REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM CASE NO. O-705

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

MANUEL NUGUID NIETO,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
SR. DEPUTY STATE PROSECUTOR RICHARD ANTHONY FADULLON
SR. ASST. STATE PROSECUTOR JUAN PEDRO C. NAVERA
Department of Justice
Padre Faura Street, Ermita, Manila

ATTY. PAULYN ANN A. UMIPIG-LABUCAY
Bureau of Internal Revenue - Revenue Region No. 7A
Legal Division, Room 516, Roof Deck, Fisher Mall
Fernando Poe Jr. Avenue corner Quezon Avenue
Diliman, Quezon City

GREETINGS:

You are hereby notified by these presents that on **May 14, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 15, 2024.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MANUEL NUGUID NIETO,
Accused.

CTA Crim. Case No. O-705

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

Promulgated:
MAY 14 2024; 1:20PM

x- -x

RESOLUTION

For resolution of this Court is plaintiff's ***Motion for Reconsideration*** *(of the Resolution dated February 06, 2024)* filed on April 1, 2024.

Plaintiff's *Motion for Reconsideration* assails the Court's *Resolution* (assailed *Resolution*), dated February 6, 2024, dismissing the case on the ground of prescription of the offense charged. It argues that prescription has not set in and that the institution of a criminal action before the Department of Justice (DOJ) for purposes of preliminary investigation effectively tolls the running of the prescriptive period.

At the outset, We note that the instant *Motion for Reconsideration* was filed out of time.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> "SECTION 1. Who may and when to file motion. — **Any aggrieved party may seek a reconsideration** or new trial of any decision, resolution, or order of the Court **by filing a motion for reconsideration** or new trial **within fifteen days** from the date of receipt of notice of the decision, resolution or order of the Court in question." [*Emphasis supplied*]

The rule is and has been that the period for filing a motion for reconsideration is non-extendible. [1] If no motion for reconsideration is filed on time, the judgment or final order of the court becomes final and executory.[2]

Records reveal the following dates of receipt: **February 12, 2024,** by the Bureau of Internal Revenue, National Bureau of Investigation, and **Department of Justice**; February 13, 2024, by the Chief of the Philippine National Police through the Criminal Investigation and Detection Group; and on February 14, 2024, by the Chief Warrant Section of the Quezon City Police Department.

Counting fifteen (15) days from February 12, 2024, the date the Department of Justice received the assailed Resolution, the plaintiff only had until **February 27, 2024** to file its Motion for Reconsideration. It only filed the instant *Motion for Reconsideration* on April 1, 2024. Hence, We rule that the Motion was belatedly filed and should be dismissed outright.

Even if the *Motion for Reconsideration* is timely filed, it is still dismissible for lack of merit.

We quote Section 281 of the National Internal Revenue Code (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. [*Emphasis supplied*]

---

[1] *Apex Mining Co., Inc. v. Commissioner of Internal Revenue and Court of Appeals*, G.R. No. 122472, October 20, 2005.
[2] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006.

As We have stated in the assailed *Resolution*, the interpretation of this provision has been settled in the landmark case of *Lim v. Court of Appeals* [3] to wit:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.
>
> ...
>
> 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.** [4] [*Emphasis supplied*]

We 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 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.[5]

We quote the assailed *Resolution*:

> In the *Joint Complaint-Affidavit*, it was alleged that the Final Assessment Notice (**FAN**) dated December 30, 2010 had become final, executory, and demandable for the failure of accused to make a timely protest and that on August 8, 2011, a Final Notice Before Seizure was issued to reiterate the demand for payment of the aforementioned deficiency taxes. Thus, following the allegations of plaintiff, the assessment would have become final on **January 30, 2011.**

[3] G.R. Nos. 48134-37, 18 October 1990, 268 SCRA 680-692.
[4] Emphasis and underscoring supplied; citations omitted.
[5] *University of the East v. Masangkay*, G.R. No. 226727, April 25, 2018.

> In counting the prescriptive period provided under Section 281 of the NIRC of 1997, as amended, *Lim,* as quoted above, is instructive that the filing of the criminal information must fall within the five-year prescriptive period.
>
> The Supreme Court enunciated in *Lim* that tax criminal cases are basically imprescriptible. However, violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of the commission of the offense if known, and as applicable in this case, *i.e.*, the date of finality of the FAN/FLD, up to the date of filing of the *Information* before the Court.
>
> ...
>
> Thus, pursuant to *Lim*, plaintiff had five (5) years counted from January 30, 2011, or until **January 30, 2016**, to file the *Information* before the Court. The *Information* dated May 18, 2017, was filed only on **March 18, 2019**.
>
> Clearly, when the present *Information* was filed on **March 18, 2019**, the government's right to institute a criminal action against accused had already prescribed for *more than three (3) years.*
>
> Even if the period is counted from the issuance of the Final Notice Before Seizure, plaintiff would have five (5) years from August 8, 2011, or until **August 8, 2016**, to file the *Information* in Court. Hence, the filing of the *Information* on **March 18, 2019,** is beyond the prescriptive period. [*Citations omitted.*]

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

WHEREFORE, premises considered, the plaintiff's *Motion for Reconsideration* is **DENIED** for being filed out of time and for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice