REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB CRIM. NO. 147** (CTA CRIM. CASE NO. O-672) For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended.
- versus -	*Present:* **RINGPIS-LIBAN, *P.J.*** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES, *and*** **ANGELES, *JJ.***
DIEGO G. MARTINEZ, Respondent.	**Promulgated:** FEB 06 2026 11:35a.m.

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DECISION

FERRER-FLORES, J.:

Before this Court is the **Petition for Review**[1] filed on May 3, 2024 by the **People of the Philippines** (petitioner) against accused Diego G. Martinez praying for the reversal and setting aside of the Resolutions dated January 25, 2024[2] and March 26, 2024,[3] respectively, promulgated by the Court in Division in CTA Crim. Case No. O-672, entitled *People of the Philippines vs. Diego G. Martinez*, which dismissed said case by reason of prescription of the offense charged, and recalled and set aside the Alias Warrant of Arrest issued against accused.

The dispositive portions of the respective assailed Resolutions state:

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[1] *Rollo*, pp. 6 to 13-A.
[2] Division Docket, pp. 179 to 183.
[3] Division Docket, pp. 189 to 191.

1st Assailed Resolution

> **WHEREFORE**, premises considered, the CTA Crim. Case No. O-672 is hereby **WITHDRAWN** from the archives and accordingly **DISMISSED** by reason of prescription of the offense charged.
>
> The Alias Warrant of Arrest issued against accused is hereby **RECALLED and SET ASIDE**.
>
> **SO ORDERED.**

2nd Assailed Resolution

> **WHEREFORE**, premises considered, plaintiff's Motion for Reconsideration (of the Resolution dated January 25, 2024) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE ANTECEDENT FACTS

On April 6, 2018, an *Information* was filed against respondent accusing him of willful failure to pay tax under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which reads:

> That on or about December 2013 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused DIEGO G. MARTINEZ, proprietor of TwinPeaks Shell Service Center which is registered at BIR Revenue District Office No. 40 – Cubao, Quezon City with Tax Identification No. 148-792-224-000, did then and there, willfully, unlawfully and feloniously fail to pay the income tax deficiencies for taxable year 2006 in the amount of One Million Four Hundred Sixty-Five Thousand Thirteen Pesos and Eight Centavos (PHP 1,465,013.08), exclusive of surcharge and interest, despite final assessment, including prior and post notices, the latest being in the nature of demand before suit issued in December 2013, to the damage and prejudice of the government.
>
> **CONTRARY TO LAW.**

Thereafter, the Court issued the *1st Assailed Resolution* on January 25, 2024, which withdrew the case from the archives and dismissed the same by reason of prescription of the offense charged, and recalled and set aside the Alias Warrant of Arrest issued against accused.[4]

[4] *Supra*, Note 2.

Aggrieved, petitioner moved for reconsideration,[5] which was denied for lack of merit in the *2nd Assailed Resolution* issued by the Court in Division on March 26, 2024.[6]

Hence, this *Petition.*

THE FACTS

On April 18, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review*[7] which the Court granted on April 19, 2024.[8] Petitioner was given an additional period of 15 days from April 18, 2024, or until May 4, 2024, within which to file its *Petition for Review.*

On May 3, 2024, petitioner filed the present *Petition for Review.*

In a Minute Resolution dated June 18, 2024,[9] petitioner was directed to submit the written deputization from the Office of the Solicitor General (OSG) authorizing the Bureau of Internal Revenue (BIR) handling lawyers to file the aforementioned *Petition for Review*, pursuant to Sec. 10, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), within five days from notice.

On July 4, 2024, petitioner filed via registered mail its *Compliance*[10] with attached Revenue Memorandum Circular (RMC) No. 25-2010[11] dated March 17, 2010.

In a Minute Resolution[12] dated July 26, 2024, the Court noted petitioner's *Compliance* and directed accused to file his comment on the *Petition for Review* within 10 days from notice.

On September 10, 2024, a Records Verification Report[13] was issued stating that the Resolution dated July 26, 2024 sent via registered mail to accused's two addresses on August 1, 2024 was returned to the Court with the notation, "MOVED-OUT".

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[5] *Motion for Reconsideration (of the Resolution dated January 25, 2024)*, Division Docket, pp. 184 to 18.
[6] *Supra*, Note 3.
[7] *Rollo*, pp. 1 to 4.
[8] *Minute Resolution, Rollo*, p. 5-A.
[9] *Rollo*, p. 28.
[10] *Rollo*, 29 to 37.
[11] SUBJECT: Publishing the full text of the Memorandum of Agreement between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General.
[12] *Rollo*, p. 39.
[13] *Rollo*, p. 40.

Thereafter, the Court issued a Minute Resolution[14] dated January 8, 2025, noting the Records Verification Report dated July 26, 2024 and submitting the case for decision, without respondent's comment.

THE ISSUE

The sole issue for the Court's resolution is whether the offense charged has already prescribed when the *Information* was filed.

THE ARGUMENT

In support of its *Petition*, petitioner argues that prescription has not yet set in as the institution of a criminal action for violation of Section 255 of the NIRC of 1997, as amended, against accused Diego G. Martinez before the Department of Justice (DOJ) on January 30, 2014 triggered the interruption of the prescriptive period.

THE RULING OF THE COURT

The Petition for Review lacks merit.

The instant Petition for Review was timely filed.

Records reveal that, on February 16, 2024, petitioner received the *1st Assailed Resolution* dismissing the case on the ground of prescription,[15] to which petitioner moved for reconsideration on March 4, 2024.

On March 26, 2024, the Court in Division issued the *2nd assailed Resolution* denying petitioner's motion for reconsideration, which resolution was received by the latter on April 3, 2024.[16]

Section 9(b) of Rule 9 of the RRCTA provides:

> 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**

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[14] *Rollo.*
[15] *Notice of Resolution* dated January 26, 2024, Division Docket, p. 178.
[16] *Notice of Resolution* dated March 27, 2024, Division Docket, p. 188.

> **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. *(Emphasis supplied)*

Based on the foregoing, petitioner had 15 days from receipt of the *2nd assailed Resolution* on April 3, 2024, or until April 18, 2024, within which to file its *Petition for Review* or *Motion for Extension of Time.*

On April 18, 2024, petitioner filed its *Motion for Extension of Time.* The Court granted the same and petitioner was given an additional period of 15 days from April 18, 2024, or until May 3, 2024, within which to file its *Petition for Review.*

Petitioner, thus, timely filed the instant *Petition for Review* on May 3, 2024.[17]

That having been settled, the Court shall now proceed to the main issue in the present *Petition.*

The government's right to prosecute the case has already prescribed.

In resolving the issue of prescription of the offense charged, the following should be considered: *(1)* the period of prescription for the offense charged; *(2)* the time the period of prescription starts to run; and, *(3)* the time the prescriptive period is interrupted.[18]

For an orderly disposition of the issue, the Court will briefly discuss the *first* consideration before proceeding to the *second* and *third* considerations.

First: The prescriptive period of subject violation under the NIRC of 1997, as amended, is five years.

The *first* consideration may be found in Section 281 of the NIRC of 1997, as amended, which provides for the five-year prescriptive period as follows:

> 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. m

[17] *Rollo*, pp. 6 to 13-A.

[18] *Romualdez vs. Marcelo* (Resolution), G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan,* G.R. No. 109376, January 20, 2000.

> **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. (Emphasis supplied)

Inasmuch as accused-appellee was charged for violation of Section 255 of the NIRC of 1997, as amended, the applicable prescriptive period is five years as provided above.

Second: Prescription begins to run from the day of the commission of the violation of the law, if known.

As to the *second* consideration (i.e., commencement of the prescriptive period), Section 281 of the NIRC of 1997, as amended, provides for two reckoning points when the period of prescription begins to run:

(1) If the day of commission is known, prescription begins to run from the day of the commission of the violation of the law; or,

(2) If the day of the commission is unknown, from its discovery and the institution of judicial proceedings for its investigation and punishment.

In the assailed Resolutions, the Court in Division applied the first rule.

Petitioner would have this Court believe that the instant case falls under the second rule to bolster its claim that the filing of the complaint before the DOJ effectively tolled the running of the prescriptive period. Petitioner's argument lacks merit.

As correctly found by the Court in Division, the *Joint Complaint-Affidavit*[19] dated January 30, 2014 reveals that the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) dated November 26, 2009 was sent to accused via registered mail on even date. The estimated turnaround

[19] Division Docket, pp. 25 to 30.

time for domestic registered mail is seven working days;[20] nonetheless, the Court in Division even went beyond this period and liberally assumed receipt of said FLD/FAN 30 days from its date of mailing, or on December 26, 2009.

In the instant case, since the day of the commission of the crime is known, or at least determinable from the circumstances, the prescriptive period began to run on **January 26, 2010**, or upon the lapse of the 30-day period for accused to file his protest to the FLD/FAN. It is on this date that the FLD/FAN became due and demandable.

Furthermore, it is indicated in the *Joint Complaint-Affidavit* attached to the *Information* that, between the sending out of the FLD/FAN via registered mail on November 26, 2009 and the issuance of the Preliminary Collection Notice (PCN) on March 12, 2010, the BIR was already aware[21] that accused failed to pay his deficiency taxes despite final demand and that he failed to file a timely protest to the same.

In any case, it bears stressing that the BIR could readily check from its system whether accused made any payment or filed a protest within the requisite period. Simply put, the BIR cannot contend that it only "discovered" the alleged crime on January 30, 2014, when the case was referred to the DOJ for the preliminary investigation and that the same tolled the running of the prescriptive period.

Third: The prescriptive period was interrupted by the filing of the Information with the CTA.

As already discussed, petitioner mainly argues that the period of prescription was interrupted upon the filing of the complaint before the DOJ for purposes of conducting preliminary investigation. It likewise invokes the case of *Luis Panaguiton, Jr. vs. Department of Justice, et al.* (*Panaguiton*) wherein the Supreme Court held that the filing of the complaint before the Justice of the Peace for preliminary investigation is sufficient to toll the prescription. Petitioner also cites *People of the Philippines vs. Mateo A. Lee, Jr.* (*Lee*) and contends that in said case, the Supreme Court also ruled that the period of prescription is interrupted by the institution of proceedings for preliminary investigation against the accused.

Petitioner likewise invokes Section 1, Rule 110 in relation to Section 2, Rule 112 of the Revised Rules on Criminal Procedure (Revised Rules). Section 1 of Rule 110 of the Revised Rules reads:

[20] Philippine Postal Corporation, Post Office Delivery Lead Time, available at https://phlpost.gov.ph/postal-office-delivery-lead-time/.

[21] See Par. 16, *Joint Complaint-Affidavit* dated January 30, 2014, Division Docket, p. 28.

> SECTION 1. Institution of criminal actions. — Criminal actions shall be instituted as follows:
>
> (a) For offenses where a preliminary investigation is required pursuant to Section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation;
>
> (b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.
>
> The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws.

As such, petitioner maintains that prescription has not set in as the filing of the complaint with the DOJ for the conduct of preliminary investigation triggered both the commencement and the interruption of the running of the prescriptive period.

On the other hand, in the *2nd assailed Resolution*, the Court in Division held that the prescriptive period to file a criminal case for violations of the NIRC of 1997, as amended, is tolled only when the *Information* is filed before the Court.

This Court agrees with the Court in Division.

As early as 1990, the Supreme Court has held in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[22] (*Lim*) that the prescriptive period is interrupted by the filing of Information in Court. Specifically, it was declared therein that tax cases are practically imprescriptible for <u>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 5 years.</u>

In 2005, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the RRCTA, which provides that the prescriptive period for violations of the NIRC of 1997, *inter alia*, is interrupted by the filing of

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

an Information before the Court, consistent with the pronouncement in the *Lim* case.[23] Specifically, Section 2 of Rule 9 of the RRCTA reads:

> 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)*

Based on the foregoing, criminal cases falling within the jurisdiction of the Court in Division are instituted by the filing of the Information before the said Court. Such institution of the criminal action before the Court shall interrupt the running of the period of prescription.

Evidently, petitioner's reliance on Rule 110 of the Revised Rules on Criminal Procedure is misplaced considering that it only applies suppletorily to the RRCTA[24] and that the latter specifically provides that criminal actions are instituted by the filing of an Information before the CTA which filing shall interrupt the running of the prescriptive period.

In view of the foregoing disquisitions, the running of the prescriptive period is interrupted by the filing of the Information before the Court and not by the filing of the complaint before the DOJ.

As correctly found by the Court in Division, the right to prosecute the criminal action herein has prescribed.

The Court, in a long line of cases[25] has consistently adopted the pronouncement in *Lim*[26] and ruled that the commencement of the five-year prescriptive period in criminal tax cases, as provided in Section 281 of the NIRC of 1997, as amended,[27] commences from the date of the commission of

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[23] *Id.*

[24] Section 3 of Rule 1 of the RRCTA provides that "[t]he Rules of Court in the Philippines shall apply suppletorily to these Rules."

[25] *People of the Philippines vs. Ziegfried Loo Tian*, CTA EB Crim. No. 116 (CTA Crim. Case No. O-944), September 26, 2024; *People of the Philippines vs. Star Asset Management NPL, Inc., et al.*, CTA EB Crim. No. 129 (CTA Crim. Case No. O-995), April 22, 2024; *People of the Philippines vs. CTA Second Division, et al.*, CTA EB Crim. No. 093 (CTA Crim. Case Nos. O-850, O851, O-852, and O-853), August 29, 2023; and *People of the Philippines vs. Wintelecom, Inc/Hua C. Uychiyong (Treasurer)*, CTA EB Crim. No. 090 (CTA Crim Case Nos. O-800 and O801), June 21, 2023, to name a few.

[26] G.R. No. L-48134-37, October 18, 1990.

[27] A replica of then Section 354 of the 1939 NIRC.

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 period of prescription is only interrupted when proceedings are instituted against the guilty persons and shall run again in the event the proceedings are dismissed for reasons not constituting jeopardy.

In this case, the five-year prescriptive period began to run on January 26, 2010, upon the lapse of the 30-day period for accused to file his protest the FLD/FAN. The prosecution, thus, had until January 26, 2015 to file the requisite *Information* with the Court. However, the prosecution belatedly filed the subject *Information* with the Court in Division only on **April 6, 2018**. Clearly, the prescription of criminal action had long set in.

The Court is not unaware of the recent pronouncement of the Supreme Court in *People of the Philippines vs. Ulysses Palconit Consebido (Consebido),*[28] wherein the High Court, after re-examining *Lim*, categorically ruled that the filing of the complaint before the prosecution office and the conduct of summary investigation should toll the running of the prescriptive period. In the same case, the Supreme Court also pronounced that that the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts,[29] shall toll the running of the prescriptive period effectively overturning the doctrine in *Republic vs. Desierto*[30] and *Corpus vs. People.*[31] In relation to such pronouncement, the Supreme Court declared that the new rule shall apply prospectively, *viz.*:

> **But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply prospectively.**
>
> Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. The ruling in Desierto and the subsequent case of Corpus, Jr. v. People of the Philippines, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned. *(Emphasis supplied; citations omitted)*

While there is no explicit provision on the prospective application of the new rule in relation to the prescription of offenses under the NIRC of 1997, as amended, this Court nonetheless observes that the ruling in *Consebido*

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[28] G.R. No. 258563, April 2, 2025.
[29] A.M. No. 08-8-7-SC dated March 1, 2022, effective April 11, 2022.
[30] G.R. No. 136506, January 16, 2023.
[31] G.R. No. 255740, August 16, 2023.

effectively abandoned the doctrine in *Lim*. Inasmuch as a new doctrine has been declared by the Supreme Court pertaining to prescription of tax offenses, We find the prospective application of the same is proper.

Notably, judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.[32] When a doctrine of the Supreme Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.[33]

For instance, in *Albino S. Co vs. Court of Appeals and the People of the Philippines (Co)*,[34] a case involving the issuance of a bouncing check in violation of *Batas Pambansa Bilang* (B.P. Blg.) 22 allegedly committed in 1983, the Supreme Court held that the "Court's decision of September 21, 1987 in *Que v. People*, 154 SCRA 160 (1987)— i.e., that a check issued merely to guarantee the performance of an obligation is nevertheless covered by B.P. Blg. 22 — should not be given retrospective effect to the prejudice of the petitioner and other persons similarly situated, who relied on the official opinion of the Minister of Justice that such a check did not fall within the scope of B.P. Blg. 22."

In the same vein, the new doctrine on prescription laid down in *Consebido*, a case promulgated by the Supreme Court on April 2, 2025, should not be applied to the present case which involves an offense allegedly committed on April 15, 2012. Respondent cannot be prejudiced by his reliance on *Lim* which was the prevailing doctrine when the offense was allegedly committed.

It bears emphasis, as held in a number of cases, that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted. The said legal principle takes into account the nature of the law on prescription of crimes which is an act of amnesty and liberality on the part of the state in favor of the offender.[35]

In fine, the Court *En Banc* finds no compelling reason to reverse the Court in Division's assailed Resolutions.

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[32] *Conchita Carpio-Morales, in her capacity as the Ombudsman, vs. Court of Appeals (Sixth Division) and Jejomar Erwin S. Binay, Jr.*, G.R. Nos. 217126-27, November 10, 2015.

[33] *People of the Philippines vs. Jose Jabinal y Carmen*, G.R. No. L-30061, February 27, 1974, as reiterated in *Carpio-Morales vs. Court of Appeals*, G.R. Nos. 217126-27, November 10, 2015, and *People of the Philippines vs. Martinado y Aguillon*, G.R. No. 92020, October 19, 1992, among others.

[34] G.R. No. 100776, October 28, 1993.

[35] *People of the Philippines vs. Arturo F. Pacificador*, G.R. No. 139405, March 13, 2001.

WHEREFORE, premises considered, petitioner's **Petition for Review** is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated January 25, 2024 and March 26, 2024 promulgated by the Court in Division in CTA Crim. Case No. O-672 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

With due respect, please see Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With due respect, please see my DO
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB Crim. No. 147** (CTA Crim. Case No. O-672)
- versus -	Present: **RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
DIEGO G. MARTINEZ, Respondent.	Promulgated: FEB 06 2026 11:35 a.m.

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DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, I am constrained to register my dissent to the *ponencia*, as it denies petitioner People of the Philippines' (**petitioner**'s) *Petition for Review*, for lack of merit and thereby, affirms the First Division's Resolutions dated 25 January 2024 and 26 March 2024 (**assailed Resolutions**), which dismissed of the subject criminal action against respondent Diego G. Martinez (**respondent**) on the ground of prescription of the offense charged.

Respectfully, I am unable to subscribe to the affirmance of the ruling in the assailed Resolutions that the government's right to prosecute the subject criminal action has already prescribed on the premise that the Supreme Court's declaration in *People of the Philippines v. Ulysses Palconit*

Consebido[1] (**Consebido**) — that the five (5)-year prescriptive period for criminal tax offenses is tolled by the filing of a complaint before the Department of Justice (**DOJ**), rather than by the filing of an Information before the Court — constitutes a supposed "new doctrine on prescription" that may be applied only prospectively.

Contrary to the view espoused in the *ponencia*, I submit that **the pronouncement in *Consebido* should be applied retroactivel**y, dating back to the effectivity of the National Internal Revenue Code (**NIRC**) of 1997. Section 281[2] of the NIRC of 1997, which governs the prescriptive period for criminal tax actions, expressly provides that the five (5)-year prescriptive period "shall be interrupted when proceedings are instituted against the guilty persons" and, according to *Consebido*, the proper interpretation thereof should be that the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period.

To be clear — and I take this opportunity to stress this to avoid creating further confusion and compounding its consequences — **the above ruling in *Consebido* is <u>not</u> a new doctrine on prescription**. In upholding the said interpretation, **the Supreme Court merely reaffirmed what should have been the correct construction of the relevant provision from the outset, thereby revealing, by implication, this Court's error in applying the doctrine in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[3] (Lim, Sr.), which was understood to have ruled that, in criminal tax cases such as the present one, the prescriptive period is tolled only upon the filing of the Information in court**.

At this juncture, I wish to highlight certain inaccurate assumptions, whether explicitly or implicitly stated in this Decision that, in my humble view and with utmost due respect, must be withdrawn to ensure the fair and orderly administration of justice.

First*, it is incorrect to assume that *Consebido* effectively abandoned *Lim, Sr.*, as the doctrines in these cases do not conflict with each other — unlike *Consebido vis-à-vis Republic of the Philippines v.

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[1] G.R. No. 258563, 02 April 2025.

[2] SEC. 281. *Prescription for Violations of any Provision of this Code.* — <u>**All violations of any provision of this Code shall prescribe after five (5) years**</u>.

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, <u>**from the discovery thereof and the institution of judicial proceedings for its investigation and punishment**</u>. (Emphasis and underscoring supplied)

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

The Honorable Aniano A. Desierto as Ombudsman, et al.[4] **(Desierto) and *Pastor Corpus, Jr. y Belmoro v. People of the Philippines***[5] **(Corpus, Jr.), insofar as the tolling of the prescriptive periods for crimes covered by the 2022 Rules on Expedited Procedure in the First Level Courts**[6] **(REPFLC) is concerned.**

In *Consebido*, the Supreme Court held that the prescriptive period for prosecuting crimes is tolled upon the filing of a complaint with the DOJ — not when the case reaches the court. **The High Court *specifically* clarified that under Section 281**[7] **of the NIRC of 1997, the prescriptive period for criminal tax offenses that are not immediately known starts from the time the violation is discovered and is interrupted once a preliminary investigation begins. This interpretation ensures that the intent of the law — to set a clear time limit for the prosecution of tax violations — is properly applied.**

To reiterate, for emphasis, **the Supreme Court's ruling in *Consebido*** — that the prescriptive period for criminal tax offenses is interrupted by the institution of judicial proceedings, particularly the commencement of preliminary investigation — **constitutes the proper and authoritative interpretation of Section 281 of the NIRC of 1997**. Thus, as aforesaid, this interpretation must be applied retroactively, *i.e.*, from the time the NIRC of 1997 took effect, as may be inferred from the Supreme Court's discussion quoted below:

> ...
>
> **Notably, *Lim, Sr.* applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely noted that the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. This is no longer the case now, as observed in *Panaguiton*. Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery.** The adoption of the interpretation in *Duque* is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. **The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense.** This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations

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4 G.R. No. 136506. 16 January 2023.
5 G.R. No. 255740. 16 August 2023.
6 A.M. No. 08-8-7-SC, 01 March 2022.
7 Supra at note 2.

> of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.[8]
>
> ...

From the foregoing, **it is clear that the ruling in *Lim, Sr.*** — which the CTA had long relied on to hold that preliminary investigation does not toll the running of the prescriptive period — **was based on Section 354[9] of the NIRC of 1939**. That provision was enacted at a time when preliminary investigations were conducted by justices of the peace, a procedural context that no longer applies. Having said that, the Supreme Court clarified that under Section 281[10] of the NIRC of 1997, the commencement of preliminary investigation interrupts the prescriptive period for the offense.

It bears noting that the latter portion of the decision in *Consebido*, which states that "[t]his new rule shall apply prospectively", refers only to offenses covered by the 1991 Revised Rules on Summary Procedure[11] (**RRSP**), which was supplanted by the REPFLC[12] (and thus, not to criminal tax offenses covered by the Revised Rules of the Court of Tax Appeals[13] [**RRCTA**]), *viz*:

> ...
> [E]ven if the commencement of preliminary investigation interrupted the running of the prescriptive period, the complaint should have been filed with the DOJ within five years from October 25, 2008, or not later than October 25, 2013. Thus, **the offense had already prescribed as early as when the Joint Complaint-Affidavit dated January 30, 2014, was filed.**
>
> In fine, the CTA *En Banc* did not err in affirming the dismissal of the Complaint.
>
> *The rule on the tolling of the prescriptive period for offenses*
>
> As discussed above, **the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the 1997 NIRC, as amended, whether its commission was immediately known or unknown at the time of the violation.**

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8 Supra at note 1; Citation omitted, italics in the original text, emphasis and underscoring supplied.

9 SEC. 354. *Prescription for Violations of Any Provisions of This Code.* — All violations of any provisions of this Code shall prescribe after five 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.

10 Supra at note 2.

11 Resolution of the Court *En Banc* 1991, 15 October 1991.

12 Supra at note 6.

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

Still, the Court deems it necessary to revisit the prevailing jurisprudence on the tolling of offenses covered by the 1991 Revised Rules on Summary Procedure as well as the 2022 Rules on Expedited Procedures in the First Level Courts.

In the recent case of *Republic v. Desierto*, the Court held that the rule in *Panaguiton, Jr.*, *i.e.*, prescription is tolled by the institution of proceedings for preliminary investigation, only applies to special laws that are not covered by the Revised Rules on Summary Procedure. For acts covered by special laws where the Revised Rules on Summary Procedure applies, prescription shall only be interrupted by the filing of the Information and not the commencement of preliminary investigation. This is based on Section 11 of the 1991 Revised Rules on Summary Procedure which states that "[t]he filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information: Provided, however, that in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de officio*."

The ruling in *Desierto* can be traced back to *Zaldivia v. Reyes, Jr.*, which involved a municipal ordinance. The Court held:

> Under Section 9 of the Rule on Summary Procedure, "the complaint or information shall be filed directly in court without need of a prior preliminary examination or preliminary investigation." Both parties agree that this provision does not prevent the prosecutor from conducting a preliminary investigation if he wants to. However, the case shall be deemed commenced only when it is filed in court, whether or not the prosecution decides to conduct a preliminary investigation. This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.

Subsequently, the Court pronounced in *People v. Pangilinan* that the ruling in *Zaldivia* does not apply to special laws. The Court later clarified in *Jadewell Parking Systems Corp. v. Lidua, Sr.* that "the doctrine of *Pangilinan* pertains to violations of special laws but *not* to ordinances." In *People v. Lee*, the Court explained that "*Jadewell* presents a different factual milieu as the issue involved therein was the prescriptive period for violation of a city ordinance, unlike here as well as in *[Pangilinan]* and *[the] other above-mentioned related cases*, where the issue refers to prescription of actions pertaining to violation of a special law." Thus, the Court said that *Jadewell* did not abandon the doctrine in *Pangilinan*.

The 1991 Revised Rules on Summary Procedure was supplanted by the 2022 Rules on Expedited Procedures in the First Level Courts. Rule II, Subsection B, Section 1 thereof states that "[t]he filing of criminal cases governed by the Rule on Summary Procedure shall either be by complaint or by information."

The DOJ likewise issued Circular No. 028, entitled the "2024 DOJ-NPS Rules on Summary Investigation and Expedited Preliminary Investigation," which applies when the penalty prescribed by the law is imprisonment of one day to six years, fine regardless of the amount, or both.

A summary investigation shall be conducted if the prescribed penalty is imprisonment of one day to one year, fine regardless of the amount, or both. The investigating prosecutor must immediately resolve a case subject of summary investigation upon receipt of its records.

With this dilemma, the Court takes this opportunity to pronounce that the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period. While it is ideal that all cases are resolved promptly, the reality is that this is not done at all times, whether for valid reasons or not. The offended party, which is primarily the State, should not be prejudiced by any delay in the conduct of the preliminary investigation even for cases covered by summary procedure. **The Court reiterates its reasoning in *People v. Olarte* that *"it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint."***

In addition, Chief Justice Gesmundo extensively discussed the history of the pertinent laws and rules on the filing of complaint or information for criminal cases and the conduct of preliminary investigation in his Reflections. Based on an examination of these laws and rules, he aptly surmised:

> **[T]he use of the phrase "complaint or information" in Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule II, Subsection B, Section 1 of [the] 2022 Rules on Expedited Procedures in the First Level Courts**, for purposes of the tolling of the prescriptive period of offenses, must henceforth, be construed to refer to the filing of the complaint or information before the prosecution office."

But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, **this new rule shall apply prospectively.**

Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. The ruling in *Desierto* and the subsequent case of *Corpus, Jr. v. People of the Philippines*, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned.[14]

...

The Supreme Court found it necessary to revisit prior pronouncements on the tolling of prescription for offenses covered by these summary procedures, especially in light of its rulings in *Desierto*, which held that prescription is interrupted by the institution of preliminary investigation only

[14] Supra at note 1; Citations omitted, italics in the original text, emphasis and underscoring supplied.

for special laws not covered by the RRSP, and *Corpus, Jr.*, which held that for light offenses, the timely filing of the information in court is necessary to toll prescription.

Clearly, the Supreme Court has now abandoned the pertinent rulings in *Desierto* and *Corpus, Jr.*, as they are inconsistent with its definitive pronouncement in *Consebido* — that the filing of a criminal complaint before the DOJ tolls the running of the prescriptive period, even for offenses covered by the REPFLC.

The same concept of jurisprudential abandonment cannot be conveniently applied between *Consebido*, on one hand, and *Lim, Sr.*, on the other, precisely because there is no inconsistency between them. For criminal tax offenses committed under the NIRC of 1939, the doctrine in *Lim, Sr.* applies, whereas for those committed under the NIRC of 1997, *Consebido* is the controlling doctrine. Unfortunate as it may be, with due respect, I am of the humble opinion that this Court erred in failing to appreciate this crucial distinction. Accordingly, for criminal tax offenses covered by the RRCTA, and not by the RRSP or the REPFLC, the definitive rule in *Consebido* must apply retroactively.

Furthermore, as stated in *Consebido*, the Supreme Court recognized that while criminal cases should ideally be resolved promptly, delays are sometimes unavoidable. Therefore, the State, as the offended party, should not be disadvantaged by delays in the DOJ's preliminary investigations. **The Supreme Court also reiterated its ruling in the 1967 case of *People of the Philippines, et al. v. Ascencion P. Olarte*[15] (Olarte), emphasizing that "it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under [their] control. All that the victim of the offense may do on [their] part to initiate the prosecution is to file the requisite complaint."**

The foregoing reiteration of the ruling in *Olarte*, coupled with the fact that the aforesaid prospective application was confined to offenses covered by the REPFLC, reveals the Supreme Court's intent to firmly settle the applicable rule on prescription of *all* criminal tax offenses committed since the effectivity of the NIRC of 1997.

It is also worth stressing that in *Consebido*, before the Supreme Court discussed the necessity of revisiting the prevailing jurisprudence on the tolling of offenses under the RRSP and the REPFLC, it had

15 G.R. No. L-22465, 28 February 1967.

already settled the rule applicable to the parties in that case: the commencement of preliminary investigation interrupts the running of the prescriptive period. The Supreme Court upheld the CTA *En Banc*'s dismissal of the complaint not because the Information was filed beyond the five (5)-year prescriptive period, but because the complaint itself was filed after the lapse of such period. In fact, the Supreme Court expressly applied the long-settled doctrine in *Olarte* in resolving the controversy in *Consebido*, which involved a criminal tax offense. On this score, respectfully, there should be no question that, with respect to criminal tax offenses, the *Consebido* doctrine applies retroactively.

***Second*, to be precise, it was not respondent, but this Court, that relied on the doctrine in *Lim, Sr.* in finding that the prosecution belatedly filed the subject Information on 06 April 2018 — more than five (5) years after the government's right to institute a criminal action had prescribed on 26 January 2015, reckoned from 26 January 2010, when the assessment became final and executory for respondent's failure to file a valid protest thereto within thirty (30) days from receipt of the Formal Letter of Demand with Details of Discrepancy and Assessment Notices (FLD/FAN) on 26 December 2009 assuming receipt 30 days from mailing *via* registered mail on 26 November 2009.**

Respondent's reliance on the *Lim, Sr.* doctrine is immaterial because the controlling interpretation of Section 281[16] of the NIRC of 1997 rests with the Supreme Court, whose pronouncements form part of the legal system under Article 8[17] of the Civil Code of the Philippines. Even assuming that respondent invoked *Lim, Sr.* in good faith, such reliance cannot prevail over the Supreme Court's later and definitive construction in *Consebido*, which clarified that the filing of a complaint before the DOJ interrupts the prescriptive period for criminal tax offenses under the NIRC of 1997. **Once the Supreme Court clarifies the interpretation of a law, that ruling applies to all cases still pending,[18] regardless of the parties' prior position or the lower court's earlier rulings to the contrary.**

Thus, this Court's consistent reliance, in a long line of cases, on the *Lim, Sr.* doctrine is of no consequence, as its decisions are not binding precedents. The principle of *stare decisis et non quieta movere*, which holds that once a case has been decided a certain way, any subsequent case involving the same

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16 Supra at note 2.

17 Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

18 See *Jonathan Y. Dee v. Harvest All Investment Limited, et al.*, G.R. Nos. 224834 & 224871, 15 March 2017, citing *Jaime Tan, Jr., as Judicial Administrator of the Intestate Estate of Jaime C. Tan v. Hon. Court of Appeals (Ninth Special Div.), et al.*, G.R. No. 136368, 16 January 2002; *Oriental Assurance Corporation v. Solidbank Corporation*, G.R. No. 139882, 16 August 2000.

legal issue should be resolved in the same manner,[19] applies only to decisions promulgated by the Supreme Court.

***Third,* I am of the opinion that this Court would err in invoking — albeit only in concept — the time-honored principle on the prescription of crimes, which holds that the interpretation most favorable to the accused should be adopted,[20] to justify declaring that the better rule is to apply *Consebido* prospectively on the ground that such application would favor the accused (herein respondent). With due respect, such reasoning misconstrues the essence of this basic principle of criminal law.**

In the 1949 case of *Dominador B. Bustos v. Antonio G. Lucero, Judge of First Instance of Pampanga,*[21] the Supreme Court drew a clear distinction between substantive and procedural law, thus:

> ...
>
> As applied to criminal law, **substantive law is that which declares what acts are crimes and prescribes the punishment for committing them**, as distinguished from the **procedural law which provides or regulates the steps by which one who commits a crime is to be punished.** (22 C. J. S., 49.) Preliminary investigation is eminently and essentially remedial; it is the first step taken in a criminal prosecution.
>
> ...

In a separate opinion penned by the late Chief Justice Renato C. Corona,[22] it is evident that **the *pro reo* doctrine applies *only* to ambiguities in the *substantive* provisions of penal laws, particularly those defining the elements of a crime or the punishment. It does *not* extend to procedural matters, such as the computation or application of prescriptive periods**, *viz*:

> ...
>
> The fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law, is to resolve all doubts in favor of the accused. ***In dubio pro reo*. When in doubt, rule for the accused.** This is in consonance with the constitutional guarantee that the accused ought to be presumed innocent until and unless his guilt is established beyond reasonable doubt.

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19 *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 174134, 30 July 2008, citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R No. 149834, 02 May 2006.

20 *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.

21 G.R. No. L-2068 (Resolution), 08 March 1949; Emphasis supplied.

22 See *People of the Philippines v. Beth Temporada*, G.R. No. 173473, 17 December 2008; Citations omitted, italics in the original text and emphasis supplied.

Intimately intertwined with the *in dubio pro reo* principle is the **rule of lenity**. It is the doctrine that "**a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment.**"

...

Similarly, in *Salvador Estipona, Jr. y Asuela v. Hon. Frank E. Lobrigo, Presiding Judge of the Regional Trial Court, Branch 3, Legazpi City, Albay, and People of the Philippines,*[23] although the case focused on plea bargaining, the Supreme Court reiterated the distinction between substantive and procedural law, emphasizing that **procedural rules fall within its exclusive domain** and that **their interpretation does not call for the application of *pro reo***, unless they directly affect substantive rights, to wit:

...

The Supreme Court's sole prerogative to issue, amend, or repeal procedural rules is limited to the preservation of substantive rights, *i.e.*, the former should not diminish, increase or modify the latter. "Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions." *Fabian v. Hon. Desierto* laid down **the test for determining whether a rule is substantive or procedural in nature.**

> It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. In fact, **a particular rule may be procedural in one context and substantive in another**. It is admitted that what is procedural and what is substantive is frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.
>
> **In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the *judicial process for enforcing rights and duties recognized by substantive law* and for justly administering remedy and redress for a disregard or infraction of them.** If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but ***if it operates as a means of implementing an existing right then the rule deals merely with procedure.***

...

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[23] G.R. No. 226679, 15 August 2017; Citations omitted, italics in the original text and emphasis supplied.

Relevantly, in *Fil-Estate Properties, Inc. and Fairways and Blue-Waters Resort and Country Club, Inc. v. Hon. Marietta J. Homena-Valencia, in her capacity as Presiding Judge of Branch 1, Regional Trial Court, Kalibo, Aklan, and Sullian Sy Naval*[24] (**Fil-Estate**), the Supreme Court explained the retroactivity of the "fresh period" rule in this wise:

> ...
>
> The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of **the general rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure**. Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.
>
> *Sps. De los Santos* reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect[.]
>
> ...

Applying the foregoing, considering that the *Consebido* doctrine on the interruption of the prescriptive period for criminal tax actions is in the nature of a procedural rule, it may be given retroactive effect to actions pending and undetermined upon its promulgation, there being no vested rights in the rules of procedure.[25]

It is thus clear that the *pro reo* doctrine, also known as the rule of lenity, applies only when there is doubt in construing the substantive provisions of a penal law — particularly those defining the elements of the crime or prescribing its penalty. It does not apply to the interpretation of procedural rules, such as those governing the computation or interruption of prescription, unless such interpretation would directly affect or impair substantive rights.

Furthermore, with due respect, the 1993 case of *Albino S. Co v. Court of Appeals and People of the Philippines*[26] (**Co**) cannot be used to support the prospective application of *Consebido* in this case, as that case involved the protection of a **substantive right** of therein accused — the constitutional safeguard against *ex post facto* laws — where retroactive application of a later judicial interpretation (*Victor Que v. People of the Philippines and*

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[24] G.R. No. 173942 (Resolution), 25 June 2008; Italics in the original text and emphasis supplied.
[25] See *Pfizer Inc., et al. v. Edwin V. Galan*, G.R. No. 143389, 25 May 2001.
[26] G.R. No. 100776, 28 October 1993.

Intermediate Appellate Court[27]) would have penalized acts that, under then-prevailing official guidance (a DOJ Circular), were not considered criminal. In that context, the Supreme Court properly applied the *pro reo* principle, as the ambiguity concerned the substantive scope of the penal statute and directly implicated the elements of the offense.

In contrast with *Co*, the *Consebido* doctrine deals with the interpretation of a **procedural rule** — specifically, when the prescriptive period for criminal tax offenses under the NIRC of 1997, as amended, is interrupted. Jurisprudence consistently holds that procedural rules may be applied retroactively to cases pending and undetermined at the time of their promulgation, there being no vested rights in matters of procedure, as underscored in *Fil-Estate*. As such, the interpretation in *Consebido* does not involve a change in the definition of the crime or its penalties, but rather clarifies the judicial process for enforcing existing substantive rights. Accordingly, the *pro reo* principle finds no application unless the procedural rule's interpretation would directly impair a substantive right — a circumstance not present in this case.

In light of the Supreme Court's categorical declaration in *Consebido*, which affirmed that the established doctrine on prescription applies to criminal tax cases, I am of the considered view that this Court, sitting *En Banc*, ought to reconsider its reliance on *Lim, Sr.* and align its rulings with the prevailing doctrine. Specifically, when the records clearly show that the prescriptive period was tolled by the filing of a complaint with the DOJ for purposes of preliminary investigation, consistency with *Consebido* requires that a dismissal grounded on *Lim, Sr.* be set aside and the criminal tax case remanded for trial.

Accordingly, in this case, the five (5)-year prescriptive period began to run on **26 January 2010**, the day after the last day for filing a protest against the FLD/FAN. On this date, the assessment became final and executory, and the offense was deemed "committed." The criminal tax offense at issue is respondent's violation of Section 255[28] of the NIRC of 1997, as amended, specifically his willful failure to pay deficiency income tax (**IT**) in the amount of ₱1,465,013.08 for the taxable year (**TY**) 2006. Thus, petitioner had only until **26 January 2015** within which to institute proceedings with the DOJ.

b

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27 G.R. Nos. 75217-18 (Resolution), 21 September 1987.

28 **Sec. 255**. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

Since the concerned Revenue Officers referred their criminal complaint against respondent to the DOJ on **30 January 2014**, the institution of judicial proceedings for preliminary investigation on that date effectively interrupted or tolled the prescriptive period. Hence, contrary to the Court *En Banc*'s ruling, the government's right to pursue the case against respondent had not yet prescribed when the Information was filed on **06 April 2018**.

All told, I vote to (1) **GRANT** the present *Petition for Review*, (2) **REVERSE** and **SET ASIDE** the First Division's Resolutions dated 25 January 2024 and 26 March 2024 in CTA Crim. Case No. O-672, and (3) **REMAND** the case to the First Division for further proceedings, including the enforcement of outstanding alias warrants of arrest against respondent Diego G. Martinez, and thereafter, conduct of arraignment and pre-trial conference.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA *EB* CRIM. NO. 147** *(CTA Crim. Case No. O-672)*
- versus -	
DIEGO G. MARTINEZ, *Respondent.*	Promulgated: FEB 06 2026 11:35 a.m.

x - x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

The Decision upholds the dismissal of the criminal case against the accused in *CTA Crim. Case No. O-672* on the ground that the government's right to prosecute the alleged crime already prescribed. It discussed three main points in ruling such:

> *First*: The prescriptive period of subject violation under the NIRC of 1997, as amended, is five years;
>
> *Second*: Prescription begins to run from the day of the commission of the violation of the law, if known; and
>
> *Third*: The prescriptive period was interrupted by the filing of the Information with the CTA.

I agree with the majority's stand on the *First* and *Second* points, but respectfully disagree with the *Third* point.

Section 281 of the 1997 National Internal Revenue Code ("NIRC") provides for the prescription of offenses charged therein:

> 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.
> (Italics and boldfacing. Ours.)

The majority adhered to the doctrine laid down in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[1] (*Lim*) that the prescriptive period is interrupted by the filing of Information in Court. Specifically, it was declared therein 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, up to the filing of the Information in Court does not exceed 5 years.

It must be noted that the foregoing ruling in *Lim* interprets *Section 354 of the 1939 NIRC*. But this was nevertheless made applicable until the present criminal cases since its wordings were retained and the provision was renumbered to what is now *Section 281 of the 1997 NIRC*.

However, in light of the recent ruling in *People of the Philippines vs. Ulysses Palconit Consebido*,[2] ("*Consebido*") in April 2025, the ruling in *Lim* was re-examined by the High Court, which then held that the filing of the criminal complaint before the Department of Justice ("DOJ") tolls the running of the prescriptive period for offenses under the *1997 NIRC, as amended*, whether its commission was immediately known or unknown at the time of the violation.

Now, my point of contention is in the application of *Consebido* on pending cases at the time of its promulgation in April 2025. While the majority subscribed to the clarification in *Consebido* that it should be applied prospectively, I, on the other hand, am of the contrary view.

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[1] G.R. Nos. L-48134-37, October 18, 1990.
[2] G.R. No. 258563, April 2, 2025.

In ruling as such in *Consebido*, the High Court took cue from *Panaguiton, Jr. vs. Department of Justice*[3] *("Panaguiton")*, citing the Concurring Opinion of Former Supreme Court Associate Justice Dante O. Tinga in *Securities and Exchange Commission vs. Interport Resources Corporation, et. al.*,[4] both promulgated in 2008, where it has already been established that any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution should be sufficient to toll prescription, hence:

> While it may be observed that the term "judicial proceedings" in Sec. 2 of Act No. 3326 appears before "investigation and punishment" in the old law, with the subsequent change in set-up whereby the investigation of the charge for purposes of prosecution has become the exclusive function of the executive branch, *the term "proceedings" should* ***now*** *be understood either executive or judicial in character: executive when it involves the investigation phase and judicial when it refers to the trial and judgment stage. With this clarification, any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution should be sufficient to toll prescription.*
> (Italics and boldfacing, Ours.)

Notably, what *Panaguiton* clarified was the interpretation of *Section 2 of Act No. 3326.*[5] However, *Consebido* explained that the same interpretation applies to *Section 281 of the 1997 NIRC*, thus:

> Notably, Lim, Sr. applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely noted that *the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. This is no longer the case now, as observed in Panaguiton.* Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery. The adoption of the interpretation in Duque is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense. This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.
> (Italics, Ours.)

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

[4] G.R. No. 135808, October 6, 2008.

[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.

It is in this respect that I humbly opine that *Consebido* should be applied retroactively since it merely fortifies the correct construction of *Section 281 of the 1997 NIRC* from the time of its enactment. It does not establish a new rule, it only clarifies what the rule has always been since the law was enacted.

As held in *Columbia Pictures, Inc. vs. Court of Appeals*,[6] "judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect . . . Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one. . ."

The foregoing rule is subject only to the qualification that when a doctrine of [the High Court] is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.[7] However, I find that this qualification is not applicable in *Consebido*.

Lim did not effectively abandon by *Consebido*. To my mind, *Lim* is still good case law, but only in such time when preliminary investigations were still conducted by the justices of the peace, before the task became under the sole jurisdiction of the DOJ. As such, there was no reversal of a different view of the High Court. *Lim* shall still be the prevailing view during the effectivity of *Section 354 of the 1939 NIRC*.

In fact, what *Consebido* did was to harmonize *Section 281 of the 1997 NIRC, as amended*, with existing laws (i.e. *Presidential Decree No. 1275*[8] and *Republic Act No. 10071*[9]) and jurisprudence (i.e. *Panaguiton*), as the High Court is duty-bound to do so. Instructive here is *Grand Development Corp. v. Franklin Baker, Inc.*,[10] citing Ruben E. Agpalo:

> The rule is that a statute should be so construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, *interpretare et concordare leges legibus est optimus interpretandi modus*, or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence. Consistency in statutes as in executive issuances is of prime importance, and, in the absence of a showing to the contrary, all laws are

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6 G.R. No. 110318, August 28, 1996, citing *Senarillos v. Hermosisima*, G.R. No. L-10662, December 14, 1956. Also cited in *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 205837, November 21, 2017 and *Ramos, et. al. v. National Commission on Indigenous People, et. al.*, G.R. No. 192112, August 19, 2020.
7 *Id.*
8 An Act Creating the National Prosecution Service.
9 Prosecution Service Act of 2010.
10 G.R. No. 251463, August 2, 2023, citing the eminent commentator Ruben E. Agpalo.

> presumed to be consistent with each other. Where it is possible to do so, it is the duty of courts, in the construction of statutes, to harmonize and reconcile them, and to adopt a construction of a statutory provision which harmonizes and reconciles it with other statutory provisions.
>
> . . . .
>
> Statutes *in pari materia* should be construed together to attain the purpose of an express national policy. *For the assumption is that whenever the legislature enacts a law, it has in mind the previous statutes relating to the same subject matter, and in the absence of any express repeal or amendment, the new statute is deemed enacted in accord with the legislative policy embodied in those prior statutes.* Provisions in an act which are omitted in another act relative to the same subject matter will be applied in a proceeding under the other act, when not inconsistent with its purpose. *Prior statutes relating to the same subject matter are to be compared with the new provisions, and if possible by reasonable construction, both to be construed that effect is given to every provision of each.* Statutes *in pari materia*, although in apparent conflict, are as far as reasonably possible construed to be in harmony with each other. Similarly, every new statute should be construed in connection those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Accordingly, courts of justice, when confronted with apparently conflicting statutes, should endeavor to reconcile them instead of declaring outright the invalidity of one against the other. Courts should harmonize them, if this is possible, because they are equally the handiwork of the same legislature.
>
> (Italics. Ours.)

Further, with the foregoing considered, it logically follows that the interpretation in *Consebido* necessarily extends to *Section 2, Rule 9 of the Revised Rules of the CTA* as rules should be consistent with the law.

While, indeed, *Consebido* made a pronouncement that the new rule therein shall apply prospectively, I, however, find that such pertains only to offenses covered by the 1991 Revised Rules on Summary Procedure as well as the 2022 Rules on Expedited Procedures in the First Level Courts:

> *The rule on the tolling of the prescriptive period for offenses*
>
> As discussed above, the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the 1997 NIRC, as amended, whether its commission was immediately known or unknown at the time of the violation. *L*

> Still, the Court deems it necessary to revisit the prevailing jurisprudence on the tolling of offenses covered by the 1991 Revised Rules on Summary Procedure as well as the 2022 Rules on Expedited Procedures in the First Level Courts.
>
> . . . .
>
> The 1991 Revised Rules on Summary Procedure was supplanted by the 2022 Rules on Expedited Procedures in the First Level Courts. [59] Rule II, Subsection B, Section 1 thereof states that "[t]he filing of criminal cases governed by the Rule on Summary Procedure shall either be by complaint or by information."
>
> . . . .
>
> With this dilemma, the Court takes this opportunity to pronounce that the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period. . . .
>
> . . . .
>
> But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply prospectively.

In narrating the foregoing part of the *Consebido* Decision, the High Court *first* reiterated that the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the *1997 NIRC, as amended*. This establishes that it is already a settled rule. Then it was *followed* with a discussion on the effect of such rule on 1991 Revised Rules on Summary Procedure as well as the 2022 Rules on Expedited Procedures in the First Level Courts as the High Court found it necessary to revisit the prevailing jurisprudence thereon, as well. It is in this respect that the High Court pronounced the prospective application of the new rule and not on the already settled rule.

Lastly, I find that the retroactive application of *Consebido* does not violate the rule that laws on prescription of crimes must be interpreted in a way which is more favorable to the accused. The matter of interruption of the running of prescriptive periods, as a procedural law, may be given retroactive application.

Procedural laws are adjective laws which prescribe rules and forms of procedure of enforcing rights or obtaining redress for their invasion; they refer to rules of procedure by which courts applying laws of all kinds can properly administer justice. They include rules of pleadings, practice and evidence. *As applied to criminal, **they provide or regulate the steps** by which one who* *commits a crime is to be punished.*[11] The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. Nor is the retroactive application of procedural statutes constitutionally objectionable. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws.[12]

In this case, while accused Martinez may have vested rights as to when the prescription of the crime alleged against him begins to run and end, the matter of its interruption does not affect such right, which makes *Consebido* applicable herein.

Verily, the prescriptive period of criminal offenses under the *NIRC, as amended*, is now effectively interrupted upon the filing of complaint-affidavit with the DOJ, triggering the preliminary investigation on the alleged offense committed.

Considering that the prescriptive period of the alleged violation of *Section 255 of the 1997 NIRC, as amended,* in this case began to run on January 26, 2010, petitioner's right to prosecute the same shall end on January 26, 2015. However, this had been effectively interrupted by the filing of the Joint Complaint-Affidavit of Clea Marie P. Pimentel, Angelina T. Victorio, and Roel A. Zafra, together with the recommendation from the Commissioner of Internal Revenue, on January 30, 2014 before the DOJ.[13] Thus, the violation of *Section 255 of the 1997 NIRC, as amended*, was instituted within the five-year prescriptive period under *Section 281 of the same Code*, and should not have been dismissed by the Court in Division.

Accordingly, I **VOTE** to **GRANT** the Petition for Review and that:

1.) The assailed Resolutions dated January 25, 2024 and March 26, 2024 promulgated by the Court in Division in *CTA Crim. Case No. O-672* be **REVERSED** and **SET ASIDE**; and

2.) The Alias Warrant of Arrest issued against the accused be **REINSTATED** and the case be **REMANDED** to the Court's Division for continuation of the proceedings.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[11] *People v. Lastimosa*, G.R. No. 265758, February 3, 2025, citing Ruben E. Agpalo in *Tan, Jr. v. Court of Appeals*, G.R. No. 136368, January 16, 2002.
[12] *Id.*
[13] Docket (CTA Crim. Case No. O-672), pp. 23 to 30.