REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

VIRGILIO B. CASTILLO
41 Havana St., BF Homes
Parañaque City,
President, PRO HEALTH INTERNATIONAL INC.,
184 A. Aguirre Avenue, BF Homes,
Parañaque City,
Accused.

CTA Crim. Case No. O-663
(NPS Docket No. XVI-INV-11F-00233)
For: Violation of Section 255 of Republic Act 8424 (NIRC of 1997, as amended), in relation to Section 253 par. (d) of the same Code

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
MAY 25 2018 2:15 p.m.

x- x

RESOLUTION

On February 21, 2018, the Court dismissed the Information for having been filed beyond the five-year prescriptive period.

On March 23, 2018, the Court received plaintiff's Motion for Reconsideration (of the Resolution dated February 21, 2018) filed through registered mail on March 16, 2018.

Plaintiff argues that under Section 281 of the 1997 National Internal Revenue Code, as amended (NIRC), prescription runs from the date of discovery; that prescription is interrupted when proceedings for its investigation are instituted; and, that prescription runs again if said proceedings are dismissed for reasons not constituting jeopardy. Thus, the offense charged herein was discovered on March 17, 2007, or the date of finality of the Final Assessment Notice (FAN). Within five (5) years from said March 17, 2007, a complaint for its investigation was filed with the Department of Justice (DOJ) on June 23, 2011. Hence, the criminal offense has not yet prescribed.

The motion is without merit.

The Information was filed beyond the prescriptive period in accordance with Section 281 of the National Internal Revenue Code of 1997, as amended (NIRC) and the ruling of the Supreme Court in *Lim v. Court of Appeals* (*Lim*).[1]

It may be recalled that in *Lim*, the Supreme Court interpreted Section 354 of the Tax Code applicable at that time, to resolve the issue of prescription in the said case. It bears noting that the wording of Section 354 of the old Tax Code is identical to that of Section 281 of the NIRC. Accordingly, the interpretation given by the Supreme Court to the former provision shall likewise apply to the latter.

The relevant portions of *Lim* are quoted below:

> With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of *discovery* of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.
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> On behalf of the Government, the Solicitor General counters that the crime of filing false returns can be considered "discovered" only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment and therefore required the petitioners to pay P1,237,190.55 in deficiency taxes that the tax infractions were discovered.
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> Not only that. **The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of discovery of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and punishment." In other words, in addition to the fact of discovery, there must be a**

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

> **judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**
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> xxx xxx xxx
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> **The Court is inclined to adopt the view of the Solicitor General.** For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years**. (*Emphasis and underscoring supplied*)

On the basis of the foregoing pronouncement and of Section 281 of the NIRC, this Court found that the Information filed in the present case was filed out of time, as follows:

> Applying Section 281 of the NIRC and the pronouncement in the *Lim* case, the instant Information was filed beyond the five-year period.
>
> According to the Prosecutor's Resolution dated January 28, 2017, and the Joint Complaint-Affidavit dated June 23, 2011, the Formal Assessment Notice (FAN), issued on February 14, 2007, was served on the accused on February 15, 2007. For failure to pay the assessed deficiency taxes, the assessment became final and executory on March 17, 2007, or thirty (30) days from February 15, 2007. This date can be considered as the point of "discovery" of the violation. On the other hand, the Joint Complaint-Affidavit of the revenue officers was referred to the DOJ for preliminary investigation on June 23, 2011.

> Thus, the date of "discovery" on March 17, 2007 together with the institution of judicial proceedings for preliminary investigation on June 23, 2011 shows that prescription began to run on June 23, 2011. Counting five (5) years from June 23, 2011, the prescriptive period lapsed on June 23, 2016. Unfortunately, the Information was filed with the Court only on February 5, 2018, which exceeds the five-year prescriptive period.

Plaintiff also argues that tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment does not exceed five (5) years, stating:

> 11. If this Honorable Court were to apply the relevant law on the matter, that is Section 281 of the NIRC, it would find that tax cases are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment does not exceed five (5) years. Hence, the institution of judicial proceedings for the tax case's investigation, or the BIR's filing of the Joint Complaint-Affidavit before the DOJ for preliminary investigation on June 23, 2011, commenced the 5-year prescriptive period and interrupted the running of prescription at the same time."

The Court cannot countenance the foregoing assertion. Suffice it to say that it is not only a distorted interpretation of the ruling in *Lim*, but also reduces to absurdity the meaning of Section 281 of the NIRC. Such an interpretation would urge one to ask why Section 281 has to be provided in the NIRC at all if the filing of the complaint before the prosecutor's office would commence the running of the prescriptive period and interrupt it at the same time.

Finally, plaintiff invokes the Supreme Court's rulings in *People v. Pangilinan*[2] and *Panaguiton v. Department of Justice*[3] to advance the view that the running of the period of prescription is interrupted by the filing of the complaint before the prosecutor's office.

The foregoing cases do not apply to the present case. They do not involve the prescriptive period for the filing of criminal

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[2] G.R. No. 152662, June 13, 2012.
[3] G.R. No. 167571, November 25, 2008.

tax cases but the prescriptive period for instituting B.P. 22 cases pursuant to Act No. 3326. Simply put, the factual and legal circumstances of these cases and that of the present case are different. On the contrary, *Lim* squarely dealt with the interpretation of the prescriptive period for purposes of instituting criminal tax cases. And until and unless the doctrine laid down in *Lim* is modified or reversed by the Supreme Court, such a doctrine remains to be binding.

WHEREFORE, plaintiff's Motion for Reconsideration (of the Resolution dated February 1, 2018) is **DENIED**.

SO ORDERED.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice