REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ULYSSES PALCONET CONSEBIDO, *Petitioner,*	**CTA CASE NO. 10357**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
HON. ANNA LEAH Y. TIONGSON-MENDOZA (Presiding Judge, Regional Trial Court of Palawan – Branch 164) and COMMISSIONER OF INTERNAL REVENUE and the PEOPLE OF THE PHILIPPINES, *Respondents.*	Promulgated: JAN 0 9 2024 4:08 pm

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RESOLUTION

CUI-DAVID, J.:

For resolution is respondent Commissioner of Internal Revenue (CIR)'s *Motion for Reconsideration (of the Decision dated June 30, 2023)* filed *via* registered mail on July 28, 2023, without petitioner's comment as per Records Verification dated October 25, 2023.

Respondent moves that the Court reverse and set aside its Decision dated June 30, 2023 (assailed Decision), *viz.*:

> **WHEREFORE**, the *Petition for Certiorari* is **GRANTED**. The assailed Orders dated September 5, 2019, and February 10, 2020, in Criminal Case Nos. ROX-19-39155 and ROX-19-39156 are **SET ASIDE**. Accordingly, Criminal Case Nos. ROX-19-39155 and ROX-19-39156, pending with the Regional Trial Court of Palawan – Branch 164, are DISMISSED on the grounds of prescription.

SO ORDERED.

Respondent argues that prescription for violations penalized by special acts and municipal ordinances is governed by Section 2[1] of Act No. 3326,[2] adopted in Section 281 of the National Internal Revenue Code of 1997, as amended. Hence, the Supreme Court's interpretation of Section 2 of Act No. 3326 in *Panaguiton v. Department of Justice* (*Panaguiton*)[3] and *People v. Lee, Jr.* (*Lee, Jr.*)[4] must be applied in this case, *i.e.*, the prescription of the offense is tolled once a complaint is filed for preliminary investigation and shall begin to run again of the proceedings are dismissed for reasons not constituting jeopardy.

The instant *Motion* fails to impress.

Contrary to respondent's assertion, the rulings in *Panaguiton* and *Lee, Jr.* do not apply to the present case since they do not involve the prescriptive period for the filing of criminal tax cases but the prescriptive period for instituting cases for violation of special laws, pursuant to Act No. 3326.

Meanwhile, *Lim, Sr. et al. v. Court of Appeals* (*Lim*)[5] deals with the interpretation of the prescriptive period for instituting criminal tax cases under the Tax Code. The factual and legal circumstances of *Panaguiton* and *Lee, Jr.* and those of the present case are different. As held by the Court *En Banc* in the assailed Decision:

> Based on *Lim*, the proceeding for investigation and punishment of a crime, *i.e.*, preliminary investigation, commences the prescriptive period and is tolled by filing the information in court. The period between the preliminary investigation and the filing of the information in court must not exceed five (5) years.

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[1] SEC. 2. 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 proceeding for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

[2] ACT NO. 3326 - AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN, December 4, 1926.

[3] G.R. No. 167571, November 25, 2008.

[4] G.R. No. 234618, September 16, 2019.

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

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> As applied in this case, the Joint Complaint-Affidavit against petitioner for purposes of preliminary investigation was filed on January 20, 2014, and the Information was later filed before the RTC Branch 164 on May 20, 2019, or only after five (5) years and four (4) months. As such, the right to prosecute petitioner had already prescribed under Section 281 of the 1997 NIRC.
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> ... ...
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> Finally, contrary to public respondent CIR's claim, the ruling in *Panaguiton v. Department of Justice* does not apply to this case since it does not involve the prescriptive period for the filing of criminal tax cases but the prescriptive period for instituting Batas Pambansa Blg. 22 cases pursuant to Act No. 3326, which deals with special penal laws not involving tax. On the other hand, *Lim* deals explicitly with the prosecution for violating the Tax Code.

Unless *Lim* is modified or reversed by the Supreme Court, said doctrine remains binding in a criminal tax case such as this.

WHEREFORE, respondent's *Motion for Reconsideration (of the Decision dated June 30, 2023)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice