REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, as represented by the Solicitor General, Plaintiff-Appellant,	**CTA EB CRIM. NO. 117** (CTA CRIM. CASE NO. O-945)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES, *JJ.***
ZIEGFRIED LOO TIAN, Accused-Appellee.	Promulgated: JUL 3 1 2024 4:10pm

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DECISION

***FERRER-FLORES, J.*:**

Before this Court is the **Amended Verified Petition for Review (of the Resolution dated March 02, 2023)** *(Amended Verified Petition for Review)* filed on June 21, 2023 *via* registered mail by the **People of the Philippines (plaintiff-appellant)** against accused **Ziegfried Loo Tian (accused-appellee)** appealing the Resolution dated December 5, 2022 (**1st assailed Resolution**),[1] dismissing the case on the ground of prescription, and Resolution dated March 2, 2023 (**2nd assailed Resolution**),[2] denying the motion for reconsideration, both rendered by the then Second Division of this Court[3] (**Court in Division**).

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[1] *Rollo*, pp. 26 to 31.
[2] *Rollo*, pp. 32 to 35.
[3] Composed of Associate Justice Erlinda P. Uy, Associate Justice Jean Marie A. Bacorro-Villena, and Associate Justice Lanee S. Cui-David.

The dispositive portions of the assailed Resolutions read as follows:

1st assailed Resolution

> **WHEREFORE**, premises considered, the instant case is **DISMISSED** on the ground of prescription.
>
> **SO ORDERED.**

2nd assailed Resolution

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

THE ANTECEDENT FACTS

On October 26, 2022, an *Information* was filed against accused-appellee for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which reads:

> That on or before January 20, 2011, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, filed his Quarterly Value-Added Tax Return (VAT return), for fourth (4th) quarter of taxable year 2010, knowing fully well that he is required by the law and by the rules and regulations to supply correct and accurate information within the period mentioned therein, did then and there, willfully, unlawfully and feloniously failed to supply correct and accurate information in his VAT return by stating in the entry fields of the said return the word "exempt", when in truth and in fact said accused is not exempted as he failed to comply with the substantiation and reporting requirement under the tax law and revenue regulations, which willful failure to supply correct and accurate information resulted to the damage and prejudice of the Government in the amount of Two Million Seven Hundred Ninety Four Thousand Eight Hundred Thirteen Pesos and Thirty Seven Centavos (Php2,794,813.37), exclusive of interests, penalties and surcharges.

Thereafter, the Court issued the *1st assailed Resolution* on December 5, 2022 dismissing the above Information for having been filed beyond the prescriptive period.

Aggrieved, the plaintiff-appellant moved for reconsideration which was still denied for lack of merit in the *2nd assailed Resolution* of the Court in Division.

Hence, this Petition.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On March 28, 2023, this Court received plaintiff-appellant's *Verified Petition for Review* filed *via* registered mail on March 22, 2023.[4]

In the Resolution dated June 9, 2023, this Court ordered the plaintiff-appellant to file an amended *Verified Petition for Review* incorporating the new title of the case and the proper representation of the plaintiff-appellant in the case.

In compliance therewith, plaintiff-appellant filed the present *Amended Verified Petition for Review via* registered mail on June 21, 2023 which was received by this Court on June 27, 2023.

On July 11, 2023, the Court noted the filing of the *Amended Verified Petition for Review* and ordered the accused-appellee to file his Comment on the said *Petition.*

The counsel for the accused-appellee filed a *Notice of Appearance*[5] on July 12, 2023 which was noted by the Court on July 18, 2023.[6]

On July 27, 2023, accused-appellee filed his *Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 02 March 2023).*[7]

This case was submitted for decision on August 7, 2023.[8]

THE ISSUE

In plaintiff-appellant's *Amended Verified Petition for Review*, the sole assignment of error raised was that the Court in Division erred when it found no probable cause to charge accused-appellee Loo Tian for Section 255 [of the NIRC of 1997, as amended] or willful failure to supply correct and accurate information in his quarterly VAT return for the 4th quarter of taxable year (TY) 2010.

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4 *Rollo*, pp. 1 to 19.
5 *Rollo*, pp. 501 to 502.
6 Minute Resolution dated July 18, 2023, *Rollo*, p. 504.
7 *Rollo*, pp. 505 to 524.
8 Minute Resolution dated August 7, 2023, *Rollo*, p.525.

THE ARGUMENTS

Plaintiff-appellant interposes the following arguments in support of its petition:

A. Prescription has not set in as the period of discovery and the institution of judicial proceedings for violation of Section 255 of the NIRC of 1997, as amended, not only triggers the commencement of the prescriptive period but, at the same time, triggers the interruption of the same prescriptive period.

B. Accused-appellee should be held liable for deliberate failure to supply correct and accurate information in violation of Section 255, paragraph 1, of the NIRC of 1997, as amended.

On the other hand, accused-appellee counter-argues that:

A. The right of the government to prosecute him has prescribed under Section 281 of the NIRC of 1997, as amended; and,

B. The case must be dismissed for violation of the accused's right to speedy disposition of cases as the plaintiff took more than ten (10) years from the filing of the complaint to the filing of the Information in the Court of Tax Appeals (CTA).

THE RULING OF THE COURT

The *Amended Verified Petition for Review* lacks merit.

The instant Petition for Review was timely filed.

Records show that, on December 13, 2022,[9] plaintiff-appellant received the *1st assailed Resolution,* dismissing the case on the ground of prescription, to which plaintiff-appellant timely moved for reconsideration on December 28, 2022.[10]

On March 2, 2023, the Court in Division issued the *2nd assailed Resolution* denying plaintiff-appellant's motion for reconsideration which resolution was received by the latter on March 10, 2023.[11]

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[9] *Notice of Resolution* dated December 5, 2022, Division Docket, p. 212.
[10] *Formal Entry of Appearance with Motion for Reconsideration*, Division Docket, pp. 219 to 231.
[11] *Notice of Resolution* dated March 2, 2023, Division Docket, p. 239.

Section 9(b) of Rule 9 of the Revised Rules of Court of Tax Appeals (RRCTA) provides:

> SEC. 9. *Appeal; period to appeal.* — xxx xxx xxx
>
> (b) **An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from.** The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. *(Emphasis supplied)*

Based on the foregoing, plaintiff-appellant had fifteen (15) days from receipt of the *2nd assailed Resolution* on March 10, 2023, or until **March 25, 2023**, within which to file its Petition for Review. Since March 25, 2023 fell on a Saturday, plaintiff-appellant had until **March 27, 2023** (Monday), the next working day, to file the Petition before the Court *En Banc*.

Plaintiff-appellant, thus, timely filed the instant *Petition for Review* on **March 22, 2023.**[12]

That having been settled, the Court shall now proceed to the main issue in the present petition.

The government's right to prosecute the case has already prescribed.

In resolving the issue of prescription of the offense charged, the following should be considered: *(1)* the period of prescription for the offense charged; *(2)* the time the period of prescription starts to run; and, *(3)* the time the prescriptive period is interrupted.[13]

There is no dispute as to the *first* and *second* considerations. The issue, however, lies with the *third* consideration.

For an orderly disposition of the issues, the Court will briefly discuss the *first* and *second* considerations before proceeding to the *third* consideration.

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[12] Filed *via* registered mail on March 22, 2023 and received by the Court on March 28, 2023; *Rollo*, p. 1.

[13] *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan*.

First: The prescriptive period of subject violation under the NIRC of 1997, as amended, is five (5) years.

The *first* consideration may be found in Section 281 of the NIRC of 1997, as amended, which provides for the **five (5)- year prescriptive period** as follows:

> 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)*

Second: The day of the commission of the subject violation is unknown; hence, the prescriptive period began to run upon its discovery and the institution of judicial proceedings on July 5, 2012.

As to the *second* consideration (i.e., commencement of the prescriptive period), Section 281 of the NIRC of 1997, as amended, provides for two (2) reckoning points from when the period of prescription begins to run:

(1) If the day of commission is known, prescription begins to run from the day of the commission of the violation of the law; or

(2) If the day of the commission is unknown, from its discovery *and* the institution of judicial proceedings for its investigation and punishment.

In the assailed Resolutions, the Court in Division applied the second rule which the plaintiff-appellant likewise avers to be applicable in its *Amended Petition for Review.*

A perusal of the Information shows that the violation alleged therein is that the accused "willfully, unlawfully and feloniously failed to supply correct and accurate information in his VAT return by stating in the entry fields of the said return the word 'exempt', when in truth and in fact said accused is not exempted". Such being an omission and misrepresentation on the part of the accused, the day of the commission of the violation is unknown until the same is discovered. Thus, the Court *En Banc* agrees with the finding of the Court in Division that the commencement of the prescriptive period is from the discovery of the commission *and* the institution of judicial proceedings for its investigation and punishment.

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[14] (*Lim* case), the Supreme Court discussed the commencement of the prescriptive period where the day of the commission of the violation is not known and what is contemplated by the term "judicial proceedings", to wit:

> With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of discovery of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.
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> On behalf of the Government, the Solicitor General counters that the crime of **filing false returns can be considered 'discovered' only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment** and therefore required the petitioners to pay ₱1,237,190.55 in deficiency taxes that the tax infractions were discovered.
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> 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.**
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> xxx

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

> 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.** *(Emphasis supplied.)*

Based on foregoing discussions, where the day of the commission of the violation of the law is not known, the five (5)-year prescriptive period begins to run from:

(1) *Discovery*; **and**,
(2) *Institution of judicial proceedings* (i.e., offense is indorsed to the Prosecutor's Office for preliminary investigation).

In the instant case, since, by the nature of the violation charged against the accused, the day of the commission of the violation is not known, the prescriptive period begins to run when the violation is discovered and, subsequently, the case was indorsed by the CIR for preliminary investigation to the DOJ on **July 5, 2012**.

Third: The prescriptive period was interrupted by the filing of the Information with the CTA.

The present controversy is with the *third* consideration, particularly, when the period of prescription is interrupted.

Plaintiff-appellant claims that the discovery and the institution of judicial proceedings not only trigger the commencement of the prescriptive period but also trigger the interruption of the same prescriptive period pursuant to Section 281 of the NIRC of 1997, as amended. It likewise invokes Section 1 of Rule 110 of the Revised Rules on Criminal Procedure which provides:

> SECTION 1. Institution of criminal actions. — Criminal actions shall be instituted as follows:
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> (a) For offenses where a preliminary investigation is required pursuant to Section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation;

> (b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.
>
> The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws.

As such, plaintiff-appellant maintains that prescription has not set in as the filing of the complaint with the DOJ for the conduct of preliminary investigation triggered both the commencement and interruption of the running of the prescriptive period.

This Court cannot subscribe to such interpretation.

As early as 1990, the Supreme Court has held in the *Lim* case[15] that the prescriptive period is interrupted by the filing of Information in court. Specifically, it was declared therein that tax cases are practically imprescriptible for <u>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.</u>

In 2005, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the RRCTA, which provided for the interruption of the prescriptive period under Section 2 of Rule 9 of the said Rules, to wit:

> 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.
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> **The institution of the criminal action shall interrupt the running of the period of prescription**. *(Emphasis supplied)*

Based on the foregoing, criminal cases falling within the jurisdiction of the Court in Division is instituted by filing the information before the said

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[15] *Id.*

Court. Such institution of the criminal action before the Court shall interrupt the running of the period of prescription.

Evidently, plaintiff-appellant's reliance on Rule 110 of the Revised Rules on Criminal Procedure is misplaced considering that it only applies suppletorily to the RRCTA[16] and that the latter specifically provides that criminal actions are instituted by the filing of an information before the CTA which filing shall interrupt the running of the prescriptive period.

In view of the foregoing disquisitions, **the running of the prescriptive period is interrupted by the filing of the information before the Court** and not by the filing of the complaint before the DOJ.

As correctly found by the Court in Division, the right to prosecute the criminal action herein has prescribed.

Counting from the discovery of the violation of the NIRC of 1997 and the institution of the judicial proceeding for preliminary investigation (i.e., CIR's referral of the case to the DOJ) on **July 5, 2012**, the Information should have been filed before this Court within five (5) years from July 5, 2012, or until **July 5, 2017**. Clearly, when the instant Information was filed before this Court on **October 26, 2022**, more than five (5) years have passed since the government's right to institute a criminal action prescribed.

In fine, the Court *En Banc* finds no compelling reason to reverse the Court in Division's assailed Resolutions.

WHEREFORE, premises considered, the *Amended Verified Petition for Review (of the Resolution dated March 02, 2023)* is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated December 5, 2022 and March 2, 2023 in CTA Crim. Case No. O-945 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

[16] Section 3 of Rule 1 of the RRCTA provides that "[t]he Rules of Court in the Philippines shall apply suppletorily to these Rules."

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
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