REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

ZIEGFRIED LOO TIAN,
Respondent.

CTA EB CRIM. NO. 116
(CTA CRIM. CASE NO. O-944)
For: Violation of Section 255, paragraph 1, of the National Internal Revenue Code (NIRC) of 1997, as amended.

Present:

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

Promulgated:

JUL 16 2025 11:56 a.m.

x - x

RESOLUTION

FERRER-FLORES, J.:

For this Court's resolution is petitioner's **Motion for Reconsideration (of Decision dated September 26, 2024)** filed via registered mail on October 15, 2024,[1] with respondent's *Comment/Opposition* filed via electronic mail on December 20, 2024.[2]

[1] Received by the Court on October 21, 2024; *Rollo* – Vol. II, pp. 568 to 588.
[2] *Rollo* – Vol. II, pp. 294 to 312.

In the instant *Motion*, petitioner prays for the Court *En Banc* to set aside its Decision dated September 26, 2024 (**assailed Decision**),[3] which denied its *Amended Verified Petition for Review*, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, petitioner's *Amended Verified Petition for Review (of the Resolution dated March 02, 2023)* is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated December 5, 2022 and March 2, 2023 in CTA Crim. Case No. O-944 are **AFFIRMED**.
>
> **SO ORDERED.**

In its *Motion*, petitioner insists that the *Motion for Reconsideration* of the *First assailed Resolution* was timely filed before the Court in Division on January 5, 2023 as the period to file the motion for reconsideration should be reckoned from the receipt by the Bureau of Internal Revenue (BIR) of the *First assailed Resolution* on December 21, 2022. In support thereof, petitioner alleges that the BIR itself, being the complainant, is the aggrieved party entitled to file the motion for reconsideration, although without prejudice to the right of the BIR, through the Office of the Prosecutor, to file the motion for reconsideration. Petitioner also maintains that the principles of prescription should apply across all criminal actions, particularly, the rule that the institution of the criminal action before the Department of Justice (DOJ) interrupts the running of the five-year prescriptive period under Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended. Ultimately, petitioner reiterates that prescription has not set in as the period of discovery and institution of the judicial proceedings not only triggered the commencement of the prescriptive period, but also triggered the interruption thereof.

Respondent, on the other hand, counters that the right of the government to prosecute respondent had prescribed pursuant to Section 281 of the NIRC of 1997, as amended. Respondent avers that the pronouncement of the Supreme Court in *Lim vs. Court of Appeals* (*Lim* case)[4] remains to be the prevailing jurisprudence on the matter of prescription of criminal tax violations. Furthermore, the Revised Rules of the Court of Tax Appeals (RRCTA), the special provision governing the proceedings in the CTA, provides that the period of prescription is tolled by the filing of the Information before the CTA. Finally, respondent claims that the case must be dismissed for violation of respondent's right to speedy disposition of cases.

The instant *Motion* is bereft of merit.

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[3] *Rollo* – Vol. II, pp. 524 to 536.
[4] G.R. No. L-48134-37, October 18, 1990.

The Court is not convinced that petitioner's *Motion for Reconsideration* was timely filed before the Court in Division on the basis that the reglementary period for the filing thereof should be reckoned from the BIR's receipt of the *First assailed Resolution.*

To reiterate, the deputization of the legal officers of the BIR as special prosecutors does not, in any way, alter the standing of the DOJ as the principal prosecutor for the plaintiff as provided under Section 5 of Rule 110 of the Revised Rules of Criminal Procedure, as amended,[5] and as adopted by this Court in Section 3 of Rule 9 of the RRCTA.[6] At the risk of sounding repetitive, the Supreme Court has settled that the service of legal processes to the principal counsel, and not that on the deputized lawyers, is decisive as to the date from which the 15-day period is counted. Hence, the *Motion for Reconsideration* should have been filed within 15 days from the date of receipt of the DOJ, as principal prosecutor, on **December 15, 2022** or until **January 3, 2023.**[7] As it is, the *Motion* was belatedly filed on January 5, 2023.

Time and again, the Supreme Court has stressed that procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to, and enhance the efficiency of, our judicial system. While procedural rules are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. The timeliness of filing a pleading is a jurisdictional caveat that even the Supreme Court cannot trifle with.[8]

In view of the foregoing, the Court finds it no longer necessary to address the other arguments raised by the petitioner.

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[5] Section 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 prosecutors, 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 the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court. *(Emphasis supplied)*

[6] 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)*

[7] Since the 30th day fell on December 30, 2022, a holiday, petitioner had until January 3, 2023, the next working day, to file a motion for reconsideration.

[8] *Le Soleil Int'l. Logistics Co., Inc. vs. Sanchez*, G.R. No. 199384 (Resolution), September 9, 2015, citing *Labao vs. Flores*, G.R. No. 187984, November 15, 2010.

All told, the Court *En Banc* finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, the petitioner's *Motion for Reconsideration (of Decision dated September 26, 2024)* is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
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
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

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SEPARATE OPINION

BACORRO-VILLENA, J.:

While I concur that petitioner People of the Philippines' (**petitioner**'s) Motion for Reconsideration (**MR**), assailing the Second Division's Resolution promulgated on 05 December 2022, was filed out of time, I respectfully maintain that the question of whether the offense charged has prescribed remains a fundamental issue that must be addressed. The Court *En Banc*'s Decision promulgated on 26 September 2024—which is the subject of petitioner's present MR—squarely tackled this issue, which directly affects the viability of the prosecution.

Although the procedural lapse—specifically, the belated filing of the MR—may justify the outright dismissal of the petition, there are established jurisprudential precedents where procedural defects were set aside in the interest of substantial justice[1], particularly when the case involves significant substantive questions. In this instance, addressing the issue of prescription would enable a more comprehensive discussion of the legal principles involved and may serve as persuasive guidance in future cases involving similar circumstances.

Accordingly, I am constrained to withdraw my concurrence in the dismissal of the subject criminal action against respondent Ziegfried Loo Tian (**respondent**) on the ground of prescription of the offense charged.

With due respect, after a second hard look at the case records and the parties' opposing arguments, considered alongside relevant and recent jurisprudence on the matter, I respectfully submit that the Court *En Banc* is now bound to abandon its previous position in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[2] (**Lim, Sr.**), which was understood to have ruled that, in criminal tax cases such as the present one, the prescriptive period is tolled only upon the filing of the Information in court. Nevertheless, I maintain that the case should still be dismissed, albeit on a different ground—the violation of respondent's constitutional right to speedy disposition of cases.

PRESCRIPTION OF THE OFFENSE CHARGED

At the outset, it is undeniable that the Court *En Banc*'s application of the ruling in *Lim, Sr.* deviates from the general rule on prescription applicable to criminal actions for offenses requiring preliminary investigation—whether under the Revised Penal Code[3] (**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[4] 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

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[1] See *Sue Ann Bounsit-Torralba v. Joseph B. Torralba*, G.R. No. 214392, 07 December 2022; *Philippine Amusement and Gaming Corporation v. Lorenia P. De Guzman*, G.R. No. 208261, 08 December 2014; *TFS, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 166829, 19 April 2010.

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

[3] AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS.

[4] 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) 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[5], 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. The term of prescription shall not run when the offender is absent from the Philippine Archipelago. (Emphasis supplied)	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 if the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

Evidently, Section 281[6] of the NIRC of 1997, as amended, substantially mirrors the prescriptive provisions cited above, particularly Section 2 of Act No. 3326[7], 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*[8] (**Olarte**), which was later cited in *People of the Philippines v. Mateo A. Lee, Jr.*[9] (**Lee, Jr.**) and *People of the Philippines v. Ma. Theresa Pangilinan*[10] (**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

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5 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.
6 Supra at note 4.
7 Supra at note 5.
8 G.R. No. L-22465, 28 February 1967.
9 G.R. No. 234618, 16 September 2019.
10 G.R. No. 152662, 13 June 2012.

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*[11] (**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*[12] (**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.*[13] (**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 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*:

> ...
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> 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.**
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> 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**

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[11] G.R. Nos. 118757 & 121571, 19 October 2004.
[12] G.R. No. L-45674, 30 May 1983.
[13] G.R. No. 167571, 25 November 2008.

> **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.**
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> 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.
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> **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.[14]
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> ...

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.*[15] (**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

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[14] Supra at note 10; Citations omitted, italics in the original text and emphasis supplied.
[15] G.R. No. 135808, 06 October 2008.

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*, then 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.

Now, if the Court *En Banc* were to sustain the interpretation in the 1990 case of *Lim, Sr. vis-à-vis* Section 2[16], Rule 9 of the Revised Rules of the Court of Tax Appeals[17] (**RRCTA**)—that it is the filing of an Information with the Court which interrupts the five (5)-year prescriptive period under Section 281[18] 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.[19]

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.

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16 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)

17 A.M. No. 05-11-07-CTA dated 22 November 2005.

18 Supra at note 4.

19 *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.

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, 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 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.

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[20] SEC. 1. *Institution of Criminal Actions.* – Criminal actions shall be instituted as follows:
(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 16.

[22] Supra at note 20.

[23] Supra at note 4.

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 the recent case of *People of the Philippines v. Ulysses 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 held in *Consebido*, 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.

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[24] G.R. No. 127777, 01 October 1999.
[25] G.R. No. 258563, 02 April 2025.
[26] See Press Release dated 04 April 2025, 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.

Accordingly, in this case, the five (5)-year prescriptive period began to run upon the discovery of respondent's violation of Section 255[29] of the NIRC of 1997, as amended, or deliberate failure to supply correct and accurate information in his Value-Added Tax (**VAT**) Return for the 3rd quarter of the taxable year (**TY**) 2010, and the institution of judicial proceedings for preliminary investigation on **05 July 2012**—when the Joint Complaint-Affidavit (**JCA**) of the concerned Revenue Officers was referred to the DOJ. That same act also interrupted or tolled the running of the prescriptive period. Thus, contrary to the Court *En Banc*'s earlier ruling, the right of the government to institute the case against respondent had not yet prescribed when the Information was filed on **26 October 2022**.

Now, although prescription should no longer be considered a ground for dismissal, I respectfully submit that the Court *En Banc* must also address the separate issue raised by respondent regarding the alleged violation of his constitutional right to speedy disposition of cases. As this issue is independent of the issue of prescription and may, on its own, justify the dismissal of the case, the Court *En Banc* remains duty-bound to consider and resolve the matter.

RESPONDENT'S RIGHT TO SPEEDY
DISPOSITION OF CASES

Respondent seeks the dismissal of the case on the ground of inordinate delay, invoking his constitutional right to speedy disposition of cases under Section 16[30], Article III[31] of the 1987 Philippine Constitution, as interpreted in *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, et al.*[32] (**Cagang**). He argues that the prosecution took over ten (10) years—from the filing of the JCA on 05 July 2012 to the filing of the Information on 26 October 2022—to file the Information before the CTA, far exceeding the timeframe prescribed under Section 3(f)[33], Rule 112 of the RRCP. Respondent highlights that the DOJ initially resolved the complaint only on 01 September 2014—more than two (2) years after its filing—and further took until 11 May 2017 to resolve the motion for reconsideration, with the Information being filed over five (5) years thereafter.

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[29] **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

[30] SEC. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

[31] Bill of Rights.

[32] G.R. Nos. 206438 and 206458 & 210141-42, 31 July 2018.

[33] SEC. 3. *Procedure.* — The preliminary investigation shall be conducted in the following manner:

...

(f) **Within ten (10) days after the investigation**, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (Emphasis supplied)

Citing *Francisco S. Tatad v. The Sandiganbayan and the Tanodbayan*[34] (**Tatad**) and *People of the Philippines v. Hon. Sandiganbayan, First Division & Third Division, et al.*[35] (**Sandiganbayan**), respondent maintains that delays far shorter than those in the present case were previously deemed inordinate and sufficient to warrant dismissal. He stresses that the delay remains unjustified and unexplained, and asserts that the burden has shifted to the prosecution to prove that such delay was reasonable. Finally, respondent claims that he timely invoked his right to speedy disposition of cases in his "Comment/Opposition"[36] to the present Petition for Review, thus entitling him to relief.

Respectfully, I find merit in respondent's arguments.

In *Cagang*, the Supreme Court laid down definitive guidelines in resolving the issue involving the right to speedy disposition of cases, synthesized as follows:

> ...
> [I]nordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and **may** result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.
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> **The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.**[37]
>
> ...

In line with the "balancing test" adopted from the American case of *Barker v. Wingo*[38], the Supreme Court in *Cagang* stressed that courts must

[34] G.R. Nos. 72335-39, 21 March 1988.
[35] G.R. Nos. 188165 & 189063, 11 December 2013.
[36] *Rollo*, pp. 252-270.
[37] Supra at note 32; Emphasis supplied.
[38] 407 U.S. 514 (1972).

consider the following factors when determining the existence of inordinate delay: (1) the length of delay; (2) the reason for delay; (3) the defendant's assertion or non-assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay.[39]

As regards the burden of proving delay, the Supreme Court held in *Cagang* that if the alleged delay extends beyond the prescribed periods, the burden shifts to the prosecution to demonstrate that the delay was reasonable under the circumstances and that accused did not suffer prejudice as a result of such delay, *viz*:

> ...
>
> For the court to appreciate a violation of the right to speedy disposition of cases, delay must not be attributable to the defense. Certain unreasonable actions by the accused will be taken against them. This includes delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case. When proven, this may constitute a waiver of the right to speedy trial or the right to speedy disposition of cases.
>
> **If it has been alleged that there was delay beyond the given time periods, the burden of proof *shifts*. The prosecution will now have the burden to prove that there was no violation of the right to speedy trial or the right to speedy disposition of cases.** *Gonzales v. Sandiganbayan* states that "vexatious, capricious, and oppressive delays," "unjustified postponements of the trial," or "when without cause or justifiable motive a long period of time is allowed to elapse without the party having his [or her] case tried" are instances that may be considered as violations of the right to speedy disposition of cases. The prosecution must be able to prove that it followed established procedure in prosecuting the case. It must also prove that any delay incurred was justified, such as the complexity of the cases involved or the vast amount of evidence that must be presented.
>
> The prosecution must likewise prove that no prejudice was suffered by the accused as a result of the delay. ...
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> ...
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> The consequences of delay, however, do not only affect the accused. The prosecution of the case will also be made difficult the longer the period of time passes. ...
>
> ...
>
> The consequences of the prosecution's failure to discharge this burden are severe. Rule 119, Section 9 of the Rules of Court requires that the case against the accused be dismissed if there has been a violation of the right to speedy trial[.]
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> ...

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[39] Supra at note 32.

> *Tatad*, as qualified by *Angchangco*, likewise mandates the dismissal of the case if there is a violation of the right to speedy disposition of cases. The immediate dismissal of cases is also warranted if it is proven that there was malicious prosecution, if the cases were politically motivated, or other similar instances. Once these circumstances have been proven, there is no need for the defense to discharge its burden to prove that the delay was inordinate.
>
> To summarize, inordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. **The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules.** If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. **If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.**
>
> The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. **If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result.** The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.[40]
>
> ...

Clearly from the foregoing parameters, determining inordinate delay requires a holistic assessment of the circumstances, focusing on three (3) main factors: (1) the reasonableness of the time taken to resolve the case; (2) the complexity of the issues involved, and (3) the timely invocation of the right to speedy disposition of cases. Delay must not be attributed to the defense, as actions like unjustified absences or dilatory motions may constitute a waiver of the right. Importantly, when the delay alleged exceeds the timeframes provided by law or rules, the burden shifts to the prosecution to prove that the delay was justified—such as by case complexity or the volume of evidence—and that no prejudice was suffered by the accused. Failure to discharge this burden may lead to the dismissal of the case.

In this case, from the time the JCA was filed on 05 July 2012 until the filing of the Information on 26 October 2022, more than ten (10) years have lapsed. Of this period: (1) it took over two (2) years to resolve the initial complaint (until 01 September 2014); (2) nearly three (3) more years to resolve

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[40] Supra at note 32; Citations omitted, italics in the original text and emphasis supplied.

the motion for reconsideration (until 11 May 2017); and (3) over five (5) additional years passed before the Information was filed (on 26 October 2022).

Such delays were neither sufficiently explained nor justified by petitioner. Following the guidelines in *Cagang*, the burden shifted to the prosecution to prove that the delay was reasonable and not oppressive. Petitioner failed to discharge this burden. Moreover, respondent timely invoked his right to speedy disposition of cases in his Comment/Opposition[41] to the Petition for Review, and reiterated the same in his Comment/ Opposition[42] to the present MR. He was unable to assert this right before the Second Division, understandably so, as the case had already been dismissed on the ground of prescription prior to his arraignment.

What underscores the gravity of the delay in this case is the fact that the DOJ had already determined the existence of probable cause to charge respondent as early as 01 September 2014. At that point, the legal and factual issues had been sufficiently addressed, and no further investigation was warranted. Yet, despite this clear finding, the prosecution failed to file the Information for over eight (8) years, offering no satisfactory justification for such inordinate lapse of time. This prolonged inaction, absent any compelling reason, runs afoul of the constitutional guarantee of a speedy disposition of cases and undermines the fair and efficient administration of justice.

To my mind, such unexplained delay cannot be countenanced. The right to speedy disposition of cases is not a mere technicality—it is a fundamental right guaranteed by the Constitution to prevent oppression and harassment through vexatious legal processes.

In the case of *Tahira S. Ismael and Aida U. Ajijon v. People of the Philippines*[43], the Supreme Court acknowledged that "the silence of the accused during the period of delay cannot be easily construed as a waiver or surrender of the right to speedy disposition of cases. Indeed, the actual intention to relinquish the right must be shown."

Considering that nothing in the records indicates that respondent committed any overt act that contributed to the delay in the filing of the Information against him, this Court must indulge every reasonable presumption against the existence and validity of such waiver of his right to speedy disposition of cases.[44] Pertinently, as held in *Rene C. Figueroa v.*

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[41] Supra at note 36.
[42] *Rollo*, pp. 295-313.
[43] G.R. Nos. 234435-36, 06 February 2023.
[44] See *People of the Philippines v. Ricardo Bodoso y Bolor*, G.R. Nos. 149382-149383, 05 March 2003.

Sandiganbayan, Special Third Division, et al.[45] (**Figueroa**), the burden is not upon the accused to ensure that the wheels of justice continue to turn. Rather, it is for the State to guarantee that the cases are disposed of within a reasonable period.[46] Thus, as similarly ruled in *Figueroa*, it is sufficient that herein respondent raised the constitutional violation after the Second Division admitted the Information and prior to his arraignment.[47]

At this point, it is worth stressing that the objective of the right to speedy disposition of cases is to spur dispatch in the administration of justice and to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to a speedy trial, its objective is to assure that an innocent person may be free from the anxiety and expense of litigation or if otherwise, to have his guilt determined within the shortest possible time compatible with the presentation and consideration of whatever legitimate defense he may raise. This unrest and the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.[48]

In fine, while the criminal action has not yet prescribed, the prolonged and unjustified delay of more than ten (10) years between the filing of the JCA and the subsequent filing of the Information before the Second Division constitutes a violation of respondent's right to speedy disposition of cases, thereby warranting the dismissal of this case.

All told, I vote to (1) partially grant petitioner's "Motion for Reconsideration (of the Decision dated August 14, 2024)", (2) reverse and set aside the Second Division's assailed Resolutions dated 05 December 2022 and 02 March 2023 in CTA Crim. Case No. O-944, and (3) instead dismiss the criminal case on the ground of violation of respondent's right to speedy disposition of cases.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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45 G.R. Nos. 235965-66, 15 February 2022.
46 Id.
47 Id.
48 Id., citing *Rafael L. Coscolluela v. Sandiganbayan (First Division) and People of the Philippines*, G.R. Nos. 191411 & 191871, 15 July 2013.