REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

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

CTA Crim. Case Nos. O-728, O-730, O-732 and O-734
For: Violation of Section 255 in relation to Sections 253 & 256 of the National Internal Revenue Code of 1997, as amended.

Members:
CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:
OCT 22 2019
4:10 p.m.

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RESOLUTION

For this Court's Resolution are accused's **"Ex-Parte Joint Motion to Dismiss"** filed on July 19, 2019, with the prosecution's **"Motion to Admit (Plaintiff's Comment to Accused's Ex Parte Joint Motion to Dismiss)** filed on September 17, 2019 in CTA Crim. Case No. O-730, prosecution's **"Compliance with Manifestation"** in CTA Crim. Case Nos. O-728, O-730 and O-732 filed on September 24, 2019 and accused's "**Reply to the Comment** filed on October 7, 2019.

In the instant motion, the accused allege that the case at bar should be dismissed on the ground of prescription; inordinate delay in the conduct of the preliminary investigation; and lack of probable cause.

In this regard, the Court deems it necessary to resolve first the issue on prescription before we resolve the other issues.

At the outset, it bears emphasis that an assessment is not necessary for the filing of the cases in this Court. The issuance of an assessment must be distinguished from the filing of a complaint.

Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the Commissioner of Internal Revenue (CIR) is unsatisfied, an assessment signed by the CIR is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her.

In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the Department of Justice (DOJ). Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the CIR has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.

In this case, the accused failed to consider that despite the filing of the case before the DOJ even just a day after the issuance of the Letter of Authority (LOA) do not constitute as a legal obstacle in the prosecution of the case. Referral of the case to the DOJ for preliminary investigation is different from the filing of the case in Court for the prosecution of the case. The referral of the case by the BIR to the DOJ is just a part of the whole administrative process in order to determine the existence of probable cause for the purpose of filing the case in court.

Equally important to note is that the judicial proceeding commences upon the filing of the DOJ of the Information with the proper court. In other words, the wheel of justice starts to grind only when the case is lodged with the court. Once the court acquires jurisdiction over the case, it takes control of the proceeding until the termination of the case. Unless barred by the rules or regulations, the parties, even after the filing of the case in court, parties may still continue to obtain evidence to support or strengthen their respective positions.

The crux of the issue boils down as to when the prescriptive period for filing criminal tax cases is tolled or interrupted. Is it upon filing of the complaint with the DOJ or upon the filing of the Information in Court?

After careful scrutiny of the facts and antecedent proceedings, this Court rules to DISMISS the case against the accused.

Considering that the issue at hand revolves between two contending but equally important rights, the power to tax by the Government, on one hand, and the right of the taxpayer accused to speedy trial, on the other, this Court, in resolving the issue at hand, shall discuss all relevant matters in *seriatim*.

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 was interrupted.[1]

Pertinent to this case is Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended, which governs the prescriptive period for criminal tax actions. To wit:

> "SECTION 281. Prescription for Violations of any Provision of this Code. - All violations of any provision of this Code shall **prescribe after five (5) years**.
>
> **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 <u>judicial proceedings</u> 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

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[1]Benjamin ("Kokoy") T. Romualdez vs. Hon. Simeon vs. Marcelo, in his Official Capacity as the Ombudsman, and Presidential Commission On Good Government, G.R. Nos. 165510-33, September 23, 2005.

proceedings are dismissed for reasons not constituting jeopardy.

The term of prescription shall not run when the offender is absent from the Philippines."

A reading of the afore-stated provision would reveal two modes of determining the start of prescription. The first-level or mode of prescription deals with the case where the commission of the offense was known at the time it was committed. Here, prescription sets in from the time of the commission of the offense. On the other hand, in case the commission of the offense was not known at the time it was committed, prescription begins only from the time of discovery of the offense and the institution of judicial proceedings for its investigation and punishment - this is the second-level of prescription.[2] Thus, determining when prescription begins is therefore a matter of whether the offense is known or unknown at the time of its commission.

We discuss. The following cases illustrate instances when an offense is considered known or not, and more importantly, the two modes of prescription under Section 281 of the NIRC of 1997, as amended.

First, the case of *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep,*[3] elaborates the first mode of prescription where the offense committed was known. In this case, Tupaz was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. Further, when the notice of assessment was issued on 16 July 1984, the taxpayer still had thirty days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As Tupaz did not protest, the assessment became final and unappealable on 16 August 1984.

Consequently, when the complaint for preliminary investigation was filed with the DOJ on 8 June 1989, the criminal action was instituted within the five (5) year prescriptive period. For easy reference, We illustrate:

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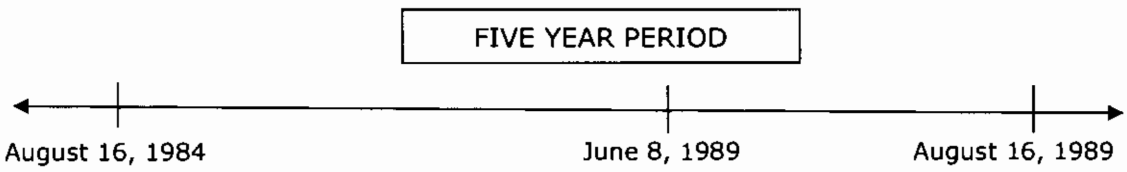
[2] Section 2, Revenue Memorandum Circular 101-90.
[3] G.R. No. 127777, October 1, 1999.



It was on 16 August 1984 that the assessment became final and unappealable. Therefore, it was on this date that the prescriptive period began to run since this was the date the offense was committed, such offense being known. This prescriptive period lapsed five years after or on 16 August 1989.

It appears that inasmuch as the filing of the preliminary investigation was the event taken by the Court to be well-within the five-year period, and thus the basis for ruling that the criminal action was timely instituted, it may be concluded that it is the filing of the preliminary investigation with the DOJ that tolls the prescriptive period. This is in accord with the Revised Rules of Criminal Procedure which provides that, where a preliminary investigation is required, the filing of such investigation institutes the criminal action. However, in the second mode of prescription, such does not exist.

The second mode of prescription is elucidated in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[4], wherein the offense committed was not known at the time of its commission. Here, the unknown offense was the filing of fraudulent consolidated income tax returns with intent to evade tax. The crime of filing false returns was deemed discovered only after the manner of the commission, and the nature and extent of the fraud has been ascertained. Being so unknown, the five-year prescription period commenced from the discovery and institution of judicial proceedings.

Under this premise, when Section 354 (now, Section 281 of the NIRC of 1997, as amended) spoke of **"from the discovery thereof and the institution of judicial proceedings," it meant exactly that: in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax**

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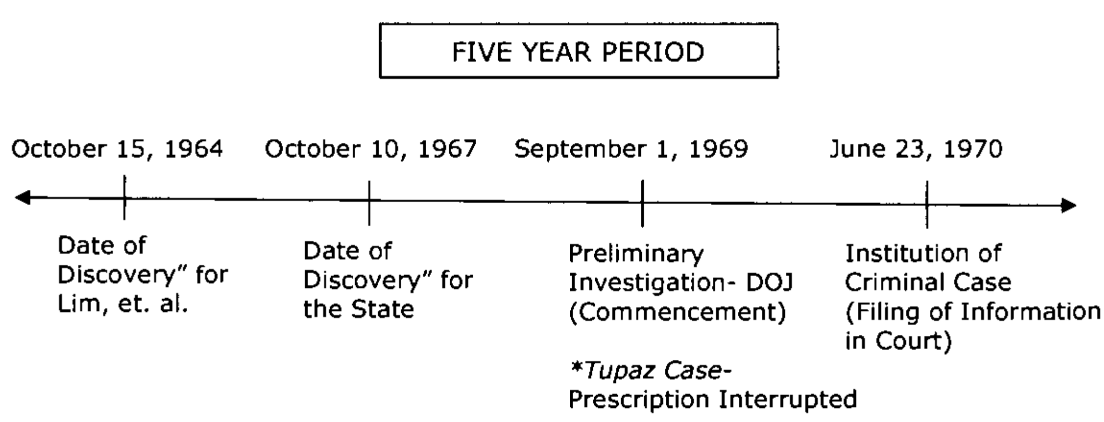
[4] G.R. Nos. 48134-37, October 18, 1990.

<u>offense before the five-year limiting period can begin to run</u>.

It was ruled that for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment up to the filing of the information in court does not exceed five (5) years, the government's right to file an action will not prescribe. The Supreme Court ruled in this wise:

> "xxx. **The Solicitor General stresses that Section 354 speaks not only of the discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and punishment."** In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1971 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.

In the case, the petitioners alleged that the discovery was made on 15 October 1964. On the other hand, the Solicitor General claimed that discovery occurred on 10 October 1967. The filing of the preliminary investigation was made on 1 September 1969. To summarize:



Hence, the prescriptive period for offenses, the commission of which were concealed from the Government is five years, was reckoned from the institution of judicial proceedings for the investigation and punishment. The Court explains further as follows:

> "xxx. **The Court is inclined to adopt the view of the Solicitor General**. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years**.
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> xxx xxx xxx
>
> Unless amended by the Legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. **And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive strict construction in favor of the government and limitations in such cases will not be presumed in the absence of clear legislation**. (Emphases supplied)

From the foregoing, the Supreme Court considered both the date of discovery and the institution of judicial proceedings for investigation as significant.

It is then observed that 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 does not exceed five (5) years, the government's right to file an action will not prescribe.

Notably however, the point of confusion arises when the Supreme Court, in the same case, acknowledged that **tax offenses which are unknown at the time of their commission *"are practically imprescriptible for as long as the period for discovery and institution of judicial proceedings, up to the filing of information does not exceed five years."*** Such admission leads to the assumption that prescription does not run until the institution of judicial proceedings. Therefore, the interval from discovery up to said judicial proceedings could be perpetual or imprescriptible.

At this juncture, it is important to examine the phrase **"judicial proceedings for the investigation and punishment thereof"** inasmuch as it plays a crucial role in the determination of the prescriptive period in question. The period was only deemed commenced upon the filing of the complaint with the Fiscal's Office. This is buttressed by RMC No. 101- 90, paragraph 2(d) of which provides:

> "The 5-year prescriptive period in Section 281 of the Tax Code does not commence to run by the mere fact of discovery. This must be ***coupled by judicial proceedings such as a preliminary investigation before the Prosecutor's Office***, before the 5-year limitation period begins to run."

On the other hand, in the previously mentioned case of *Tupaz vs. Ulep*, the Supreme Court impliedly held that the filing of the preliminary investigation with the DOJ tolled the prescriptive period. Although not explicitly stated, it could be deduced from counting the dates, that the filing of the preliminary investigation had tolled the prescriptive period. Otherwise, the offense in this case would have prescribed.

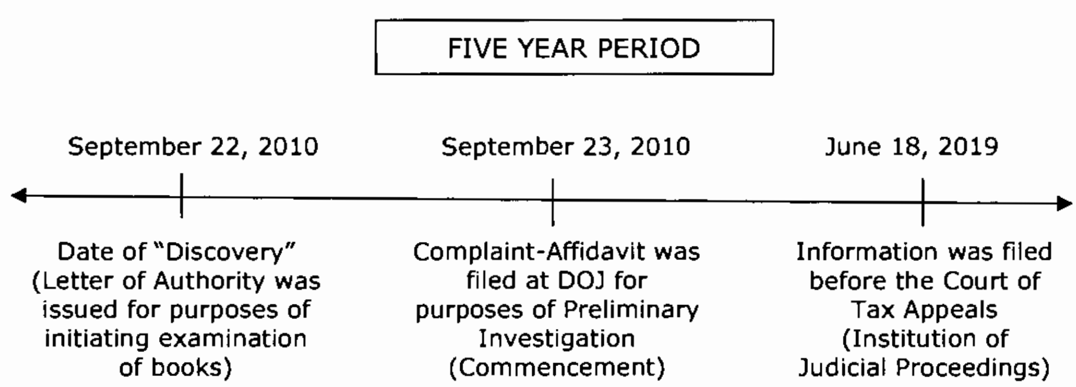
Taking into consideration the case of *Lim vs. CA* and RMC No. 101-90 together with *Tupaz vs. Ulep*, one is generally led to the conclusion that the institution of judicial proceedings for the investigation and punishment of the offense **marks both the commencement and interruption of the prescriptive period**.

This Court cannot countenance the foregoing conclusion. Suffice it to say that it is not only a distorted interpretation of the ruling in *Lim vs. CA*, but it also reduces to absurdity the meaning of Section 281 of the NIRC of 1997, as amended. Such an interpretation would urge one to ask why Section 281 must be provided in the NIRC at all if the filing of the complaint before the prosecutor's office would commence the running of the prescriptive period and interrupt it at the same time.

Likewise, this negates any possible efficacy of the prescriptive period which also renders the law ineffectual. Accordingly, it is a well-known principle in statutory interpretation that statutes must be construed in such a way as to give effect to the intention of the legislative authority, and so as to give a sensible meaning to the language of the statute and thus, avoid nonsensical or absurd results, departing to the extent unavoidable from the literal language of the statute.

Therefore, inasmuch as Section 281 of the NIRC of 1997, as amended, must be construed in favor of the accused-taxpayer, all interpretations of said section must incline towards prescriptibility. Obviously, to interpret such period as running perpetually violates the afore-mentioned statutory construction rule as well as the rights of the taxpayer-accused.

Applying the foregoing, the case at bar falls within the second mode of prescription. Consequently, records reveal that the instant Informations were already filed beyond the five-year period. To illustrate:



It can therefore be observed that prescription began to run on September 23, 2010, the date when the Complaint-Affidavit was filed before the DOJ, or on September 22, 2010, assuming that the issuance of the Letter of Authority would constitute as the date "discovery".

Next, the date of "discovery" together with the institution of judicial proceedings for preliminary investigation on September 23, 2010 shows that prescription began to run on September 23, 2010. Counting five (5) years therefrom, the prescriptive period lapsed on September 23, 2015. Unfortunately, the Informations were only filed before the CTA on June 18, 2019, which exceeds the five-year prescriptive period.

While it is true that it does not make a taxpayer immune to the conduct of the investigation, it also does not make the CIR, through its revenue officers superior over rules and regulations that are required by law to be complied with. It bears emphasis that the purpose of establishing a prescriptive period is to bar the Government's right to punish tax offenders insofar as the grace period granted by the legislature for the proper exercise of such right has already expired. Hence, to interpret that the prescriptive period under Section 281 will both begin and be interrupted by the filing of the complaint for preliminary investigation at the DOJ practically defeats the very purpose of fixing said period.

Congress could not possibly have intended this. Neither could Congress have intended for a taxpayer criminally charged for a violation of the NIRC of 1997, as amended, to stand at the mercy of the Government, who may choose to exercise its right to prosecute at a time most favorable to it. If it was, then the result would not only be incongruous but also irrational and even unjust.

Although taxes are the lifeblood of the government, their assessment and collection should be made in accordance with law, rules and regulations as any arbitrariness will defeat the very purpose of the government itself. This Court cannot condone errant or enterprising tax officials, as they are expected to be vigilant and law-abiding as well.

In the case of *Commissioner of Internal Revenue vs. Algue, Inc.*,[5] the Supreme Court ruled in this wise:

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[5] Commissioner of Internal Revenue vs. Algue, Inc., G.R. No. L-28896 February 17, 1988.

> "But even if we concede the inevitability and indispensability of taxation, **it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** (Emphasis supplied) If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed."

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All told, since the subject Informations were filed before this Court on June 18, 2019 or more than eight (8) years from the alleged date of the commission of the crime, it is clear that the subject Informations were filed beyond the five-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, premises considered, the prosecution's **"Compliance with Manifestation"** filed on September 24, 2019 in CTA Crim. Case Nos. O-728, O-730 and O-732 is hereby **NOTED**.

Accordingly, CTA Criminal Case Nos. O-728, O-730, O-732 and O-734 are hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice