REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB CRIM. NO. 076** (CTA CASE NOS. O-700, O-702 & O-703)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
ULYSSES PALCONET CONSEBIDO, Respondent.	***Promulgated:*** JUL 1 5 2021 2:30p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (of the Decision dated January 27, 2021)"**[1] filed on February 17, 2021, with respondent's **"COMMENT (On the Motion for Reconsideration dated February 17, 2021)**[2] filed on March 23, 2021 *via* electronic mail[3], praying for the reversal and setting aside of this Court's Decision dated January 27, 2021,[4] the dispositive portion of which reads:

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[1] EB Docket, pp. 79 to 88.
[2] EB Docket, pp. 96 to 102.
[3] The hard copy of respondent's *Comment (On the Motion for Reconsideration dated February 17, 2021)* was received by the Court on May 18, 2021; EB Docket, pp. 103 to 109.
[4] EB Docket, pp. 61 to 78.

> "**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated November 8, 2019 and February 6, 2020, both rendered by the Court in Division in CTA Crim. Case Nos. O-700, O-702 and O-703 are **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's arguments:

In support of its *Motion for Reconsideration*, petitioner argues that the Court erred when it applied Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended, and the pronouncement in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[5] *(or Lim case)*. Allegedly, the pronouncement in the *Lim case* in computing the running of the five-year prescriptive period without interruption is contrary to established laws, rules and various jurisprudence.

Petitioner insists that the institution of judicial proceedings or the filing of the criminal complaint before the Department of Justice (DOJ) for preliminary investigation tolled or interrupted the running of the period of prescription.

Further, petitioner reiterates 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 does not exceed five (5) years; and that the Supreme Court has long established the issue that the running of the prescriptive period is suspended by the filing of the complaint with the prosecutor's office.

As regards the denial of petitioner's *Motion for Reconsideration* before the Court in Division for being filed out of time, petitioner posits that strict adherence to the rules on the period to file the appeal/motion for reconsideration may be relaxed to give way to substantial justice.

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

Respondent's counter-arguments:

Respondent maintains that prescription is interrupted only when the case is filed in court and not when a complaint is filed with the DOJ for preliminary investigation.

Further, respondent contends that the maximum number of days for the DOJ to resolve criminal cases is set at ninety (90) days; and that it allegedly took the DOJ more than five (5) years to resolve this case. Thus, respondent avers that the criminal complaints were correctly dismissed not only on the ground of prescription, but also for the inordinate delay amounting to a transgression of the right to a speedy disposition of cases.

Respondent further argues that the assailed Resolution dated November 8, 2019 issued by the Court in Division has attained finality in view of petitioner's failure to file a motion for reconsideration within the prescribed time. According to respondent, a judgment that lapses into finality becomes immutable and unalterable; and that the same can neither be modified nor disturbed by courts in any manner even if the purpose of the modification is to correct perceived errors of fact or law.

THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

A perusal of the instant *Motion* shows that the grounds raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

As ruled in the assailed Decision, the Resolution dated November 8, 2019, issued by the Court in Division has already become final and unappealable in view of petitioner's failure to file a timely motion for reconsideration pursuant to A.M. No. 15-06-10-SC or the *Revised Guidelines for Continuous Trial of Criminal Cases*.

Further, there is no merit in petitioner's assertion that the period to appeal admits of exception in consideration of substantial justice.

It bears reiterating that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[6]

Anent petitioner's claim that the running of the prescriptive period was interrupted by the filing of the criminal complaint for preliminary investigation with the DOJ, the same deserves scant consideration

It must be stressed that in the *Lim case*, the Supreme Court considered **both** the fact of discovery of the offense and the institution of judicial proceeding for investigation and punishment as significant in determining the commencement of the five-year prescriptive period for criminal violation under then Section 354 of the 1939 Tax Code (now Section 281 of the NIRC of 1997, as amended). Moreover, in Revenue Memorandum Circular (RMC) No. 101-90 dated November 26, 1990, it is provided that the five-year prescriptive period under the Tax Code does not commence to run by a mere fact of discovery. This must be coupled by judicial proceedings, such as preliminary investigation before the Prosecutor's Office, before the five-year limitation period begins to run.

Thus, considering that in the instant case, the period from the filing of the preliminary investigation with the DOJ up to the filing of the *Informations* before the Court in Division exceeded five (5) years, petitioner is barred from instituting the subject tax cases against respondent.

In sum, the Court *En Banc* finds no compelling reason to reconsider, modify or reverse the assailed Decision.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

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[6] *Lazaro, et al. vs. Court of Appeals, et al.,* G.R. No. 137761, April

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice