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: JUN 3 0 2023 4:00 p.m.

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DECISION

CUI-DAVID, J.:

Before the Court is a Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order[1] by way of certiorari under Rule 65 of the Rules of Court.

THE PARTIES

Petitioner Ulysses Palconet Consebido is a Filipino, of legal age, with address at New Princesa, Tinguiban, Puerto Princesa City, Palawan.[2] He is a registered taxpayer of Revenue District Office (RDO) No. 36-Coron with Tax Identification Number (TIN) 183-661-696-000 and the registered sole proprietor of Seven Digit Construction and Supplies, which is engaged in the

[1] Docket, pp. 7-15.
[2] Par. 6, Petition for Certiorari and Prohibition, Docket, p. 8.

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business of construction as evidenced by the Certificate from the Department of Trade and Industry (DTI). [3]

Public respondent Hon. Anna Leah Y. Tiongson-Mendoza (public respondent judge), represented by the Office of the Solicitor General (OSG), is the presiding judge of the Regional Trial Court of Puerto Princesa City, Palawan, Branch 164 (RTC Branch 164).[4]

Public respondent Commissioner of Internal Revenue (public respondent CIR) is the government agency mandated to collect national internal revenue taxes for nation building with office address at Room 704, Prosecution Division, BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

The People of the Philippines is represented by the Office of the Solicitor General (OSG).[6]

THE FACTS

Proceedings before the court *a quo*

On May 20, 2019, in RTC Puerto Princesa City, two (2) separate Informations, both dated August 31, 2017, were filed against petitioner for willful failure to file his quarterly VAT Return under Section 255, in relation to Section 114, of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, and willful failure to supply correct and accurate information in his Annual Income Tax Return under Section 255, in relation to Sections 24(A) and Section 51(A)(1)(a), of the 1997 NIRC, as amended, to wit:

Criminal Case No. ROX-19-39155

> **INFORMATION**
>
> The undersigned Assistant State Prosecutor of the Department of Justice, hereby accused **ULYSSES PALCONET CONSEBIDO** for willful failure to file quarterly VAT return in violation of Section 255, in relation to Section 114, of the

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[3] Par. 5, Memorandum [for Respondent], Docket, p. 247.
[4] Par. 8, Petition for Certiorari and Prohibition, Docket, p. 8.
[5] Par. 3, Memorandum [for Respondent], Docket, p. 247.
[6] Par. 7, Petition for Certiorari and Prohibition, Docket, p. 8.

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National Internal Revenue Code of 1997, as amended, committed as follows:

> "That on or about **July 25, 2009**, in Roxas, Palawan and within the jurisdiction of this Honorable Court, the above named accused, an individual and a Filipino citizen residing in the Philippines, doing business under the name and style SEVEN DIGIT CONSTRUCTION AND SUPPLIES, and at that time required by law, rules and regulations to file his quarterly Value Added Tax (VAT) return did, then and there, willfully, unlawfully and feloniously fail to file his quarterly VAT return for the 2nd quarter of taxable year 2009, which resulted in basic deficiency quarterly VAT of **₱593,217.92** for the second quarter of taxable year **2009**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.
>
> CONTRARY TO LAW."[7]

Criminal Case No. ROX-19-39156

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accused **ULYSSES PALCONET CONSEBIDO** for willful failure to supply correct and accurate information in his Annual Income Tax Return in violation of Section 255, in relation to Sections 24(A) and Section 51 (A) (1a), of the National Internal Revenue Code of 1997, as amended, committed as follows:

> "That on or about **March 22, 2010**, in Roxas, Palawan and within the jurisdiction of this Honorable Court, the above named accused, an individual and a Filipino citizen residing in the Philippines, doing business under the name and style SEVEN DIGIT CONSTRUCTION AND SUPPLIES, and at that time required by law, rules and regulations to file his annual income tax return did, then and there, willfully, unlawfully and substantially fail to supply correct and accurate information with respect to his true and correct income, as said accused substantially under declared his income for taxable year 2009 which resulted in basic deficiency income tax of **₱548,970.68** for taxable year **2009**, exclusive of

[7] Exhibit "P-7", Docket, pp. 220-222.

> surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.
>
> CONTRARY TO LAW."[8]

Both cases were consolidated and heard by Judge Tiongson-Mendoza and docketed as Crim. Case Nos. ROX-19(5)-39155 to 56-RX.

On June 28, 2019, petitioner filed a *Motion to Quash Information*[9] for both cases on the ground of prescription under Section 281 of the 1997 NIRC, as amended, which Judge Tiongson-Mendoza denied in her Order dated September 5, 2019 (First Assailed Order). [10]

On October 7, 2019, petitioner filed his *Motion for Reconsideration of the Order dated September 5, 2019.*[11]

On February 10, 2020, public respondent judge issued an Order[12] (Second Assailed Order) denying petitioner's Motion for Reconsideration for lack of merit.

Proceedings before the Court

On September 21, 2020, petitioner filed his Petition for *Certiorari* and Prohibition with Prayer for the Issuance of Temporary Restraining Order[13] praying for the following reliefs:

1. A Temporary Restraining Order be issued enjoining the public respondent to suspend further proceedings in the underlying Criminal Case Nos. ROX-19(5)-39155-RX and ROX-19(5)-39156-RX pending resolution of this Petition.

2. This Petition be given DUE COURSE.

3. The questioned ORDER dated September 5, 2019 and February 10, 2020 of the public respondent be set aside and reversed.

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[8] Exhibit "P-8", Docket, pp. 223-225.
[9] Exhibit "P-1", Docket, pp. 177-181.
[10] Exhibit "P-2", Docket, pp. 182-187.
[11] Exhibit "P-3", Docket, pp. 188-192.
[12] Exhibit "P-4", Docket, pp. 203-205.
[13] *Supra*, note 1. Raffled to the then Third Division of the Court before the issuance of CTA Administrative Circular No. 01-2022 dated June 21, 2022, reorganizing the Second and Third Divisions of the Court and transferring the case to the Second Division.

4. The Information for Criminal Case Nos. ROX-19(5)-39155-RX and ROX-19(5)-39156-RX filed against the petitioner be quashed on the ground of prescription.

5. And both cases dismissed on the ground of prescription.

On October 7, 2020, the Court ordered petitioner to submit the original copy of the Verification/Certification of Non-Forum Shopping, a compliant Verification provided under Section 4, Rule 7 of the 1997 Rules of Civil Procedure, as amended by A.M. No. 19-10-20-SC, and the requisite Affidavit of Service.

On October 19, 2020, petitioner filed his Compliance,[14] which the Court noted in its Resolution dated November 9, 2020.[15] Without necessarily giving due course to the petition, respondents were given ten (10) days from notice to file their comment, not a motion to dismiss.[16] Finally, petitioner's prayer for Temporary Restraining Order (TRO) incorporated in his petition was set for hearing on November 17, 2020.[17]

On November 16, 2020, petitioner filed his Judicial Affidavit [18] and *Ex-Parte* Motion to be Heard *via* Videoconference.[19]

During the November 17, 2020 hearing, considering that petitioner's witness is based in Palawan and there being no objection interposed by respondents, the Court granted petitioner's *Ex-Parte* Motion to be Heard *via* Videoconference and set the same on December 2, 2020, and a Commissioner's Hearing on November 24, 2020.[20]

On November 27, 2020, public respondent CIR filed *via* registered mail his Comment (On: Petitioner's undated Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order)[21] received by the Court on December 7, 2020.

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[14] Docket, pp. 69-74.
[15] Docket, pp. 78-79.
[16] *Id.*
[17] *Id.*
[18] Docket, pp. 80-130.
[19] Docket, pp. 131-132.
[20] Order, Docket, pp. 135-136.
[21] Docket, pp. 162-171.

On December 2, 2020, during the hearing held on petitioner's motion for issuance of a TRO, the latter presented his lone witness, who testified on direct examination by way of a Judicial Affidavit and underwent cross-examination. The Court then gave petitioner until December 7, 2020 to file his Formal Offer of Evidence and respondents' counsels five (5) days from receipt thereof to file comment thereto.[22]

On December 7, 2020, petitioner filed his Formal Offer of Evidence,[23] with public respondent CIR's Comment (To Petitioner's Formal Offer of Evidence)[24] filed on December 14, 2020.

On January 12, 2021, the Court issued a Resolution[25] denying petitioner's prayer for the issuance of a temporary restraining order.

In the Resolution dated April 7, 2022,[26] the Court admitted petitioner's offered exhibits.

On May 10, 2022, public respondent CIR filed *via* registered mail his Memorandum.[27] Petitioner filed his Memorandum[28] on July 28, 2022.

The present case was submitted for decision on August 16, 2022.

Subsequently, petitioner filed his Motion to Resolve on February 23, 2023.

THE ISSUE

In his Petition for *Certiorari* and Prohibition, petitioner raised this sole issue:

> Whether the public respondent [judge] committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned Order[s] dated September 5, 2019, and February 10, 2020.

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[22] Order, Docket, pp. 160-161.
[23] Docket, pp. 173-176.
[24] Docket, pp. 231-234.
[25] Docket, pp. 239-242.
[26] Docket, pp. 244-245.
[27] Docket, pp. 246-265.
[28] Docket, pp. 268-276.

Petitioner's arguments:

Petitioner argues that following the case of *Lim, Sr. et al. v. Court of Appeals*,[29] (*Lim*) prescription began on January 30, 2014, *i.e.*, the filing date of the Joint Complaint-Affidavit with the Department of Justice (DOJ) for preliminary investigation. Hence, petitioner asserts that the two Informations filed in the RTC Puerto Princesa City on May 20, 2019, exceed the five-year prescriptive period under Section 281 of the 1997 NIRC, as amended.

Petitioner submits that public respondent judge erred in denying his Motion to Quash Information and insists that prescription is interrupted only when the case is filed in Court and not by the conduct of the preliminary investigation.

Public respondent CIR's arguments:

Public respondent CIR counters that public respondent judge did not commit grave abuse of discretion in issuing the assailed Orders because the same have basis in law and jurisprudence.

He echoes the findings of public respondent judge that Section 281 of the 1997 NIRC, as amended, should be interpreted in its entirety and not on a piecemeal basis and that the law should be interpreted in accordance with the rulings of the Supreme Court in *Lim* and *Tupaz v. Ulep* (*Tupaz*).[30] As held in the case of *Lim*, the phrase "institution of judicial proceedings" refers to the filing of the complaint during the preliminary investigation; in *Tupaz*, the Supreme Court interpreted Section 281 by ruling that the preliminary investigation also interrupts the running of the prescriptive period. Hence, unless a new law is passed and the Supreme Court further clarifies its rulings in both cases, public respondent judge is bound to deny petitioner's Motion to Quash Information.

[29] G.R. Nos. L-48134-37, October 18, 1990.
[30] G.R. No. 127777, October 1, 1999.

THE COURT'S RULING

The Court has jurisdiction over the instant petition.

The Court shall determine first the timeliness of the filing of the instant petition. Petitioner admitted in his petition that he received the Second Assailed Order denying his motion for reconsideration on July 21, 2020.[31] Under Section 4, Rule 65 of the Rules of Court,[32] petitioner had sixty (60) days from July 21, 2020, or until September 19, 2020, to file a petition with the Court. Considering that September 19, 2020 fell on a Saturday, petitioner had until the next working day, September 21, 2020, to file this petition. Thus, petitioner timely filed the instant petition on September 21, 2020.

Next, the Court has to consider whether the assailed Orders are the proper subject of a special civil action for *certiorari*. For a petition for certiorari and prohibition to prosper and be given due course, it must be shown that:

> (a) the respondent judge or tribunal issued the order without or in excess of jurisdiction or with grave abuse of discretion; or
>
> (b) the assailed interlocutory order is patently erroneous, and the remedy of appeal cannot afford adequate and expeditious relief.[33]

Given the foregoing, the Court must distinguish whether the assailed Orders are interlocutory or final. In this case, the First Assailed Order dated September 5, 2019 denying petitioner's Motion to Quash Information, and the Second Assailed Order dated February 10, 2020 denying reconsideration of the First Assailed Order are interlocutory orders because the judgment is yet to be rendered.[34] The proceedings with the trial court are not yet terminated, and there is still something to be done with respect to the merits of the case.[35]

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[31] Par. 4, Docket, p. 8.
[32] SEC. 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. …
[33] *The City of Iloilo v. Hon. Honrado*, G.R. No. 160399, December 9, 2015, citing *Pahila-Garrido v. Tortogo, et al.*, G.R. No. 156358, August 17, 2011, citing *Investments, Inc. v. Court of Appeals*, G.R. No. L-60036, January 27, 1987.
[34] *Alma Jose v. Javellana, et al.*, G.R. No. 158239, January 25, 2012; *Miranda v. Court of Appeals*, G.R. No. L-33007, June 18, 1976.
[35] *Boston Equity Resources, Inc. v. Court of Appeals, et al.*, G.R. No. 173946, June 19, 2013.

Petitioner also alleged in his petition the acts committed by public respondent judge that are without or in excess of her jurisdiction or done with grave abuse of discretion amounting to lack or excess of jurisdiction, *i.e.*, the issuance of the assailed Orders denying his Motion to Quash Information considering that the right to prosecute had already prescribed under Section 281 of the 1997 NIRC, as amended.

Hence, petitioner availed of the proper remedy before this Court by filing a Petition for *Certiorari* and Prohibition under Rule 65 of the Revised Rules of Court.

The crime charged has already prescribed under Section 281 of the 1997 NIRC.

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 was interrupted.[36]

Pertinent thereto is Section 281 of the 1997 NIRC, as amended, which reads:

> 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*)

[36] *Romualdez v. Marcelo, et al.*, G.R. Nos. 165510-33, July 28, 2006.

Clear from the foregoing provision that, *first*, the period of prescription for the offense charged is five (5) years.

Second, the period of prescription starts to run from the day of the commission of the violation of the law, or if the date of commission is not known, from the discovery thereof *and* the institution of judicial proceedings for its investigation and punishment.

Third, prescription shall be tolled when proceedings are instituted against the guilty persons.

Following Section 281 of the 1997 NIRC, as amended, in offenses where the commission is unknown, prescription *commences* from the discovery of the commission *and* the institution of judicial proceedings for its investigation and punishment. Hence, the prescriptive period in this case commenced on January 30, 2014, when the Joint Complaint-Affidavit[37] against the accused was filed with the DOJ for purposes of preliminary investigation.

The contention lies as to when the prescriptive period is interrupted.

Public respondent CIR maintains that the running of the prescriptive period on January 30, 2014, which is the filing of the Joint-Complaint Affidavit with the DOJ, also interrupted the same prescriptive period.

Public respondent CIR is mistaken.

In *Lim,* which involves the offense of filing false and fraudulent income tax returns and failure to pay the deficiency taxes due, the Supreme Court interpreted Section 354 of the 1939 Tax Code (now Section 281 of the 1997 NIRC) to resolve the issue of prescription.

The Court notes that the wording of Section 354 of the 1939 Tax Code is identical to that of Section 281 of the 1997 NIRC.[38] Accordingly, the interpretation given by the Supreme Court to Section 354 shall likewise apply to Section 281, to wit:

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[37] Exhibit "P-5", Docket pp. 206-217.
[38] Below is a side-by-side comparison of Section 354 of the 1939 NIRC and Section 281 of the 1997 NIRC:

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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 P1,237,190.55 in deficiency taxes that the tax infractions were discovered.

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*.**

... ...

The Court is inclined to adopt the view of the Solicitor General. ... 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**

Section 354 of the 1939 Tax Code	Section 281 of the NIRC of 1997
SEC. 354. *Prescription for Violations of Any Provisions of this Code.* – All violations of any provisions of this Code shall prescribe after five 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.	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

> **information in court does *not* exceed five (5) years.** (*Emphases supplied*)

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.

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.

Thus, We hold that the lower court, through public respondent judge, had committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed Orders.

Finally, contrary to public respondent CIR's claim, the ruling in *Panaguiton v. Department of Justice*[39] 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.

Thus, in view of *Lim*, the Court reiterates that the period of prescription for a tax case where the date of actual commission is unknown begins to run from the discovery *and* institution of proceedings for its investigation and shall only be tolled by filing an information with the court.

In fine, unless and until the Supreme Court modifies or reverses *Lim*, it remains binding in cases involving prosecutions for violation of the 1997 NIRC, as amended.

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

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 ground of prescription.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice