22-000607-0027

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM CASE NO. O-984

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

FAIVO PASCUAL BARTOLOME,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROS. MA. RICHELLE Q. OLIVIA
Department of Justice
Padre Faura Street, Ermita, Manila 1000

ATTY. JAMAICA KAY S. DELA CRUZ
Bureau of Internal Revenue
Room704, Prosecution Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

FAIVO BARTOLOME Y PASCUAL
No. 22 MJ. Guerrero St., Brgy. 21, Laoag City
Ilocos Norte

ATTY. MELINDA S. DIAZ-SALCEDO
2056 Obanic Street, Commonwealth, Quezon City

GREETINGS:

You are hereby notified by these presents that on **April 4, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 5, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case No. **O-984**
	For: Violation of Section 255 of the NIRC of 1997, as amended
- versus -	Members:
	DEL ROSARIO, P.J., *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, JJ.
FAIVO PASCUAL BARTOLOME, Accused.	Promulgated: APR 04 2024, 2:15PM

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RESOLUTION

For the Court's resolution is plaintiff People of the Philippines' (**plaintiff**'s) "Motion for Reconsideration (of the Resolution dated December 4, 2023)"[1] (**MR**), filed on 18 December 2023[2], without accused Faivo Pascual Bartolome's (**accused**'s) comment despite due notice.[3] The present MR assails the Court's Resolution dated 04 December 2023[4] (**assailed Resolution**), which granted accused's "Motion to Quash"[5], filed on 18 September 2023[6], and thereby dismissed the instant case on the ground that the criminal offense charged has already prescribed.

In the MR, plaintiff merely argues that its right to prosecute the accused has not yet prescribed as the filing of the Joint Complaint-Affidavit[7] before the Department of Justice (**DOJ**) on 23 October 2020

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1 Division Docket, pp. 290-296.
2 Received by the Court on 21 December 2023.
3 *Per* Records Verification dated 02 February 2024.
4 Id., pp. 283-289.
5 Id., pp. 267-273.
6 Received by the Court on 02 October 2023.
7 Division Docket, pp. 18-24.

has interrupted the five (5)-year prescriptive period for criminal tax offenses.

We resolve.

Indeed, the general rule is that the prescriptive periods for criminal offenses are tolled by the filing of a criminal complaint, or information.[8] However, Article 91 of the Revised Penal Code (**RPC**),[9] in relation to Section 281[10] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, clearly provides an exception to the general rule.

As discussed in the assailed Resolution, by virtue of Section 281 of the NIRC of 1997, as amended, the prescription of the offense of willful failure to pay tax is counted from the time of the offense's commission and is interrupted by the institution of judicial proceedings in court for its prosecution as explained in the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[11](**Lim**).

To reiterate for emphasis, the proper interpretation of Section 281 of the NIRC of 1997, as amended, has been settled in *Lim* to mean 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, *viz*:

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8 Article 91 of the Revised Penal Code.

9 **Art. 91.** *Computation of prescription of offenses.* — The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

10 **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. (Emphasis and underscoring supplied)

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

> ...
>
> Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] 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.**
>
> ...
>
> 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 [now, Section 281] 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.**[12]
>
> ...

Clearly from the foregoing, criminal tax cases shall nevertheless prescribe if more than 5 years have lapsed from the time of commencement of the investigation before the DOJ, *i.e.*, the filing of a complaint-affidavit, up to the filing of the Information in Court.

The Court cannot depart from the foregoing interpretation as, under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), once a case has been decided one way, any other case involving exactly the same point at issue should be decided in the same manner.[13]

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12 Emphasis supplied and italics in the original text.

13 *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.

Furthermore, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) clearly provides that it is the institution of the criminal action which interrupts the prescriptive period, and that criminal actions before the Court of Tax Appeals (CTA) are instituted by the filing of an Information:

> ...
> 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.**[14]
> ...

The above rule is clear and unequivocal. For cases prosecuted before this Court, it is the institution of a criminal action through the filing of an Information—not the filing of a complaint before the DOJ—that interrupts the running of the prescriptive period. Nowhere does it state that the filing of a Complaint before the DOJ institutes criminal actions or suspends the prescriptive period, nor does it suggest that a Complaint can be considered equivalent to an Information.

In this case, where accused is charged with willful failure or refusal to pay his assessed tax deficiencies, the 5-year prescriptive period began to run when the assessment became final, executory and demandable after 04 February 2016, *i.e.*, the last day of the thirty (30)-day period for filing a valid protest reckoned from accused's receipt of the Formal Letter of Demand (**FLD**) and Final Assessment Notice (**FAN**) on 05 January 2016. Counting 5 years therefrom, the prescriptive period to institute the criminal action lapsed on 04 February 2021 or almost two years *before* the actual filing of the Information on 05 December 2022. As such, plaintiff's right to file the subject criminal action has already prescribed.

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14 Italics in the original text, emphasis and underscoring supplied.

WHEREFORE, premises considered, plaintiff's "Motion for Reconsideration (of the Resolution dated December 4, 2023)" filed on 18 December 2023, is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice