REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

REMEDIOS DE JUAN PENSOTES,
Accused.

CTA Crim. Case No. **O-685**

For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *JJ.*

Promulgated:
FEB 16 2023 1:05 p.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is plaintiff People of the Philippines' (**plaintiff**'s) "Motion for Reconsideration (of the Decision dated August 22, 2022)"[1] (**MR**) filed on 06 September 2022, with accused Remedios De Juan Pensotes' (**accused**'s) "Comment/Opposition (To the Motion for Reconsideration dated September 5, 2022)"[2] (**Comment/Opposition**) filed on 13 October 2022.

The MR seeks the reversal of the Court's Decision[3] (**assailed Decision**) promulgated on 22 August 2022. The dispositive portion thereof reads:

---

[1] Division Docket, Volume III, pp. 1206-1222.
[2] Id., pp. 1232-1236.
[3] Id., pp. 1179-1202.

> ...
>
> **WHEREFORE,** premises considered, CTA Crim. Case No. O-685 filed against accused Remedios De Juan Pensotes is hereby **DISMISSED** on the ground of prescription. Accordingly, the cash bail bond posted by accused Remedios De Juan Pensotes is hereby **DISCHARGED** and is to be **RELEASED** to her upon presentation of proper documents, in accordance with usual accounting rules and regulations.
>
> No pronouncement as to civil liability *ex delicto.*
>
> **SO ORDERED.**
>
> ...

In its MR, plaintiff contends that the National Internal Revenue Code (NIRC) of 1997, as amended, adopted Section 2[4] of Act No. 3326[5] to form part of its present Section 281.[6]

According to plaintiff, the issue of when prescription of a special law starts to run and when it is tolled was already settled in the case of *Luis Panaguiton, Jr. v. Department of Justice, et al.*[7] (**Panaguiton**), where the Supreme Court discussed the set-up of the Philippine judicial system in place during the passage of Act No. 3326. There, it was explained that when the said law was passed, preliminary investigation was conducted by justices of the peace thus the phraseology in the law "institution of judicial proceedings for its investigation and punishment". As such, prescription of the offense is tolled once a complaint is filed with the justice of the peace for preliminary investigation.

---

[4] **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 proceeding 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.

[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] **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.

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.

[7] G.R. No. 167571, 25 November 2008.

Panaguiton was thereafter followed by the cases of *Domingo Ingco, et al. v. Sandiganbayan*[8] (**Ingco**), *Sanrio Company Limited v. Edgar C. Lim, doing business as Orignamura Trading*[9] (**Sanrio**) where the Supreme Court held that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against accused.

In the more recent case of *Securities and Exchange Commission v. Interport Resources Corporation, et al.*[10] (**Interport**), the Supreme Court further held that the nature and purpose of the investigation conducted by the Securities and Exchange Commission (**SEC**) on violations of the Revised Securities Act, another special law, is equivalent to the preliminary investigation conducted by the Department of Justice (**DOJ**) in criminal case, and thus effectively interrupts the prescriptive period.

Further, in the case of *People of the Philippines v. Mateo A. Lee, Jr.*[11] (**Lee**), the Supreme Court ruled that "'(t)here is no more distinction between cases under the RPC (Revised Penal Code) and those covered by special laws with respect to the interruption of the period of prescription' and reiterated that the period of prescription is interrupted by the filing of the complaint before the fiscal's office for purposes of preliminary investigation against the accused".

Plaintiff underscores that the circumstances surrounding the issuance of the decision in *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[12] (**Lim**) have changed and that there are already recent developments in our jurisprudence which this Court should take into consideration.

Plaintiff thus questions why violations of the NIRC of 1997, as amended, which are equally criminal in nature, are treated differently from any other crimes such as issuing a bouncing check in *Panaguiton*, graft and corrupt practices act in *Ingco*, copyright infringement in *Sanrio*, violations of Revised Securities Act in *Interport* and sexual harassment in *Lee* where the Supreme Court consistently considered the institution of preliminary investigation as an act that interrupts the running of prescription.

---

[8] G.R. No. 112584, 23 May 1997.
[9] G.R. No. 168662, 19 February 2008.
[10] G.R. No. 135808, 06 October 2008.
[11] G.R. No. 234618, 16 September 2019.
[12] G.R. Nos. L-48134-37, 18 October 1990.

Plaintiff finally submits that its action against the accused has not yet prescribed considering that the filing of the Joint Complaint-Affidavit[13] with the DOJ on 26 April 2012 constitutes as the judicial proceedings which interrupted the running of prescriptive period.

On the other hand, accused claims that plaintiff's arguments are mere rehashes of the issues and arguments that were already resolved by the Court. As such, plaintiff's MR is a *pro-forma* motion which should not be given even a scant consideration.

Lastly, accused invokes her right against double jeopardy and maintains that plaintiff was given more than enough chance to present its evidence. However, accused was eventually acquitted and that the said acquittal became final and executory on the day the Court rendered the assailed Decision on 22 August 2022.

We resolve.

At the onset, the arguments being raised herein by plaintiff have already been considered and passed upon in the assailed Decision. Nevertheless, for emphasis, the Court shall address the crux of plaintiff's contention raising issue on the present applicability of *Lim* in view of the more recent cases decided by the Supreme Court.

According to plaintiff, the recent interpretations of Act No. 3326 provides that the filing of complaint with the prosecutor interrupts the running of prescription. Since the provisions in Act No. 3326 is same as that in Section 281 of the NIRC of 1997, as amended, the interpretation in such more recent cases should be made applicable herein instead of *Lim*.

We do not agree.

It bears to emphasize that *Lim* specifically deals with the prosecution for violation of a tax law while the other cases cited by plaintiff deals with the prosecution of special penal laws not involving tax.

---

13 Exhibit "P-3", Division Docket, Volume I, pp. 24-33.

As held in the assailed Decision, the ruling in *Lim* that the filing of information in Court interrupts the running of prescriptive period is further consistent with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals[14] (**RRCTA**), which reads as follows:

> ...
>
> **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. (Rules of Court, Rule 110, sec. 2a; n)
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.**[15]
>
> ...

The RRCTA is clear enough in stating that the institution of the criminal action shall interrupt the running of the period of prescription, which is done by the filing of information with this Court.

Thus, in view of *Lim* and the RRCTA, the Court reiterates that the period of prescription for a tax case begins to run from the discovery *and* institution of proceedings for its investigation and shall only be tolled by the filing of an information with this Court.

As applied herein, the Joint Complaint-Affidavit against accused for purposes of preliminary investigation was filed on 26 April 2012. However, the Information against accused was filed only on 01 March 2019, or only after more than six (6) years and ten (10) months. As such, plaintiff's right to prosecute accused had already prescribed.

In addition to the foregoing, plaintiff's MR likewise violates accused's constitutional right against double jeopardy, as expounded in Section 7, Rule 117 of the Revised Rules of Criminal Procedure, to wit:

---

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

15 Emphasis supplied.

> ...
>
> **Section 7.** *Former conviction or acquittal; double jeopardy.* — When an accused has been convicted or acquitted, or **the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge,** the conviction or acquittal of the accused or **the dismissal of the case shall be a bar to another prosecution for the offense charged,** or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.[16]
>
> ...

In *Wilfred N. Chiok v. People of the Philippines, et al.*[17], the Supreme Court laid down the elements that must concur for double jeopardy to attach, *viz*:

> ...
>
> The 1987 Constitution, as well as its predecessors, guarantees the right of the accused against double jeopardy. Section 7, Rule 117 of the 1985 and 2000 Rules on Criminal Procedure strictly adhere to the constitutional proscription against double jeopardy and provide for the requisites in order for double jeopardy to attach. For double jeopardy to attach, the following elements must concur: (1) **a valid information sufficient in form and substance to sustain a conviction of the crime charged**; (2) **a court of competent jurisdiction**; (3) **the accused has been arraigned and had pleaded**; and (4) the accused was convicted or acquitted **or the case was dismissed without his express consent.**
>
> ...

In this case, all the aforementioned requisites are present.

First, there is a valid Information against accused charging the accused for violation of Section 255[18] of the NIRC of 1997, as amended,

---

16 Emphasis supplied.

17 G.R. No. 179814, 07 December 2015; Citations omitted and emphasis supplied.

18 **Sec. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof,

for the alleged willful failure to supply correct and accurate information in her Income Tax Return (**ITR**) for taxable year (**TY**) 2007, which would have been sufficient to sustain conviction of the offense charged.

Second, the same was correctly filed with this Court which has jurisdiction over criminal offenses arising from violations of the National Internal Revenue Code where the amount of taxes and fees, exclusive of charges and penalties, claimed is at least One Million Pesos (₱1,000,000.00). Here, the deficiency tax involved amounts to Nineteen Million Nine Hundred Ninety-Seven Thousand Five Hundred Twenty-Three Pesos and Seven Centavos (₱19,997,523.07), exclusive of surcharges and interests.

Third, accused pleaded not guilty to the aforesaid charge during the arraignment.[19]

Fourth, by virtue of the rendition of the assailed Decision after trial, the case against accused was dismissed, upon the Court's finding that plaintiff's right to file the instant criminal action has already prescribed.

Considering that all the aforementioned requisites are present, plaintiff's MR is violative of the constitutional proscription against double jeopardy.

All told, unless and until the Supreme Court modifies or reverses *Lim,* this Court shall be bound by the said ruling in cases involving prosecutions for violation of the NIRC of 1997, as amended.

Accordingly, the Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, in view of the foregoing, plaintiff People of the Philippines' "Motion for Reconsideration (of the Decision dated August 22, 2022)" is **DENIED** for lack of merit.

---

be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

...

19 Certificate of Arraignment dated 20 May 2019, Division Docket, Volume I, p. 179.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice