REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-940** (NPS Docket No. XVI-INV-12G-00346)
	For: Violation of Section 254 of the National Internal Revenue Code of 1997, as amended
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
ZIEGFRIED LOO TIAN, (No. 1013, Juan Luna Street, Brgy. 7, Zone 1, Tondo Manila), -AT LARGE-, *Accused.*	Promulgated: APR 05 2023 9:45 a.m.

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RESOLUTION

For the Court's resolution is the prosecution's "Manifestation", filed on 19 January 2023.

Acting on the same, the Court **NOTES** the Manifestation.

However, upon review of the Information, the Court finds that the instant Case must be dismissed on the ground of prescription.

Section 281 of the NIRC, which governs the prescriptive period for the filing of criminal actions under said Code, states:

> "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. [...]"

Meanwhile, the Supreme Court ruled in ***Emilio E. Lim, Sr., and Antonio Sun Lim v. Court of Appeals and People of the Philippines***[1] (***"the Lim Case"***) as follows:

> "Not only that. The Solicitor General stresses that Section 354 [of the Tax Code of 1939] speaks not only of discovery of 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.' [sic] **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 Case 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 for a crime, it was only on September 1, 1969 that the prescriptive period commenced.**"
> (Emphasis supplied.)

Finally, ***The Revised Rules of the Court of Tax Appeals ("RRCTA"), Rule 9, Sec. 2, paragraph 2*** states:

> 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.)

This Court has since followed the construction of the prescriptive period as laid out in the ***Lim Case*** and the ***RRCTA***, above, as in ***People v. Castillo***[2] (**"the Castillo Case"**), ***People v. Consebido***,[3] ***People v. Bernardo***,[4] and ***People v. Balili***.[5] We ruled in the ***Castillo Case*** in this wise:

> "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 'discover,' **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

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1 G.R. Nos L-48134-37, 18 October 1990.
2 CTA *EB* Crim. Case No. 053 (CTA Crim. Case No. O-663), 8 June 2021.
3 CTA Crim. Case No. O-701, 7 May 2019.
4 CTA *EB* Crim Case No. 079 (CTA Crim. Case No. O-733), 21 July 2022.
5 CTA Crim. Case No. A-8 (Case Nos. R-MKT-20-01449-CR and R-MKT-20-01450-CR), 25 July 2022.

prescriptive period; otherwise, there is nothing to be interrupted as the prescriptive period has already lapsed."
(Emphasis supplied.)

From the foregoing, the government's right to prosecute a criminal offense under the ***NIRC*** prescribes five (5) years after either (a) the commission of said offense; or (b) the discovery of the offense *and* the institution of judicial proceedings for the investigation and punishment of the offense, if the same was not known by the government at the time of its commission. The ***Lim Case***,[6] meanwhile, identifies a preliminary investigation as the "proceedings for investigation and punishment" that toll the commencement of the prescriptive period. The ***RRCTA*** then mandates that the prescriptive period is only interrupted by the filing of an Information before the Court of Tax Appeals ("CTA"). In brief, if the government is unaware of a criminal offense under the NIRC at the time of its commission, the government's right to prosecute said offense prescribes five (5) years after the institution of a preliminary investigation via the filing of a Joint Complaint-Affidavit with the Department of Justice ("DOJ"), while said prescriptive period is interrupted with the filing of an Information before the CTA.

Unfortunately, the stamps recording the date of the DOJ's receipt of the Joint Complaint-Affidavit by the DOJ on the pertinent records are illegible.[7] Neither do the two attached Resolutions of the DOJ, dated 1 September 2014[8] and 11 May 2017,[9] respectively, identify the date of said filing. As such, the Court cannot ascertain the exact date of the filing of the Joint Complaint-Affidavit, which, again, tolls the commencement of the prescriptive period discussed above.

The Court notes, however, that the first of the aforementioned Resolutions was issued on 1 September 2014. As such, the Joint Complaint-Affidavit must have been filed *before* said date; it is impossible to pen and issue a Resolution on a pleading that has not yet been filed, after all. Assuming, for leniency's sake, that the Joint Complaint-Affidavit was filed on 1 September 2014, the date of the Resolution's issuance, the government's right to prosecute this case prescribed on 1 September 2019.

The records show that the instant Information was filed on 26 October 2022, over eight (8) years after the latest possible date of the filing of the Joint Complaint-Affidavit. Being over three (3) years late, the government's right to prosecute this criminal offense has already prescribed.

There is thus nothing for the Court to do but to dismiss this case.

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6 The ruling in the Lim Case was based on ***Section 354 of the Tax Code of 1939***. However, the wording of said section is identical to that of ***Section 281 of the NIRC***. As such, the interpretation of when the prescriptive period begins laid down there is still applicable to the present case.

7 *See* Letter, dated 5 July 2012, Records, pp. 21-22; *see also* Investigation Data Form, Records, p. 20.

8 Records, pp. 10-19.

9 *Id*, pp. 7-9.

WHEREFORE, CTA Crim. Case No. O-940 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice