REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM CASE NO. O-943** (NPS Docket No. XVI-INV-12G-00346)
	For: Violation of Section 255, paragraph 1 of the National Internal Revenue Code of 1997, as amended
-versus-	**Members:**
	RINGPIS-LIBAN, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
ZIEGFRIED LOO TIAN, (No. 1013 Juan Luna Street, Barangay 7, Zone 1, Tondo, Manila) -AT LARGE- *Accused.*	**Promulgated:** FEB 01 2023 3:14 p.m.

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RESOLUTION

For the Court's resolution is the Information dated September 1, 2014, *filed* on October 26, 2022 by the prosecution against the accused for violation of Section 255, paragraph 1 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, which states:

> "**INFORMATION**
>
> The undersigned Prosecution Attorney, of the Department of Justice, hereby accuses **ZIEGFRIED LOO TIAN** for violation of Section 255 of the National Internal Revenue Code, as amended, committed as follows:
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> > 'That on or before July 20, 2010, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, filed his Quarterly Value-Added Tax Return (VAT return), for second (2nd) quarter of taxable year 2010, knowing fully well that he is required by the law and by the rules and regulations to supply correct and accurate information within the period mentioned

> therein, did then and there, willfully, unlawfully and feloniously failed [sic] to supply correct and accurate information in his VAT return by stating in the entry fields of the said return the word 'exempt', when in truth and in fact said accused is not exempted as he failed to comply with the substantiation and reporting requirement under the tax law and revenue regulations, which willful failure to supply correct and accurate information resulted to the damage and prejudice of the Government in the amount of Three Million Two Hundred Ninety Three Thousand Three Hundred Twelve Pesos and Eighty Eight Centavos (Php3,293,312.88), exclusive of interests, penalties and surcharges.'

CONTRARY TO LAW.

1 September 2014, City of Manila for Quezon City, Philippines.

(SIGNED)
JAYVEE LAURENCE B. BANDONG
Prosecution Attorney
IBP Lifetime Roll No. 010413
Roll No. 59559
MCLE Compliance No. IV-0016353"[1]

Attached to the Information dated September 1, 2014, which was approved by Prosecutor General, Claro A. Arellano, are the following documents in support of its allegations:

1. Certified True Copy of the May 11, 2017 Resolution of the Department of Justice, Task Force on Bureau of Internal Revenue, signed by Prosecution Attorney, Jayvee Laurence B. Bandong, which *denied* the motion for reconsideration of respondent, Ziegfried Loo Tian, and *affirmed* the September 1, 2014 Resolution;

2. Certified True Copy of the September 1, 2014 Resolution of the Department of Justice, signed by Prosecution Attorney, Jayvee Laurence B. Bandong and approved by Senior Assistant State Prosecutor, Susan F. Dacanay, which recommended the *filing* against respondent Ziegfried Loo Tian of:

   a. Informations for two (2) counts of violation of Section 255 of the 1997 NIRC for failure to supply correct information in his Income Tax Return (ITR) for taxable year 2010 and his failure to file his ITR for taxable year 2011;

   b. Informations for two (2) counts of violation of Section 254 of the 1997 NIRC for his attempt to evade or defeat income taxes for taxable years 2010 and 2011;

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[1] Emphasis supplied.

c. Informations for eight (8) counts of violation of Section 255 of the 1997 NIRC for failure to supply correct information in his Value-Added Tax (VAT) Returns for taxable years 2010 and 2011; and,

d. Informations for eight (8) counts of violation of Section 254 of the 1997 NIRC for his attempt to evade or defeat taxes in his VAT returns for taxable years 2010 and 2011.

3. Certified True Copy of the Department of Justice, *National Prosecution Service* Verified Investigation Data Form dated July 5, 2012;

4. Certified True Copy July 5, 2012 letter signed by Commissioner of Internal Revenue, Kim S. Jacinto-Henares, which referred the attached Joint Complaint-Affidavit with its Annexes A to T-104, to the Department of Justice for preliminary investigation and filing of information in court if evidence so warrants, pursuant to the provisions of Section 220 of the 1997 NIRC; and,

5. Certified True Copy of the July 5, 2012 Joint Complaint-Affidavit with its Annexes A to T-104, signed by the Revenue Officers of the Prosecution Division-RATE, Bureau of Internal Revenue.

On the face of the Information, it appears that *Ziegfried Loo Tian* is accused of violation of Section 255 the 1997 NIRC, committed on or before *July 20, 2010, or more than ten (10) years ago.*

Section 255 the 1997 NIRC provides:

"TITLE X
STATUTORY OFFENSES AND PENALTIES

xxx xxx xxx

CHAPTER II
CRIMES, OTHER OFFENSES AND FORFEITURES

xxx xxx xxx

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.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

In this connection, the 1997 NIRC imposes a five-year prescription period for *all* violations of any of its provisions. Specifically, Section 281 provides:

"TITLE X
STATUTORY OFFENSES AND PENALTIES

xxx xxx xxx

CHAPTER IV
OTHER PENAL PROVISIONS

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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." (*Underscoring supplied*)

Section 281 of the 1997 NIRC, formerly Section 354 of the 1939 NIRC, was interpreted by the Supreme Court in *Emilio E. Lim and Antonia Sun Lim v.*

Court of Appeals and People of the Philippines,[2] a case also involving Section 71, similar to the current Section 255 of the 1997 NIRC.

In that decision penned by Chief Justice Fernan, the Bureau of Internal Revenue (BIR) assessed spouses Lim, business owners with dealership in household appliances, deficiency income tax liabilities for 1958 and 1959, for which they filed a protest and asked for reinvestigation. The BIR rendered a final decision holding that there was no cause for reversal of the assessment against the Lim couple. The spouses Lim were required to pay deficiency income taxes for 1958 and 1959 amounting to PhP1,237,190.55 inclusive of interest, surcharges and compromise penalty for late payment. Since the taxpayers did *not* pay, however, on September 1, 1969, the matter was referred by the BIR to the Manila Fiscal's Office for investigation and prosecution. On June 23, 1970, four (4) separate criminal informations were filed against petitioners in the then Court of First Instance of Manila, Branch VI for violation of Sections 45 and 51 in relation to Section 73 (now Section 255) of the National Internal Revenue Code. Trial ensued. On August 19, 1975, the trial court rendered two (2) joint decisions finding petitioners guilty as charged. The convictions were *affirmed* by the Court of Appeals, hence, the petition for review by certiorari with the Supreme Court. Although the parties were in agreement that the period of prescription was five years, they differed as to *when the prescription should commence.* The Supreme Court adopted the view of the government and explained that under Section 354 (now Section 281), as worded, prescription begins from *the time of the discovery of the commission of the crime* and *the institution of the judicial proceedings for investigation and punishment --- which was on September 1, 1969 when the criminal cases were indorsed to the Fiscal's Office for preliminary investigation. Therefore, the period from the indorsement to the Fiscal's Office for preliminary investigation up to the filing of the information in court should* not *exceed five (5) years*, thus:

> "Preliminarily, it must be made clear that what we are dealing here are criminal prosecutions for filing fraudulent income tax returns and for refusing to pay deficiency taxes. The governing penal provision of the National Internal Revenue Codes is Section 73 in conjunction with Section 354. <u>The dispute centers on the interpretation of Section 354 because in an effort to exculpate themselves, petitioners have raised the defense of prescription. On the five-year prescriptive period, both parties are in agreement. They differ however in the manner of computation, specifically as to when the period should commence</u>. Thus:
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>> Section 73. *Penalty for failure to file return or to pay tax.* — Anyone liable to pay the tax, to make a return or to supply information required under this Code, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, shall be punished by a fine of not more than two thousand

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

pesos or by imprisonment for not more than six months, or both.

Any individual or any officer of any corporation, or general co-partnership ..., required by law to make, render, sign or verify any return or to supply any information, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this Code to be made, shall be punished by a fine of not exceeding four thousand pesos or by imprisonment for not exceeding one year, or both.

Section 354. *Prescription for violations of any provisions of this Code.* — All violations of any provision 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 proceeding 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)

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With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of discovery of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.

On behalf of the Government, the Solicitor General counters that the crime of filing false returns can be considered 'discovered' only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment and therefore required the petitioners to pay P1,237,190.55 in deficiency taxes that the tax infractions were discovered.

Not only that. 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.
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> 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
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> 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." (*Underscoring supplied*)

Conversely, based on the holding in *Lim*, *where the period from indorsement to the Fiscal's Office for the conduct of the preliminary investigation until the filing of information in court exceeds five (5) years, then the government's right to institute the criminal action is barred by prescription.*

In this case, reckoned from the July 5, 2012 Joint Complaint-Affidavit of the revenue officers of the BIR and the July 5, 2012 referral letter signed by Commissioner of Internal Revenue, Kim S. Jacinto-Henares, which referred the attached Joint Complaint-Affidavit with its Annexes A to T-104 to the Department of Justice for preliminary investigation, *the five-year prescription ended on July 5, 2017.*

However, the information against the accused was filed in court only on October 26, 2022.

Rule 9, Section 2 of the Revised Rules of the Court of Tax Appeals, consistent with *Lim*, also states that only the filing of the information in court interrupts the running of the prescriptive period, which began on July 5, 2012:

> "RULE 9
> PROCEDURE IN CRIMINAL CASES
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> 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 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. (Rules of Court, Rule 110, sec. 2a; n)
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> <u>The institution of the criminal action shall interrupt the running of the period of prescription</u>. (Rules of Court, Rule 110, sec. 1, par. 2a)" (*Underscoring supplied*)

Clearly, since 2012, *more than ten years have elapsed*, when the information was filed on October 26, 2022. Evidently, the period *exceeded* the five-year limit stated in Section 281 of the 1997 NIRC. Prescription has set in and, therefore, bars the prosecution from pursuing the criminal case.

WHEREFORE, premises considered, CTA Crim. Case No. O-943 filed against accused, **Ziegfried Loo Tian**, is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice