REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

ERLINDA K. ILUSORIO,
Respondent.

CTA EB CRIM. NO. 169
(CTA Crim. Case No. O-099)

Present:

RINGPIS-LIBAN, ***P.J.*,**
BACORRO-VILLENA,
MODESTO-SAN PEDRO
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, ***JJ.***

Promulgated:
APR 24 2026 4:05 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner People of the Philippines (**petitioner/prosecution**), pursuant to Rule 43[2] of the Rules of Court (**ROC**), as amended,[3] in accordance with Rule 9,[4] Section 9(b)[5] of the Revised Rules of the Court

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[1] Filed on 15 November 2024, *rollo*, pp. 7-20, with annexes.

[2] *Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.*

[3] A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.

[4] *Procedure in Criminal Cases.*

[5] **SEC. 9.** *Appeal; Period to Appeal.* —

...

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a **petition for review as provided in Rule 43 of the Rules of Court** within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. (Emphasis supplied) of Tax Appeals (**RRCTA**).[6] It seeks the reversal and setting aside of the Resolution dated 09 August 2024[7] (**first assailed Resolution**) and Resolution dated 08 October 2024[8] (**second assailed Resolution**) of the Court's Second Division[9] in CTA Crim. Case No. O-099, entitled *People of the Philippines v. Erlinda K. Ilusorio.*

The first assailed Resolution revived the case from the archives but also dismissed it on the ground of prescription of the offense charged, while the second assailed Resolution denied petitioner's Motion for Reconsideration[10] (**MR**) thereto for lack of merit. The dispositive portions of the first and second assailed Resolutions read as follows:

<u>First Assailed Resolution dated 09 August 2024</u>

> ...
>
> **ACCORDINGLY,** CTA Crim. Case No. O-099 is hereby **REVIVED** from the archives but also **DISMISSED** on the ground of prescription.
>
> **SO ORDERED.**
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> ...

<u>Second Assailed Resolution dated 08 October 2024</u>

> ...
>
> **ACCORDINGLY,** plaintiff's *Motion for Reconsideration (Re: Resolution dated 09 August 2024)* is hereby **DENIED** for lack of merit. The Resolution, dated August 9, 2024, is hereby **AFFIRMED.**
>
> **SO ORDERED.**
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> ...

<u>PARTIES OF THE CASE</u>

Petitioner is represented by the Bureau of Internal Revenue (**BIR**), the government agency primarily tasked to collect national internal

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

7 Division Docket, pp. 109-110.

8 Id., pp. 117-118.

9 The Second Division is composed of then Associate Justice Ma. Belen M. Ringpis-Liban (now Presiding Justice), as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, as Members.

10 Division Docket, pp. 111-115.

revenue taxes for the support of the government. Petitioner, through the deputized special prosecutors from the BIR, may be served with notices and processes of this Court at its office address at the Legal Division, Revenue Region No. 6, 5th Floor, BIR Bldg. I, Solana Street, Intramuros, Manila.[11]

Respondent Erlinda K. Ilusorio (**respondent**) is the accused natural person, charged in her capacity as President and responsible officer of Lakeridge Development Corporation (**LDC**) with business address at 2/F Pacific Star Building, Sen. Gil J. Puyat Avenue corner Makati Avenue, Makati City, for nonpayment of deficiency income tax (**IT**), value-added tax (**VAT**) and compromise penalties for the taxable year (**TY**) 1998 in the amounts of ₱169,623.89, ₱3,461,298.16 and ₱41,000.00, respectively, in the aggregate amount of ₱3,671,922.05.[12]

FACTS OF THE CASE

On 03 October 2008, petitioner filed an Information[13] against respondent for violation of Section 255,[14] in relation to Sections 253(d)[15] and 256[16] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The Information charged respondent with failure to pay deficiency taxes under the said provision. Accusatory portion of the Information reads as follows:

> CTA Crim. Case No. O-099
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> ...
>
> That on or about **January 24, 2002**, in City of Manila, Philippines, the said accused, ERLINDA K. ILUSORIO as President and/or Responsible Officer of LAKERIDGE DEVELOPMENT CORPORATION located at 2/F Pacific Star Building, Sen. Gil J. Puyat Avenue cor. Makati Avenue, Makati City, did then and there willfully and unlawfully fails, refuses and neglects, as she still fails, refuses and

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11 THE PARTIES, Petition for Review, supra at note 1, p. 8.

12 See Information dated 21 July 2008, Division Docket, pp. 1-2.

13 Id.

14 SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

15 SEC. 253. *General Provisions.*

...

(d) **In the case of** associations, partnerships or **corporations, the penalty shall be imposed on the** partner, **president**, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation. (Emphasis supplied)

16 SEC. 256. *Penal Liability of Corporations.*

neglects to pay their deficiency internal revenue tax liabilities for the year 1998, to wit:

KIND OF TAX	ASSESSMENT NO.	DATE	AMOUNT
Def. Income	33-1-0001291-98	01-24-02	₱169,623.89
Def. VAT	33-1-0001291-98	01-24-02	3,461,298.16
Comp. Penalties	33-1-0001291-98	01-24-02	41,000.00

or in the total amount of ₱3,671,922.05, despite notice and service of said assessment and Warrant of Distraint and/or Levy, without formally protesting against or appealing the same, and repeated demands made upon her to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of ₱3,671,922.05, Philippine Currency.

Contrary to Law.

...

The Information was raffled initially to the First Division.[17] To substantiate the charges, petitioner (as then plaintiff) attached the following supporting documents to the Information:

1. Resolution (Motion for Reconsideration) dated 21 July 2008,[18] signed by 2nd Assistant City Prosecutor Anabel D. Magabilin, with recommending approval of 2nd Assistant City Prosecutor Joselito D.R. Obejas, and approved by then City Prosecutor (now Supreme Court Associte Justice) Jhosep Y. Lopez;

2. Referral Letter dated 06 October 2006[19] of the BIR Regional Director Alfredo V. Misajon (**RD Misajon**), addressed to the City Prosecutor of Manila;

3. Approved Letter-Request for Approval of the Criminal Actions to be filed with the Office of the City Prosecutor of Manila,[20] signed by RD Misajon and approved by the then BIR Commissioner Jose Mario C. Buñag (**Commissioner Buñag**); and

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17 The First Division was then composed of Presiding Justice Ernesto D. Acosta (Ret.), as Chairperson, Associate Justice Lovell R. Bautista (Ret.) and Associate Justice Caesar A. Casanova (Ret.), as Members.

18 Division Docket, pp. 3-4.

19 Id., pp. 5-7.

20 Id., p., 8.

4. Affidavit dated 06 October 2006[21] executed by BIR Attorney I Ramon B. Lorenzo (**Lorenzo**), with attached Annexes "A" to "E", inclusive of sub-markings.[22]

In the Resolution dated 20 January 2009,[23] after noting petitioner's Compliance (submitting a certified true copy of the record of I.S. No. 06-L-23936, entitled *Bureau of Internal Revenue, represented by Ramon Lorenzo v. Erlinda K. Ilusorio*), the First Division found probable cause for the commission of the offense charged and ordered the issuance of a Warrant of Arrest (**WOA**) against respondent (as then accused) and fixed bail for her provisional liberty at ₱24,000.00. Accordingly, the First Division issued the WOA for this case on 02 February 2009.[24]

Subsequently, in the Resolution dated 07 April 2009,[25] the First Division noted the return of the WOA to the Court and the explanation of Police Senior Inspector Dexter A. Castor, Chief Warrant and Subpoena Section of the Makati Police Station, that the WOA could not be executed because respondent could not be located at the given address. In the same Resolution, the First Division ordered the BIR to inform the Court of any developments on respondent's whereabouts.[26]

Since respondent remained at large despite the issuance of a WOA, in the Resolution dated 19 November 2009,[27] the First Division archived the case, pursuant to Supreme Court Administrative Circular No. 7-A-92,[28] without prejudice on the part of petitioner to prosecute respondent as soon as she is apprehended.

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21 Id., pp. 9-10.
22 Id., pp. 11-19.

Annex	Document/s
A	Assessment Notice No. 33-1-0001291-98 dated 24 January 2002 for Deficiency Income Tax (**IT**) for the Taxable Year (**TY**) 1998
B	Assessment Notice No. 33-1-0001291-98 dated 24 January 2002 for Deficiency Value-Added Tax (**VAT**) for TY 1998
C	Assessment Notice No. 33-1-0001291-98 dated 24 January 2002 for Compromise Penalty for Late Payment of IT for TY 1998
D	Assessment Notice No. 33-1-0001291-98 dated 24 January 2002 for Compromise Penalty for Late Payment of VAT for TY 1998
E	General Information Sheet (**GIS**) of Lakeridge Development Corporation for the year ended 31 December 2004

23 Division Docket, pp. 93-94.
24 Id., p. 96.
25 Id., pp. 99-100.
26 Id.
27 Id., p. 106.
28 GUIDELINES IN THE ARCHIVING OF CASES.

Almost fifteen (15) years thereafter, in the Minute Resolution dated 16 July 2024,[29] the case was transferred to the Second Division.[30]

On 09 August 2024, the Second Division rendered the first assailed Resolution[31] which revived the case from the archives and, at the same time, dismissed it on the ground of prescription. The Second Division held that the government's right to prosecute had already prescribed at the time the Information was filed. Consequently, the Court did not acquire jurisdiction over the case. Petitioner filed an MR[32] on the first assailed Resolution on 27 August 2024 (*sans* respondent's comment). However, the Second Division denied the same for lack of merit in the second assailed Resolution dated 08 October 2024.[33]

<u>PROCEEDINGS BEFORE THE COURT *EN BANC*</u>

Undeterred, following a 15-day extension granted to it through a Minute Resolution dated 06 November 2024,[34] petitioner filed the present Petition for Review before the Court *En Banc* on 15 November 2024.[35]

In a subsequent Minute Resolution dated 06 January 2025[36] (**returned Minute Resolution**), the Court *En Banc* directed private respondent to file a Comment on the Petition for Review within ten (10) calendar days from notice.

After an unsuccessful attempt to serve the returned Minute Resolution, the Court *En Banc*, in a Minute Resolution dated 24 April 2025,[37] noted the Records Verification dated 06 March 2025[38] issued by the Judicial Records Division (**JRD**). In the same Minute Resolution, the Court *En Banc* submitted the case for decision.

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29 Division Docket, p. 107.
30 Supra at note 9.
31 Supra at note 7.
32 Supra at note 10.
33 Supra at note 8.
34 *Rollo*, p. 6.
35 Supra at note 1; Emailed on 25 November 2024.
36 *Rollo*, p. 24.
37 Id., p. 26.
38 Id., p. 25; The Records Verification dated 06 March 2025 states that the Minute Resolution dated 06 January 2025, which the Court sent by registered mail to respondent, was returned to the Court with the notation "Unknown."

ISSUES

In the present Petition for Review[39] before the Court *En Banc*, petitioner assigns the sole issue for Our resolution —

> WHETHER THE SECOND DIVISION ERRED IN DISMISSING THE INSTANT CASE ON THE GROUND THAT THE INFORMATION WAS FILED BEYOND THE FIVE (5)-YEAR PRESCRIPTIVE PERIOD.

ARGUMENTS

Petitioner argues that the institution of proceedings for preliminary investigation interrupts the running of the prescriptive period, and that this rule applies equally to offenses punished under special laws and those governed by the Revised Penal Code (**RPC**).

Petitioner further contends that, although the records do not definitively show when respondent received the Assessment Notice (**AN**), the AN was issued on 24 January 2002. Thus, petitioner assumes that the prescriptive period commenced on 24 February 2002. Based on this reckoning, the prosecution had until 24 February 2007 within which to file the Information. Accordingly, petitioner maintains that prescription did not set in because the filing of the complaint with the City Prosecutor's Office of Manila on 15 December 2006, for purposes of conducting a preliminary investigation, interrupted the running of the five (5)-year prescriptive period.

On the other hand, respondent was unable to submit a comment on the present Petition for Review.[40]

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We shall first determine the timeliness of the filing of the present petition.

[39] Supra at note 1.
[40] See Records Verification dated 06 March 2025, supra at note 38.

THE PETITION FOR REVIEW WAS TIMELY FILED.

The Second Division issued the second assailed Resolution denying petitioner's MR[41] on 08 October 2024. Petitioner received the said assailed Resolution on 22 October 2024.[42]

Under Section 2(f),[43] Rule 4 in relation to Rule 9,[44] Section 9(b)[45] of the RRCTA, petitioner had fifteen (15) days from 22 October 2024, or until 06 November 2024, within which to file its appeal before this Court.

On 04 November 2024, petitioner filed a "Motion for Extension of Time to File Petition for Review,"[46] requesting for an additional period of 15 days from 06 November 2024, or until 21 November 2024, within which to file its Petition for Review. The Court *En Banc* granted the same in its Minute Resolution dated 06 November 2024.[47]

Accordingly, on 15 November 2024, petitioner timely filed the present Petition for Review.[48]

Despite the timely filing of the present Petition for Review, the Court *En Banc* must nevertheless dismiss the case outright because petitioner's counsel lacked the requisite authority to file said petition and to represent the State in this proceeding.

PETITIONER'S COUNSEL LACKS LEGAL PERSONALITY TO FILE THE INSTANT PETITION FOR REVIEW.

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41 Supra at note 10.
42 See Notice of Resolution dated 08 October 2024, Division Docket, p. 116.
43 **SEC. 2.** *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

...

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs[.]

44 Supra at note 4.
45 Supra at note 5.
46 *Rollo*, pp. 1-4; Emailed on 05 November 2024.
47 Supra at note 34.
48 Supra at note 1.

Section 10, Rule 9 of the RRCTA[49] provides that:

...

RULE 9
PROCEDURE IN CRIMINAL CASES

...

SEC 10. *Solicitor General as counsel for the People and government officials sued in their official capacity.* — **The Solicitor General shall represent the People of the Philippines and government officials sued in their official capacity in all cases brought to the Court in the exercise of its appellate jurisdiction.** The former may deputize the legal officers of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, or the legal officers of the Bureau of Customs in cases brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their official capacity: *Provided, however,* such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General.[50]

...

The foregoing provision clearly establishes that the Office of the Solicitor General (**OSG**) is the proper party to institute an appeal before the Court *En Banc*. It likewise authorizes the OSG to deputize legal officers of the BIR in cases brought under the NIRC before the Court *En Banc*. However, such deputized legal officers remain at all times under the direct control and supervision of the OSG.

Indeed, in appellate proceedings involving the criminal aspect of a case, representation of the People of the Philippines belongs to the OSG. This flows from the OSG's statutory mandate to represent the Government in the Supreme Court and the Court of Appeals in criminal proceedings. Section 35(1), Chapter 12, Title III, Book III of the Revised Administrative Code of 1987 provides:

...

Section 35. *Powers and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any

49 Supra at note 6.
50 Emphasis supplied and italics in the original text.

> litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:
>
> (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.[51]
>
> ...

Consistent with this, the Supreme Court ruled in the landmark case of *Mamerto Austria v. AAA and BBB*[52] (**Austria**), *viz*:

> ...
>
> In any criminal case or proceeding, only the OSG may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State before the *Supreme Court (SC) and the CA*. This is explicitly provided under Section 35(1), Chapter 12, Title III, Book III of the 1987 Administrative Code of the Philippines, thus:
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>> Section 35. *Power and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the service of a lawyer. It shall have the following specific power and functions:
>>
>> (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

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51 Emphasis supplied and italics in the original text.

52 G.R. No. 205275, 28 June 2022; Citations omitted, emphasis in the original text, italics and underscoring supplied.

> The rationale behind this rule is that in a criminal case, the state is the party affected by the dismissal of the criminal action and not the private complainant. The interest of the private offended party is restricted only to the civil liability of the accused. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the OSG. The private offended party may not take such appeal, but may only do so as to the civil aspect of the case. Differently stated, the private offended party may file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned. Also, the <u>*private complainant*</u> may file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his or her interest in the <u>*civil aspect of the case*</u>. Hence, the Court dismissed for lack of legal standing or personality the appeals or petitions for *certiorari* filed by the private offended parties <u>*before the SC and CA, without the consent or conformity of the OSG*</u>, questioning the dismissal of the criminal case or acquittal of the accused.
>
> ...

The *Austria* guidelines can be summarized as follows:[53]

1. The private complainant has the legal personality to appeal the civil liability of the accused or to file a petition for *certiorari* to preserve his or her interest in the civil aspect of the criminal case. The appeal or petition for *certiorari* must allege the specific pecuniary interest of the private offended party. The failure to comply with this requirement may result in the denial or dismissal of the remedy.

   The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice if it appears that the resolution of the private complainant's appeal or petition for *certiorari* will necessarily affect the criminal aspect of the case or the right to prosecute (*i.e.*, existence of probable cause, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, modification of penalty, and other questions that will require a review of the substantive merits of the criminal proceedings, or the nullification/reversal of the entire ruling, or cause the

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53 *AAA261422, a minor and represented by YYY261422 v. XXX261422*, G.R. No. 261422 (Formerly UDK-17206), 13 November 2023.

reinstatement of the criminal action or meddle with the prosecution of the offense, among other things). The comment of the OSG must state whether it conforms or concurs with the remedy of the private offended party. The judgment or order of the reviewing court granting the private complainant's relief may be set aside if rendered without affording the People, through the OSG, the opportunity to file a comment.

2. The private complainant has no legal personality to appeal or file a petition for *certiorari* to question the judgments or orders involving the criminal aspect of the case or the right to prosecute, unless made with the OSG's conformity.

   The private complainant must request the OSG's conformity within the reglementary period to appeal or file a petition for *certiorari*. The private complainant must attach the original copy of the OSG's conformity as proof in case the request is granted within the reglementary period. Otherwise, the private complainant must allege in the appeal or petition for *certiorari* the fact of pendency of the request. If the OSG denied the request for conformity, **the Court shall dismiss the appeal or petition for *certiorari* for lack of legal personality of the private complainant.**

3. The reviewing court shall require the OSG to file comment within a non-extendible period of 30 days from notice on the private complainant's petition for *certiorari* questioning the acquittal of the accused, the dismissal of the criminal case, and the interlocutory orders in criminal proceedings on the ground of grave abuse of discretion or denial of due process.

In this case, petitioner challenges the dismissal of the criminal case due to prescription. This matter necessarily involves the exercise of the State's authority to prosecute criminal actions. Accordingly, the filing of the present Petition for Review requires the conformity of the OSG, which represents the State in criminal proceedings before appellate courts.

However, the case records do not show any participation of the OSG in these proceedings. They likewise do not show any conformity from the OSG, whether through the submission of a Comment on the present Petition for Review or through any indication that it received notice of, or was otherwise made aware of, these proceedings.

There is no gainsaying that the BIR possesses a clear interest in the prosecution of violations of the NIRC of 1997, as amended. Section 220[54] of the NIRC of 1997, as amended, expressly provides that "[c]ivil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the [BIR] shall be brought in the name of the Government of the Philippines and shall be conducted by **legal officers of the [BIR]** ..." This provision recognizes the authority of BIR legal officers to institute and prosecute tax-related actions on behalf of Government.

However, in the case of *People of the Philippines v. Court of Tax Appeals-Third Division, L.M. Camus Engineering Corporation, and Lino D. Mendoza*,[55] the Supreme Court made it abundantly clear that the NIRC of 1997, as amended, did not dispense with the requirement that the OSG represent the Republic in appellate proceedings before this Court. Thus, while the BIR may prosecute tax violations at the trial level, representation of the State in appellate proceedings remains vested in the OSG.

A perspicacious review of the present Petition for Review[56] and its attachments reveals no such participation on the part of the OSG. The OSG was neither a signatory nor even furnished a copy of the Petition for Review.

It bears noting that the act of deputation is an exception to the general rule that the OSG shall represent the government in criminal proceedings. Such exception operates only upon compliance with certain conditions. ***First***, the OSG must issue an express authorization **identifying the legal officers who are being deputized**. ***Second***, the cases involved must fall within the official functions or jurisdiction of offices to which the deputized legal officers belong. ***Finally***, even after

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54 SEC. 220. *Form and Mode of Proceeding in Actions Arising under this Code.* — Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

55 G.R. Nos. 251270 and 251291-301, 05 September 2022.

56 Supra at note 1.

deputization, the OSG must retain supervision and control over the deputized legal officers with respect to the conduct of cases.[57]

In fact, Paragraph B(2)(b)[58] of Revenue Memorandum Circular (**RMC**) No. 25-2010,[59] which circularizes the Memorandum of Agreement (**MOA**) between the BIR and the OSG, mandates that for appealed cases before this Court, the BIR must submit the name of the lawyer to be deputized, with the OSG retaining direct control and supervision throughout the proceedings.

Here, no such deputation appears on record. The Petition for Review[60] was signed by Special Prosecutors Lorenzo (**Lorenzo**) and Rowell B. Vicente (**Vicente**), yet nothing in the records shows that the OSG deputized them to appear and act on its behalf in this case. Even more telling is the BIR's failure to furnish the OSG with a copy of the Petition — a procedural lapse that betrays the absence of coordination, and more gravely, the absence of authority to represent the State in these proceedings.

THERE IS NO COGENT REASON TO RELAX PROCEDURAL RULES.

While it is true that courts have the prerogative to relax procedural rules of even the most mandatory character and that the Supreme Court has in many cases allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity,[61] the Court *En Banc* finds no compelling reason to do so in this case.

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57 *Republic of the Philippines, represented by Philippine Economic Zone Authority v. Heirs of Cecilio and Moises Cuizon,* G.R. No. 191531, 06 March 2013.

58 B. *Handling Cases*

...

2. Cases appealed before the Regional Trial Courts, Court of Appeals and the **Court of Tax Appeals *En Banc*.**

...

b. **The BIR shall periodically submit a <u>list of handling lawyers</u> to the OSG for purposes of deputation.** (Emphasis and underscoring supplied)

59 Publishing the Full Text of the Memorandum of Agreement Between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General.

60 Supra at note 1.

61 *Helen L. Say, et al. v. Gabriel Dizon*, G.R. No. 227457, 22 June 2020, citing *Vicente Ong Lim Sing, Jr. v. FEB Leasing & Finance Corporation*, G.R. No. 168115, 08 June 2007.

Notably, respondent did not actually participate in the proceedings before this Court. Records show that the First Division did not acquire jurisdiction over the person of respondent because the WOA issued against her remained outstanding. For this reason, the First Division archived the case. When the Second Division, to which the case was transferred, later revived the case from the archives, respondent still failed to receive actual notice of the assailed Resolutions. Moreover, respondent failed to receive actual notice of this Court's returned Minute Resolution[62] (requiring the filing of a Comment on the present Petition for Review), as service proved unsuccessful and it was merely deemed served upon its return. As a result, respondent did not have a real opportunity to present a defense or otherwise participate in the proceedings.

Relaxation of procedural rules under these circumstances would unduly prejudice respondent, as it would deprive her of the opportunity to be heard and effectively expose her to an adverse ruling without meaningful participation in the proceedings.[63] Such a course of action would offend the fundamental requirements of due process, which demand that a party be afforded a real and reasonable opportunity to defend one's rights before any judgment adversely affecting such rights may issue.[64]

Although the CTA is not bound by the technical rules of procedure,[65] observance thereof remains paramount and its liberal application may only be warranted for the weightiest of reasons. The Supreme Court in *Juanito Magsino v. Elena De Ocampo and Ramon Guico*[66] held:

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62 Supra at note 36.

63 As held in *Joel F. Latogan v. People of the Philippines* (G.R. No. 238298, 22 January 2020), "[c]ases should be decided only after giving all parties the chance to argue their causes and defenses."

64 It is well-settled that the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. (See *Hon. Armand Fabella, in his capacity as Secretary of the Department of Education, Culture and Sports, et al. v. The Court of Appeals, et al.*, G.R. No. 110379, 28 November 1997, citing Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary, p. 108, (1996).

65 Revised Rules of the Court of Tax Appeals (**RRCTA**), Rule I.

...

SEC. 2. *Liberal construction.* — The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.

66 G.R. No. 166944, 18 August 2014, citing *Social Security System v. Hon. Nazar U. Chaves, RTC, Br. 18, Misamis Oriental, Cagayan de Oro City, et al.*, G.R. No. 151259, 13 October 2004; *Cynthia S. Bolos v. Danilo T. Bolos*, G.R. No. 186400, 20 October 2010; *Iloilo La Filipina Uygongco Corporation v. Hon. Court of Appeals, et al.*, G.R. No. 170244, 28 November 2007; *Mediserv, Inc. v. Court of Appeals (Special Former 13th Division) and Landheights Development Corporation*, G.R. No. 161368, 05 April 2010.

> ...
>
> [A]ny "**resort to a liberal application or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice.**" It cannot be otherwise for him, for, as the Court aptly put it in *Republic v. Kenrick Development Corporation*:
>
>> Procedural requirements which have often been disparagingly labeled as mere technicalities have their own valid *d' etre* in the orderly administration of justice. To summarily brush them aside may result in arbitrariness and injustice.
>>
>> The Court's pronouncement in *Garbo v. Court of Appeals* is relevant:
>>
>>> Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.
>>
>> **Like all rules, procedural rules should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.**
>
> The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party like the petitioner was impermissible. **Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving.** Their liberal construction in exceptional situations should then rest on a showing of justifiable reasons and of at least a reasonable attempt at compliance with them.[67]
>
> ...

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

In this case, the Second Division dismissed the criminal case on the ground of prescription, finding that the State had already lost the right to prosecute respondent due to the lapse of the five (5)-year prescriptive period. This ruling operated in favor of respondent and effectively extinguished criminal liability.[68]

Given these circumstances, the Court *En Banc* finds no cogent reason to relax procedural rules. On the contrary, strict adherence to the rules becomes necessary to uphold respondent's right to due process and to preserve the finality of a judgment rendered in her favor.

Even assuming *arguendo* that the BIR's legal officers possessed the requisite authority to file the present Petition for Review, or that this Court may relax the rules of procedure in this case, the Petition would nevertheless fail for lack of merit.

PETITIONER'S RIGHT TO PROSECUTE
HAS ALREADY PRESCRIBED.

Now, if only to put petitioner's mind to rest, We shall take this opportunity to discuss the issue of prescription in criminal tax cases, a persistent challenge faced by the Court *En Banc*, particularly in reconciling the provisions of the NIRC of 1997, as amended, with conflicting judicial interpretations.

The divergence between this Court's previous reliance on *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[69] (**Lim, Sr.**) and the more recent and definitive ruling of the Supreme Court in *People of the Philippines v. Ulysses Palconit Consebido*[70] (**Consebido**) that Section 281[71] of the NIRC of 1997, as amended, must be interpreted to mean that "the filing of the criminal complaint before the [Department of Justice (**DOJ**)] shall toll the running of the prescriptive period for offenses under the [NIRC of 1997, as amended], whether its commission was immediately known or

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[68] As held in *People of the Philippines v. Mateo A. Lee, Jr.* (G.R. No. 234618, 16 September 2019), citing Article 89 of the Revised Penal Code, "[p]rescription is one of the modes of totally extinguishing criminal liability. Prescription of a crime or offense is the loss or waiver by the State of its right to prosecute an act prohibited and punished by law."

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

[70] G.R. No. 258563, 02 April 2025.

[71] **SEC. 281**. *Prescription for Violations of any Provision of this Code.*

unknown at the time of the violation" compels a thorough deliberation on its legal implications. Certainly, to continue applying *Lim, Sr.* is to perpetuate a misapplication of the law and to undermine the government's right to prosecute tax offenses. However, it must also be recognized that to insist on a retroactive application of *Consebido* would also work against the settled rule that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.[72]

In resolving the issue of the prescription of the offense charged, the following factors should be considered: (1) the period of prescription for the offense charged; (2) the time when the prescriptive period starts to run; and (3) the time when the prescriptive period is interrupted.[73]

Regarding the ***first consideration***, *i.e.*, prescriptive period of the offense charged, Section 281 of the NIRC of 1997, as amended, governs the prescriptive period for criminal tax actions and provides as follows:

> ...
>
> 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.[74]
>
> ...

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72 *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001, citing *The People of the Philippine Islands v. Norberto Parel*, G.R. No. 18260, 27 January 1923.

73 See *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government*, G.R. Nos. 165510-33 (Resolution), 28 July 2006, citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division) and The People of the Philippines*, G.R. No. 109376, 20 January 2000.

74 Italics in the original text and emphasis supplied.

The above provision clearly states that the prescriptive period for all violations of the NIRC of 1997, as amended, including the offense charged in this case (*i.e.*, willful failure to pay deficiency tax under Section 255[75] of the NIRC of 1997, as amended), is **five (5) years**.

With regard to the ***second consideration***, *i.e.*, the time when the prescriptive period starts to run, Section 281[76] of the NIRC of 1997, as amended, provides for two (2) reckoning points for when the prescriptive period begins to run:

1. If the day of the commission is **<u>known</u>**, prescription begins to run from the day of the commission of the violation of the law; or,

2. If the day of the commission is unknown, from its discovery and the institution of judicial proceedings for its investigation and punishment.

In the case of *Lim, Sr.*, the Supreme Court ruled that the offense of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with willful refusal to pay the taxes due within the allotted period, *viz:*[77]

> ...
> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allot[t]ed period. The two <u>criminal informations</u>, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.**
> ...

[75] Supra at note 14.
[76] Supra at pp. 18-19.
[77] Supra at note 69; Emphasis and underscoring supplied.

The Supreme Court further applied this interpretation in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and the People of the Philippines*[78] (**Tupaz**), where it held that the offense of failure to pay deficiency IT can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, *viz*:

> ...
> We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with **failure to pay deficiency income tax** after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals*, we stated that[,] **by its nature**[,] **the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because **prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.**
> ...

A plain reading of the subject Information[79] reveals that the alleged violation of Section 255[80] of the NIRC of 1997, as amended, is that respondent "willfully and unlawfully and fails, refuses and neglects, as she still fails, refuses and neglects to pay their deficiency internal revenue tax liabilities for the year 1998, . . . in the total amount of ₱3,671,922.05, despite notice and service of said assessment and Warrant of Distraint and/or Levy without, formally protesting against or appealing the same, and repeated demands made upon her to do so[.]"

Clearly, the commission of the tax offense is determinable. Accordingly, the proper reckoning point is the date of the commission of the violation — specifically, the failure to pay the deficiency tax — which occurs upon the finality of the deficiency tax assessment.

Here, this Court adopts the Second Division's finding that the subject ANs issued against LDC (of which respondent was then the President and responsible officer) do not indicate when LDC received

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78 G.R. No. 127777, 01 October 1999; Citations omitted, italics in the original text and emphasis supplied.
79 Supra at note 12.
80 Supra at note 14.

them, nor do the records allege the date of such receipt. In the absence of proof to the contrary, and applying the presumption of regularity in the performance of official duties, as well as the presumption that mail matter sent by registered mail is received by the addressee in the ordinary course, this Court presumes that LDC received the ANs on their date of issuance, *i.e.*, 24 January 2002.

Accordingly, LDC had thirty (30) days, or until 23 February 2002, within which to file a protest. Since LDC did not file any protest within the prescribed period, the assessment became final, executory, and demandable on **24 February 2002**, or the day immediately following the lapse of the period to protest. On such date, the offense is deemed "committed" for purposes of computing the five (5)-year prescriptive period. Petitioner thus had until **24 February 2007** to institute a criminal action against LDC and its responsible officer.

The present controversy lies with the ***third consideration***, *i.e.*, the time when the prescriptive period is interrupted.

Petitioner claims that the filing of the criminal complaint with the City Prosecutor's Office of Manila on **15 December 2006** interrupted the five (5)-year prescriptive period. In support of this theory, petitioner cites Section 1, Rule 110 of the Revised Rules on Criminal Procedure (**RRCP**), which provides:

> ...
>
> **Sec. 1.** *Institution of criminal actions.* — **Criminal actions shall be instituted** as follows:
>
> (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.**[81]
>
> ...

As earlier noted, petitioner cites *People of the Philippines v. Mateo A. Lee, Jr.*[82] (**Lee, Jr.**) to support its claim that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation and that this interruption applies equally to cases under special laws and those governed by the RPC.

Petitioner, thus, maintains that prescription has not set in as the filing of the criminal complaint with the City Prosecutor's Office of Manila for the conduct of a preliminary investigation triggered the interruption of the prescriptive period.

In the assailed Resolutions,[83] however, the Second Division ruled that the filing of the Information, *not* the filing of the criminal complaint, tolls the five (5)-year prescriptive period. Since the subject Information was filed only on **03 October 2008**, the State's right to prosecute had already prescribed. Consequently, the Court did not acquire jurisdiction over the case.

We now address the proper interpretation and application of the rules on prescription, particularly the point at which the prescriptive period is tolled, in order to arrive at a fair and reasonable resolution of the issue.

In *Consebido*, the Supreme Court held that the prescriptive period for prosecuting crimes is tolled upon the filing of a complaint with the DOJ — not when the case reaches the court. **It *specifically* clarified that under Section 281[84] of the NIRC of 1997, the prescriptive period for criminal tax offenses that are not immediately known starts from the time the violation is discovered and is interrupted once a preliminary investigation begins. This interpretation ensures that the intent of the law — to set a clear time limit for the prosecution of tax violations — is properly applied.**

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81 Italics in the original text, emphasis and underscoring supplied.
82 Supra at note 68.
83 Supra at notes 7 and 8.
84 Supra at pp. 18-19.

Insofar as criminal tax offenses are concerned, *Consebido* is controlling. However, it also introduces a doctrinal clarification that carries significant procedural ramifications, as will be explained below.

In *Consebido*, the Supreme Court clarified that, under Section 281 of the NIRC of 1997, as amended, the prescriptive period operates in a harmonized manner such that the commencement of a preliminary investigation interrupts prescription. The Court was explicit:

> ...
> Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery. The adoption of the interpretation in *Duque* is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. **The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense.**[85]
>
> ...

Consebido likewise categorically declared that the filing of the criminal complaint before the DOJ tolls the running of the prescriptive period for NIRC offenses:

> ...
> As discussed above, the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the 1997 NIRC, as amended, whether its commission was immediately known or unknown at the time of the violation.[86]
>
> ...

This clarification, while now controlling, necessarily interfaces with longstanding procedural formulations on when a criminal action is "instituted" for purposes of interrupting prescription. Section 1[87] of Rule 110 of the RRCP above clearly provides that criminal actions shall be instituted by the filing of a complaint for purposes of conducting a preliminary investigation.

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85 Supra at note 70; Emphasis supplied.
86 Id.
87 Supra at pp. 21-22.

However, in must be recognized that the RRCTA's "**institution-by-Information**" formulation creates a genuine interpretive tension when applied to criminal cases before the CTA.

While *Consebido* squarely addresses criminal tax offenses and applied the "**institution-by-complaint**" formulation to the offense involved in that case, criminal prosecutions before the CTA remain specifically governed by the RRCTA, duly approved by the Supreme Court *En Banc* in 2005 and later revised in 2008. Rule 9, Section 2 of the RRCTA 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.[88]
>
> ...

It cannot be denied that the foregoing provision, as plainly worded, may reasonably lead an accused, litigants, and even the prosecution to understand that the **filing of an Information** before this Court is **the operative act that both institutes the criminal action and tolls prescription**, at least within this Court's original criminal jurisdiction. This understanding materially differs from *Consebido*, where "institution" occurs upon filing of the complaint with the prosecutor or the DOJ.

Thus, for criminal cases before the CTA predating *Consebido*, there exists a genuine interpretive tension between:

1. *Consebido*'s clarified reading of Section 281 of the NIRC of 1997, as amended; and

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[88] Italics in the original text, emphasis and underscoring supplied.

2. the RRCTA's express "institution-by-Information" formulation in the CTA.

A genuine interpretive tension arises from the coexistence of two (2) seemingly inconsistent rules governing the interruption of the prescriptive period in criminal tax cases before the CTA. On one hand, the RRCTA expressly provides that a criminal action is instituted upon the filing of an Information before this Court, and that such institution interrupts prescription. On the other hand, *Consebido* clarifies that, for offenses under the NIRC of 1997, as amended, prescription is tolled upon the filing of a criminal complaint for purposes of preliminary investigation before the prosecutor or the DOJ.

This divergence creates uncertainty as to the precise point at which prescription is interrupted. For the accused, this uncertainty proves material and consequential, as it determines whether criminal liability has already been extinguished. An accused who relied on the plain language of the RRCTA could reasonably believe that prescription would only be interrupted upon the filing of the Information. However, the subsequent doctrinal clarification in *Consebido* advances the reckoning point of interruption to an earlier stage in the proceedings, thereby altering the legal landscape.

In this context, doubt arises not only from competing textual interpretations, but also from a supervening doctrinal development that affects the accused's substantive right to invoke prescription. This lack of clarity undermines fair notice and raises the risk that an accused may face prosecution despite a reasonable belief that the prescriptive period had already lapsed under the previously understood rule.

Because prescription extinguishes criminal liability and operates as a substantive right, any uncertainty in its application must be strictly construed against the State and liberally in favor of the accused. Accordingly, the Court must resolve the doubt in favor of the accused.

Prescription emanates from the liberality of the State. Any bar to or cause of interruption in the operation of prescriptive periods cannot simply be implied nor derived by mere implication. Any diminution of this endowment must be directly and expressly sanctioned by the source itself, the State. **Any doubt on this matter must be resolved in favor of the grantee thereof, the accused.**[89]

The RRCTA, promulgated by the Supreme Court *En Banc*, expressly treated criminal actions before this Court as "instituted" by the filing of an Information and declared that such institution interrupts prescription. In fact, *Lim, Sr.* and the RRCTA are consistently applied in a plethora of criminal cases decided by this Court, whether acting *En Banc* and in Division, to wit:

<u>*En Banc*</u>

1. *People of the Philippines v. Juanchito D. Bernardo, et al.*;[90]
2. *People of the Philippines v. Juanchito D. Bernardo, et al.*;[91]
3. *People of the Philippines v. Ulysses Palconet Consebido*;[92]
4. *People of the Philippines v. Ulysses Palconet Consebido*;[93] and,
5. *People of the Philippines v. Virgilio B. Castillo*;[94]

<u>Division</u>

1. *People of the Philippines v. R-Jell Marketing & Construction Company, et al.*;[95]
2. *People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)*;[96]
3. *People of the Philippines v. GH Resources and Training Services, Inc., et al.*;[97]
4. *People of the Philippines v. The Property Forum Phils., Inc., et al.*;[98] and
5. *People of the Philippines v. Chiatsing Cardboard Corp., et al.*[99]

Consebido later held that, for NIRC offenses, the filing of the criminal complaint for preliminary investigation tolls prescription, thereby **effectively modifying the operative understanding of**

89 *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, et al.*, supra at note 73.
90 CTA EB Crim. No. 078 (CTA Crim. Case No. O-731), 29 September 2021.
91 CTA EB Crim. No. 079 (CTA Crim. Case No. O-733), 07 July 2021.
92 CTA EB Crim. No. 076 (CTA Crim. Case Nos. O-700, O-702 & O-703), 27 January 2021.
93 CTA EB Crim. No. 069 (CTA Crim. Case No. O-701), 06 January 2021.
94 CTA EB Crim. No. 053 (CTA Case No. O-663), 08 July 2020.
95 CTA Crim. Case Nos. O-850, O-851, O-852 & O-853, 15 March 2022 (Resolution).
96 CTA Crim. Case Nos. O-800 & O-801, 22 February 2022 (Resolution).
97 CTA Crim. Case No. O-818, 17 February 2022 (Resolution).
98 CTA Crim. Case No. O-875, 23 June 2021 (Resolution).
99 CTA Crim. Case Nos. O-385, O-386, O-387, O-388, O-399, O-390, O-391 & O-392, 08 July 2015 (Resolution).

"institution" for purposes of interruption in criminal cases before this Court.

Given this doctrinal shift in the operative tolling point, prudence, fair notice and the liberal construction of prescription (in favor of the accused) all coalesce to limiting the new rule to post-*Consebido* cases. This approach aligns with *Consebido*'s express directive on prospectivity, even if its discussion arose in the context of offenses governed by the Revised Rules on Summary Procedure (**RRSP**) and the 2022 Rules on Expedited Procedures in the First Level Courts (**REPFLC**).[100]

Furthermore, jurisprudence supports the view that, consistent with the spirit of the law and legislative intent, **any change in the interpretation of prescription laws must operate liberally in favor of the accused.** Accordingly, such interpretive changes must apply prospectively when they affect substantive rights, as *Consebido* itself recognized in relation to offenses under the RRSP and REPFLC.

Previously, the *ponente*, in several CTA *En Banc* cases,[101] acknowledged a contrary view that the ruling in *Consebido* should apply

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[100] *Consebido* abandons *Pastor Corpus, Jr. y Belmoro v. People of the Philippines*, G.R. No. 255740, 16 August 2023.

[101] *People of the Philippines v. AJ Corinthian Hauling Corporation, et al.*, CTA EB Crim. Case No. 165 (CTA Crim. Case No. O-1150); *People of the Philippines v. Logistics.com Corporation, et al.*, CTA EB Crim. Case No. 114 (CTA Crim. Case No. O-973) (Resolution), 24 February 2026; *People of the Philippines v. Diego G. Martinez*, CTA EB Crim. Case No. 147 (CTA Crim. Case No. O-672), 06 February 2026; *People of the Philippines v. AJ Corinthian Hauling Corporation, et al.*, CTA EB Crim. Case No. 164 (CTA Crim. Case No. O-1151), 05 February 2026; *People of the Philippines v. AJ Corinthian Hauling Corporation, et al.*, CTA EB Crim. Case No. 162 (CTA Crim. Case No. O-1148); *People of the Philippines v. Faivo Pascual Bartolome*, CTA EB Crim. Case No. 149 (CTA Crim. Case No. O-984), 02 December 2025; *People of the Philippines v. PGU General Merchandise, Inc., et al.*, CTA EB Crim. Case No. 144 (CTA Crim. Case No. O-1081), 18 November 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 132 (CTA Crim. Case No. O-940), 14 November 2025; *People of the Philippines v. Shelmark Builders Phils., Inc. and Santiago C. Barangan*, CTA EB Crim. Case No. 138 (CTA Crim. Case No. O-1054), 22 October 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 143 (CTA Crim. Case No. O-943), 10 October 2025; *People of the Philippines v. Faivo Pascual Bartolome*, CTA EB Crim. Case No. 140 (CTA Crim. Case No. O-985) (Resolution), 09 October 2025, *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 118 (CTA Crim. Case No. O-951) (Resolution), 03 October 2025; *People of the Philippines v. PGU General Merchandise, Inc., et al.*, CTA EB Crim. Case No. 145 (CTA Crim. Case No. O-1082), 01 October 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 112 (CTA Crim. Case No. O-957), 04 August 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 116 (CTA Crim. Case No. O-944), 16 July 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 102 (CTA Crim. Case No. O-938), 30 May 2025; *People of the Philippines v. Ziegfried Loo Tian*, CTA EB Crim. Case No. 119 (CTA Crim. Case No. O-954), 30 May 2025; *People of the Philippines v. Lemuel Sibuma Consolacion*, CTA EB Crim. Case No.

retroactively to all cases governed by the NIRC of 1997, reckoned from its effectivity. This view posits that the ruling merely affirms the proper interpretation of Section 281 of the said law from its inception, rather than establishes a new doctrine on prescription. Notably, in *Consebido*, the Supreme Court upheld the CTA *En Banc*'s dismissal of the complaint not because the Information was filed beyond the five (5)-year prescriptive period, but because the complaint itself was filed after the lapse of such period. The Supreme Court, in resolving the controversy in *Consebido*, which involved a criminal tax offense, expressly applied the long-settled doctrine in *People of the Philippines, et al. v. Ascencion P. Olarte* (G.R. No. L-22465, 28 February 1967) that the commencement of preliminary investigation interrupts the running of the prescriptive period.

Nevertheless, more compelling doctrinal considerations support the prospective application of *Consebido*. Such application accords with the higher interest of upholding the *in dubio pro reo* doctrine and protecting the substantive rights of accused. It recognizes the practical and legal implications of the Supreme Court-approved Revised Rules of the Court of Tax Appeals (**RRCTA**), particularly its "institution-by-Information" formulation, which created a genuine interpretive tension when applied to criminal cases before the CTA. In light of this tension, the CTA must resolve any doubt regarding the existence, bar, or interruption of the prescriptive period in favor of accused.

The 1923 cases of Moran and Parel

The discussion on the effect and interpretation of the law on prescription dates to 1923 in the case of *The People of the Philippine Islands v. Juan Moran, et al.*[102] (**Moran**), where the Supreme Court cited Fiore, an eminent professor of international law and author of "Irretroactivity and Interpretation of Statutes," and **leaned towards his interpretation that regardless of the nature of the law on prescription, any new construction of prescription law must be applied if it is more favorable to the accused, but not if it is more prejudicial, considering that prescription affects the very substance of criminal prosecutions:**

150 (CTA Crim. Case No. O-983), 29 May 2025; *People of the Philippines v. Star Asset Management NPL, Inc., et al.*, CTA EB Crim. Case No. 146 (CTA Crim. Case No. O-994), 21 May 2025.

[102] G.R. No. 17905, 27 January 1923; Emphasis supplied.

> ...
>
> After examining the different opinions of the writers on the matter, Fiore has come, as seen from the above quotation, to the conclusion that, whether the statute relative to prescription be considered as of a procedural or formal, or substantive, nature, **the new statute must be applied if it is less severe or more favorable to the accused, but not if it is more prejudicial, notwithstanding the general rule that all procedural laws are retroactive in regard to prescription.** In view of the special motion filed by the accused on May 2, 1922, it does not matter and it is of no importance, so far as the question herein raised is concerned, whether the provision contained in section 71 of Act No. 3030 be considered as of a substantive, procedural, or adjective character, because applying the principles above enunciated, the result is the same, and **the more severe law in the matter of prescription** extends, as Fiore says, the field of the criminal action and **affects the very substance thereof, because it determines the basis and the sphere of the rights to punish.**
>
> ...

Thus, the Supreme Court concluded by saying that:

> ...
>
> [N]o period of prescription having been fixed in the former law, those offense were imprescriptible, and the offender could be prosecuted and punished at any time and indefinitely, even ten, twenty, or more years after the commission thereof, whereas the new law, that is, Act No. 3030 in providing the period of one year for the prescription, has, in effect, shortened the time of prescription fixed in the old law by virtue of the silence thereof, reducing it to one year and has established less difficult conditions for the application of the same as regards those offenses, which is evidently more favorable and lenient to the violators of the said former law, and, as Fiore says in one of the paragraph above quoted from his book, **the reduction made by the new law implies a recognition on the part of the sovereign power that the greater severity of the former law, as regards the substance of the criminal action, is unjust, and it would contradict itself if it would attempt to enforce its right under the conditions of the former law which has already been regarded by the conscientious public opinion as juridically burdensome, and, therefore, unjust,** and the sovereign power cannot exercise the right to punish except within the limits regarded by it as just at the time of exercising it.[103]
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> ...

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[103] *The People of the Philippine Islands v. Juan Moran, et al.*, supra at note 102; Emphasis supplied.

This portion of the *Moran* case went on to be cited by the Supreme Court in later and even more recent cases interpreting the laws on prescription in criminal offenses.

Promulgated at the same time as *Moran* was the case of *The People of the Philippine Islands v. Norberto Parel*[104] (**Parel**), where the Court, citing Fiore anew, declared that **changes in the law on prescription must not be applied retroactively if the same would prejudice the accused:**

> ...
> [W]**hen the new prescriptive law is more rigid than the former, whether as to the admissibility of the prescription itself or as to the conditions and time required for its effectiveness, care must be taken that law is not applied to crimes committed before its enactment**, not because the accused has acquired any right so to prevent its application, but for the reasons that we have already stated. What right can the accused have to endeavor to prevent that which the sovereign power has the right to do in order to preserve public order? Let us not talk therefore of vested rights of the accused, but let us say it, and with emphasis, that the reason for the irretroactivity of the more severe law is found in the principle that the **sovereign power cannot, without committing an injustice, apply the more severe prescriptive provisions; and those provisions cannot be justly applied if they have not been previously promulgated. And the right itself to punish does not arise except by virtue of a law promulgated and in force at the time of the commission of the crime. <u>The more rigid the prescriptive law the more enlarged the field of criminal prosecution and this affects the substance thereof, because it fixes the basis and the sphere of the right to punish.</u>** And can all of these be done by the sovereign power without any law? Can that power, without doing an injustice, extend the effects of the new law to said acts committed before its enactment? For the same reasons which prevent the sovereign power from punishing those acts that have not expressly been made punishable as crimes by the former law or from imposing the more severe penalties provided in the new law when such acts have been committed before those penalties were established by legislative enactment, so also it cannot enlarge the criminal action (that is to say, its right to punish) by a subsequent law and apply to acts executed before its enactment the less favorable provisions of prescription therein established . . .
>
> For the reasons stated, we come to the conclusion that, as a matter of justice which must regulate all the elements of a criminal action, that **the accused must be given the benefit of the provisions of the**

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104 Supra at note 72; Emphasis and underscoring supplied.

> **new law when more favorable to him** and that, unless there should be a final and conclusive judgment at the time, **we must also admit in matters of prescription that the new law, when less severe, should be applied.** The same principle applies when the modifications introduced by the law refer to the prescription of the penalty, because in its substance the prescription of the penalty is equivalent to the prescription of the criminal action. (Fiore, *Irretroactividad e Interpretacion de las Leyes*, pp. 426-428.)
>
> ...

The *Parel* case remains to be good law and was recently cited in the 2024 case of *Dexter Bargado y Morgado v. People of the Philippines.*[105]

Jurisprudence on prescription being a matter of substantive law

After 1923, the Supreme Court was more definitive in stating that prescription is indeed a matter of substantive law.

In the 1954 case of *The People of the Philippines v. Pascual Castro,*[106] the Supreme Court declared that prescription is a substantive provision of law:

> ...
> Hence, the rule provides that the plea of prescription should be set up before arraignment, or before the accused pleads to the charge, as otherwise the defense would be deemed waived; but, as was well said in the Moran case, this rule is not of absolute application, especially when it conflicts with a **substantive provision of the law, such as that which refers to prescription of crimes.** Since, under the Constitution, the Supreme Court has only the power to promulgate rules concerning pleadings, practice and procedure, and the admission to the practice of law, and cannot cover substantive rights (section 13, article VII, of the Constitution), the rule we are considering cannot be interpreted or given such scope or extent that would come into conflict or defeat an **express provision of our substantive law. One of such provisions is article 89 of the Revised Penal Code which provides that the prescription of crime has the effect of totally extinguishing the criminal liability.**
> ...

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105 G.R. No. 271081, 29 July 2024.
106 G.R. No. L-6407, 29 July 1954; Emphasis supplied.

The conclusion that prescription is a matter of substantive law was reiterated in the 1992 case of *Luz M. Zaldivia v. Hon. Andres B. Reyes, Jr., et al.,*[107] as well as in the 2013 case of *Jadewell Parking Systems Corporation v. Hon. Judge Nelson F. Lidua, Sr., et al,*[108] both were cases discussed in *Consebido*:

> ...
> [I]f there be a conflict between the Rule on Summary Procedure and Section 1 of Rule 110 of the Rules on Criminal Procedure, the former should prevail as the special law. And if there be a conflict between Act No. 3326 and Rule 110 of the Rules on Criminal Procedure, the latter must again yield because **this Court, in the exercise of its rule-making power, is not allowed to "diminish, increase or modify substantive rights"** under Article VIII, Section 5(5) of the Constitution. <u>**Prescription in criminal cases is a substantive right.**</u>[109]
> ...

Jurisprudence on the liberal interpretation of prescription laws

In the 1989 case of *People of the Philippines v. Mizpah R. Reyes,*[110] which was cited in the 1992 case of *People of the Philippines v. Napoleon Duque,*[111] the Supreme Court ruled that in the interpretation of the law on prescription of crimes, that which is most favorable to the accused is to be adopted:

> ...
> However, the law on prescription of crimes rests on a more fundamental principle. Being more than a statute of repose, **it is an act of grace whereby the state, after the lapse of a certain period of time, surrenders its sovereign power to prosecute the criminal act.** While the law on prescription of civil suits is interposed by the legislature as an impartial arbiter between two contending parties, the law on prescription of crimes is an **act of amnesty and liberality on the part of the state** in favor of the offender [People v. Moran, supra, at p. 405]. **Hence, in the interpretation of the law on prescription of crimes, that which is most favorable to the accused is to be adopted.** [People v.

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107 G.R. No. 102342, 03 July 1992.
108 G.R. No. 169588, 07 October 2013.
109 Emphasis and underscoring supplied.
110 G.R. Nos. 74226-27, 27 July 1989.
111 G.R. No. 100285, 13 August 1992.

> Moran, supra; People v. Parel, 44 Phil. 437 (1923); People v. Yu Hai, 99 Phil. 725 (1956)].[112]
>
> ...

This doctrine was reiterated in the 2001 case of *People of the Philippines v. Arturo F. Pacificador*[113] (**Pacificador**):

> ...
>
> It bears emphasis, as held in a number of cases, that **in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.** The said legal principle takes into account the nature of the law on prescription of crimes which is an **act of amnesty and liberality on the part of the state in favor of the offender.** In the case of *People v. Moran,* this Court amply discussed the nature of the statute of limitations in criminal cases, as follows:
>
> > The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence, it is that **statutes of limitation are to be liberally construed in favor of the defendant,** not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a **recognition and notification** by **the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt.**
>
> ...

Citing *Pacificador,* the Supreme Court, in the 2006 case of *Benjamin T. Romualdez v. Hon. Simeon V. Marcelo,*[114] declared that any doubt on the bar or cause of interruption of prescriptive periods must be resolved in favor of the accused:

> ...
>
> Indeed, there is no reason why we should deny petitioner the benefits accruing from the liberal construction of prescriptive laws on criminal statutes. **Prescription emanates from the liberality of the State. Any bar to or cause of interruption in the operation of**

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112 Emphasis supplied.
113 Supra at note 72; Citations omitted and emphasis supplied.
114 Supra at note 73.

> **prescriptive periods cannot simply be implied nor derived by mere implication.** Any diminution of this endowment must be directly and expressly sanctioned by the source itself, the State. **Any doubt on this matter must be resolved in favor of the grantee thereof, the accused.**
>
> The foregoing conclusion is logical considering the nature of the laws on prescription. The exceptions to the running of or the causes for the interruption of the prescriptive periods may and should not be easily implied. The prescriptive period may only be prevented from operating or may only be tolled for reasons explicitly provided by the law.
>
> ...

Clearly from the foregoing, while *Consebido* supplies the authoritative construction of Section 281[115] of the NIRC of 1997, as amended — holding that the filing of a complaint for preliminary investigation tolls prescription — this Court's own rules (*i.e.*, the RRCTA) create reasonable interpretive doubt when applied to pre-*Consebido* prosecutions such as this case. In faithful adherence to the principle that doubts in criminal prosecutions, especially those affecting prescription, must be resolved in favor of the accused, this Court must affirm the dismissal of the criminal action against respondent on the ground of prescription.

As correctly ruled by the Second Division, since the Information was filed only on **03 October 2008**, or after the lapse of the five (5)-year prescriptive period, which ended on **24 February 2007**, the State's right to prosecute or to institute a criminal action against LDC and its responsible officer (*i.e.*, respondent) had already prescribed.

Considering that this criminal action was instituted prior to *Consebido*, this Court cannot sustain petitioner's position that the filing of the criminal complaint with the City Prosecutor's Office of Manila allegedly on **15 December 2006** interrupted the prescriptive period. Even if the records suggest that the preliminary investigation commenced prior to 24 February 2007,[116] and thus logically indicate that the criminal complaint was filed earlier, this Court cannot construe such filing as having interrupted the prescriptive period. To do so would

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115 Supra at pp. 18-19.

116 See Resolution dated 30 April 2007 (signed by Assistant City Prosecutor Dinah Myrtle M. Pacquing, with recommending approval of 2nd Assistant City Prosecutor Yvonne G. Corpuz and approval of City Prosecutor [now, Associate Justice] Jhosep Y. Lopez), Division Docket, pp. 46-47.

operate to the prejudice of accused respondent and contravene the rule that prescription must be construed liberally in favor of the accused.

In fine, aside from petitioner's lack of legal personality to file the present Petition for Review, the Court *En Banc* finds no legal or equitable basis to relax the procedural rules for purposes of resolving the case on the merits, much less to reconsider or modify the assailed Resolutions[117] of the Second Division.

WHEREFORE, with the foregoing considerations, the present Petition for Review filed by petitioner People of the Philippines on 15 November 2024 is hereby **DISMISSED** for lack of authority to file and **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Ma. Belen o

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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117 Supra at notes 7 and 8.

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice