24-000490-0005

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1213

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

W2 ELECTRO MECHANICAL SYSTEMS AND GENERAL CONTRACTOR, INC. / WILFREDO S. LUCAS (President),
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
SR. ASST. CITY PROSECUTOR SUSAN T. VILLANUEVA
Department of Justice
Padre Faura Street, Ermita
1000 Manila

ATTY. PAULYN ANN A. UMIPIG-LABUCAY
Bureau of Internal Revenue - Revenue Region No. 7A
Legal Division, 5th Floor, Room 505, Fisher Mall
Quezon Avneue corner Fernando Poe Jr., Avenue
Quezon City

GREETINGS:

You are hereby notified by these presents that on **January 8, 2025,**a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 9, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus -

W2 ELECTRO MECHANICAL SYSTEMS AND GENERAL CONTRACTOR, INC./ WILFREDO S. LUCAS (President), Accused.

CTA Crim. Case No. **O-1213**

For: Violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Members:

DEL ROSARIO, P.J., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, JJ.

Promulgated:
JAN 08 2025; 3:30PM

x - x

RESOLUTION

For the Court's resolution is plaintiff People of the Philippines' (**plaintiff**'s) "Motion for Reconsideration (of the Resolution dated October 10, 2024)"[1] (**MR**) filed on 06 November 2024, praying for the reversal of the Resolution dated 10 October 2024[2] (**assailed Resolution**) which dismissed the instant case due to prescription.

In the MR, plaintiff solely argues that the running of the statute of limitations is suspended when a warrant of distraint and/or levy (**WDL**) is duly served to the taxpayer and no property could be located to satisfy the warrant pursuant to Section 223[3] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

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1 Division Docket, pp. 92-96.
2 Id., pp. 83-91.
3 **SEC. 223.** *Suspension of Running of Statute of Limitations.*

We resolve.

Although the MR was duly filed on time[4], an examination of the same fails to yield new arguments that could warrant the modification of the assailed Resolution.

First, petitioner's invocation of Section 223 of the NIRC of 1997, as amended, is misplaced. The said provision pertains to the suspension of the prescriptive periods to assess and collect under Section 203[5] in relation to Section 222[6] of the same law. In the instant case, what has been determined and ruled as prescribed is plaintiff's right to institute a criminal action for the subject criminal tax offense.

As held in the assailed Resolution, We have clearly pointed out that in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[7], and the Revised Rules of the Court of Tax Appeals (**RRCTA**), prescription of criminal offenses shall only be interrupted when the criminal action (or Information) is instituted before a court –

> . . .
>
> In *Lim*, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) to mean that tax cases 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, *viz*:
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> > . . .
> >
> > Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] speaks not only of 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 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

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4 Public Prosecutor received the assailed Resolution on 22 October 2024. Counting 15 days therefrom, plaintiff had until 06 November 2024 to file an appeal or motion. The Motion for Reconsideration was filed on 06 November 2024, thus, it was timely filed.

5 **SEC. 203.** *Period of Limitation Upon Assessment and Collection.*

6 **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*

7 G.R. Nos. L-48134-37, 18 October 1990.

> 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.**
>
> . . .
>
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 [now, Section 281] stands in the statute book (and to this day it 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.**
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> . . .
>
> **Unless amended by the legislature, Section 354 [now, Section 281] 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.
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> . . .

Relevantly, Section 2, Rule 9 of the RRCTA, as amended, provides:

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

Verily, pursuant to the Supreme Court's pronouncement in *Lim* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the Court. In this case, the Information was filed beyond the five (5)-year prescriptive period, thus there is no interruption of said period.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the Department of Justice (**DOJ**), it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.[8]

. . .

ACCORDINGLY, plaintiff's "Motion for Reconsideration (of the Resolution dated October 10, 2024)" filed on 06 November 2024 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

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8 Supra at note 2, pp. 88-90; Citations omitted, emphasis and italics in the original text.