REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. No. 078
(CTA CRIM Case No. O-731)

-versus-

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro, and
Reyes-Fajardo, *JJ.*

JUANCHITO D. BERNARDO,
PRAXEDES P. BERNARDO and
JDBEC, INCORPORATED,
Respondents.

Promulgated:
SEP 2 9 2021 11:30am

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DECISION

CASTAÑEDA, JR., *J.*:

Before the Court of Tax Appeals (CTA) *En Banc* is the petition for review filed by petitioner People of the Philippines ("petitioner") on March 10, 2020 assailing the Resolution dated November 12, 2019[1] (1st Resolution), Resolution dated January 16, 2020[2] (2nd Resolution), and Resolution dated February 14, 2020[3] (3rd Resolution) promulgated by the CTA First Division[4] ("CTA Division") in the case entitled *"People of the*

[1] *Rollo*, pp. 25-30.
[2] *Id.*, pp. 31-33.
[3] *Id.*, pp. 34-36.
[4] Composed of Presiding Justice Roman G. Del Rosario, Associate Justice (now retired) Esperanza R. Fabon-Victorino, and Associate Justice Catherine T. Manahan.

Philippines v. Juanchito D. Bernardo, Praxedes P. Bernardo and JDBEC Incorporated ... " docketed as CTA CRIM. Case No. O-731.

The dispositive portion of the 1st Resolution reads:

> "**WHEREFORE,** CTA Criminal Case No. O-731 is hereby **DISMISSED** on the ground of prescription.
>
> **SO ORDERED.**"

The dispositive portion of the 2nd Resolution reads:

> "**WHEREFORE,** the prosecution's *Motion for Reconsideration (to Resolution dated November 12, 2019)* is **DENIED.**
>
> **SO ORDERED.**"

The dispositive portion of the 3rd Resolution reads:

> "**WHEREFORE,** the prosecution's Motion for Reconsideration dated January 28, 2020 is **DENIED.**
>
> **SO ORDERED.**"

Petitioner prays that the 1st Resolution, 2nd Resolution, and 3rd Resolution of the CTA Division be reversed and set aside; and that the criminal case against respondents be reinstated for the continuation of the proceedings.

THE FACTS

On June 18, 2019, an Information[5] for failure to supply correct and accurate information under Section 255 in relation to Section 253 (d) and Section 256 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, was filed in the Court of Tax Appeals against Juanchito D. Bernardo, Praxedes P. Bernardo and JDBEC, Incorporated (accused), the accusatory portion of which reads:

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[5] Division Docket, Vol. 1, pp. 8-9.

> "That on or about January 25, 2008, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the forenamed accused **JUANCHITO D. BERNARDO** and **PRAXEDES P. BERNARDO** being the President and Vice-President and Treasurer, respectively, of **JDBEC Inc.,** a domestic corporation, and who are required by law, rules and regulations to supply correct and accurate information in the Value-Added-Tax (VAT) returns of the said corporation, did then and there willfully, unlawfully and feloniously file fraudulent VAT returns for taxable year 2007 for the said corporation by falsely and fraudulently stating/declaring therein that the vatable income/receipts of the latter for the said taxable year was only P208,067,683.81 when in truth and in fact its actual income/receipts subject to VAT for the taxable year 2007 amounted to P453,334,382.50 or a gross understatement /under declaration in the amount of P245,266,698.69, or an understatement/underdeclaration of 117.88%, and as a result, JDBEC incurred basic VAT deficiency for taxable year 2007 in the amount of P29,432,003.84, exclusive of interests, penalties and surcharges, to the damage and prejudice of the Government.
>
> CONTRARY TO LAW."

On July 17, 2019, the CTA Division ordered the prosecution (petitioner in this *En Banc* case) to submit the original or certified true copy of the letter of the Commissioner of Internal Revenue (CIR) referring the case to the Department of Justice (DOJ) for preliminary investigation and filing of an Information is incomplete as it lacks the signature page of the document.[6] The complete original or certified true copy of the CIR Letter dated September 23, 2010[7] was submitted on October 4, 2019.[8]

On November 12, 2019, the CTA Division promulgated the 1st Resolution dismissing CTA Criminal Case No. O-731, on the ground of prescription.[9]

On November 27, 2019, the CTA Division noted the Entries of Appearance as counsel for the accused and as counsels for the prosecution, and with the dismissal of the case, deemed moot the various incidents.[10]

[6] Division Docket, Vol. IV, pp. 2118-2119.
[7] *Id*, pp. 2166-2168.
[8] *Id.*, pp. 2163-2165.
[9] *Id.*, pp. 2174-2179.
[10] *Id.*, pp. 2182-2183.

On January 16, 2020, the CTA Division promulgated the 2nd Resolution denying the prosecution's *Motion for Reconsideration (to Resolution dated November 12, 2019)*.[11]

On February 14, 2020 Resolution (3rd Resolution), the CTA Division denied the prosecution's Motion for Reconsideration dated January 28, 2020.[12]

On March 10, 2020, petitioner filed its Petition for Review.[13]

On June 16, 2020, the CTA *En Banc* ordered respondent to file a comment to the "Petition for Review" within ten (10) days from receipt.[14]

On July 28, 2020, this Court ordered respondents to submit additional nine (9) copies of the "Comment/Opposition (To The Petition for Review)" filed *via* JRS and received by the Court on July 17, 2020.[15]

On September 7, 2020, the Court noted the "Compliance" filed by the respondents *via* LBC and received by the Court on September 1, 2020.[16]

On September 29, 2020, this case was submitted for decision.[17]

Hence, this Decision.

ISSUES

The following are the *grounds for the allowance of the petition*[18]:

i. THE CTA FIRST DIVISION ERRED WHEN IT RULED THAT THE PROSECUTION FAILED TO SEASONABLY INSTITUTE THE PRESENT CRIMINAL ACTION AND CONSEQUENTLY DISMISSED THE PRESENT CASE.

ii. THE CTA FIRST DIVISION ERRED WITH*[sic]* IT RULED THAT PETITIONER'S MOTION FOR RECONSIDERATION DATED

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[11] *Id.*, pp. 2206-2207.
[12] Division Docket, Vol. IV, pp. 2218-2220.
[13] *Rollo*, pp. 1-19.
[14] *Id..*, pp. 64-65.
[15] *Id.*, p. 83.
[16] *Id.*, p. 104.
[17] *Id.*, pp. 106-107.
[18] *Id.*, p. 6.

DECEMBER 16, 2019 WAS BELATEDLY FILED AND CONSEQUENTLY DENIED THE SAME.

Petitioner maintains that the present Information was timely filed before the CTA Division. Petitioner alleges that the application of the pronouncement in *Lim, Sr. v. Court of Appeals*[19] to the case is contrary to the provision on prescription of crimes under the 1997 NIRC, as amended, as its interpretation goes beyond what is stated in the law. Petitioner states that the *Lim* case added the phrase *"up to the filing of the information in court does not exceed five (5) years"* when nowhere in Section 354 of the 1939 NIRC, nor in the present Section 281 of the 1997 NIRC does it so provide. Petitioner also states that in fact, Section 354 and Section 281 are pretty much exactly the same.

Petitioner cited the cases of *People v. Ma. Theresa Pangilinan,*[20] and *Luis Panaguiton, Jr. v. Department of Justice,*[21] in order to bolster its stand that prescription of crimes is interrupted or tolled by the filing of preliminary investigation before the DOJ.

Petitioner alleges that the CTA Division erred when it ruled that petitioner's Motion for Reconsideration dated December 16, 2019 was belatedly filed allegedly because it is not in conformity with Item III (2) (c) of the Revised Guidelines for Continuous Trial of Criminal Cases.[22] Petitioner reiterates its argument that the November 12, 2019 Resolution (1st Resolution) of the CTA Division, which was the subject of the prosecution's Motion for Reconsideration dated December 16, 2019, was not made pursuant to accused-respondents' Joint-Ex Parte Motion to Dismiss. Petitioner alleges that there is no "meritorious motion" to speak of which may appropriately call for the application of the said rule. *jc*

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[19] G.R. Nos. 44134-37, October 18, 1990.
[20] G.R. No. 152662, June 13, 2012.
[21] G.R. No. 167571, November 25, 2008.
[22] *III. Procedure*

xxx xxx xxx

2. Motions
xxx xxx xxx

(c) *Meritorious Motions.* — Motions that allege plausible grounds supported by relevant documents and/or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious motions, such as:

xxx xxx xxx

The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution, and the adverse party shall be given an equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. Thereafter, the motion for reconsideration shall be resolved by the court within a non-extendible period of five (5) calendar days from the expiration of the five (5)-day period to submit the comment.

Motions that do not conform to the requirements stated above shall be considered unmeritorious and shall be denied outright. *(Emphasis Supplied)*

Respondents in their Comment/Opposition (To the Petition for Review) counter-argue, among others, that the offense has prescribed. They state that the right of the Bureau of Internal Revenue (BIR) to prosecute the case has already prescribed because it is the actual filing in court that tolls the running of the prescriptive period.

On the second issue, respondents allege that considering that petitioner filed a second motion for reconsideration, the running of the prescriptive period to file an appeal with the CTA *En Banc* was not tolled, thus, Petition for Review was filed out of time. Respondents state that the Resolution dated January 16, 2020 (2nd Resolution) of the CTA Division was final and executory.

THIS COURT'S RULING

The petition is denied.

After a careful review of petitioner's arguments in this petition, this Court finds that these arguments are the same arguments raised before the CTA Division, *i.e.*, the 1st ground in this petition was raised in the prosecution's Motion for Reconsideration (to Resolution dated November 12, 2019), while the 2nd ground in this petition was raised in the prosecution's Motion for Reconsideration dated January 28, 2020.

The Information was filed beyond the five (5)-year prescriptive period

Pertinent to this case is Section 281 of the NIRC, as amended, which states that:

> 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.**
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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.
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> 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.

A plain reading of the above provision shows that the period of prescription for the offense charged is five years.

As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the commission of the violation of the law, or 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 Supreme Court had interpreted the commencement of the prescriptive period as provided Sec. 354 (now Sec. 281) of the NIRC in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[23] (*Lim* case), and also ruled that "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", the government's right to file an action will not prescribe. Pertinent portions of the said case provide:

> . . . 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, 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 Case 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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> xxx xxx xxx
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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** *jr*

[23] G.R. Nos. 48134-37, October 18, 1990 (190 SCRA 616).

> **and punishment, up to the filing of the information in court does not exceed five (5) years.**
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> 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 Government and limitations in such cases will not be presumed in the absence of clear legislation. *(Emphases supplied)*

As correctly admitted by the petitioner in this Petition that "Section 354 [of the 1939 NIRC] and Section 281 [of the 1997 NIRC] are pretty much exactly the same,"[24] We find that the interpretation of the Supreme Court in the *Lim* case is applicable in the present case.

On the other hand, We find the rulings in *People v. Pangilinan* and *Panaguiton v. Department of Justice* are not applicable in the instant case because these cases do not involve the prescriptive period for the filing of criminal tax case, as these cases pertain to prescriptive period for instituting cases for violation of Batas Pambansa Blg. 22, pursuant to Act No. 3326.

Applying the foregoing, this Court agrees with the dismissal of the case by the CTA Division on the ground of prescription. Inasmuch as preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 23, 2010 when prescriptive period begins to run up to the filing of the information in court. However, in this case, the filing of the information in court (June 18, 2019) exceeds five (5) years, thus, the government's right to file an action has prescribed. We reiterate with approval the findings of the CTA Division,[25] as follows:

> In this case, the BIR referred the Joint Complaint-Affidavits of ROs Arnel B. Magbag, Jose Amor B. Dayoan, Ma. Racel B. Wacan, and Amelita M. Tugade with the DOJ for preliminary investigation on September 23, 2010. Given that such proceeding necessarily entails the investigation and consequent punishment of the subject offense, the five (5)- year prescriptive period begun to run on said date. *A fortiori*, **the prosecution had until September 23, 2015 to file the requisite Information with the Court. Hence, prescription**

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[24] *Rollo*, p. 7
[25] *Rollo*, pp. 29-30.

> **had already set in at the moment the prosecution instituted the subject Information with the Court on June 18, 2019, justifying the immediate dismissal of the instant case.** *(Emphases Supplied)*

The dismissal of the case is already final and unappealable

A perusal of the records reveal that indeed there were two (2) motions for reconsideration filed in this case, *i.e,* Motion for Reconsideration (*to Resolution dated November 12, 2019)*[26] filed on December 16, 2019 (*1st MR),* and Motion for Reconsideration *(to Resolution dated January 16, 2020)*[27] filed on January 28, 2020 *(2nd MR).* In these motions, petitioner (then plaintiff) prayed that the November 12, 2019 Resolution (1st Resolution) dismissing the Information on the ground of prescription be reversed and set aside.

Section 7 of Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), explicitly provides that "No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order."

In *Reyes v. People,*[28] the Supreme Court emphasized that, "second and subsequent motions for reconsideration are, as a general rule, prohibited...The rule rests on the basic tenet of immutability of judgments. 'At some point, a decision becomes final and executory and, consequently, all litigations must come to an end.'"

In *Securities and Exchange Commission v. PICOP Resources, Inc.*,[29] the Supreme Court ruled that, "Since the second motion for reconsideration was not allowed, this Court ruled that it did not toll the running of the period to appeal."

In this case, since the counting of the period of appeal to the CTA *En Banc* was reckoned by petitioner "From receipt of the assailed 3rd Resolution on February 24, 2020,"[30] or after the receipt of the resolution on the 2nd MR, this appeal was filed beyond the 15-day period under Sec.9 (b)[31], Rule 9 of the 2005 Revised Rules of the CTA (2005 RRCTA), as amended. *Je*

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[26] Division Docket, Vol.IV, pp. 2184-2193.
[27] *Id.*, pp. 2208-2213.
[28] G.R. No. 193034, July 20, 2015.
[29] G.R. No. 164314, September 26, 2008, 588 Phil. 136 (2008).
[30] *Rollo*, p.3.
[31] RULE 9

In *CIR v. Fort Bonifacio Development Corporation,*[32] the Supreme Court emphasized that:

> It has been ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.

In addition, We emphasize that the counsel for the People is the Solicitor General in all cases brought to the Court in its appellate jurisdiction pursuant to Section 10, Rule 9[33] of the 2005 RRCTA. In this case, People's counsel was BIR by Deputized Special Prosecutors.

Even without these procedural infirmities, We still uphold the dismissal of the case on the ground of prescription as already discussed at the outset.

Based on the foregoing, there is no reason to set aside the findings and conclusions of the CTA First Division in the assailed Resolutions.

WHEREFORE, premises considered, the Petition for Review is **DENIED.** Accordingly, the assailed Resolutions promulgated on November 12, 2019, January 16, 2020, and February 14, 2020, respectively, by the then CTA First Division in CTA Crim. Case No. O-731 are **AFFIRMED.** Je

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PROCEDURE IN CRIMINAL CASES

Xxx xxx xxx
SEC. 9. *Appeal; period to appeal.* —
Xxx xxx xxx

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days.

[32] G.R. No. 167606, August 11, 2010
[33] RULE 9
PROCEDURE IN CRIMINAL CASES

SEC. 10. *Solicitor General as counsel for the People and government officials sued in their official capacity.* — **The Solicitor General shall represent the People of the Philippines** and government officials sued in their official capacity in **all cases brought to the Court in the exercise of its appellate jurisdiction.** The former **may deputize the legal officers of the Bureau of Internal Revenue** in cases brought under the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, or the legal officers of the Bureau of Customs in cases brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their official capacity: *Provided, however,* such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General. *(Emphases Supplied)*

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(took no part)
MARIAN IVY F. REYES-FAJARDO
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