REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

JUANCHITO D. BERNARDO, PRAXEDES P. BERNARDO and JDBEC, INCORPORATED,
Respondents.

CTA EB CRIM. NO. 079
(CTA Crim. Case No. O-733)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ*.

Promulgated:
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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner People of the Philippines (**petitioner**) seeking the reconsideration of the three (3)

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[1] Filed on 10 March 2020, *Rollo*, pp. 1-22.
Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Section 3. *Who may appeal; period to file petition.* —
...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper

Resolutions dated 12 November 2019[2] (**First Resolution**), 16 January 2020[3] (**Second Resolution**) and 14 February 2020[4] (**Third Resolution**) by the Court's First Division[5], respectively, in CTA Crim. Case No. O-733, entitled *People of the Philippines v. Juanchito D. Bernardo, Praxedes P. Bernardo and JDBEC, Incorporated, Room 511 DFS Building, Remedios Street, corner Taft Avenue, Malate, Manila and 8F PARC House II, No. 21 EDSA Guadalupe Nuevo, Makati City (At Large).*

The antecedent facts follow.

On 23 September 2010, the Bureau of Internal Revenue (**BIR**) referred the Joint Complaint-Affidavits of its revenue officers (**ROs**) to the Department of Justice (**DOJ**) for the conduct of a preliminary investigation.[6]

In the Resolution dated 20 June 2013, the DOJ found probable cause to indict herein respondents Juanchito D. Bernardo (**Juanchito**), Praxedes P. Bernardo (**Praxedes**) and JDBEC Incorporated (**JI**) with four (4) counts of violation of Section 255[7] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Sections 253(d)[8] and 256[9] of the same code. Allegedly, respondents Juanchito

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motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

2 *Rollo*, pp. 25-30.

3 Id., pp. 31-33.

4 Id., pp. 34-36.

5 With Presiding Justice Roman G. Del Rosario as Chairperson, and Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Associate Justice Catherine T. Manahan as Members.

6 Court's First Division Resolution dated 12 November 2019, *Rollo*, p. 25.

7 **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 the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply 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 (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

...

8 **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.

...

9 **Sec. 256.** *Penal Liability of Corporations.* – Any corporation, association or general co-partnership liable for any acts or omissions penalized under this Code, in addition to the penalties

and Praxedes, being JI's President and Vice President and Treasurer, respectively, failed to supply correct and accurate information on JI's income tax (**IT**) and value-added tax (**VAT**) returns for the years 2006 to 2009. On the other hand, charges for tax evasion under Section 254[10] of the NIRC of 1997, as amended, against the same respondents were dropped for the BIR's failure to establish probable cause.[11]

Both the BIR and respondents filed separate Motions for Partial Reconsideration (**MPRs**), challenging the DOJ Resolution of 20 June 2013. However, the two (2) motions were denied in the separate Resolutions dated 30 July 2015 and 31 July 2015, respectively.[12]

On 18 June 2019, an Information was filed against respondents JI, Juanchito and Praxedes, as JI's responsible officers, for failure to supply the correct and accurate information in JI's Income Tax Return (**ITR**) covering taxable year (**TY**) 2008.[13]

In the First Resolution of 12 November 2019, the Court's First Division (to which the case was raffled) dismissed the case *ex-mero motu* on the ground of prescription.

Aggrieved, on 12 December 2019, petitioner moved for reconsideration of the First Resolution. In the Second Resolution of 16 January 2020, the Court denied petitioner's motion as the same was belatedly filed.

Unyielding, petitioner again sought the reconsideration of the Second Resolution but was rejected by the First Division in the assailed Third Resolution of 14 February 2020. The First Division held that a second motion for reconsideration (**MR**) is a prohibited pleading under Section 7[14], Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

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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).

[10] **Sec. 254**. *Attempt to Evade or Defeat Tax.*

[11] *Rollo*, p. 26.

[12] Id.

[13] Id.

[14] **Sec. 7.** *No second motion for reconsideration or for new trial.* – No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order.

There being no fruitful result from the motions filed before the First Division, petitioner now bids to have the assailed Resolutions reversed. It thus assigns the following errors to the First Division, to wit:

I.

THE FIRST DIVISION OF THE COURT ERRED WHEN IT RULED THAT THE PROSECUTION FAILED TO SEASONABLY INSTITUTE THE PRESENT CRIMINAL ACTION AND CONSEQUENTLY DISMISSED THE PRESENT CASE; AND,

II.

THE FIRST DIVISION OF THE COURT ERRED WHEN IT RULED THAT PETITIONER'S MOTION FOR RECONSIDERATION DATED DECEMBER 16, 2019 WAS BELATEDLY FILED AND CONSEQUENTLY DENIED THE SAME.

Maintaining its disagreement with the First Division's actions, petitioner primarily questions the finding that its action has prescribed. According to it, the First Division reckoned the five-year prescriptive period from 23 September 2010 when the BIR referred the Joint Complaint-Affidavits to the DOJ for preliminary investigation; hence, the erroneous conclusion that prescription had already set in when the Information before this Court was filed only on 18 June 2019.

Petitioner further finds the application of the Supreme Court's pronouncement in *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[15] (**Lim Case**) to the present case as being contrary to the provision on prescription of crimes under the NIRC of 1997, as amended. To its mind, it is the institution of *judicial* proceedings for investigation and punishment of the offense that interrupts the running of the prescriptive period. Thus, the filing of the Joint Complaint-Affidavits before the DOJ for preliminary investigation commenced the five-year prescriptive period and, at the same time, interrupted the running of the same. Petitioner claims that, consequently, the period from 23 September 2010 (*i.e.*, the filing of the Joint Complaint-Affidavit before the DOJ) up to 18 June 2019 (*i.e.*, the filing of the Information before the **CTA**) should not have been counted for purposes of determining the five-year prescriptive period.

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[15] G.R. Nos. L-48134-37, 18 October 1990.

Petitioner likewise maintains that the First Division erred in ruling that its MR dated 12 December 2019 was belatedly filed. It argues that the applicable reglementary period to file an MR is fifteen (15) days and *not* five (5) days as the Court ruled. According to it, the five-day period for meritorious motions[16] under A.M. No. 15-06-10-SC[17] should not be used considering that the case was dismissed *ex-mero motu* in the First Resoluton and not hinged on the *Ex-Parte* Joint Motion to Dismiss filed by the respondents. It submits that the First Resolution made no mention of the said motion to dismiss and the dismissal based on prescription was the Court's own accord.

In refutation, respondents echo the ruling of the First Division that the actual filing of the case in court tolls the running of the prescriptive period.

Additionally, considering that petitioner filed a second MR, the running of the reglementary period to file an appeal with the CTA *En Banc* was not tolled.

The Court *En Banc*'s ruling follows.

Prefatorily, the Court *En Banc* shall discuss the procedural aspect of the instant petition. After a careful perusal of the records, We find that the instant Petition for Review was filed out of time.

Section 3(b), Rule 8 of the RRCTA provides:

> ...
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> **Sec. 3.** *Who may appeal; period to file petition.* –
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> ...
>
> (b) A party adversely affected by a decision or **resolution of a Division** of the Court **on a motion for reconsideration** or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution...[18]
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> ...

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16 ...The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution...

17 *Revised Guidelines for Continuous Trial of Criminal Cases.*

18 Emphasis supplied.

It bears emphasis that the Court issued the Second Resolution on 16 January 2020 denying petitioner's MR dated 12 December 2019. Petitioner, however, filed another MR seeking the reversal of the Second Resolution.

Upon receipt of the Second Resolution, petitioner should have already elevated the dismissal of the case and the denial of its MR by filing a Petition for Review before the Court *En Banc* (instead of filing another MR seeking the reversal of the Second Resolution). Certainly, the second MR was unnecessary especially so that petitioner also assigned as error the ruling on the timeliness of its MR. In so doing, petitioner assumed the risk that the 15-day reglementary period within which to file a Petition for Review would lapse, thus depriving the Court *En Banc* of jurisdiction to entertain the present petition.

Moreover, and as correctly found by the First Division, Section 7, Rule 15 of the RRCTA, adopting Section 2[19], Rule 52 of the Rules of Court, proscribes the filing of a second MR, to wit:

> ...
>
> **Sec. 7.** *No second motion for reconsideration or for new trial.* – No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution, or order.
>
> ...

With the above, the Court *En Banc* has no other recourse but to hold that petitioner's second *pro forma*[20] MR did not toll the running of the 15-day period to appeal. It is noted that petitioner had 15 days reckoned from 22 January 2020 (or until 06 February 2020) to file the Petition for Review before the Court *En Banc*. In failing to do so, the period to file the instant Petition for Review filed on 10 March 2020 has indeed lapsed.

It is settled that an appeal is not a matter of right, but is one of sound judicial discretion. It may only be availed of in the manner provided by the law and the rules. A party who fails to question an adverse decision by not filing the proper remedy within the period

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19 Supra at 14.

20 See *Philippine National Bank v. Hon. Jose G. Paneda, et al.*, G.R. No. 149236, 14 February 2007.

prescribed by law loses the right to do so as the decision, as to him, becomes final and binding.[21]

While the Court is aware that a dismissal based on mere technicalities is frowned upon and that there are instances when the same may set aside, its hands are however tied when the dismissal is in fact grounded on prescription. Thus, even if We were to ignore a procedural infirmity in the case at bar, the dismissal will be maintained.

Section 281 of the NIRC of 1997, as amended, reads:

> ...
>
> **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.
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> ...

This Court has applied consistently the Supreme Court's pronouncement in the *Lim* case with respect to the prescription of tax offenses. We reproduce in part the First Resolution, to wit:

> ...
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> Significantly, in *Lim, Sr. vs. Court of Appeals*, the High Court construed Section 354 (now 281) of the NIRC, as amended, in the following fashion:
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> xxx.The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial

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21 *Heirs of Gamaliel Albano, et al. v. Sps. Ravanes*, G.R. No. 183645, 20 July 2016.

> 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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> xxx xxx xxx
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> As Section 354 stands in the statute book (and to this day it has remained unchanged) it would 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.[22]
>
> ...

Contrary to petitioner's claim, the *Lim* case was correctly applied in the case at bar. It could not be discounted that the facts in the *Lim* case are on all fours with the case at bar. As petitioner pointed out, Section 281[23] of the NIRC of 1997, as amended, is the same as Section 354 of Commonwealth Act No. 466 (**1939 NIRC**). Therefore, the doctrine laid down in the *Lim* case is still controlling.

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[22] Citation omitted; underscoring in the original text.

[23] Supra at p. 7.

Incidentally, the ruling in the *Lim* case was formally adopted in Revenue Memorandum Circular (**RMC**) No. 101-90.[24] The RMC states in part:

> ...
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> d) The 5-year prescriptive period in Section 280 of the Tax Code does not commence to run by the mere fact of discovery. This must be coupled by judicial proceedings, such as a preliminary investigation before the Prosecutor's Office, before the five (5) year limitation period begins to run.
>
> The offenses under the Tax Code are seemingly 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.
>
> ...

This leads to the conclusion that even the BIR concedes that the five-year prescriptive period begins to run with the filing of the affidavit-complaints before the DOJ for preliminary investigation.

To lend credence to the position that the *verba legis* rule shall be applied such that the filing of the complaint before the DOJ commences and simultaneously interrupts the prescriptive period will render nugatory the provision on prescription. In effect, the running of the five-year prescriptive period will be contingent upon the dismissal of the case for reasons not constituting double jeopardy, which practically removes the period altogether.

It is a salutary principle in statutory construction that there exists a valid presumption that undesirable consequences were never intended by a legislative measure, and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, undefensible, wrongful, evil, and injurious consequences. Nothing is better settled than that courts are not to give words a meaning which would lead to absurd or unreasonable consequences. This case calls for the application of the cardinal rule of statutory construction that such intent of spirit must prevail over the letter thereof, for whatever is within the spirit of a statute is within the

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24 *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

statute, since adherence to the letter would result in absurdity, injustice and contradictions and would defeat the plain and vital purpose of the statute.[25]

Surely, the lawmakers could not have intended the right of the government to prosecute against tax offenses to run perpetually. As it is, the scales of justice already weigh heavily against the taxpayers, for the government can institute the offenses at a time most favorable to it, even decades after the supposed discovery of the offense. Thus, to even commence the running of the prescriptive period only upon the dismissal of the case for reasons not constituting double jeopardy is not only unjust, but it already defeats the very essence of a prescriptive period laid down in the NIRC of 1997, as amended.

Needless to state, the First Division of this Court correctly dismissed the case on the ground of prescription.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[25] *Brent School, Inc., et al. v. Zamora, et al.*, G.R. No. L-48494, 05 February 1990 as cited in *Millares, et al. v. National Labor Relations Commission, et al.*, G.R. No. 110524, 29 July 2002.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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