Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM CASE NO. O-699**
	For: Failure to File Quarterly VAT Return under Section 255, in relation to Section 114 of the National Internal Revenue Code of 1997, as amended.
-versus-	
ULYSSES PALCONET CONSEBIDO, Accused.	Members: CASTAÑEDA, JR., Chairperson, and MINDARO-GRULLA, *JJ.*
	Promulgated: APR 01 2019

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8:20 a.m.

RESOLUTION

On March 18, 2019, People of the Philippines filed an Information, accusing ULYSSES PALCONET CONSEBIDO for willful failure to file Quarterly VAT Return under Section 255, in relation to Section 114 of the National Internal Revenue Code of 1997, as amended. The Information reads:

> "That on or about July 25, 2008, in Roxas, Palawan and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, doing business under the name and style SEVEN DIGIT CONSTRUCTION AND SUPPLIES, and at that time required by law, rules and regulations to File his quarterly Value Added Tax (VAT) return did, then and there, willfully, unlawfully and feloniously fail to file his quarterly VAT return for the 2nd quarter of taxable

year 2008, which resulted in basic deficiency quarterly VAT of **₱1,229,450.10** for the 2nd quarter of taxable year **2008**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."

The discovery together with the institution of judicial proceedings for preliminary investigation, when the case was referred to the Department of Justice for preliminary investigation on January 30, 2014[1] shows that prescription began to run on January 30, 2014. Counting five (5) years from January 30, 2014, the prescriptive period lapsed on January 30, 2019. Unfortunately, the Information was filed with the Court only on March 18, 2019, which exceeds the five-year prescriptive period.

Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended, states:

"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.

<u>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.</u>

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."

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[1] Letter of the Commissioner of Internal Revenue to the Secretary of Justice, *Docket,* pp. 167-168.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines (Lim case),*[2] the Supreme Court interpreted the commencement of the prescriptive period under Section 354 of the Tax Code (now Section 281). The Supreme Court explained:

> "xxx. The Solicitor General stresses that Section 354 speaks not only of the discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and punishment." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1971 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.
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> xxx. As Section 354 stands in the statute book (and to this day has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as <u>the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.</u>
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> xxx xxx xxx
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> xxx And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive strict construction in favor of the government and limitations in such cases will not be presumed in the absence of clear legislation." (Underscoring supplied)

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

As stated in the case of *People of the Philippines vs. Virgilio B. Castro:*[3]

> "From the foregoing, the Supreme Court considered both the date of discovery and the institution of judicial proceedings for investigation as significant. It then observed that as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment up to the filing of the information does not exceed five (5) years, the government's right to file an action will not prescribe.
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> Conversely, it can be concluded from the Supreme Court's statement in the Lim case that if the period from the institution of judicial proceedings for its investigation up to the filing of the information in court exceeds five (5) years, then the government's right to file an action has prescribed."

Applying Section 281 of the NIRC and the pronouncement in the Lim case, the instant Information was filed beyond the five-year period.

WHEREFORE, CTA Criminal Case No. O-699 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[3] CTA Crim. Case No. 0-663, February 21, 2018.