REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM CASE NO. O-944**
	FOR: Violation of Section 255 par. 1 of the National Internal Revenue Code of 1997, as amended
-versus-	*Members:*
	UY, *Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
ZIEGFRIED LOO TIAN, (No. 1013, Juan Luna Street, Brgy. 7, Zone 1, Tondo Manila), *Accused.*	Promulgated: MAR 02 2023 2:00 p.m.

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RESOLUTION

For resolution of this Court is the prosecution's ***Formal Entry of Appearance with Motion for Reconsideration*** filed on 5 January 2023, to which no comment was received from the accused.

The prosecution's *Motion for Reconsideration* assails the Court's *Resolution* (assailed *Resolution*), dated 5 December 2022, dismissing the case on the ground of prescription. It argues that prescription has not set in, invoking the case of *Lim vs. Court of Appeals* (*Lim* case),[1] where the Supreme Court pronounced that tax cases are practically imprescriptible.[2] It posits that since the date of the commission of the violation is unknown,[3] the five-year prescriptive period commenced from the discovery and institution of judicial proceedings.[4]

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[1] G.R. Nos. 48134-37, 18 October 1990, 268 SCRA 680-692.
[2] Formal Entry of Appearance with Motion for Reconsideration, par. 16.
[3] Par. 15
[4] Par. 17.

The prosecution argues that "the period of discovery and the institution of judicial proceedings" against the accused "not only triggers the commencement of the prescriptive period but also triggers the interruption of the same prescriptive period."[5]

The prosecution's arguments do not convince.

We quote Section 281 of the NIRC of 1997, as amended:

> *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. [6] [*Emphasis supplied*]

As We have stated in the assailed *Resolution*, the interpretation of this provision has been settled in the landmark case of *Lim*[7] to wit:

> Not only that. The Solicitor General stresses that Section 354 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 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.** [*Emphasis supplied*]

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[5] Par. 23.
[6] Emphasis and underscoring supplied.
[7] G.R. Nos. 48134-37, 18 October 1990, 268 SCRA 680-692.

But according to the Lim spouses, that argument had precisely been raised, considered and found without merit in the case of People vs. Ching Lak which had perfunctorily dismissed the Government's position in this wise:

> "Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, suffice it to state that the theory is not supported by any provision of law and we need not elucidate thereon.

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 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.** [8] [*Emphasis supplied*]

As the prosecution suggests, the Supreme Court indeed made a pronouncement in *Lim* that tax criminal cases are basically imprescriptible. However, the prosecution conveniently omits the portion of the case where the High Court mentions that the violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of commencement of the investigation before the Department of Justice, *i.e.*, the filing of a complaint-affidavit, up to the filing of the *Information* before the Court.

As such, the prosecution supposes that "the period of discovery and the institution of judicial proceedings" against the accused "not only triggers the commencement of the prescriptive period but also triggers the interruption of the same prescriptive period"[9] is incorrect. While it is true that the filing of a complaint before the Department of Justice triggers the commencement of the prescriptive period, the filing of the information in Court interrupts such.

This Court cannot depart from this interpretation of the Supreme Court of Section 354 of the 1939 Tax Code as recodified in Section 281 of the NIRC of 1997, for the principle

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[8] Emphasis and underscoring supplied; citations omitted.
[9] Par. 23.

of *stare decisis* requires that once a case has been decided one way, the rule is settled that any other case involving exactly the same point at issue should be decided in the same manner.[10]

We quote the assailed *Resolution*:

> In the instant case, the *Joint Complaint-Affidavit* of Emerita D. Tan, Carine P. Balmeo, Dominador A. Callangan, Arnel A. Boco, and Adelina P. See, was filed on 5 July 2012. It is on that date that the running of the prescriptive period commenced. Accordingly, the Information should have been filed on or before **5 July 2017**. The *Information* was filed before this Court only on 26 October 2022, or **10 years, 3 months, and 21 days** after the *Joint Complaint-Affidavit* was filed. Clearly, the right of the State to prosecute the accused is already barred by prescription.
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> It must be stressed that prescription in criminal cases is a matter of substantive law.[11] Although prescription has not been raised as an issue, it is well-settled that if the pleadings or the evidence on record show that the claim is barred by prescription, the Court may *motu proprio* order its dismissal on said ground.[12] [*Emphasis supplied*]

As such, We find no merit in reversing the assailed Resolution.

WHEREFORE, premises considered, the prosecution's *Motion for Reconsideration* is **DENIED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[10] *University of the East vs. Masangkay*, G.R. No. 226727, 25 April 2018.
[11] *Reodica vs. Court of Appeals*, G.R. No. 125066, 8 July 1998, 354 SCRA 90-111.
[12] *Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corp.*, G.R. No. 212920, 16 September 2015, 769 SCRA 861-871.