REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

VIRGILIO B. CASTILLO,
Respondent.

CTA EB CRIM NO.053
(CTA Crim Case No. O-663)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.
UY
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 08 2020

x- 3:52 p.m. - - - - - - -x

DECISION

Fabon-Victorino, J.:

In this Petition for Review posted on July 5, 2018 and received by the Court on July 13, 2018,[1] petitioner People of the Philippines impugns the twin Resolutions dated February 21, 2018[2] and May 25, 2018,[3] both issued by the Court in Division in CTA Criminal Case No. O-663, which dismissed the case against respondent Virgilio B. Castillo on ground of prescription.

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[1] *En Banc* Docket, pp. 5-9.
[2] *Ibid.*, pp. 13-18.
[3] *Ibid.*, pp. 20-24.

THE FACTS AND THE PROCEEDINGS

On February 5, 2018,[4] an Information was filed against respondent Virgilio B. Castillo, in his capacity as President of Pro Health International, Inc. (PHII), for violation of Section 255, in relation to Sections 253(d) of the National Internal Revenue Code (NIRC) OF 1997, as amended, for his alleged failure and refusal to pay deficiency internal revenue tax liabilities for taxable year (TY) 2003, committed as follows:

> That on or about February 14, 2007 up to the present, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the forenamed Accused **VIRGILIO B. CASTILLO** being the **President of PHII**,and as such, required by law, rules and regulations to pay taxes due from said corporation, did then and there willfully, unlawfully and feloniously fail and refuse to pay the Income Tax Deficiency of PHII for taxable year 2003 in the total amount of **Two Million Nine Hundred Forty Six Thousand Six Hundred Ninety Pesos and Twenty Seven Pesos and Twenty Seven Centavos (P2,946,690.27),** exclusive of interest and surcharges, despite due notice and demand from the BIR Commissioner of his duly authorized representatives.
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> **CONTRARY TO LAW.**

On February 21, 2018, the Court in Division rendered the assailed Resolution dismissing the case on ground of prescription as the Information against respondent was filed in Court beyond the five (5)-year prescriptive period mandated under Section 281 of the NIRC of 1997, as amended, and applied by the Supreme Court in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[5] *(Lim* case*),* in which it determined the time when the prescriptive period would set in the filing criminal cases

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[4] CTA Crim. Case No. O-663 Docket, pp. 6-7.
[5] G.R. Nos. L-48134-37, October 18, 1990.

for infraction of any provision of the Tax Code as provided in Section 354 (now Section 281) of the Tax Code.

Unconvinced, petitioner filed through registered mail a Motion for Reconsideration (*of the Resolution dated February 21,2018*) on March 16, 2018,[6] claiming that Court in Division erred when it ruled that subject Information was filed beyond the 5-year prescriptive period applying Section 281 of the NIRC of 1997, as amended, and the pronouncement in the *Lim* case.

On April 27, 2018, the Court's Judicial Records Division issued a Records Verification Report,[7] stating that respondent, despite the Court's directive in the Resolution of April 5, 2018, failed to file the required comment on petitioner's Motion for Reconsideration.

On May 25, 2018, the Court in Division denied petitioner's Motion for Reconsideration, for lack of merit.

Hence, the instant Petition for Review before the Court *En Banc* filed within the extended period granted, or on July 5, 2018, praying that the twin Resolutions of February 21, 2018 and May 25, 2018 rendered by the Court in Division be reversed and set aside, and a new one be issued for the filing of a criminal case against respondent for violation of Section 255, in relation to Section 253(d) of the NIRC of 1997, as amended.

On October 25, 2018, the Judicial Records Division issued a Records Verification Report,[8] stating that respondent failed to file comment on the Petition for Review as required in the Resolution[9] of July 31, 2018.

On November 13, 2018, the Court *En Banc* gave the Petition for Review due course and granted the parties

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[6] CTA Crim. Case No. O-663 Docket, pp. 395-404.
[7] *Ibid.*, p. 408.
[8] *En Banc* Docket, p. 40.
[9] *Ibid.*, pp. 38-39.

thirty (30) days from notice, to file their respective memoranda.[10]

On July 10, 2019, the instant Petition was submitted for decision with petitioner's Manifestation filed on December 19, 2018, stating that he is adopting all his pleadings filed in the instant case as his Memorandum, and with the Records Verification Report of the Judicial Records Division dated June 20, 2019,[11] stating that respondent failed to file any, despite directive.

THE ISSUE

Petitioner assigns the lone error quoted below:

> Whether the Honorable Second Division of the CTA erred in denying herein Plaintiff's Motion for Reconsideration on the ground of prescription

THE RULING OF THE COURT *EN BANC*

Petitioner contends that per Section 1, paragraph 2(a) of Rule 110[12] of the Revised Rules of Criminal Procedure and Section 2 of Rule 9 of the Revised Rules of

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[10] *En Banc* Docket, pp. 42-43.
[11] *Ibid.*, p. 50.
[12] Section 1 of Rule 110 of the Rules of Court reads:

> **Section 1.** *Institution of criminal actions.* — Criminal actions shall be instituted as follows:
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> (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 period of prescription of the offense charged unless otherwise provided in special laws.** (emphasis supplied)

the Court of Tax Appeals (RRCTA),[13] as well as jurisprudence, the filing of a complaint with the proper office for the conduct of preliminary investigation, interrupts the running of the prescriptive period. Hence, when BIR examiners filed with the Department of Justice (DOJ) their Joint Complaint-Affidavit againt respondent on June 23, 2011, the 5-year prescriptive period for tax evasion under Section 255, in relation to Sections 253(d) of the NIRC of 1997, as amended, was interrupted. In other words, the instant case had not yet prescribed when it was filed before the Court in Division on February 5, 2018.

The Court *En Banc* is not convinced.

Section 281 of the NIRC of 1997, as amended, provides:

> 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 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

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[13] Section 2 of Rule 9 of the RRCTA reads"

Section 2.*Institution of criminal actions.* — All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by 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. x x x x

The institution of the criminal action shall interrupt the running period of prescription of the offense charged unless otherwise provided in special laws. (emphasis supplied)

> proceedings are dismissed for reasons not constituting jeopardy.

The commencement of the prescriptive period as provided in the above-cited provision (priorly Section 354 of the Old Tax Code) was interpreted by no less than the Supreme Court in the *Lim* case[14] in the following manner, to wit:

> ...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 preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.
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> xxx xxx xxx
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> ... **As Section 354 stands in the statute book (and to this day 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

[14] *Supra,* Note 5.

> 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. (emphases supplied)

Evident from the foregoing, both the date of discovery and the institution of judicial proceedings for investigation and punishment are significant events in the prosecution of any infraction of the Tax Code. It was 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 in Court does not exceed 5 years, the government's right to file a criminal action does not prescribe. Conversely, if the period from the institution of judicial proceedings for its investigation up to the filing of the information in court exceeds 5 years, then the government's right to file an action has prescribed.

As found by the Court in Division in the assailed Resolution of February 21, 2018, the Formal Assessment Notice (FAN), issued on February 14, 2007, was served on the respondent on February 15, 2007. However, considering that respondent failed to pay the assessed deficiency taxes indicated in the said FAN, the assessment became final and executory on March 17, 2007, or thirty (30) days after February 15, 2007, which is the date considered as the point of "discovery" of the violation. On the other hand, the Joint Complaint-Affidavit of the investigating revenue officers was filed with the DOJ for preliminary investigation on June 23,2011. Thus, the date of "discovery" on March 17, 2007 together with the institution of judicial proceedings for preliminary investigation on June 23, 2011 show that prescription began to run on June 23, 2011. Applying the law and the *Lim* case, the 5-year prescriptive period from June 23, 2011 lapsed on June 23, 2016. In fine, when the

Information was filed before the Court in Division on February 5, 2018, the 5-year prescriptive period had already lapsed. Hence, the Court in Division correctly ruled that the Information dated February 5, 2018 against respondent could no longer be entertained as it was filed beyond the 5-year prescriptive period.

Further, while it may true that in the *Lim* case, the Supreme Court interpreted Section 354 of the 1939 Tax Code, which was the applicable law as the tax infraction committed pertained to TYs 1958 and 1959, it cannot be denied that the wording of Section 354 of the 1939 Tax Code is identical to that of Section 281 of the NIRC of 1997, as amended. Accordingly, the interpretation given by the Supreme Court to the former provision still holds true to the present case.

Finally, contrary to petitioner's assertion and as ruled by the Court in Division, the rulings of the Supreme Court in *People v. Pangilinan*[15] *and Panaguiton v. Department of Justice*[16] are not applicable to the present case since they do not involve the prescriptive period for the filing of criminal tax cases but the prescriptive period for instituting cases for violation of B.P. 22 cases, pursuant to Act No. 3326. Simply put, the factual and legal circumstances of cited cases and of the present case are world apart. On the other hand, the *Lim* case squarely dealt with the interpretation of the prescriptive period for purposes of instituting criminal tax cases. Until and unless the doctrine laid down in the *Lim* case is modified or reversed by the Supreme Court, such a doctrine remains to be binding.

WHEREFORE, the Petition for Review posted on July 5, 2018 by the People of the Philippines against respondent Virgilio B. Castiilo, is hereby **DENIED**, for lack of merit. The twin Resolutions dated February 21, 2018 and May 25, 2018, both issued by the Court in Division are **AFFIRMED.**

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[15] G.R. No. 152662, June 13, 2012.
[16] G.R. No. 167571, November 25, 2008.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice