REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ZIEGFRIED LOO TIAN,
No. 1013, Juan Luna Street, Brgy. 7, Zone 1, Tondo, Manila.
(At-Large)
Accused.

CTA Crim. Case No. O-948
(NPS Docket No. XVI-INV-12G-00346)

For: Violation of Section 255, paragraph 1, of the National Internal Revenue Code of 1997, as amended.

Members:

UY, *Chairperson,*
BACORRO-VILLENA, and
CUI-DAVID, JJ.

Promulgated:

DEC 05 2022

9:25 a.m.

x - x

RESOLUTION

Records show that on October 26, 2022, an *Information* was filed by the prosecution, herein represented by Prosecution Attorney Jayvee Laurence B. Bandong, against accused Ziegfried Loo Tian, for willful failure to supply correct and accurate information in his Quarterly Value-Added Tax Return for the third quarter of taxable year 2011, in violation of Section 255, paragraph 1, of the National Internal Revenue Code (NIRC) of 1997, as amended.

After careful and thorough consideration of the allegations in the *Information* and the attachments thereto, the Court finds that the right of the government to prosecute accused for his alleged violation of Section 255, paragraph 1, of the NIRC of 1997, as amended, has already prescribed when the subject *Information* was filed with this Court on October 26, 2022.

Section 281 of the NIRC of 1997, as amended, governs the prescriptive period for the filing of criminal actions under the said Code, to wit:

> "SECTION 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)*

Based on the foregoing, the five (5)-year prescriptive period for criminal violations under the NIRC of 1997, as amended, commences to run from the day of the commission of the violation, 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.

In interpreting the commencement of the prescriptive period under Section 281 of the NIRC of 1997, as amended, the case of *Emilio E. Lim, Sr., and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[1] (*Lim* case) is instructive, 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, <u>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</u>**

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

> **limiting period begins to run**. It was on September 1, 1969 that the offenses subject of Criminal Case 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 xxx xxx
>
> 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**.
>
> xxx xxx xxx
>
> Unless amended by the Legislature, Section 354 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." *(Emphasis and underscoring supplied)*

Based on the foregoing, the Supreme Court considered both the fact of discovery of the offense and the institution of judicial proceeding for investigation and punishment in determining the commencement of the five (5)-year prescriptive period under Section 354 of the 1939 Tax Code. The *Lim* case likewise provides that the preliminary investigation is considered a proceeding for investigation and punishment of a crime which commences the period for prescription. Further, tax cases are practically imprescriptible as long as the period for 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.

It bears noting that the wording of Section 354 of the 1939 Tax Code is identical to that of Section 281 of the NIRC of 1997, as amended. Accordingly, the interpretation given by the Supreme Court in the *Lim* case still holds true to the present case.

Further, in Revenue Memorandum Circular No. 101-90,[2] dated November 26, 1990, it is provided that "[t]he offenses under the Tax Code are seemingly 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".

Applying the foregoing to the instant case, the filing of the Joint Complaint-Affidavit with the Department of Justice on July 5, 2012 is considered as the judicial proceeding for investigation which commences the running of the five (5)-year prescriptive period. Accordingly, counting five (5) years from July 5, 2012, the prescriptive period lapsed on July 5, 2017. Clearly, prescription had already set in when the prosecution filed the subject *Information* before this Court on October 26, 2022.

WHEREFORE, in view of the foregoing considerations, CTA Crim. Case No. O-948 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

ERLINDA P. UY
Associate Justice

(On Official Business)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[2] SUBJECT: Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.