REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

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

CTA EB CRIM. NO. 079
(CTA Crim. Case No. O-733)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO,
CUI-DAVID, *JJ.*

Promulgated:
JUL 2 1 2022 2:50 pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1) Petitioner's "Motion for Reconsideration"[1] (**MR**) filed on 28 July 2021[2]; and,

2) Respondents' MR filed on 08 June 2022.

[1] *Rollo*, pp. 157-176.
[2] Received by the Court on 15 September 2021.

Petitioner's MR seeks the reversal of the Court's Decision[3] dated 07 July 2021 (**assailed Decision**). The pertinent portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, the instant Petition for Review is hereby **DISMISSED.**
>
> ...

On the other hand, respondents' MR assails this Court's Resolution dated 06 April 2022 (**assailed Resolution**) which expunged respondents' "Comment/Opposition (To The Motion for Reconsideration)"[4] (**Comment Opposition**) filed on 16 November 2021 from the case's records for the former's failure to timely file additional six (6) copies thereof pursuant to a Minute Resolution dated 29 November 2022.

We resolve.

PETITIONER'S MOTION FOR RECONSIDERATION

It is noted that petitioner's Petition for Review[5] was dismissed on the ground that its right to appeal has already prescribed, to wit:

> ...
>
> On 18 June 2019, an Information was filed against respondents JI, Juanchito and Praxedes, as JI's responsible officers, for failure to supply the correct and accurate information in JI's Income Tax Return (**ITR**) covering taxable year (**TY**) 2008.
>
> In the First Resolution of 12 November 2019, the Court's First Division (to which the case was raffled) dismissed the case *ex-mero motu* on the ground of prescription.
>
> Aggrieved, on 12 December 2019, petitioner moved for reconsideration of the First Resolution. In the Second Resolution of 16 January 2020, the Court denied petitioner's motion as the same was belatedly filed.

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[3] *Rollo*, pp. 109-119.
[4] Id., pp. 216-229.
[5] Id., pp. 1-21.

Unyielding, petitioner again sought the reconsideration of the Second Resolution but was rejected by the First Division in the assailed Third Resolution of 14 February 2020. The First Division held that a second motion for reconsideration (**MR**) is a prohibited pleading under Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

...

...After a careful perusal of the records, We find that the instant Petition for Review was filed out of time.

Section 3(b), Rule 8 of the RRCTA provides:

...

Sec. 3. *Who may appeal; period to file petition.* –

...

(b) A party adversely affected by a decision or **resolution of a Division** of the Court **on a motion for reconsideration** or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution...

...

It bears emphasis that the Court issued the Second Resolution on 16 January 2020 denying petitioner's MR dated 12 December 2019. Petitioner, however, filed another MR seeking the reversal of the Second Resolution.

Upon receipt of the Second Resolution, petitioner should have already elevated the dismissal of the case and the denial of its MR by filing a Petition for Review before the Court *En Banc* (instead of filing another MR seeking the reversal of the Second Resolution). Certainly, the second MR was unnecessary especially so that petitioner also assigned as error the ruling on the timeliness of its MR. In so doing, petitioner assumed the risk that the 15-day reglementary period within which to file a Petition for Review would lapse, thus depriving the Court *En Banc* of jurisdiction to entertain the present petition.

Moreover, and as correctly found by the First Division, Section 7, Rule 15 of the RRCTA, adopting Section 2, Rule 52 of the Rules of Court, proscribes the filing of a second MR, to wit:

...

Sec. 7. *No second motion for reconsideration or for new trial.* – No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution, or order.

...

> With the above, the Court *En Banc* has no other recourse but to hold that petitioner's second *pro forma* MR did not toll the running of the 15-day period to appeal. It is noted that petitioner had 15 days reckoned from 22 January 2020 (or until 06 February 2020) to file the Petition for Review before the Court *En Banc*. In failing to do so, the period to file the instant Petition for Review filed on 10 March 2020 has indeed lapsed.[6]
>
> ...

Going further, the Court ruled that even assuming that petitioner's right to appeal had not lapsed, the filing of the criminal action against respondents for violation of Section 255[7], in relation to Sections 253(d)[8] and 256[9] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, had already prescribed. On this note, the Court, applying the Supreme Court's ruling in *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[10] (***Lim***) ruled as follows:

> ...
>
> On 23 September 2010, the Bureau of Internal Revenue (**BIR**) referred the Joint Complaint-Affidavits of its revenue officers (**ROs**) to the Department of Justice (**DOJ**) for the conduct of a preliminary investigation.
>
> ...
>
> Both the BIR and respondents filed separate Motions for Partial Reconsideration (**MPRs**), challenging the DOJ Resolution of 20 June 2013. However, the two (2) motions were denied in the separate Resolutions dated 30 July 2015 and 31 July 2015, respectively.

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6 Citations omitted.

7 **Sec. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

...

8 **Sec. 253**. *General Provisions.* –

...

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

...

9 **Sec. 256.** *Penal Liability of Corporations.* – Any corporation, association or general co-partnership liable for any acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

10 G.R. Nos. L-48134-37, 18 October 1990.

On 18 June 2019, an Information was filed against respondents JI, Juanchito and Praxedes, as JI's responsible officers, for failure to supply the correct and accurate information in JI's Income Tax Return (**ITR**) covering taxable year (**TY**) 2008.

...

This Court has applied consistently the Supreme Court's pronouncement in the *Lim* case with respect to the prescription of tax offenses. We reproduce in part the First Resolution, to wit:

> ...
>
> Significantly, in *Lim, Sr. vs. Court of Appeals,* the High Court construed Section 354 (now 281) of the NIRC, as amended, in the following fashion:
>
> xxx.The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.
>
> xxx xxx xxx
>
> As Section 354 stands in the statute book (and to this day it has remained unchanged) it would seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.
>
> xxx xxx xxx
>
> Unless amended by the legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.
>
> ...

> Contrary to petitioner's claim, the *Lim* case was correctly applied in the case at bar. It could not be discounted that the facts in the *Lim* case are on all fours with the case at bar. As petitioner pointed out, Section 281 of the NIRC of 1997, as amended, is the same as Section 354 of Commonwealth Act No. 466 (1939 **NIRC**). Therefore, the doctrine laid down in the *Lim* case is still controlling."[11]
>
> ...

Given the above disquisition in *Lim*, petitioner's filing of the complaint before the Department of Justice (**DOJ**) on 23 September 2010 set the five (5)-year prescriptive period in motion. Therefore, when petitioner filed the Information against respondents before the Court on 18 June 2019, the 5-year period had already prescribed.

It is further noted that, in its MR, petitioner rehashed its previous arguments in its prior Petition for Review. Herein, it again contends that the First Division erred in its Resolution dated 16 January 2020[12] when it held that petitioner's MR dated 12 December 2019 was belatedly filed, and that its MR against said resolution was considered a *pro forma* second MR in a Resolution dated 14 February 2020.[13] Likewise, petitioner insists that the criminal action against respondents had not yet prescribed - since the institution of the complaint with the DOJ tolled the period of prescription.

The Court *En Banc* finds no need to likewise rehash its discussion of petitioner's recycled argument. Besides, even if the Court *En Banc* were to relax procedural rules in the interest of justice, the outcome of the case will not change. The Supreme Court's decision in *Jimmy L. Barnes a.k.a. James L. Barnes v. Hon. Ma. Luisa C. Quijano Padilla, et al.*[14] serves as a guiding principle when technical austerity may be foregone, to wit:

> ...
>
> In the Sanchez case, the Court restated the range of reasons which may provide justification for a court to resist a strict adherence to procedure, enumerating the elements for an appeal to be given due course by a suspension of procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause

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11 *Rollo*, pp. 114-116.
12 Id., pp. 31-33.
13 Id., pp. 34-36.
14 G.R. No. 160753, 28 June 2005; Citation omitted.

> not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. ...
>
> ...

Clearly, none of the above circumstances are availing in the present case, thus, the Court is even more constrained to maintain the case's dismissal.

RESPONDENTS' MOTION FOR RECONSIDERATION

The records show that respondents attempted to file their compliance with additional six (6) copies of their Comment/Opposition through private courier (**LBC**). However, their compliance was eventually returned to LBC's Manila branch for LBC's failure to serve the same due to several lockdowns caused by the COVID-19 pandemic. As the records show, it was only upon respondents' receipt of the Court's 06 April 2022 Resolution that they were notified of these circumstances.

Even conceding that the lockdowns were fortuitous events that prevented the respondents' compliance, the Court *En Banc* is still unable to set aside its previous action. As it is, respondents proffered no explanation as to why they did not opt to file their pleadings through registered mail or accredited courier, pursuant to Rule 13[15] of the Rules of Court, to ensure the timely service thereof.

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15 **RULE 13**
FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS

...

Section 3. *Manner of filing.* — The filing of pleadings and other court submissions shall be made by:

...

(b) Sending them by registered mail;

(c) Sending them by accredited courier; or

...

...In the second and third cases, the date of the mailing of motions, pleadings, and other court submissions, and payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. ...

With the foregoing, the Court *En Banc* finds no adequate reason to reverse the assailed Resolution dated 06 April 2022. To reiterate, even if respondents' Comment/Opposition was admitted, it would have no bearing on the case's outcome.

WHEREFORE, the foregoing considered, petitioner People of the Philippines' Motion for Reconsideration filed on 28 July 2021 and respondents Juanchito D. Bernardo, Praxedes P. Bernardo and JDBEC, Incorporated's Motion for Reconsideration filed 08 June 2022, are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

Maria Rowena Modesto-San Pedro

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice