REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***EN BANC***

**PEOPLE OF THE PHILIPPINES,**
*Petitioner,*

*-versus-*

**PGU GENERAL MERCHANDISE, INC., FOOK SEONG YONG and ROCELLE FRANCISCO,**
*Respondents.*

**CTA *EB* Crim. No. 145**
(CTA Crim. Case No. O-1082)

Present:

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

Promulgated:
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# RESOLUTION

**MANAHAN, *J.*:**

Before the Court is petitioner's *Motion for Reconsideration (Re: Decision dated 05 March 2025)* filed on March 25, 2025 ("***Motion for Reconsideration***"),[1] with respondent Fook Seong Yong's *Comment (re: Motion for Reconsideration)* filed on May 2, 2025 ("***Comment***").[2]

Petitioner's *Motion for Reconsideration* seeks to set aside the Court's *Decision* dated March 5, 2025 ("***assailed Decision***").[3] The assailed *Decision* dismissed its *Petition for Review* filed on April 4, 2024,[4] and held that the offense of willful failure to pay tax under Section 255 of the National Internal Revenue Code of 1997, as amended ("**Tax Code**") charged against respondents has prescribed due to petitioner's

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[1] *EB* Docket, pp. 66-69.
[2] *Id.* at pp. 76-90.
[3] *Id.* at pp. 54-62.
[4] *Id.* at pp. 5-13.

failure to file the *Information* within the five (5)-year prescriptive period under Section 281 of the Tax Code.

The dispositive portion of the *assailed Decision* reads:

> **ACCORDINGLY,** the instant *Petition for Review* filed on April 4, 2024 is **DENIED** for lack of merit. In view of the above pronouncement, respondent's *Motion to Admit Comment and Entry of Appearance* filed on September 18, 2024[5] is **NOTED** without action as the attached *Comment (re: Petition for Review)* is already rendered **MOOT**.
>
> **SO ORDERED.**

In its *Motion for Reconsideration*, petitioner once again cites the lone case of *People v. Mateo A. Lee, Jr.*,[6] and on such basis, reiterates its position that the offense charged has not yet prescribed since the complaint for preliminary investigation was filed within the five (5)-year prescriptive period.

In his *Comment*, respondent argues that the assailed *Decision* correctly applied the case of *Lim v. Court of Appeals* ("***Lim***"),[7] which likewise involved a violation of the Tax Code, in holding that the prescription of the offense charged is not tolled by the mere filing of the complaint for preliminary investigation. According to respondent, both the Tax Code and *Lim* unequivocally require that the Information must also be filed in court within the prescriptive period. Respondent further argues that petitioner's motion for reconsideration of the decision of the court *a quo* was filed beyond the period allowed by the rules.

We resolve.

At the outset, the Court observes that the present *Motion for Reconsideration* merely reproduced the exact argument that has already been directly addressed and settled in the assailed *Decision*. We held:

[5] *EB* Docket, pp. 34-38.
[6] G.R. No. 234618, September 16, 2019 [Per J. Peralta, Third Division].
[7] G.R. Nos. 48134-37, October 18, 1990 [Per C.J. Fernan, Third Division]. Emphasis supplied.

The statute of limitations for violations of the Tax Code is governed by Section 281 thereof...:

> **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.
>
> ...

Section 281 of the Tax Code contemplates two (2) modes of "proceedings." The *first mode* is the "judicial proceedings for [the] investigation and punishment" of the offense. This proceeding must accompany the discovery of the offense to *start* the period of prescription. Pertinently, the first mode of proceeding is relevant only... if the date of commission of the offense is unknown.

**The *second mode* of proceeding is the "proceedings [which] are instituted against the guilty persons." This proceeding *interrupts* the period of prescription,** while its dismissal "for reasons not constituting jeopardy" *resumes* the period of prescription. The second mode of proceeding is the crux of the present controversy.

**The Court affirms that the second mode of proceeding pertains to a court action. As the Court in Division noted, *Lim v. Court of Appeals* ("*Lim*"), which involves a violation of the Tax Code, already settled the matter**

...

...

> To consider preliminary investigation as the second mode of proceeding would create a paradox where the act that starts the period of prescription is also the act that interrupts it. This renders Section 281 of the Tax Code absurd and meaningless, as the five (5)-year prescriptive [period] will never begin to run despite the express wording of the law that "[p]rescription shall begin to run... from the discovery thereof and the institution of judicial proceedings for its investigation and punishment."
>
> Moreover, to consider preliminary investigation as the second mode of proceeding also renders superfluous the mandate of the law that the dismissal of such proceeding "for reasons not constituting jeopardy" will cause the period to "begin to run again." Jeopardy... [does] not exist in a preliminary investigation.[8]

The purpose of a motion for reconsideration is to convince the court that its main ruling is erroneous, therefore although the movant may dwell upon points already raised and passed upon, there must be *bona fide* effort to explain why the court should be regarded as having erred. It is not enough that a motion for reconsideration states that the decision is contrary to evidence or law, it should also explain why it is so. Failure to explain makes the motion for reconsideration *pro forma.*[9]

Nonetheless, the Court notes that pending resolution of the present *Motion for Reconsideration*, the Supreme Court rendered a decision in *People of the Philippines v. Ulysses Palconit Consebido* ("***Consebido***")[10] abandoning the *Lim* doctrine. *Consebido* laid down the rule that "the filing of the criminal complaint before the [Department of Justice (DOJ)] shall toll the running of the prescriptive period for offenses under the [Tax Code], whether its commission was immediately known or unknown at the time of the violation."

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[8] Citations omitted, emphasis supplied.
[9] Luzon Stevedoring Co. v. Court of Industrial Relations, G.R. No. L-16682, July 26, 1963 [Per J. Regala, *En Banc*]
[10] G.R. No. 258563, April 2, 2025 [Per J. Inting, *En Banc*]

In the instant case, the alleged offense was committed on September 7, 2015,[11] while the complaint for preliminary investigation was filed before the DOJ on September 27, 2018—before the prescription set in on September 7, 2020.[12] Following *Consebido*, petitioner's contention that the offense had not prescribed is now correct, since the complaint for preliminary investigation interrupted the prescriptive period.

However, the Court cannot apply *Consebido* in the instant case. *Consebido* itself expressly mandates:

> But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, ***this new rule shall apply prospectively***.

In the interpretation of the law on prescription of crimes, that which is most favorable to the accused shall be adopted. This is in line with the legal principle that the law on prescription of crimes is an act of liberality and amnesty of the State toward the accused, and is a recognition by the legislature that time gradually wears out evidence of innocence and guilt.[13]

**ACCORDINGLY,** petitioner's *Motion for Reconsideration (Re: Decision dated 05 March 2025)* filed on March 25, 2025 is **DENIED** for lack of merit.

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

[11] *EB* Docket, p. 57. "...the assessment became final, executory, and demandable on **September 7, 2015**—thirty (30) days from the date of issuance of the CIR's decision on the disputed assessment on August 7, 2015—since respondent did not appeal the same. Respondent's alleged failure to pay tax was therefore committed on **September 7, 2015**. (Citations omitted, emphasis in the original).

[12] Five (5) years after September 7, 2015.

[13] *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, March 13, 2001 [Per J. De Leon, Jr., Second Division].

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

(with Separate Concurring Opinion)
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice

**HENRY S. ANGELES**
Associate Justice

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## SEPARATE CONCURRING OPINION

***BACORRO-VILLENA, J.:***

I agree with the *ponencia*'s discussion on its appreciation on the rules set forth in *People of the Philippines v. Ulysses Palconit Consebido*[1], exclusively in that the filing of a criminal complaint before the Department of Justice (**DOJ**) tolls the running of the prescriptive period and that, consequently, this Court is now bound to abandon its previous position of applying *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[2] to hold that, in criminal tax cases, the prescriptive period is tolled only upon the filing of the Information in Court.

However, with due respect, I do not share the view that the present Motion for Reconsideration (**MR**) should be denied for ***lack of merit***.

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[1] G.R. No. 258563, 02 April 2025.
[2] G.R. Nos. L-48134-37, 18 October 1990.

After a second, hard look at the records of this case, as the **sole basis** for my concurrence, it is thus my considered view that the same should have been denied for ***lack of jurisdiction***. As a matter of fact, I further register that the Petition for Review in herein case should likewise have been dismissed for ***lack of jurisdiction***.

I am not unaware that the First Division (of which I am a member) ruled on the MR filed by petitioner People of the Philippines (**petitioner**), as then plaintiff, denying the same for lack of merit when it raised that its right to prosecute respondents PGU General Merchandise, Inc., Fook Seong Yong, and Rocelle Francisco (**respondents**), as then accused, had not yet prescribed.[3]

It is my position that the First Division's Resolution dated 27 February 2024[4], denying for lack of merit petitioner's MR of the earlier Resolution dated 12 October 2023[5], should have instead been denied for being ***filed out of time***.

The pertinent facts in support of my view follow.

On 12 October 2023, the First Division promulgated the Resolution dismissing the CTA Crim. Case No. O-1082 on the ground of prescription.[6] As petitioner's representatives, the Bureau of Internal Revenue's (**BIR**'s) Prosecution Division and the DOJ received copies of the said Resolution on **17 October 2023** and **23 October 2023**, respectively.[7] Accordingly, petitioner had fifteen (15) days from 17 October 2023, or until **04 November 2023** to file its MR (the next working day after the original deadline falling on 01 November 2023).

Petitioner filed its MR[8] only on **05 January 2024**, well beyond the reglementary period to file, alleging receipt of a copy of the Court's Resolution on 21 December 2023. In the Resolution dated 27 February 2024[9], the First Division denied the MR for lack of merit. Petitioner-plaintiff then went on to file a Petition for Review before the Court *En Banc*.

As enunciated above, petitioner's MR before the First Division should have been denied for being filed out of time. With the lapse of the First

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[3] See Resolution dated 12 October 2023, Division Docket, pp. 85-90.
[4] See Resolution dated 27 February 2024, id., pp. 99-101.
[5] Supra at note 3.
[6] Id.
[7] See Notice of Resolution dated 13 October 2023, Division Docket, p. 84.
[8] Id., pp. 91-96.
[9] Supra at note 4.

Division's earlier Resolution dated 12 October 2023 (dismissing the case on the ground of prescription) into finality, the Court *En Banc* failed to acquire jurisdiction to take cognizance of the Petition for Review filed before it in CTA EB Crim. No. 145, and consequently, the present MR.

Judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected.[10]

All told, I vote to **deny** the instant MR for **lack of jurisdiction**.

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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10 *Barrio Fiesta Restaurant, et al. v. Helen C. Beronia*, G.R. No. 206690, 11 July 2016.