REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA EB CRIM NO. 053** (CTA Crim Case No. O-663)
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
VIRGILIO B. CASTILLO, *Respondent.*	Promulgated: JUN 08 2021 3:45 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.

For the Court's resolution is petitioner's **Motion for Reconsideration (of the Decision dated July 08, 2020)**[1] (hereinafter referred to as the "Motion for Reconsideration"), filed through registered mail on 23 July 2020 and received by this Court on 26 August 2020, without respondent's Comment despite Order.[2]

In its Motion for Reconsideration, petitioner seeks the reconsideration and setting aside of the Decision promulgated on 8 July 2020[3] (hereinafter referred to as the "Assailed Decision"), the dispositive part of which reads:

> "**WHEREFORE**, the Petition for Review posted on July 5, 2018 by the People of the Philippines against respondent Virgilio B. Castillo, is hereby **DENIED**, for lack of merit. The twin Resolutions dated February 21, 2018 and May 25, 2018, both issued by the Court in Division are **AFFIRMED**.

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[1] *EB* Rollo, pp. 65-72.

[2] Resolution promulgated on 8 October 2020, *EB* Rollo, pp, 73- 75; *See also* Records Verification Report dated 18 January 2021, p. 76.

[3] *EB* Rollo, pp. 54- 64.

SO ORDERED."

Petitioner asserts the following in its Motion for Reconsideration:[4]

First, the case of ***Lim v. Court of Appeals and People of the Philippines ("Lim Case")***[5] does not apply in the instant case because respondent herein violated ***Section 255 of the National Internal Revenue Code of 1997, as amended, ("1997 NIRC")*** on or about 14 February 2017, which automatically makes the provisions of the ***1997 NIRC*** applicable, unlike in the ***Lim Case,*** where the Supreme Court applied the ***National Internal Revenue Code of 1939 ("1939 NIRC")*** because the infractions were committed by the accused during 1958 and 1959. Petitioner adds that neither ***Section 354 of the 1939 NIRC*** nor ***Section 281 of the 1997 NIRC*** provide the last phrase in the Supreme Court's ruling in the ***Lim Case,*** specifically "up to the filing of the information in court does not exceed five (5) years."

Second, in a *catena* of cases, the Honorable Supreme Court ruled that prescription is interrupted by the institution of preliminary investigation. Petitioner cites the Supreme Court case of ***People v. Ma. Theresa Pangilinan***[6] and CTA Resolution in ***People v. Ocampo***[7] to support its view that the period of prescription is interrupted by the institution of preliminary investigation. Thus, according to petitioner, following ***Section 1, Rule 110 of the Revised Rules of Criminal Procedure***, the running of the prescriptive period is tolled by the institution of criminal action, that is, the filing of the Joint Complaint-Affidavit with the Department of Justice ("DOJ") for preliminary investigation on 23 June 2011.

Third, ***Section 281 of the 1997 NIRC*** clearly provides when the five-year prescriptive period runs and when it is interrupted.

The arguments raised by petitioner in its Motion for Reconsideration are not new. Nonetheless, we shall pass upon the arguments for emphasis.

Petitioner's entire argument rests on the premise that the period of prescription as provided in ***Section 281 of the 1997 NIRC*** commences from the time assessment became final and executory (i.e., 17 March 2007), which is the date considered as the point of discovery of the violation, and is interrupted by the institution of preliminary investigation (i.e., 23 June 2011). Thus, according to petitioner, the information filed in Court on 5 February 2018 was filed within the five-year prescriptive period.

We disagree.

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[4] *EB* Rollo, pp. 65-72.
[5] G.R. Nos. L-48134-37, 18 October 1990.
[6] G.R. No. 152662, 13 June 2012.
[7] CTA Crim. Case No. O-260, 5 August 2013.

Section 281 of the 1997 NIRC, governs the prescriptive period for filing of criminal actions for violations of the 1997 NIRC, to wit:

> "Section 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, Ours)

The foregoing provision presents two modes for *commencement* of the period of prescription:

i. First Mode: From the day of the commission of the violation of the law; or

ii. Second Mode: When the day of the commission is unknown, from the discovery of the commission and the institution of judicial proceedings for its investigation and punishment.

In both instances, the period is *interrupted* when proceedings are instituted against the guilty persons.

Meanwhile, ***Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***[8] provides that criminal actions are instituted before this Court through the filing of an information in the name of the People of the Philippines. Such institution of criminal action interrupts the running of the period of prescription. ***Section 2, Rule 9 of the RRCTA*** pertinently provides:

> "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.**"

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[8] A.M. No. 05-11-07-CTA, 22 November 2005.

These provisions are diametrically opposed to petitioner's claim that the filing of a Joint Complaint-Affidavit with the DOJ for purposes of preliminary investigation shall be considered as the institution of criminal action which interrupts the running of the period of prescription.

For the second mode of prescription, the filing of a Joint Complaint-Affidavit with the DOJ for preliminary investigation, taken together with the finality of the assessment or the point of "discovery," triggers the *commencement* of the running of the period of prescription. The period of prescription shall thereafter be *interrupted* with the institution of criminal action before the CTA through the filing of an information in the name of the People of the Philippines. Necessarily, the information should be filed within the five-year prescriptive period; otherwise, there is nothing to be interrupted as the prescriptive period has already lapsed.

Indeed, petitioner's interpretation that the filing of a Joint Complaint-Affidavit before the DOJ for preliminary investigation on 23 June 2011 commenced and interrupted the 5-year prescriptive period is mistaken. It is not only a distorted interpretation of the ruling in ***Lim Case*** but also reduces to absurdity the meaning of ***Section 281 of the 1997 NIRC***.[9] Petitioner's interpretation urges one to ask why ***Section 281*** has to be provided in the ***1997 NIRC*** at all if the filing of the complaint before the prosecutor's office would commence the running of the prescriptive period and interrupt it at the same time.[10] It negates any possible efficacy of the prescriptive period, consequently rendering the provision ineffectual and prescriptive period perpetual.[11] It is a well-known principle in statutory construction that statues must be construed in such a way as to give effect to the intention of the legislative authority so as to give a sensible meaning to the language of the statute and thus avoid nonsensical or absurd results or defeat the clear purpose of the lawmakers.[12]

Moreover, as discussed in the Assailed Decision, the ***Lim Case*** is instructive in interpreting ***Section 281 of the 1997 NIRC*** (previously Section 354 of the 1939 NIRC) with respect to the commencement of the period of prescription:

> "The **commencement of the prescriptive period** as provided in the above-cited provision (priorly Section 354 of the Old Tax Code) was **interpreted by no less than the Supreme Court in the *Lim case*** in the following manner, to wit:

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[9] *See* People v. Consebido, CTA Crim. Case No. O-699, 7 May 2019; People v. Consebido, CTA Crim. Case No. O-701, 7 May 2019; People v. Bernardo, CTA Crim. Case Nos. O-728, O-730, O-732, and O-734, 2 December 2019; *See also* Resolution promulgated 23 May 2018, *EB Rollo*, p. 23.

[10] *Ibid.*

[11] *See* People v. Bernado, CTA Crim. Case Nos. O-728, O-730, O-730, and O-734, 2 December 2019.

[12] *Ibid; See also* Madreo v. Bayron, G.R. Nos. 237330 and 237579, 3 November 2020 citing Ursua v. Court of Appeals, G.R. No. 112170, 10 April 1996.

> . . . The Solicitor General stresses that Section 354 speaks not only of the 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 punishment."** 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 1971 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as 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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> . . . As Section 354 stands in the statute book (and to this day 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.**
>
> xxx xxx xxx
>
> **Unless amended by the legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth.** And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.

Evident from the foregoing, **both the date of discovery and the institution of judicial proceedings for investigation and punishment are significant events in the prosecution of any infraction of the Tax Code**. It was observed that **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 5 years, the government's right to file a criminal action does not prescribe**. Conversely, if the period from the institution of judicial proceedings for its investigation up to the filing of the information in court exceeds 5 years, then the government's right to file an action has prescribed." (Emphasis, Ours)

We now address petitioner's allegation that the ***Lim Case*** does not apply in the present case because the infractions in the ***Lim Case*** were governed by the ***1939 NIRC***, unlike in the instant case, which involves infractions under the ***1997 NIRC.***

In the Assailed Decision, we held that the wording of ***Section 354 of the 1939 NIRC*** is identical to that of ***Section 281 of the 1997 NIRC***.[13] Thus, the interpretation of the Supreme Court to the former provision holds true to the present case.[14] We further elaborate below.

The period of prescription for violations of the ***1939 NIRC*** are provided for in ***Section 354 of the 1939 NIRC***, while the period of prescription for violations of the ***1997 NIRC*** are governed by ***Section 281 of the 1997 NIRC***. A comparison of ***Section 354 of the 1939 NIRC*** and ***Section 281of the 1997 NIRC*** proves that the wording of the two provisions are the same:

1939 NIRC	1997 NIRC
Section 354. Prescription for violations of any provisions of this Code. — All violations of any provision of this Code shall prescribe after five 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.	Section 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.

Notably, when the ***1997 NIRC*** was enacted, there were no amendments to ***Section 354 of the 1939 NIRC***. In fact, ***Section 354 of the 1939 NIRC*** was merely reproduced in ***Section 281 of 1997 NIRC***.

In the ***Lim Case***, the Supreme Court held that, unless amended by legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth.[15] As such, it must be applied regardless of its apparent one-sidedness in favor of the Government.[16]

Further, settled is the rule in statutory construction that in the interpretation of reenacted statutes, courts should follow the construction which the statute received when previously in force because the legislature is

[13] *See* Decision promulgated on 8 July 2020, *EB* Rollo, Records p. 62.
[14] *Ibid.*
[15] *See* G.R Nos. L-48134-37, 18 October 1990.
[16] *Ibid.*

presumed to know the effect which such statutes originally had and, by its reenactment, to intend that they should have again the same effect.[17]

Considering that the wording of ***Section 354 of the 1939 NIRC*** was adopted and reproduced in ***Section 281 of the 1997 NIRC***, the legislature is presumed to have adopted the construction placed upon such provision by the Supreme Court in the ***Lim Case***. Accordingly, petitioner's argument that the ***Lim Case*** cannot be applied in interpreting ***Section 281 of the 1997 NIRC*** is bereft of merit.

With respect to petitioner's claim that the period of prescription is interrupted by the institution of proceedings for preliminary investigation pursuant to ***Section 1, Rule 110 of the Revised Rules of Criminal Procedure*** and ***People v. Pangilinan***,[18] we stand by our pronouncement in the Assailed Decision:

> "Finally, **contrary to petitioner's assertion and as ruled by the Court in Division, the rulings of the Supreme Court in *People v. Pangilinan* and *Panaguiton v. Department of Justice* are <u>not applicable</u> to the present case since they <u>do not involve the prescriptive period for the filing of criminal tax cases</u> but the prescriptive period for instituting cases for violation of B.P. 22 cases, pursuant to Act No. 3326.** Simply put, the factual and legal circumstances of cited cases and of the present case are world apart. On the other hand, the ***Lim case*** **squarely dealt with the interpretation of the prescriptive period for purposes of instituting criminal tax cases.** Until and unless the doctrine laid down in the *Lim case* is modified or reversed by the Supreme Court, such a doctrine remains to be binding." (Citations omitted)[19]

To add, this Court has held on several instances that the filing of the Complaint-Affidavit with the DOJ for preliminary investigation constitutes as the judicial proceeding for investigation which commences the five-year prescriptive period.[20]

All told, the point of "discovery" on 17 March 2007, together with the institution of judicial proceedings for preliminary investigation on 23 June 2011, commenced the running of the period of prescription on 23 June 2011.[21] Counting five years from 23 June 2011, the five-year prescriptive period lapsed on 23 June 2016. Thus, the Information filed in Court on 5 February 2018 was filed out of time.

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[17] *See* Montelibano v. Ferrer, G.R. No. L-7899, 23 June 1955.
[18] G.R. No. 152662, 13 June 2012.
[19] Decision promulgated 8, July 2020, *EB* Rollo, p. 62.
[20] *See* People v. Consebido, CTA *EB* Crim. Case No. 076 (CTA Crim. Case Nos. O-700, O-702, & O-703), 27 January 2021; People v. Consebido, CTA *EB* Crim. Case No. 069 (CTA Crim. Case No. O-701), 6 January 2021.
[21] Decision promulgated 8 July 2020, *EB* Rollo, p. 61.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration [of the Decision dated July 08, 2020]** is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice