REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-*versus*-

PGU GENERAL MERCHANDISE INC., FOOK SEONG YONG and ROCELLE FRANCISCO,
Respondents.

CTA EB Crim. No. 144
(CTA Crim. Case No. O-1081)

Present:

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

Promulgated:
NOV 18 2025 4:20

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DECISION

ANGELES, *J.*:

THE CASE

Before the Court *En Banc* is a *Petition for Review,*[1] assailing the Resolutions dated October 12, 2023,[2] dismissing the case on the ground of prescription, and February 27, 2024,[3] denying the prosecution's *Motion for Reconsideration*, promulgated by this Court's First Division in CTA Crim. Case No. O-1081.

THE PARTIES

Petitioner is represented by the deputized special prosecutors from the Bureau of Internal Revenue (BIR), a government agency primarily tasked to collect internal revenue taxes for the support of the

[1] EB Docket, pp. 5 to 13.
[2] EB Docket, pp. 14 to 19; Docket (CTA Crim. No. O-1081), pp. 85 to 90.
[3] EB Docket, pp. 20 to 22; Docket (CTA Crim. No. O-1081), pp. 99 to 101.

government, with office address at the BIR National Office Building, Diliman, Quezon City and postal address at Legal Division, Revenue Region No. 6, 5th Floor BIR Bldg. I, Solana Street, Intramuros, Manila, where summons, notices and other legal processes of this Court may be served.[4]

Respondents Fook Seong Yong, Rocelle Francisco, PGU General Merchandise, Inc., are the accused in CTA Crim. Case No. O-1081 and may be served with summons and other legal processes of this Court at their known address at 4/F Krisambet Bldg., Zobel Roxas St., Singgalong, Manila.[5]

ANTECEDENT FACTS

On September 27, 2018, petitioner filed a *Joint Complaint-Affidavit*[6] with the Department of Justice (DOJ) against the respondents for a violation of Section 255, in relation to Sections 253 (d) and 256, of the National Internal Revenue Code of 1997, as amended (Tax Code). Petitioner alleged that respondents willfully failed to pay the income tax, value-added tax (VAT), and documentary stamp tax due for taxable year 2008 amounting to Php58,279,680.51, despite receipt of the Final Decision on Disputed Assessment (FDDA) and the Decision of the Commissioner of Internal Revenue (CIR) denying respondents' request for reconsideration.

On August 10, 2023, an *Information*[7] was filed before the Court in Division against respondents for alleged non-payment of VAT for the taxable year 2008, the accusatory portion reads:

> That in or about September 2015 and thereafter, in the City of Manila and within the jurisdiction of this Honorable Court, accused PGU GENERAL MERCHANDISE, INC., a registered VAT taxpayer of BIR RDO No. 33-City of Manila, with Tax Identification Number 245-291-198, with obligation under the law to file and pay the corresponding Value-Added Tax (VAT) Return for taxable year/period 01 January to 31 December 2008, and accused FOOK SEONG YONG and ROCELLE FRANCISCO, its president and treasurer, respectively, and responsible officers, did then and there, willfully and knowingly fail to pay deficiency value added tax for the said taxable year in the amount of Php18,664,889.77, exclusive

[4] Parties, *Petition for Review*, EB Docket, p.6.
[5] Parties, *Petition for Review*, EB Docket, p.6.
[6] Docket (CTA Crim. No. O-1081), pp. 13 to 23.
[7] Docket (CTA Crim. No. O-1081), pp. 5 to 7.

of surcharges and interest, despite final assessment notice, including prior and post notices and formal demands to pay, the last being in the nature of final notice for them to pay the said tax, to the damage and prejudice of the Government.

CONTRARY TO LAW.

The Information charged respondents for an alleged violation of Section 255 of the Tax Code.

