REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,

Petitioner,

\- versus -

ULYSSES PALCONET CONSEBIDO,

Respondent.

CTA EB CRIM NO. 069
(CTA Crim Case No. O-701)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 06 2021 3:43 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review impugning the twin Resolutions dated April 02, 2019[1] and May 07, 2019[2] ("Assailed Resolutions") of the Court of Tax Appeals Second Division ("Second Division"), dismissing the case against Respondent Ulysses Palconet Consebido in CTA Criminal Case No. O-701 on the ground of prescription.

The dispositive portion of the Resolution dated April 02, 2019 reads:

[1] Penned by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla; Docket, pp. 371-374.
[2] *Id.*, pp. 387-389.

> "**WHEREFORE**, CTA Criminal Case No. O-701 is hereby **DISMISSED** on the ground of prescription.
>
> **SO ORDERED.**"[3]

Meanwhile, the dispositive portion of the Resolution dated May 07, 2019 reads:

> "**WHEREFORE**, the prosecution's Motion for Reconsideration (of the Resolution dated April 1, 2019) is hereby **DENIED**.
>
> **SO ORDERED.**"[4]

The Parties

Petitioner is the People of the Philippines, through the public prosecutor of the Department of Justice ("DOJ"), with office address at Padre Faura St., Ermita, Manila.[5]

On the other hand, Respondent Ulysses Palconet Consebido is the accused in CTA Criminal Case No. O-701 entitled *People of the Philippines v. Ulysses Palconet Consebido*, who may be served with summons and other court processes at New Princesa, Tinguiban, Puerto Prinsesa City, Palawan.[6]

The Facts

The Proceedings in the Second Division

On March 18, 2019, an Information[7] was filed against Respondent Ulysses Palconet Consebido, in violation of Section 255, in relation to Section 114, of the National Internal Revenue Code ("NIRC") of 1997, as amended, for willful failure to file quarterly Value-Added Tax ("VAT") return for the third quarter of taxable year 2008, committed as follows:

> "That on or about **October 25, 2008**, in Roxas, Palawan and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, doing business under the name and style SEVEN

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3 *Id.*, Resolution dated April 02, 2019, p. 374.
4 *Id.*, Resolution dated May 07, 2019, p. 389.
5 Rollo, Petition for Review, Parties, p. 3.
6 *Id.*
7 Docket, pp. 8-10.

DIGIT CONSTRUCTION AND SUPPLIES, and at that time required by law, rules and regulations to file his quarterly Value Added Tax (VAT) return did, then and there, willfully, unlawfully and feloniously fail to file his quarterly VAT return for the 3rd quarter of taxable year 2008, which resulted in basic deficiency quarterly VAT of **[Php]4,184,566.10** for the 3rd quarter of taxable year **2008**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'

CONTRARY TO LAW."

On April 02, 2019, the Court in Division rendered a Resolution dismissing the case on ground of prescription as the Information against Respondent was filed in Court beyond the five (5) year prescriptive period mandated under Section 281 of the NIRC of 1997, as amended, applying the Supreme Court case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[8] ("*Lim v. CA*").

Unconvinced, Petitioner filed a "Motion for Reconsideration (of the Resolution dated April 02, 2019)"[9] on April 22, 2019, claiming that Court in Division erred when it ruled that subject Information was filed beyond the 5-year prescriptive period applying Section 281 of the NIRC of 1997, as amended, and the pronouncement in *Lim v. CA*.

On May 07, 2019, said motion was denied by the Second Division for lack of merit.

The Proceedings in the Court of Tax Appeals En Banc

Thus, on June 04, 2019, Petitioner filed the instant "Petition for Review"[10], praying that the Assailed Resolutions rendered by the Court in Division be reversed and set aside, that a judgment be rendered that the information be reinstated, and that the Second Division continue to hear CTA Criminal Case No. O-701 up to its logical conclusion.

On July 10, 2019, the Court issued a Resolution[11] ordering Respondent to comment on the Petition for Review.

On February 04, 2020, the Judicial Records Division issued a Records Verification Report[12] stating that Respondent failed to file its comment.

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[8] G.R. Nos. L-48134-37, October 18, 1990.
[9] Docket, pp. 376-385.
[10] Rollo, pp. 1-14. Record shows that Petitioner received the May 07, 2019 Resolution on May 21, 2019, p. 31.
[11] *Id.*, pp. 36-37.
[12] *Id.*, p. 50.

On February 26, 2020, the Court issued a Resolution[13] submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

1) The Second Division committed gross and patent error when it applied Section 281 of the NIRC of 1997, as amended, and the pronouncement in *Lim v. CA* for the dismissal of Criminal Case No. O-701;

2) The Second Division erred when it disregarded Section 281 of the NIRC of 1997, as amended; and

3) The Second Division erred when it failed to consider that the filing of the criminal complaint for preliminary investigation tolled or interrupted the running of the prescriptive period.[14]

The Arguments of Petitioner

Petitioner mainly avers that the case of *Lim v. CA* should not have been used by the court *a quo* in deciding CTA Criminal Case No. O-701 because the same used Section 354 of the old Tax Code (*i.e.*, Commonwealth Act No. 466 or the NIRC of 1939).

Petitioner also submits that Section 281 of the NIRC of 1997, as amended, clearly provides that the institution of judicial proceedings or the filing by the Bureau of Internal Revenue ("BIR") of the Joint Complaint-Affidavit before the DOJ for preliminary investigation commenced the 5-year prescriptive period and interrupted the running of prescription at the same time, making tax cases practically imprescriptible.

Lastly, Petitioner contends that there is ample jurisprudence which asserts that prescription is interrupted or tolled by the filing of the criminal complaint for preliminary investigation, following *People of the Philippines v. Ma. Theresa Pangilinan*[15] ("*People v. Pangilinan*") and *Luis Panaguiton, Jr. v. Department of Justice*[16] ("*Panguiton v. DOJ*").

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13 *Id.*, pp. 54-55.
14 *Id.*, p. 3.
15 G.R. No. 152662, June 13, 2012.
16 G.R. No. 167571, November 25, 2008.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Resolution, denying "Motion for Reconsideration (of the Resolution dated April 02, 2019)", on May 07, 2019. Petitioner received said Resolution on May 21, 2019. Pursuant to Rule 4, Section 2(f)[17] in relation to Rule 8, Section 3(b)[18] of the Revised Rules of the Court of Tax Appeals[19] ("RRCTA"), Petitioner had fifteen (15) days from date of receipt of the resolution or until June 05, 2019 within which to file its petition for review.

On June 04, 2019, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

The Second Division correctly dismissed Criminal Case No. O-701.

Petitioner contends that per Section 1, paragraph 2(a) of Rule 110[20] of the Revised Rules of Criminal Procedure, the filing of a complaint with the

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[17] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs; x x x

[18] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[19] A.M. No. 05-11-07-CTA, November 22, 2005.

[20] **Section 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.
(b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

proper office for the conduct of preliminary investigation, interrupts the running of the prescriptive period. Hence, when BIR examiners filed with the DOJ their Joint Complaint-Affidavit against Respondent on January 30, 2014, the 5-year prescriptive period for willful failure to file quarterly VAT return under Section 255, in relation to Section 144 of the NIRC of 1997, as amended, was interrupted. In other words, the instant case had not yet prescribed when the Information was filed before the Court in Division on March 18, 2019.

Petitioner essentially believes that the dismissal of the case was incorrect for the government's right to file an action has not yet prescribed.

The Court *En Banc* is not convinced.

Section 281 of the NIRC of 1997, as amended, provides:

> "SECTION 281. Prescription for Violations of any Provision of this Code. - All violations of any provision of this Code shall prescribe after five (5) years.
>
> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines."

The commencement of the prescriptive period as provided in the above-cited provision (previously Section 354 of the NIRC of 1939) was interpreted by no less than the Supreme Court in *Lim v. CA* in the following manner, to wit:

> "...the Solicitor General stresses that Section 354 speaks not only of the 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

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The institution of the criminal action shall interrupt the running period of prescription of the offense charged unless otherwise provided in special laws. (*Emphasis supplied*) proceedings for its investigation and punishment.' **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 1971 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as 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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...**As Section 354 stands in the statute book (and to this day 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.**

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Unless amended by the legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation."[21]

Evident from the foregoing, both the date of discovery and the institution of judicial proceedings for investigation and punishment are significant events in the prosecution of any infraction of the Tax Code. It was observed that 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, the government's right to file a criminal action does not prescribe. Conversely, if the period from the institution of judicial proceedings for its investigation up to the filing of the information in court exceeds five (5) years, then the government's right to file an action has prescribed.

[21] *Emphasis supplied.*

As found by the Court in Division, the Joint Complaint-Affidavit of the investigating revenue officers was filed with the DOJ for preliminary investigation on January 30, 2014. Thus, the point in time which constitutes "discovery" together with the institution of judicial proceedings for preliminary investigation, show that prescription began to run on January 30, 2014. Applying the law and *Lim v. CA*, the 5-year prescriptive period from January 30, 2014 lapsed on January 30, 2019. In fine, when the Information was filed before the Court in Division on March 18, 2019, the 5-year prescriptive period had already lapsed. Hence, the Court in Division correctly ruled that the Information dated March 18, 2019 against Respondent could no longer be entertained as it was filed beyond the 5-year prescriptive period.

Further, while it may be true that in *Lim v. CA*, the Supreme Court interpreted Section 354 of the NIRC of 1939, which was the applicable law as the tax infraction committed pertained to taxable years 1958 and 1959, it cannot be denied that the wording of Section 354 of the NIRC of 1939 is identical to that of Section 281 of the NIRC of 1997, as amended. Accordingly, the interpretation given by the Supreme Court to the former provision still holds true to the present case.

As pointed out in *Alfredo Montelibano v. Felix S. Ferrer*[22]:

> "In the interpretation of reenacted statutes, the court will follow the construction which they received when previously in force. The legislature will be presumed to know the effect which such status originally had, and by reenactment to intend that they should again have the same effect...when a statute or a clause or provision thereof has been construed by a court of last resort, and the same is substantially re-enacted, the legislature may be regarded as adopting such construction."

Finally, contrary to Petitioner's assertion, the rulings in *People v. Pangilinan* and *Panaguiton v. Department of Justice* are not applicable to the present case since they do not involve the prescriptive period for the filing of criminal tax cases but the prescriptive period for instituting cases for violation of Batas Pambansa Blg. 22[23], pursuant to Act No. 3326[24]. On the other hand, *Lim v. CA* squarely dealt with the interpretation of the prescriptive period for purposes of instituting criminal tax cases. Simply put, the factual and legal circumstances of the cited cases and of the present case are discordant. Until and unless the doctrine laid down in *Lim v. CA* is modified or reversed by the Supreme Court, said doctrine remains to be binding.

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[22] G.R. No. L-7899, June 23, 1955.

[23] An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes, April 03, 1979.

[24] 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, December 04, 1926.

WHEREFORE, the Petition for Review filed with the Court *En Banc* on June 04, 2019 is **DENIED** for lack of merit. Accordingly, the twin Resolutions dated April 02, 2019 and May 07, 2019, both issued by the Second Division in CTA Criminal Case No. O-701 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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