Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM CASE NO. O-699** **For: Failure to File Quarterly VAT Return under Section 255, in relation to Section 114 of the National Internal Revenue Code of 1997, as amended.**
-versus-	Members: CASTAÑEDA, JR., Chairperson, and MINDARO-GRULLA, *JJ.*
ULYSSES PALCONET CONSEBIDO, Accused.	Promulgated: MAY 07 2019 8:15 a.m.

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RESOLUTION

On April 1, 2019, the Court dismissed the Information for having been filed beyond the five-year prescriptive period.

On April 22, 2019, the prosecution filed its Motion for Reconsideration (of the Resolution dated April 1, 2019).

The prosecution argues that the Court misconstrued the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines (Lim case)*[1] since the instant case was duly initiated by the filing of the complaint with the Department of Justice (DOJ) on January 30, 2014, which commenced the 5-year period to prosecute under Section 281 of the National Internal Revenue Code

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

(NIRC) of 1997 and interrupted the said period at the same time, making tax cases practically imprescriptible.

The Court cannot countenance the foregoing assertion. 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.[2] 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 DOJ would commence the running of the prescriptive period and interrupt it at the same time.[3]

To reiterate the Supreme Court in the *Lim Case:*

> "xxx. 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 proceedings for its investigation and punishment." In other words, in addition to the fact of discovery, <u>there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run.</u> <u>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 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>
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> <u>The Court is inclined to adopt the view of the Solicitor General</u>. 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 has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible <u>for as long as the period from the</u>

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[2] *People of the Philippines vs. Virgilio B. Castro*, CTA Crim. Case No. 0-663, February 21, 2018.
[3] *Ibid.*

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." (Underscoring supplied)

From the foregoing, since the period from the institution of judicial proceedings for its investigation, which was on January 30, 2014 in this case, up to the filing of the information in court, which was on March 18, 2019 in this case, exceeds five (5) years, then the government's right to file an action has prescribed.

WHEREFORE, the prosecution's Motion for Reconsideration (of the Resolution dated April 1, 2019) is hereby **DENIED.**

SO ORDERED.

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice