24-000246-0005

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1146

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EDUARDO P. VITERBO,
LUIS MANUEL C. BANSON JR.,
MARIO JONAS D. DE CASTRO
and GC QUALITY RESTAURANT GROUP, INC.,
Accused.

NOTICE OF RESOLUTION

To:

CITY PROSECUTOR DINDO G. VENTURANZA
DEPUTY CITY PROSECUTOR CHRISTOPHER C. GARVIDA
SR. ASSISTANT CITY PROSECUTOR JIMMY B. MORALES
Office of the City Prosecutor
16th Floor, Makati City Hall (New Building)
JP Rizal, Brgy. Poblacion
Makati City

ATTY. RAUL SJ. DE GUZMAN
Bureau of Internal Revenue - Revenue Region No. 8A
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Avenue, Makati City

GREETINGS:

You are hereby notified by these presents that on **August 8, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 9, 2024.**

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

REPUBLIC OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EDUARDO P. VITERBO, LUIS MANUEL C. BANSON JR., MARIO JONAS D. DE CASTRO and GC QUALITY RESTAURANT GROUP, INC.,
Accused.

CTA Crim. Case No. **O-1146**

For: Violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 253(d) and 256 of the same code.

Members:

DEL ROSARIO, P.J., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, JJ.

Promulgated:
AUG 0 8 2024 1:30PM

x - x

RESOLUTION

For the Court's resolution is plaintiff People of the Philippines' (**plaintiff**'s) "Motion for Reconsideration (to Resolution dated June 21, 2024)"[1] (**MR**) filed *via* registered mail on 09 July 2024[2], praying for the reversal of the Resolution dated 21 June 2024[3] (**assailed Resolution**) which dismissed the instant case due to prescription.

In the MR, plaintiff mainly argues that the institution of the criminal action before the Department of Justice (**DOJ**) for purposes of preliminary investigation effectively tolled the running of the prescriptive period. Citing *People of the Philippines v. Virgilio B.*

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1 Division Docket, pp. 122-129.
2 Received by the Court on 15 July 2024.
3 Division Docket, pp. 113-121.

Castillo,[4] (**People v. Castillo**), plaintiff claims that this Court previously stated that the five (5)-year prescriptive period commences to run upon the filing of the complaint with the DOJ. Applying the foregoing, since the Joint Complaint-Affidavit here was only filed on 20 December 2023, the Information filed before this Court on 16 May 2024 is clearly within the prescriptive period.

Plaintiff further avers that the filing of the Information before a court is not included in the counting of the five (5)-year period as the Supreme Court had ruled in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*.[5]

We resolve.

Although the MR was duly filed on time[6], an examination of the arguments raised therein does not warrant the modification of the assailed Resolution.

First, petitioner cannot rely on the interpretations made in *People v. Castillo* considering that it is not a binding precedent. As reiterated in *Cristinelli S. Fermin v. People of the Philippines*[7], the principle of *stare decisis* is only applicable to Supreme Court decisions –

> . . .
> The doctrine of stare decisis, embodied in Article 8 of the Civil Code, is enunciated, thus:
>
> The doctrine of stare decisis enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.
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> . . .

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4 CTA EB Crim. No. 053, 08 July 2020.

5 G.R. No. 127777, 01 October 1999.

6 Public Prosecutor received the assailed Resolution on 25 June 2024. Counting 15 days therefrom, plaintiff had until 10 July 2024 to file an appeal or motion. The Motion for Reconsideration was filed on 09 July 2024 through registered mail. Thus, it was timely filed.

7 G.R. No. 157643, 28 March 2008; Citations omitted.

Second, as held in the assailed Resolution, We have clearly pointed out that in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[8], and the Revised Rules of the Court of Tax Appeals (**RRCTA**), prescription of criminal offenses shall only be interrupted when the criminal action (or Information) is instituted before a court –

> ...
>
> In *Lim*, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) 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 five (5) years, *viz*:
>
> > ...
> >
> > 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.**
> >
> > ...

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

> **Unless amended by the legislature, Section 354 [now, Section 281] 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.
>
> ...

Relevantly, Section 2, Rule 9 of the RRCTA, as amended, provides:

> ...
>
> 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.**
>
> ...

Verily, pursuant to the Supreme Court's pronouncement in *Lim* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the Court. In this case, the Information was filed beyond the five (5)-year prescriptive period, thus there is no interruption of said period.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the DOJ, it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.[9]

...

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[9] Citations omitted, italics and emphasis in the original text.

ACCORDINGLY, plaintiff's "Motion for Reconsideration (to Resolution dated June 21, 2024)" filed on 09 July 2024 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