REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA CRIM. CASE NOS. O-700, O-702, & O-703
	Members:
- versus -	DEL ROSARIO, *P.J, Chairperson,* FABON-VICTORINO, and MANAHAN, *JJ.*
ULYSSES PALCONET CONSEBIDO, Accused.	Promulgated:
	NOV 08 2019 ; 10:42 am

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RESOLUTION

In the three (3) separately filed Motions to Quash Information, all dated July 22, 2019, accused Ulysses Palconet Consebido moves to quash the three (3) Informations filed against him on ground of prescription citing as his authority Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended.

According to accused, the right of the government to prosecute him for alleged violations of Section 255 of the NIRC, as amended, have already prescribed when the subject Informations were filed in Court on March 18, 2019. He explains that the Complaint-Affidavit was filed by the Bureau of Internal Revenue (BIR) with the Department of Justice (DOJ) on January 30, 2014, which he deemed as the date of the discovery of the offenses charged. Counting five (5) years from January 30, 2014, the prescriptive period lapsed on January 30, 2019 allowing prescription to set it. In other words, the right of the government to pursue the cases against him had already prescribed when the three Informations were filed on March 18, 2019 justifying the dismissal of the present cases.

By way of comment,[1] the prosecution argues that the Lim case cited by accused is not applicable since it applied the provision of the old Tax Code of 1939 or the Commonwealth Act No. 466 for the offenses committed in 1958 and 1959, specifically Section 354 thereof which did not particularly provide that the filing of Information in Court shall be within the five-year prescriptive period. In the instant cases however, the violations were committed by accused in the years 2008 and 2009, hence, the NIRC of 1997, as amended, applies.

Further, the prosecution opines that under Section 281 of the NIRC, tax cases are "practically imprescriptible" as long as the period from the discovery of the offense and institution of judicial proceedings does not exceed five years.

Following the foregoing theory, the prosecution deems the five-year prescriptive period in these cases to have commenced on January 30, 2014, when the BIR filed the Complaint Affidavits of the investigating Revenue Officers with the Department of Justice (DOJ). The same act allegedly interrupted the running of the five-year prescriptive period pursuant to Section 1, Rule 110 of the Revised Rules of Criminal Procedure, as amended. In view thereof and since the running of the prescriptive period has not resumed, the lodging of the three criminal Informations against accused before this Court on March 18, 2019 was well within the period mandated.

A motion to quash is a special pleading filed by an accused before entering his plea to the indictment. By filing such motion, accused hypothetically admits the truth of the facts as alleged in the complaint or information but at the same time invokes a matter, which if duly proved, would preclude further proceedings against him.[2]

In the present incidents, accused is invoking extinction of his criminal liabilities under the three (3) Informations due to prescription, defined as the loss or waiver by the State of its right to prosecute an act prohibited and punished

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[1] Comment (On Accused's Motion to Quash Information) dated August 6, 2019.
[2] People v. Lim Hoa, 103 Phil. 1169.

by law.[3] It commences from the day on which the crime is discovered by the offended party, the authorities or their agents. By setting a prescription period for crimes, the State by an act of grace surrenders its right to prosecute and declares the offense as no longer subject to prosecution after a certain period. It is an amnesty that casts the offense into oblivion and declares that the offenders are now at liberty to return home and freely resume their activities as citizens. They may now rest from having to preserve the proofs of their innocence, because proofs of their guilt have been blotted out.[4]

Relevantly, Section 281 of the NIRC, as amended, provides, thus:

> **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.
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> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines.

Clear from the foregoing provision that the period of prescription commences to run from the day of the perpetration of the offense, and if not known, from its discovery and the institution of judicial proceedings for its investigation and punishment. It shall be interrupted when proceedings are lodged against the offender and shall run

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[3] People v. Montenegro, 68 Phil. 659.

[4] Jose Jesus M. Disini, Jr., et al. v. The Secretary of Justice, et al., G. R. No. 203335, February 18, 2014; Reynato Baytan and Adrian Baytan v. The Commission on Elections, G.R. No. 15,3945, February 4, 2003.

anew when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him. The prescriptive period shall not run when the offender is not in the country.

In the case of Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines (Lim case), [5] the Supreme Court interpreted the commencement of the prescriptive period under Section 354 of the Tax Code (now Section 281 of the NIRC, as amended). The Supreme Court ruled:

> xxx. The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. <u>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.</u>
>
> xxx xxx xxx
>
> 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 <u>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.</u>
>
> xxx xxx xxx
>
> Unless amended by the legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the

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

Government and limitations in such cases will not be presumed in the absence of clear legislation. (underscoring supplied)

Undeniably, both the prosecution and accused deemed the filing of the Complaint Affidavit with the DOJ on January 30, 2014 as the reckoning point in the counting of the five-year prescriptive period provided under Section 281 of the NIRC, as amended. Counting five (5) years from January 30, 2014, the prescriptive lapsed on January 30, 2019. Evidently, the right of the government to institute the cases against accused had already prescribed when the three Informations were filed on March 18, 2019 justifying the dismissal of the present cases.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.

WHEREFORE, the three (3) separate Motions to Quash Informations, all dated July 22, 2019 filed by accused, are hereby **GRANTED**. Consequently, the Criminal Case Nos. 0-700, 0-702 and 0-703 are hereby **DISMISSED** on ground of prescription.

SO ORDERED.

ROMAN G. DEL ROSARIO
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice