REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA *EB* CRIM. NO. 150** (CTA Crim. Case No. O-983)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
LEMUEL SIBUMA CONSOLACION, *Respondent.*	Promulgated: MAY 29 2025 1:20

x- x

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] seeking to reverse and set aside the Resolutions dated February 22, 2024[2] (first assailed Resolution) and April 26, 2024[3] (second assailed Resolution) issued by the Court's Second Division. The first assailed Resolution dismissed the case for failure to prosecute, while the second assailed Resolution denied petitioner's motion for reconsideration.

---

[1] *En Banc (EB)* Docket, pp. 1–11.
[2] *Id.* at 17–19.
[3] *Id.* at 21–22.

THE PARTIES

Petitioner is the People of the Philippines through the Bureau of Internal Revenue (BIR), acting as Special Prosecutor duly deputized by the Department of Justice (DOJ), with office address at Room 704, BIR National Office Building, Senator Miriam Defensor-Santiago Avenue, Diliman, Quezon City.[4]

Respondent Lemuel Sibuma Consolacion is the proprietor of North Med Enterprise, a business engaged in the wholesale and retail distribution of pharmaceutical supplies and products, which is located at Centro Building, Lingsat, San Fernando City, La Union and is registered with the BIR under Revenue District Office (RDO) No. 03, San Fernando City, La Union, with Tax Identification Number 200-394-865-000.[5]

THE FACTS

On December 5, 2022, an Information dated February 17, 2020,[6] was filed by Assistant State Prosecutor Jayvee Laurence B. Bandong (ASP Bandong), charging respondent with a violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. The Information was initially raffled to the Court's Third Division, with the accusatory portion reading as follows:

> That on or about 04 August 17 and thereafter, in San Fernando City, La Union, Philippines, and within the jurisdiction of this Honorable Court, accused **LEMUEL SIBULA CONSOLACION**, a private individual required by law to pay Income Tax, did then and there, willfully, unlawfully and knowingly fail to pay his Value-Added Tax deficiency in the amount of One Million Three Hundred Seventy Two Thousand Eight Hundred Eighty Peso and Thirty Centavos (Php1,372,880.30), exclusive of surcharges and interests, despite final notices and notice of collection letter, including prior and post notice and demands to pay, the last being in the nature of Final Notice and Demand Before Suit dated 04 August 2017, to the damage and prejudice of the Government of the Republic of the Philippines.
>
> CONTRARY TO LAW.

---

[4] *Id.* at 2, par. 2.
[5] *Id.* at 34, Joint Complaint-Affidavit, par. 4.
[6] Division Docket, pp. 5–6.

In support of the Information, ASP Bandong attached the following documents:

1. Photocopies of the DOJ Resolutions dated February 10, 2021[7] and February 17, 2020;[8]
2. Certified true copy of the Investigation Data Form dated April 4, 2018;[9]
3. Certified true copy of the referral letter dated April 4, 2018 signed by then CIR Caesar R. Dulay;[10]
4. Certified true copy of the Joint Complaint-Affidavit[11] executed on April 4, 2018 with attached certified true copies of the following annexes:
    a. Collection Notice dated November 24, 2016;[12]
    b. Collection Notice dated February 15, 2017;[13]
    c. Final Notice dated May 29, 2017;[14]
    d. Quarterly Value-Added Tax (VAT) Return (2550-Q) for the 4th quarter of calendar year (CY) 2016;[15]
    e. Quarterly VAT Return (2550-Q) for the 1st quarter of CY 2016;[16]
    f. Quarterly VAT Return (2550-Q) for the 4th quarter of CY 2015;[17]
    g. Certification by Priscilla D. Somera, Chief of Collection Section, RDO No. 3, City of San Fernando, La Union dated August 8, 2017;[18] and
    h. Final Notice and Demand Before Suit issued by Teresita M. Dizon, Regional Director of Revenue Region No. 1, Calasiao, Pangasinan dated August 4, 2017.[19]

In a Resolution dated February 2, 2023, the Third Division noted that the Information accuses Lemuel <u>Sibula</u> Consolacion but the supporting documents referred to Lemuel <u>Sibuma</u> Consolacion, and that the February 10, 2021 and February 17, 2020 DOJ Resolutions were mere photocopies. Accordingly, the Third Division directed petitioner to file an amended information reflecting the correct name of accused and to submit the original or certified true copies of the DOJ Resolutions within five days from notice.[20]

---

7 *Id.* at 7–9.
8 *Id.* at 10–14.
9 *Id.* at 15.
10 *Id.* at 16–17.
11 *Id.* at 18–23.
12 *Id.* at 24–25.
13 *Id.* at 26–27.
14 *Id.* at 28–31.
15 *Id.* at 32–33.
16 *Id.* at 34–35.
17 *Id.* at 36–37.
18 *Id.* at 38.
19 *Id.* at 39.
20 *Id.* at 41–44.

On February 17, 2023, petitioner, through ASP Bandong, filed a *Compliance*,[21] submitting the Amended Information dated February 16, 2023,[22] along with certified true copies of the DOJ Resolutions.[23] The Amended Information reads:

> That on or about 04 August 17 and thereafter, in San Fernando City, La Union, Philippines, and within the jurisdiction of this Honorable Court, accused **LEMUEL SIBUMA CONSOLACION**, a private individual required by law to pay Income Tax, did then and there, willfully, unlawfully and knowingly fail to pay his Value-Added Tax deficiency in the amount of One Million Three Hundred Seventy Two Thousand Eight Hundred Eighty Peso and Thirty Centavos (Php1,372,880.30), exclusive of surcharges and interests, despite final notices and notice of collection letter, including prior and post notice and demands to pay, the last being in the nature of Final Notice and Demand Before Suit dated 04 August 2017, to the damage and prejudice of the Government of the Republic of the Philippines.
>
> CONTRARY TO LAW.

In its March 16, 2023 Resolution, the Third Division noted petitioner's *Compliance*, the Amended Information, and the certified true copies of the DOJ Resolutions. However, it further directed petitioner to provide the correct address of respondent, as the addresses stated in the Amended Information and the *Compliance* were different.[24]

On June 14, 2023, pursuant to Administrative Circular No. 01-2023 dated May 23, 2023, the case was transferred to the Second Division (Court in Division).[25]

On July 13, 2023, the Records Verification revealed that petitioner had failed to comply with the Court's Resolution dated March 16, 2023, despite its personal service to petitioner on April 4, 2023.[26]

On September 5, 2023, the Court in Division issued a Resolution granting petitioner one last opportunity to comply with the Resolution dated March 16, 2023, within five (5) days from notice, warning that failure to do so would result in the dismissal of the case.[27]

---

21 *Id.* at 45–46.
22 *Id.* at 47–48.
23 *Id.* at 49–56.
24 *Id.* at 58–59.
25 *Id.* at 62.
26 *Id.* at 63.
27 *Id.* at 65–66.

On September 18, 2023, counsels from the BIR filed a *Formal Entry of Appearance with Compliance (Re: Resolution promulgated on March 16, 2023)* by registered mail.[28] They manifested that they were the Deputized Special Prosecutors from the BIR, acting under the supervision and control of the DOJ. Their *Compliance (Re: Resolution promulgated on March 16, 2023)* provided the Court with respondent's addresses based on the BIR Integrated Tax System (ITS).[29]

On October 31, 2023, the Court in Division issued a Resolution dismissing the case without prejudice for lack of probable cause.[30]

Aggrieved, petitioner filed the *Omnibus Motions (1. For Reconsideration of the Resolution dated October 31, 2023; and 2. To Allow Amendment of the Information)* on December 6, 2023.[31]

On January 15, 2024, the Court in Division issued a Resolution granting petitioner's motions. It reversed its previous Resolution dated October 31, 2023, reinstated the case, and granted petitioner five (5) days from notice to file an amended information.[32]

Hence, petitioner filed a *Manifestation with Motion for Extension of Time* on January 22, 2024,[33] and subsequently submitted a *Compliance with Submission of Second (2nd) Amended Information (Re: Resolution dated January 15, 2024)* on January 29, 2024.[34]

On February 22, 2024, the Court in Division issued the first assailed Resolution, dismissing the case for failure to prosecute, stating:[35]

> *First*, the Court notes that plaintiff received a copy of the January 15, 2024 Resolution on January 19, 2024 and, therefore, had five (5) days or until January 24, 2024 to comply. However, it failed to file an Amended Information within the period provided, instead, it asked for another five (5) days or until January 29, 2024 to comply.

[28] *Id.* at 67–69.
[29] *Id.* at 71–73.
[30] *Id.* at 84–91.
[31] *Id.* at 92–99.
[32] *Id.* at 102–105.
[33] *Id.* at 106–108.
[34] *Id.* at 110–113.
[35] *Id.* at 116–118.

> *Secondly*, although plaintiff was able to file a Second (2nd) Amended Information within its requested extension on January 29, 2024, the same was filed without the necessary supporting documents.
>
> More than a year has lapsed since the original Information was filed on December 5, 2022. Due to certain deficiencies, the Court has already allowed plaintiff to amend the Information without prejudice to the continued prosecution of the case. In fact, it has just reconsidered the dismissal of the case to allow the filing of a second amendment. Without doubt, the Court has shown leniency by conceding several opportunities for the plaintiff to correct the deficiencies and has expended considerable amount of time and resources in the process. In spite of these, plaintiff has again failed to comply.
>
> **WHEREFORE**, premises considered, the case is **DISMISSED** for failure to prosecute.
>
> **SO ORDERED.**

In its *Motion for Reconsideration (of the Resolution dated February 22, 2024)*,[36] petitioner argued that the submission of the Second (2nd) Amended Information constituted substantial compliance and that its admission would serve the broader interests of justice. Petitioner explained that the request for a five (5)-day extension to submit the Second (2nd) Amended Information was not intended to delay the proceedings but was necessary to allow additional time for its preparation and approval by DOJ officials. Petitioner further noted that the five (5)-day extension included a two (2)-day weekend and that the Second (2nd) Amended Information was submitted within the requested extension period.

Regarding the Court in Division's observation that the Second (2nd) Amended Information was filed without the necessary supporting documents, petitioner contended that all necessary documents had already been submitted and previously noted by the Court in Division in its Resolutions dated March 16, 2023[37] and October 31, 2023.[38] In addition,

---

[36] *Id.* at 119–127.

[37] The Court in Division noted the certified true copies of the DOJ Resolutions dated February 10, 2021 and February 17, 2020.

[38] The Court in Division outlined the following documents, among others, as attached to the Information:

a. Certified true copy of the Investigation Data Form dated April 4, 2018;
b. Certified true copy of the referral letter dated April 4, 2018 signed by then CIR Caesar R. Dulay;
c. Certified true copy of the Joint Complaint-Affidavit with attached certified true copies of the following annexes:
a. Collection Notice dated November 24, 2016;
b. Collection Notice dated February 15, 2017;

petitioner explained that it did not reproduce the documents anew in compliance with Section 5 of the Efficient Use of Paper Rule, which provides:

> SEC. 5. *Copies to be filed.* – Unless otherwise directed by the court, the number of court-bound papers that a party is required or desires to file shall be as follows:
>
> ....
>
> c. In the Court of Tax Appeals, one original (properly marked) and two copies with annexes. On appeal to the En Banc, one original (properly marked) and eight copies with annexes; and

Petitioner respectfully moved for reconsideration on the ground that the certified true copies of the necessary supporting documents had already been submitted to the Court in Division and formed part of the case docket. Thus, it only filed the Second (2^{nd}) Amended Information on January 29, 2024.

The Court in Division denied petitioner's motion in the second assailed Resolution, ratiocinating as follows:

> The Court remains unconvinced.
>
> First, the documents that were already filed prior to the two dismissals cannot be considered to support the Second (2nd) Amended Information because the Court already found discrepancies in said documents. In addition, they were submitted in support of the original and the amended Information that were both struck down when the case was dismissed. Assuming the plaintiff believed that these same documents are still relevant to the Second (2nd) Amended Information, prudence dictates that they should have been filed with the new information in order to be evaluated by the Court with a fresh perspective. Regrettably, the plaintiff failed to prosecute this case with due attention.
>
> Second, the Court has already dismissed the case twice, and not simply for any technicality. To reinstate the case anew will not serve the broader interest of justice. In *Eloisa Merchandising, Inc. v. Banco de Oro Universal Bank*, the Supreme Court noted that despite the trial court's leniency

---

c. Final Notice dated May 29, 2017;
d. Quarterly Value-Added Tax Return (2550Q) for the fourth quarter of calendar year (CY) 2016;
e. Quarterly Value-Added Tax Return (2550Q) for the first quarter of CY 2016;
f. Quarterly Value-Added Tax Return (2550Q) for the fourth quarter of CY 2015;
g. Certification by Priscilla D. Somera, Chief Collection Section, RDO No. 3, City of San Fernando, La Union dated August 8, 2017; and
h. Final Notice and Demand Before Suit signed by Teresita M. Dizon, Regional Director, Revenue Region No. 1, Calasiao, Pangasinan dated August 4, 2017.

and admonition, the counsels continued to exhibit laxity in attending to their case and, therefore, affirmed the dismissal of the case for failure to prosecute.

> **WHEREFORE**, premises considered, the *Motion for Reconsideration (of the Resolution dated February 22, 2024)* is **DENIED** for lack of merit.
>
> **SO ORDERED**.

Dissatisfied with the second assailed Resolution, petitioner filed the present *Petition for Review* through registered mail on May 22, 2024.

On July 24, 2024, respondent filed his *Comment/Opposition to the Petition for Review via* registered mail.[39]

On September 19, 2024, the case was submitted for decision.[40]

THE ISSUE

Petitioner ascribes this lone error on the part of the Court in Division:[41]

> THE HONORABLE CTA SECOND DIVISION ERRED WHEN IT DISMISSED THE PRESENT [sic] AGAINST RESPONDENT CONSOLACION CASE [sic] FOR VIOLATION OF SECTION 255 OF THE NIRC OF 1997, AS AMENDED OR WILLFUL FAILURE TO PAY VALUE ADDED TAX (VAT) FOR FOURTH (4TH) QUARTER OF TAXABLE YEAR 2016, ON THE GROUND OF FAILURE TO PROSECUTE.

Petitioner's arguments

Petitioner asserts that it has submitted all necessary supporting documents and that the Second (2nd) Amended Information substantially complies with the order of the Court in Division. Petitioner recalls that the case was initially dismissed on October 31, 2023, when the Court in Division determined that the facts charged in the Amended Information did not constitute an offense. Specifically, the Court found that respondent could not be charged with willful failure to pay one type of internal tax if he was required to pay another.

---

[39] *EB* Docket, pp. 65–69.
[40] *Id.* at 73.
[41] *Id.* at 5, par. 22.

In its Resolution dated January 15, 2024, which reinstated the case, the Court in Division acknowledged that the prosecution's request to amend the Amended Information was intended to correct an inadvertence regarding the type of internal revenue tax stated. The Court noted that such an "amendment will not change the nature of the offense charged in the information when it is read in conjunction with the supporting annexes or alter the prosecution's theory of the case."

Petitioner disagrees with the Court in Division's finding that the documents submitted in support of the original and the Amended Information were both struck down when the case was dismissed. Petitioner emphasizes that the Court in Division recognized the amendment as merely formal. Thus, petitioner contends that the submission of the Second (2nd) Amended Information, which corrected an inadvertence concerning the tax type, should be considered substantial compliance with the Resolution dated January 15, 2024.

Finally, petitioner points out that the Resolutions dated March 16, 2023, and October 31, 2023, noted its compliance in submitting the required documents. This demonstrates petitioner's good faith throughout the case. Petitioner asks this Court's indulgence to decide the case on its merits, as the evidence presented clearly establishes a violation of law.

Respondent's arguments

Respondent echoes the assailed Resolutions of the Court in Division, which dismissed the case due to petitioner's failure to prosecute. Respondent argues that, given the filing of the case, petitioner should have attached the necessary supporting documents to its Second (2nd) Amended Information. Respondent contends that petitioner has caused unnecessary delays and asserts that, despite the Court in Division's leniency, petitioner repeatedly committed inexcusable errors in its pleadings. Consequently, respondent maintains that there was no abuse on the part of the Court in Division in dismissing the case.

THE COURT *EN BANC'S* RULING

The instant Petition for Review was filed out of time.

Before addressing the merits of this case, the Court must first determine whether the *Petition for Review* was timely filed.

Petitioner computed the fifteen (15)-day period for filing an appeal from the date the deputized special prosecutor of the BIR Prosecution Division received the second assailed Resolution on May 7, 2024.[42] However, the DOJ received the second assailed Resolution earlier, on May 2, 2024.[43]

The Supreme Court has consistently ruled that the appeal period should be reckoned from the date of receipt by the principal counsel, not the deputized lawyer.[44] The Supreme Court has also held that a lawyer deputized by the Office of the Solicitor General (OSG) is merely a representative, while the OSG retains supervision and control over the deputized counsel. Consequently, copies of orders and decisions served on a deputized counsel are not binding until they are received by the principal counsel.

Although these rulings involve the OSG and its deputized government lawyers, the same principle applies to cases where the DOJ, as the public prosecutor responsible for prosecuting criminal actions,[45] deputizes BIR lawyers to prosecute tax violation cases. While BIR lawyers may prosecute cases under the DOJ's authority, the DOJ retains ultimate direction and control over them.[46]

---

[42] *EB* Docket, p. 4, Petition for Review, par. 20.

[43] Division Docket, p. 130, Notice of Resolution dated April 26, 2024.

[44] *Baldovino-Torres v. Torres, et al.*, G.R. No. 248675, July 20, 2022 [Per J. Inting, Third Division]; *Commissioner of Customs v. Court of Tax Appeals*, G.R. No. 132929, March 27, 2000 [Per J. Mendoza, Second Division]; *National Power Corporation v. National Labor Relations Commission*, G.R. Nos. 90933-61, May 29, 1997 [Per J. Romero, Second Division].

[45] Sec. 5, Rule 110 of the Revised Rules of Criminal Procedure provides:
SEC. 5. *Who must prosecute criminal actions.* — **All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor.** In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutor, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. (*Emphasis supplied*)

[46] Sec. 3, Rule 9 of the RRCTA provides:
SEC. 3. *Prosecution of criminal actions.* — **All criminal actions shall be conducted and prosecuted under the direction and control of the public prosecutor.** In criminal actions involving violation of the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, and violations of the Tariff and Customs Code or other laws enforced by the Bureau of Customs, the prosecution may be conducted by their respective duly deputized legal officers. (*Emphasis supplied*)

Thus, the period for filing the Petition for Review should be reckoned from the date the DOJ received the second assailed Resolution, **not** from when the deputized prosecutor received it. Since the DOJ received the Resolution denying its motion for reconsideration on May 2, 2024,[47] the 15-day appeal period under Section 9(b), Rule 9[48] of the Revised Rules of the Court of Tax Appeals (RRCTA) expired on *May 17, 2024*. As the present Petition for Review was filed on *May 22, 2024*, it is time-barred.

The Court in Division did not err in dismissing the case for failure to prosecute.

Furthermore, even if the *Petition for Review* had been timely filed, the Court in Division properly dismissed the case for failure to prosecute.

The accusatory portion of the Second Amended Information reads as follows:

> That on or about 04 August 17 and thereafter, in San Fernando City, La Union, Philippines, and within the jurisdiction of this Honorable Court, accused LEMUEL SIBUMA CONSOLACION, a private individual required by law to pay **Value Added Tax** did then and there, willfully, unlawfully and knowingly fail to pay his Value Added Tax deficiency **for the fourth (4th) quarter of taxable year 2016** in the amount of One Million Three Hundred Seventy Two Thousand Eight Hundred Eighty Peso and Thirty Centavos (Php1,372,880.30), exclusive of surcharges and interests, despite final notices and notice of collection letter, including prior and post notice and demands to pay, the last being in the nature of Final Notice and Demand Before Suit dated 04 August 2017, to the damage and prejudice of the Government of the Republic of the Philippines.
>
> CONTRARY TO LAW.

The Court observes that the amendment neither alters the crime charged nor affects petitioner's theory or defense. It does not introduce additional elements necessary for a conviction of willful failure to pay tax. Further, the amendment does not change the fundamental nature of the offense or present any new information that would surprise respondent, thereby

W

[47] Division Docket, p. 130; *EB* Docket, p. 4, Petition for Review, par. 20.
[48] SEC. 9. *Appeal; period to appeal.* – .... (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.

depriving him of the opportunity to respond.[49] The amendment only states with precision something that was already included in the original Information.[50] Thus, the Court in Division correctly classified it as a formal amendment in its Resolution dated January 15, 2024: [51]

> In this case, the accused has yet to enter his plea and the prosecution now seeks to amend the *Amended Information* to correct an inadvertence on the internal revenue tax type stated. Accordingly, the amendment will *not* change the nature of the offense charged in the information when it is read in conjunction with the supporting annexes or alter the prosecution's theory of the case.

Petitioner did not attach anew the supporting annexes when filing the Second (2nd) Amended Information, as the case records already contained the following documents:

1. Certified true copies of the DOJ Resolutions dated February 10, 2021[52] and February 17, 2020;[53]
2. Certified true copy of the Investigation Data Form dated April 4, 2018;[54]
3. Certified true copy of the referral letter dated April 4, 2018 signed by then CIR Caesar R. Dulay;[55]
4. Certified true copy of the Joint Complaint-Affidavit[56] executed on April 4, 2018, with attached certified true copies of the following annexes:
   a. Collection Notice dated February 15, 2017 for the amount of unpaid tax amounting to ₱1,372,880.30 with Quarterly VAT Return (2550-Q) filed through eFPS on January 25, 2017;[57]
   b. Final Notice dated May 29, 2017;[58]
   c. Quarterly VAT Return (2550-Q) for the 4th quarter of CY 2016 total amount payable of ₱1,372,880.30;[59]
   d. Certification by Priscilla D. Somera, Chief of Collection Section, RDO No. 3, City of San Fernando, La Union dated August 8, 2017 stating that respondent did not file any amendments on his Quarterly VAT Return (2550-Q) for the 4th quarter of CY 2016;[60] and
   e. Final Notice and Demand Before Suit dated August 4, 2017.[61]

---

49 *Villarba v. Court of Appeals, et al.*, G.R. No. 227777, June 15, 2020 [Per J. Leonen, Third Division].
50 *Id.*
51 Division Docket, pp. 102–104.
52 *Id.* at 49–51.
53 *Id.* at 52–56.
54 *Id.* at 15.
55 *Id.* at 16–17.
56 *Id.* at 18–23.
57 *Id.* at 26.
58 *Id.* at 28–31.
59 *Id.* at 32–33.
60 *Id.* at 38.
61 *Id.* at 39.

Despite the previous submission of the foregoing documents, the Court in Division dismissed the case for failure to prosecute under Section 3, Rule 17 of the Revised Rules of Court:

> SEC. 3. *Dismissal due to fault of plaintiff.* — **If, for no justifiable cause, the plaintiff fails** to appear on the date of the presentation of his or her evidence in chief on the complaint, or **to prosecute his or her action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed** upon motion of the defendant or **upon the court's own motion**, without prejudice to the right of the defendant to prosecute his or her counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. (*Emphasis supplied*)

Under the aforementioned rule, the authority of the Court is broad and definite. It grants the Court the power to dismiss a case even on its own motion, and such dismissal "rests upon the sound discretion of the court and will not be reversed on appeal in the absence of abuse. The burden of showing abuse of judicial discretion is upon appellant, since every presumption is in favor of the correctness of the court's action."[62]

The Court in Division cannot be faulted for dismissing the case due to petitioner's failure to comply. The repeated amendments to the Information caused significant delays in the determination of probable cause against respondent for over a year. Both the original and Amended Informations contained multiple errors, including inaccuracies in respondent's name, inconsistencies in the tax types involved, and missing details regarding the taxable period. These deficiencies underscore the need for the prosecution to exercise greater care and diligence in drafting an Information or any legal document.

The prosecution is reminded to exercise precision and thoroughness in preparing an Information, not only to enable the court to properly exercise its jurisdiction[63] but also to uphold fairness in criminal proceedings.[64] The prosecution's responsibilities extend beyond mere formalities; they encompass a commitment to fairness and adherence to legal

---

62 *People v. Hon. Cloribel, et al.*, G.R. No. L-20314, August 31, 1964 [Per J. Regala, *En Banc*].
63 See *Navaja v. Hon. De Castro, et al.*, G.R. No. 182926, June 22, 2015 [Per J. Peralta, Third Division]; See also *Gomez v. People*, G.R. No. 216824, November 10, 2020 [Per J. Gesmundo, *En Banc*].
64 See *Villarba v. Court of Appeals, et al.*, G.R. No. 227777, June 15, 2020 [Per J. Leonen, Third Division], citing *Enrile v. People*, G.R. No. 213455, August 11, 2015 [Per J. Brion, *En Banc*].

standards that protect both the rights of the accused and the integrity of judicial processes.

Considering the records of the case, the Court *En Banc* finds no abuse of judicial discretion by the Court in Division in dismissing the case. The dismissal was well within its authority and was based on petitioner's own procedural lapses. Absent a clear showing of grave abuse, the Court *En Banc* affirms the propriety of the dismissal.

Nonetheless, even if the Court were to proceed with the determination of probable cause against respondent, the Information would still be dismissed because prescription has set in.

In assessing probable cause, it is essential to evaluate whether the prescriptive period for prosecuting the offense has lapsed, as this directly impacts the validity of a criminal charge.

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

Section 281 of the NIRC of 1997, as amended, provides a five (5)-year prescriptive period for all violations under the Code, including the offense charged in this case:

> 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 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. (*Emphasis supplied*)

A review of the Second (2^{nd}) Amended Information reveals that respondent is charged with willful failure to pay VAT for the fourth quarter of taxable year (TY) 2016, despite final notices and collection letters.

In *Lim, Sr. v. Court of Appeals*,[65] (*Lim*) the Supreme Court clarified that the offense of willful failure to pay tax could only be committed after notice and demand for payment of the deficiency taxes were served upon the taxpayers, *viz.*:

> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' refusal to pay the deficiency income taxes due, again both parties are in accord that by their nature, **the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers.** Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
>
> We hold for the Government. Section 51 (b) of the Tax Code provides:
>
> > "(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid **upon notice and demand** from the Commissioner of Internal Revenue.*" (*Emphasis on the original*)
>
> **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 alloted 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. (*Emphasis supplied*)

Respondent was charged with willful failure to pay VAT for the 4th quarter of TY 2016, which was filed through the BIR's electronic filing and payment system (eFPS) on January 25, 2017.[66] Thereafter, Collection Notices dated November 24, 2016 and February 15, 2017,[67] a Final Notice dated May 29, 2017,[68] and a Final Notice and Demand Before Suit dated August 4,

---

[65] G.R. Nos. L-48134-37, October 18, 1990 [Per C.J. Fernan, Third Division].
[66] Joint Complaint-Affidavit, par. 8, vis-à-vis BIR Form No. 2550-Q, Division Docket, pp. 20 and 32–33, respectively.
[67] *EB* Docket, pp. 39-41; Division Docket, pp. 26–27.
[68] *EB* Docket, pp. 42-44; Division Docket, pp. 28–29.

2017,[69] were sent to respondent, requiring him to pay the VAT due.

The Tax Code follows the pay-as-you-file system of taxation, under which taxpayers compute their own tax liabilities, prepare the return, and pay the tax as they file it.[70] The pay-as-you-file system is a self-assessing tax system, which imposes upon the taxpayers the obligation to conduct an assessment of themselves so they could determine and declare the amount to be used as tax basis, any deductions therefrom, and finally, the tax due.[71]

This case involves an unpaid self-assessed VAT, which respondent himself computed; thus, "no further assessment by the government is required to create the tax liability".[72] A self-assessed tax falls due without the need of any prior assessment by the BIR, and non-payment of a self-assessed tax on the date prescribed by law results in penalties even in the absence of any assessment by the BIR.[73]

Given that there was no need for the BIR to issue a Final Assessment Notice, the BIR issued the Final Notice dated May 29, 2017, which respondent received on June 9, 2017.[74] Said notice granted respondent ten (10) days from receipt, or until June 19, 2017, to settle his tax liabilities; otherwise, the BIR would initiate collection proceedings. Respondent, however, failed to pay within the prescribed period.

Lim further provides that the offense of willful failure to pay tax is committed only when the taxpayer willfully refuses to pay within the allotted period. Accordingly, the five (5)-year prescriptive period for the offense began upon the expiration of the ten (10)-day period to pay, or on **June 20, 2017**.

Subsequently, on August 4, 2017, the BIR issued a Final Notice and Demand Before Suit,[75] giving respondent the last opportunity to pay his tax liabilities within ten (10) days from receipt thereof.[76] However, petitioner failed to specify the mode

---

69 *EB* Docket, p. 52; Division Docket, p. 39.
70 *Philippine National Oil Company v. The Hon. Court of Appeals, et al.*, G.R. Nos. 109976 & 112800, April 26, 2005 [Per J. Chico-Nazario, *En Banc*].
71 *Id.*
72 *Tupaz v. Ulep, et al.*, G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].
73 See *Acoje Mining Company, Inc. v. The Commissioner of Internal Revenue*, G.R. No. L-19378, March 27, 1968 [Per J. Castro, *En Banc*].
74 Division Docket, p. 29.
75 *EB* Docket, p. 52; Division Docket, p. 39.
76 Division Docket, p. 21, Joint Complaint-Affidavit, par. 12.

of service or submit proof of such service. Nothing in the records indicates when respondent received this notice, preventing the Court from determining when the prescriptive period commenced based on the Final Notice and Demand Before Suit.

If the Court were to assume that the Final Notice and Demand Before Suit was personally served on August 4, 2017, the five (5)-year prescriptive period for the offense would begin on **August 15, 2017,** upon the lapse of the ten (10)-day period to pay. Alternatively, if sent by registered mail on August 4, 2017, the estimated delivery would take seven (7) working days.[77] Assuming that respondent received the notice within thirty (30) days of mailing (*i.e.*, by September 3, 2017) and failed to pay within the next ten (10) days (*i.e.*, by September 13, 2017), the prescriptive period for the offense would commence on **September 14, 2017**.

Regardless, the Court finds that the Final Notice and Demand Before Suit cannot be deemed the final demand for payment. Apart from its non-receipt, the earlier Final Notice dated May 29, 2017, already had a tenor of finality,[78] as it came with a warning that respondent's failure to pay would compel the BIR to "serve and execute the Warrant of Distraint, Levy, and Garnishment ... and [respondent's] case [would] be referred to the Legal Division for the filing of appropriate action".

Under Section 281 of the NIRC of 1997, as amended, the five (5)-year prescriptive period for criminal tax offenses is interrupted when proceedings are instituted against the guilty persons.[79] In *Lim,* the Supreme Court clarified that the filing of Information in court interrupts this prescriptive period:

> .... As Section 354 [now Section 281] 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*)

---

[77] Philippine Postal Corporation. *Post Office Delivery Lead Time*, Estimated Turn Around Time for Domestic Mail Services, available at https://phlpost.gov.ph/postal-office-delivery-lead-time (last accessed on February 17, 2025).

[78] See *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021 [Per J. Leonen, Third Division].

[79] SEC. 281. *Prescription for Violations of any Provision of this Code.* — ....
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.

Consistent with *Lim*, Section 2, Rule 9 of the RRCTA provides that the filing of an Information in Court interrupts the running of the prescriptive period for criminal actions:

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

Given that the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended, commenced on *June 20, 2017*, at the earliest, and on *September 14, 2017*, at the latest, based on the presumed service of the Final Notice and Demand Before Suit, petitioner had until **September 14, 2022**, to file an Information with the Court. However, the Information was filed only on **December 5, 2022**, beyond the allowable period. Thus, the Court *En Banc* finds that petitioner's right to prosecute this criminal action is barred by prescription.

WHEREFORE, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

x---x

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

LEMUEL SIBUMA CONSOLACION,
Respondent.

CTA EB Crim. No. 150
(CTA Crim. Case No. O-983)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAY 29 2025 1:27m

x - x

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lanee S. Cui-David, in the dismissal of the Petition for Review, however only on the grounds that the Petition for Review was belatedly filed, and that the prior Amended Information was properly dismissed due to petitioner's failure to prosecute.

However, with respect to the dismissal of the subject criminal action against respondent Lemuel Sibuma Consolacion (**respondent**) on the ground of prescription of the offense charged, I am constrained to withdraw my concurrence thereto.

PRESCRIPTION OF THE OFFENSE CHARGED

At the outset, it is undeniable that the Court *En Banc*'s application of the ruling in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[1] (**Lim, Sr.**) deviates from the general rule on prescription applicable to criminal actions for offenses requiring preliminary investigation—whether under the Revised Penal Code[2] (**RPC**) or special laws—that the prescriptive period is interrupted by the filing of a complaint with the fiscal's office for purposes of preliminary investigation against the accused.

Section 281[3] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which governs the prescriptive period for criminal tax actions, expressly states that the prescriptive period shall be interrupted when "**proceedings are instituted against the guilty persons.**" A meaningful resolution of the issue at hand requires a clear understanding of what constitutes the "institution of proceedings" sufficient to interrupt the running of the prescriptive period. To this end, it is necessary to refer to established jurisprudence interpreting similar provisions under both the RPC, as amended, and Act No. 3326[4], as amended, which respectively govern the prescription of felonies and violations of special laws, to wit:

RPC, as amended	**Act No. 3326, as amended**
ART. 91. *Computation of prescription of offenses.* — **The period of prescription** shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and **shall be interrupted by the filing of the complaint or information**, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.	SEC. 2. 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 person**, and shall begin to run again il the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

---

1 G.R. Nos. L-48134-37, 18 October 1990.
2 AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS.
3 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.** (Emphasis and underscoring supplied)
4 AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

RPC, as amended	Act No. 3326, as amended
The term of prescription shall not run when the offender is absent from the Philippine Archipelago. (Emphasis supplied)	

Evidently, Section 281[5] of the NIRC of 1997, as amended, substantially mirrors the prescriptive provisions cited above, particularly Section 2 of Act No. 3326[6], as amended. Given that the NIRC of 1997, as amended, is itself a special law, there is no justification for treating it differently from other special laws when determining the point at which the prescriptive period is deemed interrupted.

In the 1967 case of *People of the Philippines, et al. v. Ascencion P. Olarte*[7] (**Olarte**), which was later cited in *People of the Philippines v. Mateo A. Lee, Jr.*[8] (**Lee, Jr.**) and *People of the Philippines v. Ma. Theresa Pangilinan*[9] (**Pangilinan**), the Supreme Court settled divergent views as to the **effect of filing a complaint** with the Municipal Trial Court **for purposes of preliminary investigation** on the prescriptive period of the offense. The High Court therein held that the filing of the complaint for purposes of preliminary investigation **interrupts the period of prescription of criminal responsibility**. It explicitly adopted the ordinary sense of the word "instituted," ruling that it includes the initiation of proceedings for preliminary investigation, not just the formal filing of an Information in Court.

Then, in the 2004 case of *Roberto Brillante v. Court of Appeals and the People of the Philippines*[10] (**Brillante**), citing the 1983 case of *Emiliano A. Francisco and Harry B. Bernardino v. The Honorable Court of Appeals and the People of the Philippines*[11] (**Francisco**), the Supreme Court said that the ruling in *Francisco* amplified the *Olarte* doctrine when it categorically ruled that **the filing of a complaint with the fiscal's office suspends the running of the prescriptive period of a criminal offense**.

Relevantly, in the 2008 case of *Luis Panaguiton, Jr. v. Department of Justice, et al.*[12] (**Panaguiton**), the Supreme Court had the occasion to discuss the structure of the judicial system during the enactment of Act No. 3326, as well as the prevailing jurisprudence at the time, which recognized that **the**

5 Supra at note 3.
6 Supra at note 4.
7 G.R. No. L-22465, 28 February 1967.
8 G.R. No. 234618, 16 September 2019.
9 G.R. No. 152662, 13 June 2012.
10 G.R. Nos. 118757 & 121571, 19 October 2004.
11 G.R. No. L-45674, 30 May 1983.
12 G.R. No. 167571, 25 November 2008.

filing of a complaint before the justice of the peace for purposes of preliminary investigation was sufficient to toll the prescriptive period. This conclusion is understandable, given that, during that period, it was the justice of the peace (or municipal judge) who was authorized to conduct the preliminary investigation.

Then, as emphasized in the 2012 case of *Pangilinan* and reiterated in the 2019 case of *Lee, Jr.*, the Supreme Court categorically ruled in *Panaguiton* that the **commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses charged under Batas Pambansa (BP) Blg. 22.** This followed the Supreme Court's declaration that **there is no longer any distinction between cases prosecuted under the RPC and those covered by special laws with respect to the interruption of the period of prescription**, *viz*:

> ...
>
> Since **BP Blg. 22 is a special law** that imposes a penalty of imprisonment of not less than thirty (30) days but not more than one year or by a fine for its violation, it therefor prescribes in four (4) years in accordance with the aforecited law. **The running of the prescriptive period, however, should be tolled upon the institution of proceedings against the guilty person.**
>
> In the old but oft-cited case of *People v. Olarte*, this Court ruled that **the filing of the complaint in the Municipal Court even if it be merely for purposes of preliminary examination or investigation, should, and thus, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits.** This ruling was broadened by the Court in the case of *Francisco, et al. v. Court of Appeals, et al.* when it held that **the filing of the complaint with the Fiscal's Office also suspends the running of the prescriptive period of a criminal offense.**
>
> Respondent's contention that a different rule should be applied to cases involving special laws is bereft of merit. **There is no more distinction between cases under the RPC and those covered by special laws with respect to the interruption of the period of prescription.** The ruling in *Zaldivia v. Reyes, Jr.* is not controlling in special laws. In *Llenes v. Dicdican, Ingco, et al. v. Sandiganbayan, Brillante v. CA, and Sanrio Company Limited v. Lim,* cases involving special laws, this Court held that the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription. In *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court even ruled that investigations conducted by the Securities and Exchange Commission for violations of the Revised Securities Act and the Securities Regulation Code effectively interrupts the prescription period because it is equivalent to the preliminary investigation conducted by the DOJ in criminal cases.

> **In fact, in the case of *Panaguiton, Jr. v. Department of Justice*, which is in all fours with the instant case, this Court categorically ruled that commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses they had been charged under BP Blg. 22.** Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control, like the accused's delaying tactics or the delay and inefficiency of the investigating agencies.[13]
>
> ...

From the foregoing declarations, it can be inferred that the phrase "**when proceedings are instituted against the guilty person**", as used in the law, was understood—even then—to include the filing of a complaint for purposes of preliminary investigation, and not merely the filing of an Information before the Court. As such, it is evident that the law intends for the prescriptive period to be interrupted at the very first formal investigative step, as preliminary investigation is deemed to partake of the nature of a judicial proceeding that suspends the running of prescription.

Furthermore, in *Securities and Exchange Commission v. Interport Resources Corporation, et al.*[14] (**Interport**), the Supreme Court explained that it is a well-settled doctrine that the conduct of a preliminary investigation—which serves as a procedural safeguard to determine whether a crime has been committed and whether there is probable cause to charge the accused—interrupts the running of the prescriptive period.

It is also worth noting that, in his Concurring Opinion in *Interport*, Supreme Court Associate Justice Dante O. Tiñga (Ret.) emphasized **that any form of investigation** instituted against the guilty person which **may ultimately lead to prosecution**, as provided by law, is sufficient to toll the running of the prescriptive period.

Clearly, from the foregoing, in all criminal cases—whether prosecuted under the RPC or special laws—the prescriptive period is interrupted upon the commencement of proceedings for the prosecution of the accused, which is effectively accomplished through the initiation of a preliminary investigation, the first formal investigative step that marks the institution of criminal proceedings against the accused.

---

13 Supra at note 12; Citations omitted, italics in the original text and emphasis supplied.

14 G.R. No. 135808, 06 October 2008.

Now, if the Court *En Banc* were to sustain the interpretation in the 1990 case of *Lim, Sr. vis-à-vis* Section 2[15], Rule 9 of the Revised Rules of the Court of Tax Appeals[16] (**RRCTA**)—that it is the filing of an Information with the Court which interrupts the five (5)-year prescriptive period under Section 281[17] of the NIRC of 1997, as amended—such a ruling would constitute a clear departure from the established doctrine on prescription applicable to *all* criminal cases. This would run counter to the principle of *stare decisis et non quieta movere*, which holds that once a case has been decided a certain way, any subsequent case involving the same legal issue should be resolved in the same manner.[18]

In this regard, to hold that the NIRC of 1997, as amended, should be treated differently simply because it is a special law is unpersuasive. The Supreme Court has consistently held, even in criminal cases involving violations of special laws, that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused.

Specifically, in *Pangilinan*, the Supreme Court emphasized that the cases of *Ingco* (involving Republic Act [**RA**] No. 3019 or the Anti-Graft and Corrupt Practices Act), *Sanrio* (involving RA 8293 or the Intellectual Property Code), and *Interport* (involving the Revised Securities Act and the Securities Regulation Code) all concerned violations of special laws. Yet, in each of these cases, the Supreme Court consistently ruled that the institution of proceedings for preliminary investigation against the accused interrupts the running of the prescriptive period.

As for the finding that *Lim, Sr.* aligns with Section 2[19], Rule 9 of the RRCTA, it bears emphasizing that an alternative interpretation of the second paragraph of that provision exists—one that harmonizes it with the established doctrine cited above. Instead of construing it solely in relation to the first paragraph, as petitioner correctly argued, it may be read in conjunction with Section 1(a)[20], Rule 110 of the Revised Rules of Criminal

---

[15] 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.

The institution of the criminal action shall interrupt the running of the period of prescription. *(Rules of Court, Rule 110, Sec. 1, par. 2a)* (Emphasis supplied)

[16] A.M. No. 05-11-07-CTA dated 22 November 2005.

[17] Supra at note 3.

[18] *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 174134, 30 July 2008, citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R No. 149834, 02 May 2006.

[19] Supra at note 15.

[20] SEC. 1. *Institution of Criminal Actions.* — Criminal actions shall be instituted as follows:

Procedure (**RRCP**), which provides that for offenses where a preliminary investigation is required, the criminal action shall be instituted by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

While it is true that the provisions of the RRCP apply only suppletorily to the RRCTA, it is nonetheless important to emphasize that the second paragraph of Section 2[21], Rule 9 of the RRCTA (specifically the italicized portion at the end) explicitly references Section 1(a)[22], Rule 110 of the RRCP. That provision clearly states that, for offenses requiring preliminary investigation, a criminal action is deemed instituted upon the filing of a complaint with the proper officer for the purpose of conducting the required preliminary investigation.

On the other hand, the first paragraph of Section 2, Rule 9 of the RRCTA may be construed as referring exclusively to the institution of proceedings before the Court in Division, which is effected solely through the filing of an Information. This must be distinguished from the institution of proceedings against guilty persons—which, under Section 281[23] of the NIRC of 1997, as amended, interrupts the running of the prescriptive period—as already settled by the Supreme Court to refer to the filing of a complaint for purposes of preliminary investigation.

Moreover, petitioner correctly observed that in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*[24] (**Tupaz**), which involved the offense of willful failure to pay deficiency IT, the Supreme Court held that the offense had not prescribed because the filing of the complaint for preliminary investigation with the Department of Justice (**DOJ**) constituted the institution of the criminal action within the five (5)-year prescriptive period. This conclusion was reached despite the earlier ruling in *Lim, Sr.*, which held that the prescriptive period continues to run until the filing of the Information in Court.

In fact, as recently as 04 April 2025, in a press release issued prior to the publication of the full text of the decision in *People of the Philippines v. Ulysses*

(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.** (Emphasis supplied)

[21] Supra at note 15.

[22] Supra at note 20.

[23] Supra at note 3.

[24] G.R. No. 127777, 01 October 1999.

Palconet Consebido[25] (**Consebido**), the Supreme Court declared that the time limit or prescriptive period for prosecuting crimes stops running once a complaint is filed with the DOJ—not when the case reaches the court.[26] The High Court specifically clarified that under Section 281 of the NIRC of 1997, as amended, the prescriptive period for criminal tax offenses that are not immediately known starts from the time the violation is discovered and is interrupted once a preliminary investigation begins.[27] This interpretation ensures that the intent of the law—to set a clear time limit for prosecuting tax violations—is properly applied.[28]

It should be noted that, as stated in the *Consebido* press release, the Supreme Court recognized that while criminal cases should ideally be resolved promptly, delays are sometimes unavoidable. Therefore, the State, as the offended party, should not be disadvantaged by delays in the DOJ's preliminary investigations. The Supreme Court also reiterated its ruling in *Olarte*, emphasizing that "it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under [their] control. All that the victim of the offense may do on [their] part to initiate the prosecution is to file the requisite complaint."

In light of the Supreme Court's recent categorical pronouncement affirming that the established doctrine on prescription applies to criminal tax cases, I respectfully submit that this Court, sitting *En Banc*, can no longer adhere to its prior position in *Lim, Sr.*, which was understood to have ruled that, in criminal tax cases, the prescriptive period is tolled only upon the filing of the Information in Court.

Accordingly, in this case, as the *ponencia* declares, the five (5)-year prescriptive period began to run either on the earlier 20 June 2017 (the receipt of the Final Notice dated 29 May 2017) or on the later date of 14 September 2017 (the presumed receipt of the Final Notice and Demand Before Suit should the same be delivered *via* registered mail), the five (5)-year prescriptive period had ended on **14 September 2022**. As the Joint Complaint -Affidavit[29] and the Investigation Data Form[30] (of the concerned Revenue Officers) were both filed before the Department of Justice on **04 April 2018**, it is considered the institution of the judicial proceedings for preliminary investigation. That same act also interrupted or tolled the running of the

---

[25] G.R. No. 258563, 02 April 2025.
[26] Available at <https://sc.judiciary.gov.ph/sc-filing-of-complaint-before-doj-stops-prescriptive-period-for-crimes/> (Last accessed on 24 April 2025).
[27] Id.
[28] Id.
[29] *Rollo*, pp. 33-38.
[30] Id., p. 30

prescriptive period. Thus, contrary to the Court *En Banc*'s ruling[31], the right of the government to institute the case against respondent had not yet prescribed when the Information was filed on **05 December 2022.**

All told, I vote to **DISMISS** the Petition for Review solely on the reason for being filed out of time. Moreso, I **AFFIRM** the Second Division's Resolutions of 22 February 2024 and 26 April 2024 which dismissed the prior case due to petitioner's failure to prosecute.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[31] See pp. 14-18 of the Decision.