REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellant,	**CTA Crim. Case No. A-17** Re: Violation of Sec. 255 in relation to Sec. 253(d) and 256 of the NIRC of 1997, as amended
- versus -	Members: **BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
SKI CONSTRUCTION GROUP, INC., CLAUDIO B. ALTURA, ALBERT ALTURA and CORNELIO V. CAEDO, Accused-Appellees.	Promulgated: JUL 17 2023 1:11 p.m.

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DECISION

BACORRO-VILLENA, J.

Before the Court is plaintiff-appellant's appeal[1] filed on 11 November 2022, pursuant to Section 9(a)[2], Rule 9 of the Revised Rules

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[1] Notice of Appeal, RTC Records, p. 193.

[2] **RULE 9**
PROCEDURE IN CRIMINAL CASES

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SEC. 9. *Appeal; period to appeal.* —
(a) An appeal to the Court in criminal cases decided by a Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal pursuant to Sections 3(a) and 6, Rule 122 of the Rules of Court within fifteen days from receipt of a copy of the decision or final order with the court which rendered the final judgment or order appealed from and by serving a copy upon the adverse party. The Court in Division shall act on the appeal.
...

of the Court of Tax Appeals[3] (**RRCTA**) and Sections 3(a) and 6[4], Rule 122 of the Rules of Court, as amended; assailing the Resolutions dated 03 June 2021[5] and 30 September 2022[6] (**assailed Resolutions**), respectively, issued by the Regional Trial Court (**RTC**) 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.* The dispositive portion of the 03 June 2021 assailed Resolution reads, thus:

> ...
>
> **WHEREFORE**, the motion for reconsideration is hereby **GRANTED** insofar as the ground for prescription is concerned. The case is hereby **DISMISSED** against Albert Altura and Cornelio V. Caedo due to prescription. As to accused Claudio B. Altura, the compliance he filed on January 8, 2021 through accused Albert Altura is hereby **NOTED**. The court finds his death certificate issued by the PSA as proof of his death sufficient and satisfactory. Considering that death extinguishes criminal liability, the case as to Claudio B. Altura is hereby **DISMISSED**.
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> ...
>
> **SO ORDERED.**
>
> ...

On the other hand, the 30 September 2022[7] Resolution, provides:

> ...
>
> **WHEREFORE**, the Motion for Reconsideration filed by the BIR is hereby **DENIED** for lack of conformity of the Public Prosecutor and lack of merit.

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3 A.M. No. 05-11-07-CTA.

4 **RULE 122**
APPEAL

...

SEC. 3. *How Appeal Taken.* —

(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.

...

SEC. 6. *When Appeal to be Taken.* — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run.

5 RTC Records, pp. 176-179.

6 Id., pp. 189-192.

7 Id., p. 192.

SO RESOLVED.

...

The antecedent facts follow.

On 15 January 2020, the Office of the Prosecutor General filed an Information[8] before the RTC against accused SKI Construction Group, Inc. (**SKI**) and its responsible officers (now **accused-appellees**) for a violation of Section 255[9], in relation to Sections 253(d)[10] and 256[11] of the National Internal Revenue Code (NIRC) of 1997, as amended. The Information reads:

> ...
>
> That on or before March 20, 2014 and thereafter, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, accused Claudia B. Altura (Chairman/Director), Albert Artura (President/Director) and Cornelio V. Caedo, (Treasurer/Director), responsible officers of accused SKI Construction Group, Inc., having failed to withhold/remit the correct withholding tax due on compensation for the year 2010, the Bureau of Internal Revenue has consequently assessed, pursuant to Section 80 (A) of the NIRC of 1997, as amended, that there is due and collectible the amount of **P462,732.00** as under remittance of withholding tax on compensation (excluding interest and penalties thereon), and said accused, did then and there willfully, unlawfully and feloniously failed and refused to pay the said deficiency tax at the time required, despite due assessment, notice and demand duly issued and received, which payment is

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8 Id., pp. 1-2.

9 SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten Thousand Pesos (₱ 10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

...

10 SEC. 253. *General Provisions.* —

...

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

...

11 SEC. 256. *Penal Liability of Corporations.* — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

required by the pertinent provisions of the NIRC of 1997, as amended, to the damage and prejudice of the government.

CONTRARY TO LAW.

...

On 16 October 2020, accused-appellee Albert Altura (**Albert**) filed before the RTC an "Omnibus Motion"[12] praying for the dismissal of the case on the following grounds: (1) that the accused-appellees' right to due process was violated; (2) the complainant, Bureau of Internal Revenue (**BIR**), failed to prosecute its action within a justifiable amount of time; and, (3) that the action had already prescribed.

On 19 October 2020, accused-appellee Cornelio Caedo (**Caedo**) filed a "Motion to Adopt and Conform Co-accused's [Albert's] Omnibus Motion"[13] agreeing with the defenses and reliefs stated in the foregoing Omnibus Motion. On the same date, accused-appellee Albert filed a Manifestation alleging the death of his then co-accused Claudio Altura (**Claudio**).

On 06 November 2020, RTC issued an Omnibus Order[14] (**06 November 2020 Omnibus Order**) denying accused-appellees Albert's and Caedo's respective motions, while the manifestation on Claudio's death was duly noted.

On 10 November 2020, accused-appellees Albert and Caedo filed their Motion for Reconsideration[15] (**MR**) against the RTC's Omnibus Order reasserting the grounds for dismissal stated in the 16 October 2020 Omnibus Motion.[16] Plaintiff-appellant, on 02 February 2021, filed its Comment/Opposition[17] thereon. Subsequently, on 11 February 2021, accused-appellees filed their Reply[18] to the said Comment/Opposition.

In the assailed Resolution dated 03 June 2021, the RTC granted accused-appellees Albert's and Caedo's MR, and reversed its

12 RTC Records, pp. 61-65.
13 Id., pp. 76-78.
14 Id., pp. 88-89.
15 Id., pp. 94-103.
16 Supra at note 13.
17 RTC Records, pp. 136-142.
18 Id., pp. 151-155.

06 November 2020 Omnibus Order. The RTC stated that the offense had already prescribed considering that five (5) years had already elapsed from the commission of the offense up to the filing of the Information in court, following the Supreme Court's decision in *Emilio Lim Sr., et al. v. Court of Appeals, et al.*[19] (**Lim**). The RTC found that accused-appellee SKI received a Final Assessment Notice (**FAN**) on 13 January 2014 and the crime of willful refusal to pay would have been committed only after the lapse of thirty (30) days from the FAN's receipt or on 13 February 2014. Thus, when the Information was filed on 15 January 2020, almost six (6) years after the offense's alleged commission had lapsed, hence, prescription had already set in.

Aggrieved by the RTC's action, plaintiff-appellant filed its MR[20] against the assailed Resolution of 03 June 2021. In the similarly assailed Resolution of 30 September 2022[21], the RTC denied plaintiff-appellant's MR.

Hence, this appeal.

On 27 February 2023, plaintiff-appellant filed its Appellant's Brief[22] with the Court. Thereafter, accused-appellee Albert filed his Appellee's Brief[23] on 11 April 2023 while accused-appellee Caedo failed to do so.[24] In a Resolution dated 20 April 2023[25], the Court submitted the case for decision.

ISSUE

Essentially, the parties submit a single issue for this Court's resolution –

> WHETHER THE OFFENSE CHARGED AGAINST THE ACCUSED-APPELLEES HAD ALREADY PRESCRIBED.

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19 G.R. Nos. L-48134-37, 18 October 1990.
20 RTC Records, pp. 165-170.
21 Supra at note 6.
22 Division Docket, pp. 22-38.
23 Id., pp. 111-118.
24 *Per* Records Verification dated 19 April 2023, id., p. 143.
25 Division Docket, p. 145.

According to plaintiff-appellant, an interpretation of the doctrine laid down in *Lim* would show that the five (5)-year prescriptive period for the offense, *i.e*, violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, would only begin to run upon the filing of the criminal complaint against accused-appellees on 15 February 2018. Thus, the filing of the Information in herein case on 15 January 2020 was well within such period. It also points out that this Court has previously adopted this view in the case of *People of the Philippines v. Virgilio B. Castillo*[26] (**Castillo**).

Accused-appellees, on the other hand, fully agree with the RTC's findings as contained in the assailed Resolutions, reasserting that the 5-year prescription period should have been counted from the expiration of the period of payment which is on 13 February 2014.

The Court's ruling follows.

After a careful evaluation of the records and the parties' arguments, We find the petition lacking in merit.

Plaintiff-appellant's interpretation of *Lim* is misleading. In the said case, it is clear that the reckoning of the 5-year prescriptive period would depend on how the crime of tax evasion is committed. Section 281 (formerly Section 354) of the NIRC of 1997, as amended, provides:

> ...
> SEC. 281. *Prescription for Violations of any Provision of this Code.* - All violations of any provision of this Code shall prescribe after Five (5) years.
>
> **Prescription shall begin to run from the 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.

[26] CTA EB Crim. No. 053, 08 June 2021.

> The term of prescription shall not run when the offender is absent from the Philippines.[27]
>
> ...

In applying the above provision, the Supreme Court in *Lim*[28] 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.
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> 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 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.*

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27 Emphasis supplied.

28 Supra at note 19; Citation omitted, emphasis supplied and italics in the original text.

> 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[29] 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.

In cases involving fraudulent returns, the crime is only discovered after the BIR has been given an opportunity to investigate the taxpayer and certain discrepancies constituting such offense are found. According to Section 248 of the NIRC of 1997, as amended, there is *prima facie* finding of fraud in the following instances:

> ...
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> SEC. 248. *Civil Penalties.* —
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> ...
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That a **substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return**: *Provided, further*, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales,

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29 Supra at pp. 6-7.

> receipts or income or for overstatement of deductions, as mentioned herein.[30]
>
> ...

From the foregoing, it is only after a substantial underdeclaration is found that a preliminary finding of fraud is deemed to exists and the offense is discovered.[31] It must be emphasized, however, that despite such preliminary finding, any conclusion that the BIR reaches is not yet final as any assessment is still subject to an administrative and judicial protest by the taxpayer. Further, even in the administrative stage of the assessment, the BIR may still reconsider its findings and fully discount any existence of fraud. Notwithstanding, all of these will change once the BIR opts to file a criminal complaint for such offense as the action clearly shows its intent to collect the tax deficiency with or without the finality of any assessment.[32] It is thus logical that the 5-year prescription period for the offense should only begin to run from this moment as it is only at this point that the BIR makes its preliminary determination of fraud final.

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

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30 Emphasis supplied.

31 National Internal Revenue Code of 1997, as amended, Section 248.

32 **SEC. 205.** *Remedies for the Collection of Delinquent Taxes.* — The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

...

(b) By civil or **criminal action.**

...

SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, **the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment**, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (Emphasis supplied)

...

pay is already certain since the BIR's demand has already become final, executory and no longer subject to judicial review.[33]

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[34], 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.

As regards, plaintiff-appellant's reliance on the *Castillo* case, it must be pointed out that this Court's decisions, either in Division or sitting *En Banc*, is only persuasive in character. They are not sources of judicial precedents and We are not bound to rule in accordance with the previous decisions of any of the divisions or even in *En Banc*.

The principle of *stare decisis*[35] as a tool statutory construction only applies to decisions reached by the Supreme Court as explained *United*

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33 SEC. 228. *Protesting of Assessment.* — ...

...

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

34 RTC Records, pp. 14-18.

35 *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different (*Carmelo F. Lazatin, et al. v. Hon. Aniano A. Desierto as Ombudsman, et al.*, G.R. No. 147097, 05 June 2009)

Coconut Planters Bank v. Spouses Walter Uy and Lily Uy[36] where the Supreme Court stated that, "...the doctrine of *stare decisis* becomes operative only when judicial precedents are set by pronouncements of this Court...".[37] 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.[38]

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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36 G.R. No. 204039, 10 January 2018.
37 Id.
38 *People of the Philippines, et al. v. Ascension P. Olarte*, G.R. No. L-22465, 28 February 1967.

ATTESTATION

I attest 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's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice