**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

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| **PEOPLE OF THE PHILIPPINES,** *Plaintiff,* | **CTA CRIM. CASE NO. O-933** |
| | *Members:* |
| -versus- | **UY,** *Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.* |
| **ANTONIO VALERIANO M. BERNARDO (A.V.M. BERNARDO ENGINEERING),** *Accused.* | Promulgated: |
| | APR 27 2023 4:10 p.m. |

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# RESOLUTION

For resolution is plaintiff's (1) *Motion for Reconsideration (of the Resolution dated February 28, 2023)* filed on March 8, 2023 *via* registered mail,[1] with the accused's *Opposition (To Plaintiff's Motion for Reconsideration dated 7 March 2023)* filed on March 24, 2023; and (2) *Manifestation and Motion* filed *via* registered mail on March 30, 2023.[2]

Plaintiff's motion assails the Court's Resolution dated February 28, 2023 (assailed Resolution), dismissing the case on the ground of prescription. It argues that prescription has not set in, invoking the case of *Lim, Sr. v. Court of Appeals*[3] (*Lim*), where the Supreme Court pronounced that tax cases are practically imprescriptible[4] if the date of the commission of the violation is unknown, as in this case.[5]

Plaintiff insists that the institution of judicial proceedings for the investigation and punishment of the offense on February 18, 2016 not only triggers the commencement of the

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[1] Received by the Court on March 14, 2023.
[2] Received by the Court on March 30, 2023.
[3] G.R. Nos. 48134-37, October 18, 1990.
[4] Par. 21, Motion for Reconsideration (of the Resolution dated February 28, 2023).
[5] Pars. 22-23, *id.*

prescriptive period but also the interruption of the same prescriptive period.[6]

Plaintiff adds that if the Court were to apply Section 281 of the National Internal Revenue Code (NIRC) of 1997, it would find that tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment does not exceed five (5) years.[7]

Accused counters by echoing the findings in the assailed Resolution and maintaining that plaintiff's interpretation of Section 281 of the NIRC of 1997, as amended, *i.e.,* the filing of the complaint which commences the prescriptive period would also trigger the interruption of the same prescriptive period, would lead to absurd results as it would effectively make the prescriptive period inoperative.[8]

We resolve.

Under Section 281 of the NIRC of 1997, there is no dispute that in offenses where the commission is unknown, prescription *commences* from the discovery of the commission *and* the institution of judicial proceedings for its investigation and punishment.[9] Hence, the prescriptive period in this case began on February 18, 2016, when the complaint against the accused was filed with the Department of Justice (DOJ) for purposes of preliminary investigation.

The contention lies in when the prescriptive period is interrupted.

Plaintiff maintains that the running of the prescriptive period on February 18, 2016 also interrupted the same prescriptive period. Petitioner invokes the 3rd paragraph of Section 281 of the NIRC of 1997 as its basis:

> 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. (*Emphasis supplied*)

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[6] Par. 27, *id.*
[7] Par. 30, *id.*
[8] Par. 9, Opposition (To Plaintiff's Motion for Reconsideration dated 7 March 2023).
[9] 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.

Plaintiff believes that the phrase "when proceedings are instituted against the guilty persons" is the filing of a complaint with the DOJ; hence, when it filed a Joint Complaint-Affidavit with the DOJ, the prescriptive period was interrupted at the same time.

Plaintiff is mistaken.

To properly interpret Section 281, We have to look not only at jurisprudence involving criminal tax cases but also at the rules of this Court in ascertaining what constitutes an "institution of proceedings against the guilty persons."

Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that criminal actions are instituted before this Court by filing information in the name of the People of the Philippines. Such institution of criminal action interrupts the running of the period of prescription, *viz.*:

> SEC. 2. *Institution of criminal actions.* – **All criminal actions** before the Court in Division in the exercise of its original jurisdiction **shall be <u>instituted by the filing of an information</u> 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.
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> **The institution of the criminal action shall interrupt the running of the period of prescription**. (*Emphasis supplied*)

This negates petitioner's claim that the filing of a Joint Complaint-Affidavit with the DOJ for preliminary investigation shall be considered as the institution of criminal action that interrupts the running of the period of prescription.

Instead, the prescriptive period shall be interrupted with the institution of criminal action before the Court by filing information.

Such interpretation of Section 281 of the NIRC of 1997 has been settled in the landmark case of *Lim*:

> ... As Section 354 [now Section 281] 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 **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**. (*Boldfacing supplied; italics on the original*)

Following *Lim* and its interpretation of Section 281, the Information should be filed within the 5-year prescriptive period from the filing of the complaint (if the date of the commission of the offense is not known); otherwise, the prescriptive period shall lapse.

Hence, petitioner's interpretation that the filing of a Joint Complaint-Affidavit before the DOJ for preliminary investigation on February 18, 2016 commenced and interrupted the 5-year prescriptive period is illogical. It negates any possible efficacy of the prescriptive period, which renders the provision ineffectual. [10] It must be emphasized that statutes must be construed in such a way as to give effect to the intention of the lawmakers so as to give a sensible meaning to the language of the statute and to avoid nonsensical or absurd results.[11]

In fine, the time of discovery and the institution of judicial proceedings for preliminary investigation on February 18, 2016, commenced the running of the 5-year prescriptive period. Counting five (5) years from February 18, 2016, the prescriptive period lapsed on February 18, 2021. Thus, the Information filed in Court on September 6, 2022 was filed out of time.

**WHEREFORE**, premises considered, plaintiff's *Motion for Reconsideration (of the Resolution dated February 28, 2023)* is **DENIED** for lack of merit.

Accordingly, plaintiff's *Manifestation and Motion* is **NOTED without action**.

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[10] *People v. Bernardo*, CTA Crim. Case Nos. O-728, O-730, O-730, and O-734, December 2, 2019.
[11] *Id.*

**SO ORDERED.**

(On Leave)
**ERLINDA P. UY**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice