

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

EN BANC

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff-Appellant,

- versus -

ZIEGFRIED LOO TIAN,
(No. 1013, Juan Luna Street,
Brgy. 27, Zone 1, Tondo, Manila),
Accused-Appellee.

CTA EB CRIM. NO. 115

(CTA CRIM. CASE NO. O-941)

For: Violation of Section 254 of the
National Internal Revenue Code
(NIRC) of 1997, as amended.

Present:

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

Promulgated:

DEC 04 2024

[Signature] 3:50 p.m.

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DECISION

FERRER-FLORES, J.:

Before this Court is the **Verified Petition for Review** (of the **Resolution dated March 02, 2023**) (*Verified Petition for Review*) filed on March 22, 2023 via registered mail by the **People of the Philippines (plaintiff-appellant)** against **Ziegfried Loo Tian (accused-appellee)** appealing the Resolution dated December 5, 2022 (**1st assailed Resolution**),¹ which dismissed the case on the ground of prescription, and Resolution dated March 2, 2023 (**2nd assailed Resolution**),² which denied the motion for

¹ Rollo, pp. 25 to 28.

² Rollo, pp. 29 to 31.

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reconsideration, both rendered by the then Second Division of this Court³ (**Court in Division**).

The dispositive portions of the assailed Resolutions read as follows:

1st assailed Resolution

WHEREFORE, premises considered, the instant case is **DISMISSED** on the ground of prescription.

SO ORDERED.

2nd assailed Resolution

WHEREFORE, premises considered, the prosecution's *Motion for Reconsideration* is **DENIED**.

SO ORDERED.

THE ANTECEDENT FACTS

On October 26, 2022, an *Information*⁴ was filed against accused-appellee for violation of Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which reads:

That on April 15, 2011, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, required by law to file his Annual Income Tax Return (ITR) for taxable year 2010, did, then and there, willfully; unlawfully and feloniously attempt to evade or defeat tax by stating in the entry fields of the said return the word "Please see attached", when in truth and in fact there is nothing attached to the said return, which resulted to basic deficiency income tax in the amount of Fifty Two Million Two Hundred Ninety Nine Thousand Eight Hundred Twenty Five Pesos and Seventy One Centavos (Php 52,299,825.71), exclusive of interests, penalties and surcharges to the damage and prejudice of the Government of the Republic of the Philippines.

Thereafter, the Court issued the *1st assailed Resolution* on December 5, 2022 dismissing the above *Information* for being filed beyond the five (5)-year prescriptive period.⁵

³ Composed of Associate Justice Erlinda P. Uy, Associate Justice Jean Marie A. Bacorro-Villena, and Associate Justice Lane S. Cui-David.

⁴ Division Docket, p. 5.

⁵ *Rollo*, pp. 23 TO 28.

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Aggrieved, the plaintiff-appellant moved for reconsideration⁶, which was still denied for lack of merit in the 2nd *assailed Resolution* of the Court in Division.⁷

Hence, this Petition.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On March 28, 2023, this Court received plaintiff-appellant's *Verified Petition for Review* filed via registered mail on March 22, 2023.⁸

In the Resolution dated May 18, 2023, the Court ordered plaintiff-appellant to submit the noted deficiencies (i.e., proofs of receipt of the assailed Resolutions, Certificate of Non-Forum Shopping).⁹ In compliance therewith, plaintiff-appellant filed the said documents through its *Manifestation with Compliance (Resolution dated May 18, 2023)*.¹⁰

On June 23, 2023, the Court noted plaintiff-appellant's *Manifestation with Compliance* and directed the accused-appellee to file his comment on the *Verified Petition for Review*.¹¹

Thereafter, the counsel for accused-appellee filed a *Notice of Appearance*¹² on July 12, 2023, which was noted by the Court on July 17, 2023.¹³

On July 27, 2023, accused-appellee filed his *Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 05 March 2023)*.¹⁴

The Court noted, on October 4, 2023, the filing of accused-appellee's *Comment/Opposition*. On even date, the case was submitted for decision.¹⁵

⁶ *Motion for Reconsideration (of Resolution dated December 05, 2022)*, attached to petitioner's *Formal Entry of Appearance with Motion for Reconsideration*, Division Docket, pp. 219 to 232.

⁷ *Rollo*, pp. 29 to 32.

⁸ *Rollo*, pp. 1 to 19.

⁹ *Rollo*, pp. 243 to 244.

¹⁰ *Rollo*, pp. 245 to 254.

¹¹ Minute Resolution dated June 23, 2023. *Rollo*, p. 256.

¹² *Rollo*, pp. 257 to 258.

¹³ Minute Resolution dated July 17, 2023, *Rollo*, p. 261.

¹⁴ *Rollo*, pp. 262 to 281.

¹⁵ Minute Resolution dated October 4, 2023, *Rollo*, p. 282.

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THE ISSUE

In plaintiff-appellant's *Verified Petition for Review*, the sole error raised was that the Court in Division erred when it found no probable cause to charge accused-appellee Loo Tian for Section 254 of the NIRC of 1997, as amended, or willful attempt to evade or defeat payment of income tax for taxable year (TY) 2010.

THE ARGUMENTS

Plaintiff-appellant interposes the following arguments in support of its petition:

- A. Prescription has not set in as the period of discovery and the institution of judicial proceedings for violation of Section 254 of the NIRC of 1997, as amended, not only triggers the commencement of the prescriptive period but, at the same time, triggers the interruption of the same prescriptive period; and,
- B. Accused-appellee should be held liable for willful attempt to evade or defeat payment of income tax for TY 2010 in violation of Section 254 of the NIRC of 1997, as amended.

Accused-appellee counter-argues that:

- A. The right of the government to prosecute him has prescribed under Section 281 of the NIRC of 1997, as amended; and,
- B. The case must be dismissed for violation of the accused's right to speedy disposition of cases as the plaintiff took more than ten (10) years from the filing of the complaint to the filing of the Information in the Court of Tax Appeals (CTA).

THE RULING OF THE COURT

The *Verified Petition for Review* lacks merit.



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The instant Verified Petition for Review was timely filed.

Records show that, on December 13, 2022,¹⁶ plaintiff-appellant received the *1st assailed Resolution*, dismissing the case on the ground of prescription, to which plaintiff-appellant timely moved for reconsideration on December 28, 2022.¹⁷

On March 2, 2023, the Court in Division issued the *2nd assailed Resolution* denying plaintiff-appellant's *Motion for Reconsideration* which resolution was received by the latter on March 10, 2023.¹⁸

Section 9(b) of Rule 9 of the Revised Rules of Court of Tax Appeals (RRCTA) provides:

SEC. 9. *Appeal; period to appeal.* — xxx xxx xxx

- (b) **An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from.** The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. (*Emphasis supplied*)

Based on the foregoing, plaintiff-appellant had fifteen (15) days from receipt of the *2nd assailed Resolution* on March 10, 2023, or until **March 25, 2023**, within which to file its Petition for Review.

Plaintiff-appellant, thus, timely filed the instant *Verified Petition for Review* on **March 22, 2023**.¹⁹

That having been settled, the Court shall now proceed to the main issue in the present petition.

¹⁶ *Notice of Resolution* dated December 5, 2022. *Rollo*, p. 252.

¹⁷ Filed via registered mail on December 28, 2022 and received by the Court on January 12, 2023; *Formal Entry of Appearance with Motion for Reconsideration*, Division Docket, pp. 219 to 232.

¹⁸ *Notice of Resolution* dated March 2, 2023, *Rollo*, p. 253.

¹⁹ Filed via registered mail on March 22, 2023 and received by the Court on March 28, 2023; *Rollo*, p. 1.

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

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and, (3) the time the prescriptive period is interrupted.²⁰

There is no dispute as to the *first* and *second* considerations. The issue, however, lies with the *third* consideration.

For an orderly disposition of the issues, the Court will briefly discuss the *first* and *second* considerations before proceeding to the *third* consideration.

*First: The prescriptive period of
subject violation under the NIRC of
1997, as amended, is five (5) years.*

The *first* consideration may be found in Section 281 of the NIRC of 1997, as amended, which provides for the **five (5)- year prescriptive period** as follows:

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.

The term of prescription shall not run when the offender is absent from the Philippines. (*Emphasis supplied*)

Inasmuch as accused-appellee was charged for violation of Section 254 of the NIRC of 1997, as amended, the applicable prescriptive period is **five (5) years** as provided above.

²⁰ *Romualdez vs. Marcelo* (Resolution), G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan*, G.R. No. 109376, January 20, 2000.

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Second: The day of the commission of the subject violation is unknown; hence, the prescriptive period began to run upon its discovery and the institution of judicial proceedings on July 5, 2012.

As to the *second* consideration (i.e., commencement of the prescriptive period), Section 281 of the NIRC of 1997, as amended, provides for two (2) reckoning points when the period of prescription begins to run:

- (1) If the day of commission is known, prescription begins to run from the day of the commission of the violation of the law; or
- (2) If the day of the commission is unknown, from its discovery and the institution of judicial proceedings for its investigation and punishment.

In the assailed Resolutions, the Court in Division applied the second rule which the plaintiff-appellant likewise avers to be applicable in its *Verified Petition for Review*.

A perusal of the *Information* shows that the violation alleged therein is that the accused “willfully; unlawfully and feloniously attempt to evade or defeat tax by stating in the entry fields of the said return the word “Please see attached”, when in truth and in fact there is nothing attached to the said return, which resulted to basic deficiency income tax [...]”. Such being an omission and misrepresentation on the part of the accused, the day of the commission of the violation is unknown until the same is discovered. Thus, the Court *En Banc* agrees with the finding of the Court in Division that the commencement of the prescriptive period is from the discovery of the commission and the institution of judicial proceedings for its investigation and punishment.

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*²¹ (*Lim* case), the Supreme Court discussed the commencement of the prescriptive period where the day of the commission of the violation is not known and what is contemplated by the term “judicial proceedings”, to wit:

With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of *discovery* of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by

²¹ G.R. Nos. L-48134-37, October 18, 1990.

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the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.

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 ₱1,237,190.55 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 punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**

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The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years.** (*Emphasis supplied*)

Based on the foregoing discussions, if the day of the commission of the violation of the law is not known, the five (5)-year prescriptive period begins to run from:

- (1) *Discovery*; **and**,
- (2) *Institution of judicial proceedings* (i.e., offense is indorsed to the Prosecutor's Office for preliminary investigation).

In the instant case, since, by the nature of the violation charged against the accused, the day of the commission of the violation is not known, the prescriptive period began to run when the violation was discovered and the case was indorsed by the CIR for preliminary investigation to the DOJ on **July 5, 2012.** ¶

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Third: The prescriptive period was interrupted by the filing of the Information with the CTA.

The present controversy is with the *third* consideration, particularly, when the period of prescription is interrupted.

Plaintiff-appellant claims that the discovery and the institution of judicial proceedings not only trigger the commencement of the prescriptive period but also trigger the interruption of the same prescriptive period pursuant to Section 281 of the NIRC of 1997, as amended. It likewise invokes Section 1 of Rule 110 of the Revised Rules on Criminal Procedure which provides:

SECTION 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;
- (b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws.

As such, plaintiff-appellant maintains that prescription has not set in as the filing of the complaint with the DOJ for the conduct of preliminary investigation triggered both the commencement and interruption of the running of the prescriptive period.

On the other hand, in the *2nd assailed Resolution*, the Court in Division held that it is the filing of the criminal action before the CTA that interrupts the prescriptive period.

This Court agrees with the Court in Division.



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As early as 1990, the Supreme Court has held in the *Lim* case²² that the prescriptive period is interrupted by the filing of Information in Court. Specifically, it was declared therein that tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the Information in Court does not exceed five (5) years.

In 2005, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the RRCTA, which provides that the prescriptive period for violations of the NIRC of 1997, *inter alia*, is interrupted by the filing of an Information before the Court, consistent with the pronouncement in the *Lim* case.²³ Specifically, Section 2 of Rule 9 of the RRCTA reads:

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. (*Emphasis supplied*)

Based on the foregoing, criminal cases falling within the jurisdiction of the Court in Division is instituted by the filing of the Information before the said Court. Such institution of the criminal action before the Court shall interrupt the running of the period of prescription.

Evidently, plaintiff-appellant's reliance on Rule 110 of the Revised Rules on Criminal Procedure is misplaced considering that it only applies suppletorily to the RRCTA²⁴ and that the latter specifically provides that criminal actions are instituted by the filing of an Information before the CTA which filing shall interrupt the running of the prescriptive period.

In view of the foregoing disquisitions, **the running of the prescriptive period is interrupted by the filing of the Information before the Court** and not by the filing of the complaint before the DOJ.

As correctly found by the Court in Division, the right to prosecute the criminal action herein has prescribed.

²² *Id.*

²³ *Id.*

²⁴ Section 3 of Rule 1 of the RRCTA provides that "[t]he Rules of Court in the Philippines shall apply suppletorily to these Rules."

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Counting from the discovery of the violation of the NIRC of 1997, as amended, and the institution of the judicial proceeding for preliminary investigation (i.e., CIR's referral of the case to the DOJ) on **July 5, 2012**, the *Information* should have been filed before this Court within five (5) years from July 5, 2012, or until **July 5, 2017**. Clearly, when the instant *Information* was filed before this Court on **October 26, 2022**, more than five (5) years have passed since the government's right to institute a criminal action prescribed.

In fine, the Court *En Banc* finds no compelling reason to reverse the Court in Division's assailed Resolutions.

WHEREFORE, premises considered, plaintiff-appellant's *Verified Petition for Review (of the Resolution dated March 02, 2023)* is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated December 5, 2022 and March 2, 2023 in CTA Crim. Case No. O-941 are **AFFIRMED**.

SO ORDERED.

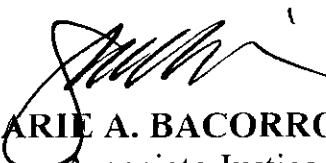

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

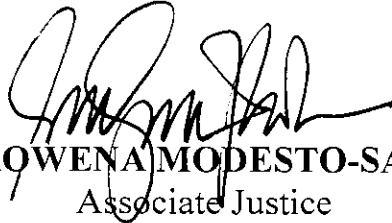

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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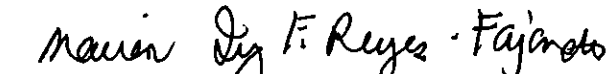
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MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IV F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO
Presiding Justice