REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1009

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MICAH MOTOR, INC.,
MAURICE DIZON, JR. and
JOY D. FERNANDEZ,
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASSISTANT STATE PROSECUTOR HJALMAR M. QUINTANA, JR.
Department of Justice
Padre Faura Street, Ermita, Manila 1000

ATTY. RAMON B. LORENZO
ATTY. ROWELL B. VICENTE
ATTY. ERIKA S. DE GUZMAN
Bureau of Internal Revenue - Revenue Region No. 6
5th Floor, BIR Building I
Solana Street, Intramuros
Manila

GREETINGS:

You are hereby notified by these presents that on **October 10, 2024,** Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **October 11, 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-1009**
	For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended.
- versus -	Members:
	DEL ROSARIO, P.J., *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, JJ.
MICAH MOTOR, INC., MAURICE DIZON, JR. and JOY D. FERNANDEZ, Accused.	Promulgated: OCT 10 2024; 1:35PM

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RESOLUTION

For the Court's resolution is plaintiff People of the Philippines' (**plaintiff**'s) "Motion for Reconsideration with Leave of Court and Entry of Appearance *(Re: Resolution dated 15 May 2024)*"[1] (**MR**), filed on 30 July 2024, *sans* accused Micah Motor, Inc., Maurice Dizon, Jr. and Joy D. Fernandez's (collectively, **accused**'s) comment as they remain at large. The present MR assails the Court's Resolution dated 15 May 2024[2] (**assailed Resolution**), which dismissed the instant case due to prescription.

In its MR, plaintiff contends that the prescriptive period for violations of the National Internal Revenue Code (**NIRC**) of 1997, as amended, being a special law, is interrupted by the filing of the complaint before the Department of Justice (**DOJ**) for purposes of

[1] Division Docket, pp. 125-131.
[2] Id., pp. 116-124.

preliminary investigation against the accused, citing the ruling of the Supreme Court in *People of the Philippines v. Mateo A. Lee, Jr.*[3] (**Lee, Jr.**).

In the case of *Lee, Jr.*, the Supreme Court held that "'(t)here is no more distinction between cases under the RPC (Revised Penal Code) and those covered by special laws with respect to the interruption of the period of prescription and reiterated that the period of prescription is interrupted by the filing of the complaint before the fiscal's office for purposes of preliminary investigation against the accused".

Plaintiff thus insists that the five (5)-year prescriptive period was tolled when the Joint Complaint-Affidavit[4] was filed with the DOJ on 11 April 2019.[5] Accordingly, the Information was timely filed before this Court on 06 December 2022.

We resolve.

At the onset, plaintiff's arguments have already been considered and addressed in the assailed Resolution. Nevertheless, for emphasis, the Court shall revisit the crux of plaintiff's contention, which effectively raises an issue regarding the applicability of the Supreme Court's ruling in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[6] (**Lim, Sr.**) in light of the more recent ruling in *Lee, Jr.*

According to plaintiff, the above recent interpretation of Act No. 3326[7] provides that filing a complaint with the prosecutor interrupts the running of the prescriptive period. Since the provisions in Section 2[8] of Act No. 3326 are the same as those in Section 281[9] of the NIRC

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[3] G.R. No. 234618, 16 September 2019.
[4] Division Docket, pp. 14-19.
[5] Not on 21 February 2019, as erroneously stated in the instant Motion for Reconsideration (MR).
[6] G.R. Nos. L-48134-37, 18 October 1990.
[7] AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.
[8] **SEC. 2.** 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.

of 1997, as amended, the interpretation in the more recent case of *Lee, Jr.* should be applied here instead of *Lim, Sr.*

We disagree.

It is important to emphasize that *Lim, Sr.* specifically addresses the prosecution for violations of a tax law (*i.e.*, the NIRC of 1997, as amended), while *Lee, Jr.*, cited by plaintiff, involves the prosecution of violations under special penal laws unrelated to tax.

As held in the assailed Resolution, the ruling in *Lim, Sr.* that the filing of an Information in Court interrupts the running of prescriptive period is consistent with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals[10] (**RRCTA**), which reads as follows:

> . . .
>
> **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.**[11]
>
> . . .

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

9 **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.

10 A.M. No. 05-11-07-CTA dated 22 November 2005.

11 Emphasis supplied and italics in the original text.

The RRCTA clearly states that the institution of a criminal action interrupts the running of the prescription period, which occurs upon the filing of the Information with this Court (not by filing the complaint with the DOJ).

Thus, in view of *Lim, Sr.* and the RRCTA, this Court reiterates that the prescriptive period for a tax case begins to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof *and* institution of proceedings for its investigation and shall only be tolled by the filing of an Information with this Court.

To reiterate, herein plaintiff had five (5) years from 21 January 2017 (*i.e.*, the last day for filing a protest against the Formal Letters of Demand[12] [**FLDs**] with Details of Discrepancies and Assessment Notices[13] [**ANs**]), or until **21 January 2022**, within which to file the Information with this Court. Since the subject Information[14] was filed only on **06 December 2022**, *five (5) years, eleven (11) months and fourteen (14) days have elapsed* since the commission of the violation on **22 January 2017** and the criminal action had already *prescribed for ten (10) months and nineteen (19) days* reckoned from **21 January 2022** (*i.e.*, the last day of the five [5]-year prescriptive period). Evidently, plaintiff's right to file the subject criminal action has already prescribed.

All told, unless and until the Supreme Court modifies or reverses *Lim, Sr.*, this Court shall be bound by the said ruling in cases involving prosecutions for violation of the NIRC of 1997, as amended.

Accordingly, the Court finds no cogent reason to disturb the assailed Resolution.

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12 Annex "N" (attached to the Joint Complaint-Affidavit dated 11 April 2019), Division Docket, pp. 35-39.

13 Annexes "J" to "M" (attached to the Joint Complaint-Affidavit dated 11 April 2019), id., pp. 31-34.

14 Id., pp. 5-6.

WHEREFORE, in view of the foregoing, plaintiff People of the Philippines' "Motion for Reconsideration with Leave of Court and Entry of Appearance *(Re: Resolution dated 15 May 2024)*" is hereby **DENIED** for lack of merit.

SO ORDERED.

ON OFFICIAL BUSINESS

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice