REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

***En Banc***

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| **PEOPLE OF THE PHILIPPINES,** *Petitioner,* | **CTA *EB* CRIM. NO. 106** (CTA Crim. Case No. O-948) |
| | Present: |
| *-versus-* | **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.* |
| **ZIEGFRIED LOO TIAN,** *Respondent.* | Promulgated: JAN 09 2024 3:55 PM |

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## DECISION

***MODESTO-SAN PEDRO, J.:***

## The Case

Before the Court is an Amended Verified Petition for Review (of the Resolution dated February 03,2023)[1] ("Petition"), filed by the People of the Philippines via registered mail on 10 July 2023 and received by this Court *En Banc* on 14 July 2023, with respondent Ziegfried Loo Tian's Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 03 February 2023) ("Comment"),[2] filed on 27 July 2023. The Petition seeks[3] the reversal and setting aside of the Resolution,[4] dated 5 December,

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1 *EB* Records, pp. 232-305.
2 *Id.*, pp. 557-576.
3 *See* Amended Verified Petition for Review, p. 22, *id.*, pp. 303.
4 *Id.*, pp. 318-321.

2022 ("Dismissal"), which dismissed the Information,[5] filed before the Court of Tax Appeals Second Division ("Court in Division"), on the ground of prescription, and the Resolution,[6] dated 3 February 2023 ("Assailed Resolution"), which denied petitioner's Motion for Reconsideration to the Dismissal for being filed late.

## The Facts

On or before 20 October 2011, respondent allegedly failed to supply correct and accurate information in his Value-Added Tax ("VAT") return for the third (3rd) quarter of taxable year 2011,[7] in violation of ***Section 255 of the National Internal Revenue Code of 1997, as amended*** ("***NIRC***"). This prompted the Bureau of Internal Revenue ("BIR") to file a Joint-Complaint Affidavit[8] with the Department of Justice ("DOJ") on 5 July 2012.[9] The DOJ then issued a Resolution[10] on 1 September 2014, recommending the filing of an Information before the Court of Tax Appeals. This was followed by a second Resolution,[11] issued on 11 May 2017, denying respondent's Motion for Reconsideration to the 1 September 2014 Resolution.

Accordingly, the DOJ, through Prosecution Attorney Jayvee Laurence B. Bandong, filed an Information before the CTA on 26 October 2022.

Acting on the Information, the Court in Division issued the assailed Dismissal on 5 December 2022. Said Dismissal was received first by the DOJ on 15 December 2022 and then by the BIR on 21 December 2022.[12]

In response to the dismissal, the BIR National Office Prosecution Division ("NOPD") filed a Formal Entry of Appearance[13] with Motion for Reconsideration[14] on 5 January 2023.

The Court in Division issued the Assailed Resolution on 3 February 2023. In it, the Court noted the Entry of Appearance but denied the Motion for Reconsideration, primarily for being filed out of time but also for lack of merit.

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5 Division Records, pp. 5-6.
6 *EB* Records, pp. 322-329.
7 *See* Information, p. 1, Division Records, p. 5.
8 *Id.*, pp. 26-40.
9 *See* Referral Letter, *id.*, pp. 24-25.
10 *Id.*, pp. 13-21.
11 *Id.*, pp. 7-9.
12 *See* Notice of Resolution, dated 5 December 2022, *id.*, p. 215.
13 *Id.*, pp. 221-222.
14 *Id.*, pp. 226-235.

Petitioner thus filed a Verified Petition for Review[15] before this Court *En Banc* via registered mail on 27 February 2023. Due to a technical error in the Petition for Review,[16] petitioner also filed the instant amended Petition on 10 July 2023.

Respondent filed his Comment on 27 July 2023.

The Court acted on the above by submitting this case for decision through a Minute Resolution,[17] dated 29 August 2023.

Hence, this Decision.

## The Issue

Petitioner assigns the following errors to the Court in Division:[18]

(a) The Court in Division erred when it denied petitioner's Motion for Reconsideration for allegedly being filed out of time; and

(b) The Court in Division erred when it found no probable cause to charge respondent for a violation of ***Sec. 255 of the NIRC*** for the third (3rd) quarter of taxable year 2011.

## The Arguments

Petitioner raises the following arguments:

(a) The reckoning point for the counting of the fifteen (15)-day period for the filing of a Motion for Reconsideration should be counted from the date of the BIR's receipt of the Dismissal; hence, the Motion for Reconsideration before the Court in Division was filed on time;[19]

(b) The filing of a complaint with the DOJ both triggers *and* interrupts the prescriptive period for prosecuting a violation of the ***NIRC***; thus, the government's right to prosecute this case has not yet prescribed;[20] and

[15] *EB* Records, pp. 1-23.
[16] *See* Manifestation and Motion, dated 15 March 2023, *id.*, pp. 268-271; *see also* Resolution, dated 30 June 2023, *id.*, pp. 275-278.
[17] *Id.*
[18] *See* Amended Verified Petition for Review, p. 6, *id.*, p 287.
[19] *See* Amended Verified Petition for Review, pp. 7-10, *id.*, pp. 288-291.
[20] *See* Amended Verified Petition for Review, pp. 10-16, *id.*, pp. 291-297.

(c) Respondent should be held liable for his willful failure to supply correct and accurate information in his quarterly VAT return.[21]

Meanwhile, respondent contends as follows:

(a) The government's right to prosecute respondent for the alleged violation has prescribed;[22]

(b) Respondent's right to a speedy disposition of cases was violated, so the case must be dismissed;[23] and

(c) The assailed Dismissal attained finality when petitioner failed to timely file a Motion for Reconsideration.[24]

## The Ruling of the Court

The Petition for Review lacks merit.

**The DOJ remained as counsel for the prosecution, so the Motion for Reconsideration was filed late.**

Petitioner's first argument against the Assailed Resolution is that the BIR NOPD was deputized as Special Prosecutors in the case, so the period for filing a Motion for Reconsideration should have been counted from their receipt, not the DOJ's receipt, of the assailed dismissal. A review of the rules and issuances that govern such deputization is thus in order.

The deputization of private prosecutors, such as the BIR NOPD, by public prosecutors is governed mainly by ***Sec. 5, Rule 110 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 02-2-07-SC***,[25] which reads as follows:

> "Section 5. *Who must prosecute criminal actions.* — **All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State**

[21] *See* Amended Verified Petition for Review, pp. 16-22, *id.*, pp. 297-303.
[22] *See* Comment/Opposition, pp. 2-9, *id.*, pp. 258-265.
[23] *See* Comment/Opposition, pp. 11-17, *id.*, pp. 566-572.
[24] *See* Comment/Opposition, pp. 12-13, *id.*, pp. 573-574.
[25] 10 April 2002.

> **Prosecutor to prosecute the case subject to the approval of the court.** Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court."[26]
> (Emphasis supplied.)

The above provision on deputization was conveniently summarized and paraphrased in ***DOJ Memorandum No. Circular No. 25***:[27]

> "In connection therewith, the authority of a private prosecutor to prosecute a criminal action is subject to the following conditions, *viz*:
>
> 1. **The public prosecutor has a heavy work schedule, or there is no public prosecutor assigned in the province or city**;
> 2. The private prosecutor is authorized by the Regional State Prosecutor (RSP), Provincial or City Prosecutor;
> 3. The authority must be in writing;
> 4. **The authority of the private prosecutor must be approved by the court**;
> 5. The private prosecutor shall continue to prosecute the case until the end of the trial unless the authority is withdrawn or otherwise revoked by the RSP, Provincial or City Prosecutor; **and**
> 6. In case of the withdrawal or revocation of the authority of the private prosecutor, the same must be approved by court.
>
> Strict compliance is hereby enjoined."
> (Emphasis supplied.)

This power of the DOJ to deputize private prosecutors would later be integrated into ***Sec. 3, Rule 9 of the Revised Rules of the Court of Tax Appeals, as amended***[28] (***"RRCTA"***):

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26 The final two (2) sentences of this passage were not included in A.M. No. 02-2-07-SC, despite being present in the previous version of Sec. 5, Rule 110. However, the Office of the Court Administrator issued OCA Circular No. 39-02 on 21 August 2002, which clarified the amendments made by A.M. No. 02-2-07-SC and stated that the sentences in question remained in the Rule despite being excluded from the SC issuance, presumably due to not being directly relevant to the amendments made.

27 26 April 2002.

28 A.M. No. 5-11-07-CTA, 22 November 2005.

> "SEC. 3. *Prosecution of criminal actions.* — All criminal actions shall be conducted and persecuted under the direction and control of the public prosecutor. **In criminal actions involving violations of the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, and violations of the Tariff and Customs Code or other laws enforced by the Bureau of Customs, the prosecution may be conducted by their respective duly deputized legal officers.**" (Emphasis supplied.)

From the above, the DOJ clearly has the power to deputize lawyers from the BIR, who then gain the authority to prosecute a case. Is petitioner thus correct in asserting that the period to file a Motion for Reconsideration should have been counted from the BIR NOPD's receipt of the assailed Dismissal?

The Court *En Banc* rules in the negative. The BIR NOPD was not yet properly deputized when the Dismissal was issued. Furthermore, even if they had been fully deputized by the time the Dismissal was issued, they would have still been under the supervision of the DOJ, who would have remained the principal counsel in this case.

*The BIR NOPD was not yet properly deputized when the Dismissal was issued.*

As discussed above, the DOJ has the power to deputize private prosecutors. Such deputization, however, must be approved by the Court. To reiterate, ***Sec. 5, Rule 110 of the Revised Rules of Criminal Procedure, as amended***, clearly states that the deputization of a private prosecutor is "subject to the approval of the court". ***DOJ Memorandum Circular No. 25***, meanwhile, observes that "[t]he authority of the private prosecutor must be approved by the court".

That the deputization of the BIR NOPD requires the approval of the court is acknowledged in no less than the written authority,[29] issued by Prosecutor General Benedicto A. Malcontento, deputizing lawyers from the BIR NOPD in criminal tax cases, such as the one before the Court in Division. Said written authority was submitted by petitioner with the Entry of Appearance[30] it filed before the Court in Division on 5 January 2023. The pertinent portion of said authority reads as follows:

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[29] Authorization and Deputization of Lawyers of the National Office – Prosecution Division, dated 14 October 2022, Division Records, pp. 224-225.

[30] *Id.*, pp. 221-223.

> "As per your recommendation and pursuant to Section 5, Rule 110 of the Revised Rules of Criminal Procedure, **the above-mentioned BIR lawyers are hereby authorized by this Office to assist the public prosecutors in handling criminal tax cases, subject to court approval.**"
> (Citations omitted; emphasis supplied.)

Unfortunately for petitioner, the deputization of the lawyers from the BIR NOPD had not been fully approved by the Court when it issued its Dismissal. Said Dismissal, to review, was promulgated on 5 December 2022. Meanwhile, the BIR NOPD filed its Entry of Appearance on 5 January 2023, thirty-one (31) days after the issuance of the Dismissal. Said Entry of Appearance was then noted by the Court in Division in the Assailed Resolution on 3 February 2023. The BIR NOPD's deputization was thus not yet in effect when the Dismissal was issued on 5 December 2022.

Given the above, the BIR NOPD cannot claim to have been the principal prosecutors of this case when the Dismissal was issued. The period for filing a Motion for Reconsideration to the Dismissal consequently cannot be counted from the BIR NOPD's receipt of said Dismissal, as the deputization of its lawyers had yet to be approved by the Court.

Petitioner's claim that the Court in Division recognized its deputization holds no water either. The passage it quoted was from the Assailed Resolution, which was issued on 3 February 2023, sixty (60) days after the issuance of the Dismissal on 5 December 2022. Said passage thus cannot be used to convincingly claim that the Court in Division already treated the BIR NOPD as fully deputized Special Prosecutors when the Dismissal was issued.

In sum, petitioner's argument, that the BIR NOPD was the prosecutor in the instant case, fails to convince this Court. However, said argument would not have helped petitioner's case either way. The central issue here is not whether the BIR NOPD's lawyers were the prosecutors here. Rather, it is the DOJ's status as the public prosecutor in CTA Crim. Case No. O-948 that is critical to the dilemma at hand.

*Even if private or special prosecutors are deputized, the public prosecutor remains the principal prosecutor.*

Assuming *arguendo* that the BIR NOPD's lawyers had been properly deputized when the Dismissal was issued, the period for the filing of the prosecution's Motion for Reconsideration would have still begun upon the DOJ's receipt of said Dismissal. This is because the DOJ's public prosecutor remained as principal prosecutor in the case before the Court in Division.

We quote once more the written authority deputizing lawyers from the BIR NOPD:

> "As per your recommendation and pursuant to Section 5, Rule 110 of the Revised Rules of Criminal Procedure, **the above-mentioned BIR lawyers are hereby authorized by this Office to <u>assist</u> the public prosecutors in handling criminal tax cases, subject to court approval.**"
> (Citations omitted; emphasis and underscoring supplied.)

In the above, the Prosecutor General authorized the BIR NOPD's lawyers to *assist* the public prosecutors, not to *replace* them. As such, the deputization of the BIR NOPD's lawyers does not revoke a public prosecutor's position as a prosecutor in a given case. The DOJ thus retained the authority to represent the People of the Philippines in CTA Crim. Case No. O-948 and receive issuances relative to said case.

Moreover, the Supreme Court has consistently held that deputized private or special prosecutors remain under the supervision of the public prosecutor. This was pronounced in the landmark case of ***National Power Corporation v. National Labor Relations Commission, et al.***[31] ("***NAPOCOR***"), which was later cited in ***Commissioner of Customs v. Court of Tax Appeals and Philippine Casino Operators Corporation***[32] ("***Commissioner of Customs***") in this wise:

> "First. Petitioner was represented in the CTA by the Office of the Solicitor General which deputized lawyers in the Legal Service Division of the Bureau of Customs to serve as collaborating counsels. In accordance with this arrangement, lawyers in both offices (Bureau of Customs and the OSG) were served copies of decisions of the CTA. The lawyers at the Bureau received a copy of the decision of the CTA on May 30, 1997, while the OSG received its own on June 5, 1997. As earlier stated, the OSG filed its motion for reconsideration on June 20, 1997. Counted from this date, the motion was seasonably filed, but if the period for appealing or filing a motion for reconsideration were reckoned from the date of receipt of the decision by the lawyers of the Bureau of Customs, then the motion was filed five days late. The Court of Appeals ruled that service of the copy of the CTA decision on the lawyers of the Bureau of Customs was equivalent to service on the OSG, and, therefore, the motion for reconsideration was filed late.
>
> This is error. In National Power Corp. v. NLRC, it was already settled that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel, and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.** x x x"
> (Citations omitted; emphasis supplied.)

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[31] G.R. No. 90933-61, 29 May 1997.
[32] G.R. No. 132929, 27 March 2000.

The relevant doctrines espoused in ***NAPOCOR*** and ***Commissioner of Customs*** were recently reaffirmed in ***Claudine Monette Baldovino-Torres v. Jasper A. Torres***,[33] to wit:

> "The Court finds no merit in the contention that the OSG filed its Motion for Reconsideration out of time in the RTC. Admittedly, the public prosecutor in charge of the case, who was deputized by the OSG to appear on its behalf, received a copy of the RTC Decision on March 20, 2017. On the other hand, the OSG received its copy only on April 4, 2017.
>
> **In the case of National Power Corporation v. National Labor Relations Commission (NAPOCOR), the Court held that the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG. In holding so, the Court emphasized that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer.** As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.
>
> The NAPOCOR case was cited in the subsequent case of Commissioner of Customs v. Court of Tax Appeals, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**"
> (Citations omitted; emphasis supplied.)

To summarize, a public prosecutor in a criminal case continues to be the principal counsel even if private or special prosecutors are deputized. The period for filing a Motion for Reconsideration, then, should be counted from the receipt of the assailed issuance by the *public* prosecutor, not the deputized prosecutor, as service of legal processes to the former is decisive.

The application of the above to the case at bar is obvious. The deputization of the BIR NOPD's lawyers notwithstanding, the DOJ continued to be the principal prosecutor in CTA Crim. Case No. O-948. It was thus service to Prosecution Attorney Bandong, who was "of the Department of Justice",[34] that was controlling. Petitioner's argument fails.

Assuming even further *arguendo* that the DOJ was not the principal prosecutor in the case, petitioner failed to prove or allege that the former was not one (1) of the prosecutors in CTA Crim. Case No. O-948. However, in cases where a party is represented by collaborating counsels, the general rule is that receipt by whichever counsel receives the relevant issuance first is

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[33] G.R. No. 248675, 20 July 2022. Note that, despite its recency, this Decision was promulgated before the issuance of the Dismissal assailed here.
[34] *See* Information, p. 1, Division Records, p. 5.

controlling.[35] The DOJ received the Dismissal first—as such, its receipt of said Resolution is controlling. Petitioner's argument still fails.

Considering all of the above, the Court in Division did not err when it counted the period for the prosecution to file its Motion for Reconsideration from the DOJ's receipt of the assailed Dismissal.

*The Motion for Reconsideration was filed late.*

To reiterate the findings of the Court in Division, the DOJ received the assailed Dismissal on 15 December 2022.[36] The prosecution thus had until 3 January 2023 within which to file its Motion for Reconsideration.[37] Given that it filed its Motion on 5 January 2023, twenty-one (21) days from the DOJ's receipt of the Dismissal and two (2) days after the period for filing a Motion for Reconsideration had lapsed, the same was filed out of time.

The Court *En Banc* thus sees no error in the Court in Division's denial of the Motion for Reconsideration for having been filed late.

**In any event, the Information was filed late.**

In the Assailed Resolution, the Court in Division found that even had the prosecution filed the Motion for Reconsideration on time, the same lacked merit and would still have to be denied.

The Court *En Banc* agrees.

*Violations of the* **NIRC** *prescribe after five (5) years; the prescriptive period began upon the BIR's filing of a complaint with the DOJ.*

***Sec. 281 of the NIRC*** provides the rules that govern the prescription of any violation of said law:

[35] *See* Sublay v. National Labor Relations Commissions, et al., G.R. No. 130104, 31 January 2000.
[36] *See* Notice of Resolution, dated 5 December 2022, Division Records, p. 215.
[37] Under Sec. 1, Rule 15 of the RRCTA, the prosecution had fifteen (15) days within which to file a Motion for Reconsideration. Said period would have lapsed on 30 December 2022, but said date was a holiday. As such, the prosecution actually had until 3 January 2023, the next working day, within which to file a Motion for Reconsideration.

> "**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."

That violations of the *NIRC* prescribe after five (5) years is clear and unequivocal. What is less clear are the rules around the start and end of such period. However, both the Court in Division and petitioner cite the influential case of ***Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines***[38] ("***Lim***") and conclude that the prescriptive period for the instant case began upon the BIR's discovery of the alleged violation and its subsequent filing of a Joint-Complaint Affidavit with the DOJ on 5 July 2012, following the second half of ***Paragraph 2, Sec. 281 of the NIRC***.[39] As such, neither the duration of the prescriptive period nor the exact date of its tolling for this case are controversial here.

What is controversial, however, is the exact event that interrupts the prescriptive period. It is on this point that petitioner is fatally mistaken.

*The prescriptive period for violations of the NIRC prosecuted before the CTA is interrupted with the filing of an Information before said court.*

To reiterate, ***Sec. 281 of the NIRC*** states that the prescriptive period for violations of said law "shall be interrupted when proceedings are instituted against the guilty persons". Petitioner interprets this as meaning that the prescriptive period was interrupted when it filed a complaint before the DOJ. It also cites ***People of the Philippines v. Mateo A. Lee, Jr.***[40] ("***Lee***") to bolster its claim.

[38] G.R. Nos. L-48134-37, 18 October 1990.
[39] *See* Verified Petition for Review, pp. 12-13, *EB* Records, pp. 12-13; *see also* Resolution, dated 5 December 2022, pp. 2-4, Division Records, pp. 218-220; *see also* Resolution, dated 3 February 2023, pp. 5-6, Division Records, pp. 242-243. The Court *En Banc* shall no longer cover the reasoning behind this conclusion as (a) the reasoning provided in the Court in Division's Resolution still stands; and (b) the point is uncontroversial in this case, as stated above.
[40] G.R. No. 234618, 16 September 2019.

What petitioner conveniently ignores is ***Sec. 2, Rule 9 of the RRCTA***:

> "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.
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.**"
> (Emphasis supplied.)

The above rule is clear and unequivocal. For cases prosecuted before the CTA, it is the institution of a criminal action through the filing of an Information with said court, *not* the filing of a complaint before the DOJ, that interrupts the running of the prescriptive period. Petitioner cannot insist on its own interpretation of the ***NIRC*** when the above rule exists. And as the Court is governed by the ***RRCTA***, neither the Court in Division nor the Court *En Banc* can ignore said rule.

The ***Lee*** case is also not applicable here. Said case involves a violation of ***Republic Act No. 7877***, which has no equivalent to ***Sec. 2, Rule 9 of the RRCTA*** to specify what exactly interrupts its prescriptive period. It is instead governed by ***Act No. 3326, as amended by Act No. 3763***, which was enacted to provide prescriptive periods for violations of acts which would otherwise lack any set period for prescription:

> "SECTION 1. Violations penalized by special acts shall, **unless otherwise provided in such acts**, prescribe in accordance with the following rules: x x x"
> (Emphasis supplied.)

The Supreme Court's pronouncements in the ***Lee*** case thus apply specifically to crimes that fall under the remit of ***Act No. 3326, as amended.***

The instant case, by comparison, involves a violation of the ***NIRC*** which would generally be heard before the CTA. As a violation of the ***NIRC***, its prescriptive period is set by ***Sec. 281*** of said law. It does not fall under the purview of ***Act No. 3326, as amended***. The doctrine of the ***Lee*** case is consequently inapplicable here. Furthermore, as a violation whose prosecution must be heard before the CTA, its prescriptive period is necessarily affected by ***Sec. 2, Rule 9 of the RRCTA***. Said period must thus conform to the above-quoted rule.

Considering the above, the Court in Division was correct to refute petitioner's claim that the filing of a complaint before the DOJ interrupted the prescriptive period.

*The Information was filed over five (5) years late.*

To summarize the above, the Information for this case should have been filed with the CTA no more than five (5) years after the BIR filed a complaint with the DOJ.

The complaint for this case was filed with DOJ on 5 July 2012.[41] To reiterate, that the prescriptive period practically began on this date, pursuant to both ***Sec. 281 of the NIRC*** and the ***Lim*** Case, is uncontroversial here. The prosecution thus had until 5 July 2017 within which to file an Information before the Court in Division. However, the Information was filed only on 26 October 2022, over ten (10) years after the complaint was filed with the DOJ and over five (5) years after the 5 July 2017 deadline. Notably, the Information was filed by the DOJ itself over (5) years after its own 11 May 2017 Resolution recommending such filing. It was thus filed late. Accordingly, the government's right to prosecute the case had long since prescribed, and the Court in Division was correct to dismiss the case.

All told, the Court *En Banc* sees no cogent reason to disturb the findings of the Court in Division.[42]

**WHEREFORE**, petitioner's Amended Verified Petition for Review, filed via registered mail on 10 July 2023, is hereby **DENIED** for lack of merit. The assailed Resolutions, dated 5 December 2022 and 3 February 2023 are hereby **AFFIRMED.**

**SO ORDERED.**

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

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[41] *Supra* note 9.

[42] We also deem it unnecessary to cover petitioner's final argument, considering that it does not address the Court in Division's reasons for dismissing the Information. In any case, We would be unable to properly decide on the issue. The argument involves the merits of the case, and any ruling on the same would require a full-blown trial before the Court in Division.

***WE CONCUR:***

**ROMAN G. DEL ROSARIO**
Presiding Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

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

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

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

**CORAZON G. FERRER-FLORES**
Associate Justice

**HENRY S. ANGELES**
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