No. O-994 on the ground that the Amended Information is still defective and insufficient.

Whether or not the Court *a quo* erred in dismissing the information docketed as CTA Crim. Case No. O-994 on the ground of prescription.

Petitioner's arguments:

Petitioner contends that the Amended Information is not defective, as it adequately charges respondents with an offense and informs them of the nature and cause of the accusation. Petitioner further asserts that the original Information, filed on December 6, 2022, was submitted within the prescriptive period, as the period was tolled when the complaint for preliminary investigation was filed with the DOJ on June 25, 2021.

Petitioner also argues that where rigid application of the rules results in a manifest miscarriage of justice, technicalities should be disregarded to resolve the case. Additionally, petitioner points out that the assessment has become final, executory, and unappealable due to respondents' failure to file a protest within 30 days from receiving the FAN. Furthermore, despite receiving the assessment notices, respondents willfully failed to pay the delinquent taxes.

Respondents' arguments:

Respondents argue that this *Petition* should be dismissed outright, as the first assailed *Resolution* has become final and binding due to petitioner's belated filing of the motion for reconsideration.

Respondents assert that the five-year prescriptive period under Section 281 of the NIRC of 1997, as amended, prescribed on February 13, 2022, while the Information was only filed with the Court in Division on December 6, 2022.

Respondents claim that the *Petition* should still be denied even if prescription had not set in because the LOA was served on Star Asset beyond the required 30-day period from its issuance. They argue that the Information is defective, as it fails



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to specifically establish that Frondoso and Sycip are the responsible officers of Star Asset. They also argue that the Information does not mention Star Asset, the corporate taxpayer allegedly liable for the income tax, nor does it contain any allegation establishing the company's involvement.

Respondents further contend that the Amended Information is defective because it fails to allege an ultimate fact that would demonstrate their willfulness in violating the NIRC at the time of the alleged offense. Finally, they assert that they cannot be held liable under Section 255 of the NIRC of 1997, as amended, because the PAN, FAN, and Demand Before Suit were improperly served, violating their right to due process.

THE COURT *EN BANC*'S RULING

The Court in Division properly denied petitioner's motion for reconsideration as it was filed out of time.

The second assailed *Resolution* held that petitioner's motion for reconsideration should have been filed within a non-extendible period of five days from receipt of the resolution, as mandated by Section 2(c), Part III of the Revised Guidelines for Continuous Trial of Criminal Cases ⁵⁰ (Continuous Trial Guidelines), *viz.*:

III. Procedure

....

2. Motions

....

(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:

.....



⁵⁰ A.M. No. 15-06-10-SC (Approved: April 15, 2017).

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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;

....

The motion for reconsideration of the resolution of a meritorious motion shall be filed within **a non-extendible period of five (5) calendar days** 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. ...

Motions that do not conform to the requirements stated above shall be considered unmeritorious and shall be denied outright. (*Emphasis supplied*)

Here, petitioner received the first assailed *Resolution* on October 12, 2023.⁵¹ Under the Continuous Trial Guidelines, the motion for reconsideration should have been filed on or before October 17, 2023. However, petitioner belatedly filed the motion only on October 27, 2023.⁵² Consequently, the Court in Division ruled that the motion warrants outright dismissal.

While the Supreme Court has, in certain instances, liberally applied procedural rules in meritorious cases, as when it would result in the outright deprivation of [a party's] liberty or property,⁵³ the circumstances here do not warrant such leniency. The dismissal of this case on procedural grounds does not result in an unjust deprivation of a party's liberty or property. In contrast, the assailed *Resolutions* serve justice in favor of respondents for their liability to be punished—to be deprived of their liberty—has ceased.⁵⁴

The extinction of criminal liability due to prescription under Section 281 of the NIRC of 1997, as amended, protects accused from prolonged legal uncertainty and ensures the timely administration of justice.

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⁵¹ EB Docket, p. 54, *Motion for Reconsideration (of the Resolution dated 26 September 2023)*, par. 1.

⁵² *Id.* at 295–308.

⁵³ *Cañaveras, et al. v. Judge Gamboa-Delos Santos, et al.*, G.R. No. 241348, July 5, 2022 [Per J. Inting, *En Banc*]; *Perez v. Sandiganbayan, et al.*, G.R. No. 245862, November 3, 2020 [Per J. Caguioa, First Division], citing *Curammeng v. People*, G.R. No. 219510, November 14, 2016 [Per J. Perlas-Bernabe, First Division]; *Malixi v. Baltazar*, G.R. No. 208224, November 22, 2017 [Per J. Leonen, Third Division].

⁵⁴ *People, et al. v. Lacson* (Resolution) G.R. No. 149453, April 1, 2003 [Per J. Callejo, Sr., *En Banc*], citing *People v. Ross*, 156 N.E. 303 (1927).

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Thus, the Court in Division correctly denied petitioner's motion for reconsideration for failure to file it on time. As a result, the first assailed *Resolution* has attained finality, precluding further consideration of this case. Accordingly, the instant *Petition for Review* is dismissible on that ground alone.

The government's right to prosecute the case has already prescribed.

Even assuming the *Motion for Reconsideration* was timely filed, the Court in Division correctly dismissed the case on the ground of prescription.

Under Section 281 of the NIRC of 1997, as amended, all violations of the Tax Code prescribe after five years:

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 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. (*Emphasis supplied*)

When does prescription start?

In *Lim, Sr. v. Court of Appeals (Lim)*,⁵⁵ the Supreme Court clarified that the prescriptive period for willful refusal to pay assessed deficiency taxes begins upon the finality of the assessment and the taxpayer's willful failure to settle the deficiency within the allotted period:

Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' refusal to pay the deficiency income taxes due, again both parties are in accord that by their nature, the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers. Petitioners maintain that

⁵⁵ G.R. Nos. 48134-37, October 18, 1990 [Per C.J. Fernan, Third Division].



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the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.

We hold for the Government. Section 51 (b) of the Tax Code provides:

(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.* (Emphasis on the original)

Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. **The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period.** The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (*Emphasis supplied*)

Thus, *Lim* establishes that the prescriptive period in cases of willful failure to pay begins only upon the taxpayer's receipt of the final notice and demand, followed by the refusal to pay.

Lim's doctrinal value remains binding in cases involving violations of the Tax Code, despite being decided before the enactment of the current Tax Code. This is because the principles established in *Lim* are based on the interpretation of prescription and the accrual of a cause of action, which are applicable under both the old and current versions of the Tax Code. The amendments to the Tax Code did not alter the prescription rules for tax-related offenses but instead reinforced the five-year prescriptive period under Section 281, as explained in *Lim*.

Accordingly, the Court's reliance on *Lim* in interpreting the prescriptive period for tax offenses remains consistent with both the spirit and letter of the law, ensuring that taxpayers are not



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subjected to indefinite tax liabilities and that the government exercises its prosecutorial powers within a reasonable time.⁵⁶

Guided by the principles in *Lim*, the cause of action of the BIR accrued upon service of the final notice and demand for payment of deficiency taxes on respondents. In this case, respondents received the FAN dated January 11, 2017, on January 13, 2017.⁵⁷ They had 30 days, or until February 12, 2017, to file a protest but failed to do so. As a result, the assessment became final, executory, and demandable⁵⁸ on **February 13, 2017**, in accordance with Section 228 of the NIRC of 1997, as amended.⁵⁹

When is prescription interrupted?

As held in *Lim*, the prescriptive period is interrupted only upon the filing of the Information in court:

.... As Section 354 (now Section 281) stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, **up to the filing of the information in court does not exceed five (5) years.** (*Emphasis supplied*)

Similarly, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) states that the filing of an Information in court interrupts the running of prescription:

SEC. 2. *Institution of criminal actions.* – All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the tariff and Customs Code and other laws enforced by the

⁵⁶ See *Cagang v. Sandiganbayan, et al.*, G.R. Nos. 206438 and 206458, July 31, 2018 [Per J. Leonen, *En Banc*].

⁵⁷ *EB* Docket, p. 11, Petition for Review, par. 11.

⁵⁸ *Id.* at 11, Petition for Review, par. 12.

⁵⁹ SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

....
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. (*Emphasis supplied*)

Bureau of Customs, the Commissioner of Customs must approve their filing.

The institution of the criminal action shall interrupt the running of the period of prescription. (*Emphasis supplied*)

However, in this case, the Information was filed with the Court only on December 6, 2022, beyond the five-year prescriptive period, which expired on **February 13, 2022**. Therefore, petitioner’s right to prosecute the criminal action has been barred by prescription. To illustrate, the timeline of events pertaining to prescription is as follows:

Date	Event
January 13, 2017	FAN served
February 13, 2017	Finality of assessment (<i>start of 5-year prescription</i>)
June 25, 2021	Complaint filed with the DOJ
February 13, 2022	Expiration or end of the 5-year prescriptive period
December 6, 2022	Information filed with the CTA (<i>beyond the 5-year prescriptive period</i>)

Given the clear lapse of the prescriptive period, the dismissal of the case on the ground of prescription of the offense is proper and must be upheld.

The dismissal of the criminal case on the ground of prescription renders the issue of whether the Amended Information is defective or insufficient moot and academic.

Petitioner also disputes the finding in the assailed *Resolutions* that the Amended Information is defective or insufficient for failure to allege facts constituting an offense. However, because the case has already been dismissed due to prescription, any resolution on this issue would serve no practical purpose. Any further discussion is unnecessary, as the matter is now moot and academic. This was elaborated in *Sze v. Bureau of Internal Revenue, viz.*:⁶⁰

My

⁶⁰ G.R. No. 210238, January 6, 2020 [Per J. Reyes, Jr., First Division].

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The Court dismisses the petition for being moot and academic.

In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, the Court defined moot and academic as:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced. (Citation omitted)

Here, **the dismissal of the criminal cases on the ground of prescription rendered the issue on the propriety of the CA's decision in finding probable cause as moot and academic.** Thus, **the Court finds it appropriate to abstain from passing upon the merits of this petition where legal relief is neither needed nor called for.** (*Emphasis supplied*)

Consequently, the Court finds it unnecessary to review the propriety of the assailed *Resolutions*, which held that the Amended Information failed to establish the offense charged.

Aside from being time-barred due to petitioner's late filing of its motion for reconsideration, which rendered the first assailed *Resolution* final, the case was properly dismissed on the ground of prescription, extinguishing respondents' criminal liability and making any further legal relief unwarranted.

WHEREFORE, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

DECISION

CTA EB Crim. No. 146 (CTA Crim. Case No. O-994)

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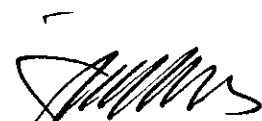
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WE CONCUR:

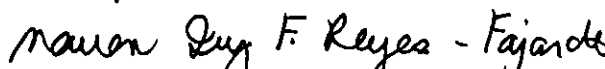

ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(Inhibited)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice



DECISION

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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



REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB Crim. No. 146
(CTA Crim. Case No. O-994)

Present:

- versus -

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

STAR ASSET MANAGEMENT
NPL INC., MARK S. FRONDOSO
AND JOSEPH RYAN R. SYCIP,
Respondents.

Promulgated:

MAY 21 2025

x

x

SEPARATE OPINION

BACORRO-VILLENA, J.:

I agree with the majority's conclusion that the Court in Division did not err in denying petitioner's Motion for Reconsideration (MR) for being filed out of time. The Revised Guidelines for Continuous Trial on Criminal Cases' (**Revised Guidelines**) unequivocally provides that "[t]he motion for reconsideration of the resolution of a meritorious motion shall be filed within **a non-extendible period of five (5) calendar days from receipt of such resolution.**" Thus, when the MR was filed on 27 October 2023, *i.e.*, fifteen (15) days from petitioner's receipt thereof, the same was filed out of time.

I disagree, however, with the Court *En Banc*'s ruling that the government's right to prosecute the instant case has already prescribed.

At the outset, it is undeniable that the majority’s application of the ruling in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*² (**Lim, Sr.**), which was understood to have ruled that, in criminal tax cases such as the present one, the prescriptive period is tolled only upon the filing of the Information in Court, deviates from the general rule on prescription applicable to criminal actions for offenses requiring preliminary investigation—whether under the Revised Penal Code³ (**RPC**) or special laws—that the prescriptive period is interrupted by the filing of a complaint with the fiscal’s office for purposes of preliminary investigation against the accused.

Section 281⁴ of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which governs the prescriptive period for criminal tax actions, expressly states that the prescriptive period shall be interrupted when “**proceedings are instituted against the guilty persons.**” Whether the government’s right to prosecute the instant case has already prescribed is turns upon the meaning of “instituted” as it appears in Section 281 of the NIRC of 1997, as amended.

In its common acceptance, the word “institute” means “to set going”.⁵ Black’s Law Dictionary defines “institute” as “to begin or start; commence.”⁶ In keeping with these, I respectfully submit that “institute” means the filing of the complaint, if applicable, before the Department of Justice (**DOJ**), since the same effectively starts the criminal machinery in motion.

Moreover, a review of the established jurisprudence interpreting similar provisions⁷ under both the **RPC**, as amended, and Act

² G.R. Nos. L-48134-37, 18 October 1990.

³ AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS.

⁴ 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.** (Emphasis and underscoring supplied)

⁵ See also Merriam-Webster Dictionary. “institute.” available at <<https://www.merriam-webster.com/dictionary/institute>> (last accessed on 25 April 2025).

⁶ Black’s Law Dictionary. p. 2336 (8th ed., 2009).

⁷

RPC, as amended	Act No. 3326, as amended
ART. 91. <i>Computation of prescription of offenses.</i> — The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and shall be interrupted by the filing of the complaint or information , and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are	SEC. 2. 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

No. 3326⁸, as amended, which respectively govern the prescription of felonies and violations of special laws, supports my view.

In the 1967 case of *People of the Philippines, et al. v. Ascencion P. Olarte*⁹ (**Olarte**), which was later cited in *People of the Philippines v. Mateo A. Lee, Jr.*¹⁰ (**Lee, Jr.**) and *People of the Philippines v. Ma. Theresa Pangilinan*¹¹ (**Pangilinan**), the Supreme Court settled divergent views as to the **effect of filing a complaint with the Municipal Trial Court for purposes of preliminary investigation** on the prescriptive period of the offense. The High Court therein held that the filing of the complaint for purposes of preliminary investigation **interrupts the period of prescription of criminal responsibility**. It explicitly adopted the ordinary sense of the word “instituted,” ruling that it includes the initiation of proceedings for preliminary investigation, not just the formal filing of an Information in Court.

Then, in the 2004 case of *Roberto Brillante v. Court of Appeals and the People of the Philippines*¹² (**Brillante**), citing the 1983 case of *Emiliano A. Francisco and Harry B. Bernardino v. The Honorable Court of Appeals and the People of the Philippines*¹³ (**Francisco**), the Supreme Court said that the ruling in *Francisco* amplified the *Olarte* doctrine when it categorically ruled that **the filing of a complaint with the fiscal’s office suspends the running of the prescriptive period of a criminal offense**.

Relevantly, in the 2008 case of *Luis Panaguiton, Jr. v. Department of Justice, et al.*¹⁴ (**Panaguiton**), the Supreme Court had the occasion to discuss the structure of the judicial system during the enactment of Act No. 3326, as well as the prevailing jurisprudence at the time, which recognized that **the filing of a complaint before the justice of the peace for purposes of preliminary investigation was sufficient to toll the prescriptive period**. This conclusion is understandable, given that, during that period, it was the justice of the peace (or municipal judge) who was authorized to conduct the preliminary investigation.

unjustifiably stopped for any reason not imputable to him. The term of prescription shall not run when the offender is absent from the Philippine Archipelago. (Emphasis supplied)	instituted against the guilty person , and shall begin to run again il the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)
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⁸ AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.
⁹ G.R. No. L-22465. 28 February 1967.
¹⁰ G.R. No. 234618. 16 September 2019.
¹¹ G.R. No. 152662. 13 June 2012.
¹² G.R. Nos. 118757 & 121571. 19 October 2004.
¹³ G.R. No. L-45674. 30 May 1983.
¹⁴ G.R. No. 167571. 25 November 2008.

Then, as emphasized in the 2012 case of *Pangilinan* and reiterated in the 2019 case of *Lee, Jr.*, the Supreme Court categorically ruled in *Panaguition* that the commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses charged under Batas Pambansa (BP) Blg. 22. This followed the Supreme Court’s declaration that there is no longer any distinction between cases prosecuted under the RPC and those covered by special laws with respect to the interruption of the period of prescription, viz:

...
Since BP Blg. 22 is a special law that imposes a penalty of imprisonment of not less than thirty (30) days but not more than one year or by a fine for its violation, it therefor prescribes in four (4) years in accordance with the aforecited law. The running of the prescriptive period, however, should be tolled upon the institution of proceedings against the guilty person.

In the old but oft-cited case of *People v. Olarte*, this Court ruled that the filing of the complaint in the Municipal Court even if it be merely for purposes of preliminary examination or investigation, should, and thus, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits. This ruling was broadened by the Court in the case of *Francisco, et al. v. Court of Appeals, et al.* when it held that the filing of the complaint with the Fiscal’s Office also suspends the running of the prescriptive period of a criminal offense.

Respondent’s contention that a different rule should be applied to cases involving special laws is bereft of merit. There is no more distinction between cases under the RPC and those covered by special laws with respect to the interruption of the period of prescription. The ruling in *Zaldivia v. Reyes, Jr.* is not controlling in special laws. In *Llenes v. Dicedican, Ingco, et al. v. Sandiganbayan, Brillante v. CA, and Sanrio Company Limited v. Lim*, cases involving special laws, this Court held that the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription. In *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court even ruled that investigations conducted by the Securities and Exchange Commission for violations of the Revised Securities Act and the Securities Regulation Code effectively interrupts the prescription period because it is equivalent to the preliminary investigation conducted by the DOJ in criminal cases.

In fact, in the case of *Panaguition, Jr. v. Department of Justice*, which is in all fours with the instant case, this Court categorically ruled that commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses they had been charged under BP Blg. 22. Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control,

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like the accused's delaying tactics or the delay and inefficiency of the investigating agencies.¹⁵

...

From the foregoing declarations, it can be inferred that the phrase "**when proceedings are instituted against the guilty person**", as used in the law, was understood—even then—to include the filing of a complaint for purposes of preliminary investigation, and not merely the filing of an Information before the Court. As such, it is evident that the law intends for the prescriptive period to be interrupted at the very first formal investigative step, as preliminary investigation is deemed to partake of the nature of a judicial proceeding that suspends the running of prescription.

Furthermore, in *Securities and Exchange Commission v. Interport Resources Corporation, et al.*¹⁶ (**Interport**), the Supreme Court explained that it is a well-settled doctrine that the conduct of a preliminary investigation—which serves as a procedural safeguard to determine whether a crime has been committed and whether there is probable cause to charge the accused—interrupts the running of the prescriptive period.

It is also worth noting that, in his Concurring Opinion in *Interport*, then Supreme Court Associate Justice Dante O. Tiña (ret.) emphasized **that any form of investigation** instituted against the guilty person which **may ultimately lead to prosecution**, as provided by law, is sufficient to toll the running of the prescriptive period.

Clearly, from the foregoing, in all criminal cases—whether prosecuted under the RPC or special laws—the prescriptive period is interrupted upon the commencement of proceedings for the prosecution of the accused, which is effectively accomplished through the initiation of a preliminary investigation, the first formal investigative step that marks the institution of criminal proceedings against the accused.

Now, if the Court *En Banc* were to sustain the interpretation in the 1990 case of *Lim, Sr. vis-à-vis* Section 2¹⁷, Rule 9 of the Revised Rules of the Court of Tax Appeals¹⁸ (**RRCTA**)—that it is the filing of an Information with the

¹⁵ Supra at note 14; Citations omitted, italics in the original text and emphasis supplied.

¹⁶ G.R. No. 135808. 06 October 2008.

¹⁷ Sec. 2. *Institution of Criminal Actions.* — **All criminal actions before the Court in Division** in the exercise of its original jurisdiction **shall be instituted by the filing of an information in the name of the People of the Philippines.** In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

The institution of the criminal action shall interrupt the running of the period of prescription. (*Rules of Court, Rule 110, Sec. 1, par. 2a*) (Emphasis supplied)

¹⁸ A.M. No. 05-11-07-CTA dated 22 November 2005.

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Court which interrupts the five (5)-year prescriptive period under Section 281¹⁹ of the NIRC of 1997, as amended—such a ruling would constitute a clear departure from the established doctrine on prescription applicable to *all* criminal cases. This would run counter to 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.²⁰

In this regard, to hold that the NIRC of 1997, as amended, should be treated differently simply because it is a special law is unpersuasive. The Supreme Court has consistently held, even in criminal cases involving violations of special laws, that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused.

Specifically, in *Pangilinan*, the Supreme Court emphasized that the cases of *Ingco* (involving Republic Act [RA] No. 3019 or the Anti-Graft and Corrupt Practices Act), *Sanrio* (involving RA 8293 or the Intellectual Property Code), and *Interport* (involving the Revised Securities Act and the Securities Regulation Code) all concerned violations of special laws. Yet, in each of these cases, the Supreme Court consistently ruled that the institution of proceedings for preliminary investigation against the accused interrupts the running of the prescriptive period.

As for the finding that *Lim, Sr.* aligns with Section 2²¹, Rule 9 of the RRCTA, it bears emphasizing that an alternative interpretation of the second paragraph of that provision exists—one that harmonizes it with the established doctrine cited above. Instead of construing it solely in relation to the first paragraph, as petitioner correctly argued, it may be read in conjunction with Section 1(a)²², Rule 110 of the Revised Rules of Criminal Procedure (RRCP), which provides that for offenses where a preliminary investigation is required, the criminal action shall be instituted by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

While it is true that the provisions of the RRCP apply only in suppletory manner to the RRCTA, it is nonetheless important to emphasize that the second paragraph of Section 2²³, Rule 9 of the RRCTA (specifically the

¹⁹ Supra at note 4.

²⁰ *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 174134, 30 July 2008, citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R. No. 149834, 02 May 2006.

²¹ Supra at note 17.

²² SEC. 1. *Institution of Criminal Actions*. — Criminal actions shall be instituted as follows:

(a) **For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.** (Emphasis supplied)

²³ Supra at note 17.

italicized portion at the end) explicitly references Section 1(a)²⁴, Rule 110 of the RRCP. That provision clearly states that, for offenses requiring preliminary investigation, a criminal action is deemed instituted upon the filing of a complaint with the proper officer for the purpose of conducting the required preliminary investigation.

On the other hand, the first paragraph of Section 2, Rule 9 of the RRCTA may be construed as referring exclusively to the institution of proceedings before the Court in Division, which is effected solely through the filing of an Information. This must be distinguished from the institution of proceedings against guilty persons—which, under Section 281²⁵ of the NIRC of 1997, as amended, interrupts the running of the prescriptive period—as already settled by the Supreme Court to refer to the filing of a complaint for purposes of preliminary investigation.

Moreover, petitioner correctly observed that in *Tupaz*, which involved the offense of willful failure to pay deficiency IT, the Supreme Court held that the offense had not prescribed because the filing of the complaint for preliminary investigation with the Department of Justice (DOJ) constituted the institution of the criminal action within the five (5)-year prescriptive period. This conclusion was reached despite the earlier ruling in *Lim, Sr.*, which held that the prescriptive period continues to run until the filing of the Information in Court.

In fact, as recently as 04 April 2025, in a press release issued prior to the publication of the full text of the decision in *People of the Philippines v. Ulysses Palconet Consebido*²⁶ (**Consebido**), the Supreme Court declared that the time limit or prescriptive period for prosecuting crimes stops running once a complaint is filed with the DOJ—not when the case reaches the court.²⁷ The High Court specifically clarified that under Section 281 of the NIRC of 1997, as amended, 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.²⁸ This interpretation ensures that the intent of the law—to set a clear time limit for prosecuting tax violations—is properly applied.²⁹

It should be noted that, as stated in the *Consebido* press release, the Supreme Court recognized that while criminal cases should ideally be resolved promptly, delays are sometimes unavoidable. Therefore, the State,

²⁴ Supra at note 22.
²⁵ Supra at note 4.
²⁶ G.R. No. 258563, 02 April 2025.
²⁷ Available at <<https://sc.judiciary.gov.ph/sc-filing-of-complaint-before-doj-stops-prescriptive-period-for-crimes/>> (Last accessed on 24 April 2025).
²⁸ Id.
²⁹ Id.

as the offended party, should not be disadvantaged by delays in the DOJ’s preliminary investigations. The Supreme Court also reiterated its ruling in *Olarte*, emphasizing that “it is unjust to deprive the injured party of the right to obtain vindication 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.”

In light of the Supreme Court’s recent categorical pronouncement affirming that the established doctrine on prescription applies to criminal tax cases, I respectfully submit that this Court, sitting *En Banc*, can no longer adhere to its prior position in *Lim, Sr.*, which was understood to have ruled that, in criminal tax cases, the prescriptive period is tolled only upon the filing of the Information in Court.

Accordingly, in this case, the five (5)-year prescriptive period to institute the offense of failure to pay deficiency taxes under Section 255³⁰ of the NIRC of 1997, as amended, began to run upon the finality of assessment, i.e., 13 February 2017.³¹ Consequently, when the complaint was filed before the DOJ on 25 June 2021, the offense was timely instituted. Thus, contrary to the majority’s conclusion, the right of the government to institute the case against respondent had not yet prescribed.

Notwithstanding the foregoing disquisitions, in addition to the belated filing of the MR before the Court in Division, the Petition for Review filed on 21 March 2024³² before the Court *En Banc* suffers a procedural *faux pas* that warrants an outright dismissal.

I lay down my legal reasoning as follows.

In *Mamerto Austria v. AAA and BBB*³³ (**Austria**), the Supreme Court held:

...
In any criminal case or proceeding, only the OSG may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State before the Supreme Court (SC) and the CA. This is explicitly provided under Section 35(1), Chapter 12, Title III, Book III of the 1987 Administrative Code of the Philippines, thus:

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.
³¹ *Rollo*, p. 50.
³² *Id.*, pp. 8-37.
³³ G.R. No. 205275. 28 June 2022.

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Section 35. *Power and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the service of a lawyer. It shall have the following specific power and functions:

(1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings;** represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

The rationale behind this rule is that in a criminal case, the state is the party affected by the dismissal of the criminal action and not the private complainant. The interest of the private offended party is restricted only to the civil liability of the accused. 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. Differently stated, the private offended party may file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned. Also, the *private complainant* may file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his or her interest in the *civil aspect of the case*. Hence, the Court dismissed for lack of legal standing or personality the appeals or petitions for *certiorari* filed by the private offended parties *before the SC and CA, without the consent or conformity of the OSG*, questioning the dismissal of the criminal case or acquittal of the accused.³⁴

...

The same is likewise provided in Section 10, Rule 9 of the Revised Rules of the Court of Tax Appeals³⁵ (RRCTA):

...

Sec. 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

³⁴

Citations omitted, emphasis in the original text, italics and underscoring supplied.

³⁵

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officials 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 officers 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 cases 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.

...

The *Austria* guidelines can be summarized as follows:³⁶

- (1) The private complainant has the legal personality to appeal the civil liability of the accused or to file a petition for certiorari to preserve his or her interest in the civil aspect of the criminal case. The appeal or petition for *certiorari* must allege the specific pecuniary interest of the private offended party. The failure to comply with this requirement may result in the denial or dismissal of the remedy.

The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice if it appears that the resolution of the private complainant's appeal or petition for *certiorari* will necessarily affect the criminal aspect of the case or the right to prosecute (*i.e.*, existence of probable cause, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, modification of penalty, and other questions that will require a review of the substantive merits of the criminal proceedings, or the nullification/reversal of the entire ruling, or cause the reinstatement of the criminal action or meddle with the prosecution of the offense, among other things). The comment of the OSG must state whether it conforms or concurs with the remedy of the private offended party. The judgment or order of the reviewing court granting the private complainant's relief may be set aside if rendered without affording the People, through the OSG, the opportunity to file a comment.

- (2) The private complainant has no legal personality to **appeal** or file a petition for certiorari to question the judgments or orders involving the criminal aspect of the case or **the right to prosecute, unless made with the OSG's conformity.**

³⁶

AAA261422, a minor and represented by YYY261422 v. XXX261422 [formerly UDK 17206], G.R. No. 261422, 13 November 2023.

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The private complainant must request the OSG's conformity within the reglementary period to appeal or file a petition for *certiorari*. The private complainant must attach the original copy of the OSG's conformity as proof in case the request is granted within the reglementary period. Otherwise, the private complainant must allege in the appeal or petition for *certiorari* the fact of pendency of the request. If the OSG denied the request for conformity, **the Court shall dismiss the appeal or petition for certiorari for lack of legal personality of the private complainant.**

- (3) The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice on the private complainant's petition for *certiorari* questioning the acquittal of the accused, the dismissal of the criminal case, and the interlocutory orders in criminal proceedings on the ground of grave abuse of discretion or denial of due process.

Here, the Bureau of Internal Revenue (**BIR**) raised the following issues in his or her Petition for Review:³⁷

...

WHETHER OR NOT THE COURT A QUO ERRED IN DISMISSING THE INFORMATION DOCKETED AS CTA CRIM. CASE NO. o-994 ON THE GROUND THAT THE AMENDED INFORMATION IS STILL DEFECTIVE AND INSUFFICIENT[.]

WHETHER OR NOT THE COURT A QUO ERRED IN DISMISSING THE INFORMATION DOCKETED AS CTA CRIM. CASE NO. o-994 ON THE GROUND OF PRESCRIPTION[.]

...

The foregoing, without a doubt, aims to appeal the very right of the State to prosecute and the criminal aspect of the case. It then follows that the Petition must be filed with the conformity of the OSG.

There is no gainsaying that that the BIR has a clear interest in the prosecution of violations of the National Internal Revenue Code (**NIRC**) as explicitly provided under Section 220 of the NIRC of 1997, as amended – "[c]ivil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by **legal officers of the Bureau of Internal Revenue** ..." However, in the case of *People of the Philippines v.*

*Court of Tax Appeals-Third Division, L.M. Camus Engineering Corporation, and Lino D. Mendoza*³⁸, the Supreme Court made it abundantly clear that the NIRC of 1997, as amended, did not do away with the rule in requiring the OSG to represent the interest of the Republic in appellate proceedings before the Court *En Banc*.

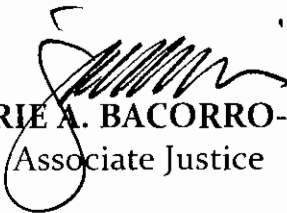
A perspicacious review of the Petition for Review and its attachments reveals no such participation on the part of the OSG. The OSG was neither a signatory nor even furnished a copy of the Petition for Review. There was also no mention of the OSG’s conformity or deputation in the Petition for Review.

The act of deputation is an exception to the general rule that the OSG shall represent the government in criminal proceedings. Such exception is subject to certain conditions precedent - **first**, there must be an express authorization by the OSG, **naming therein the legal officers who are being deputized**; **second**, the cases must involve the respective offices of the deputized legal officers; and **finally**, despite such deputization, the OSG should retain supervision and control over such legal officers with respect to the cases.³⁹

In fact, Paragraph B(2)(b) of Revenue Memorandum Circular (RMC) No. 025-10⁴⁰, which circularizes the MOA between BIR and OSG, mandates that for appealed cases before the Court *En Banc*, the BIR must submit the name of the lawyer to be deputized, with the OSG retaining direct control and supervision throughout the proceedings.

Here, no such deputation has been shown. The Petition was signed by the BIR’s Chief of the Legal Division – Sheryll P. Cacayuran (**Cacayuran**) and a member of the BIR’s Legal Division – Fely Rose R. Daganta (**Daganta**), but there is no record or indication that they were ever deputized by the OSG to appear and act on its behalf in this case. Even more telling is the BIR’s failure to furnish the OSG with a copy of the Petition—a procedural lapse that betrays the absence of coordination, and more gravely, of authority.

All told, I vote to **DISMISS** petitioner’s Petition for Review for want of legal personality to file the same.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

³⁸ G.R. Nos. 251270 and 251291-301. 05 September 2022.
³⁹ *Republic of the Philippines represented by Philippine Economic Zone Authority v. Heirs of Cecilio and Moises Cuizon*, G.R. No. 191531. 06 March 2013.
⁴⁰ Publishing the full text of the Memorandum of Agreement between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General.