PROCEEDINGS BEFORE THE COURT IN DIVISION

In the assailed Resolution dated October 12, 2023, the Court dismissed the case on the ground of prescription.[8]

On January 5, 2024, the prosecution filed a *Motion for Reconsideration with Leave of Court and Entry of Appearance (Re: Resolution dated 12 October 2023)*,[9] which the Court in Division denied for lack of merit, in the assailed Resolution dated February 27, 2024.[10]

Hence, this Petition.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On March 19, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review* praying that it be given an additional period of fifteen (15) days from March 20, 2024, or until April 4, 2024, within which to file its petition for review.[11]

In a Notice of Resolution dated March 21, 2024,[12] the Court *En Banc* granted petitioner's *Motion* subject to the condition that the motion was filed on time.

Petitioner thereafter filed its *Petition for Review* on April 4, 2024.

[8] EB Docket, pp. 14 to 19; Docket (CTA Crim. No. O-1081), pp. 85 to 90.
[9] Docket (CTA Crim. No. O-1081), pp. 91 to 96.
[10] EB Docket, pp. 20 to 22; Docket (CTA Crim. No. O-1081), pp. 99 to 101.
[11] EB Docket, pp. 1 to 3.
[12] EB Docket, p. 4-A.

On May 6, 2024, the Court *En Banc* issued a Notice of Resolution[13] directing petitioner to submit proof of the date of receipt of the Resolution dated February 27, 2024 in CTA Crim. Case No. O-1081, within five (5) days from notice.

Petitioner posted its *Compliance* on May 9, 2024 attaching therewith the proof of receipt of the assailed Resolution dated February 27, 2024.[14]

In a Notice of Resolution dated June 19, 2024,[15] the Court *En Banc* noted petitioner's *Compliance* and directed respondents to file their comment on the *Petition for Review* within ten (10) days from notice.

On July 1, 2024, respondents' counsel filed his *Entry of Appearance with Motion for Extension of Time to File Comment*.[16] Respondent Fook Seong Yong prayed that he be given an additional period of ten (10) days from July 1, 2024 or until July 11, 2024 within which to file his comment.

The Court *En Banc* noted respondent's counsel entry of appearance and granted respondent's *Motion* in a Resolution dated July 11, 2024.[17]

On July 11, 2024, respondent filed his *Comment (re: Petition for Review)*.

Meanwhile, Records Verification Report dated September 5, 2024[18] stated that respondents PGU General Merchandise, Inc. and Rocelle Francisco failed to file their comments to the *Petition for Review*.

The present case was submitted for decision on September 27, 2024.[19]

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[13] EB Docket, p. 23.
[14] EB Docket, pp. 24 to 26.
[15] EB Docket, p. 27.
[16] EB Docket, pp. 28-29.
[17] EB Docket, p. 32.
[18] EB Docket, p. 45.
[19] *Notice of Resolution* dated September 27, 2024, EB Docket, p. 46.

ASSIGNMENT OF ERROR

Petitioner assigns the following error purportedly committed by the Court in Division, *viz*:

> THE HONORABLE COURT IN DIVISION ERRED IN DISMISSING THE INSTANT CASE ON THE GROUND THAT THE INFORMATION WAS FILED BEYOND THE FIVE (5)-YEAR PRESCRIPTIVE PERIOD[20]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner contends that the filing of the Complaint-Affidavit with the Department of Justice (DOJ) on September 27, 2018 effectively tolled the running of the prescriptive period. On this premise, petitioner prays that the assailed Resolutions be reversed and set aside, and that a new Resolution be issued finding probable cause against respondents.

Respondent's arguments

Respondent, on the other hand, maintains that the Resolution dated October 12, 2023 has already attained finality considering that the Bureau of Internal Revenue (BIR) and the DOJ allegedly received copies thereof on October 17, 2023 and October 23, 2023, respectively. Thus, when petitioner filed its *Motion for Reconsideration with Leave of Court and Entry of Appearance (of the Resolution dated 12 October 2023)* on January 5, 2024, it was already out of time.

Respondent further contends that the Court in Division correctly dismissed the case on the ground of prescription.

RULING OF THE COURT

Before the Court may rule on the merits of the case, we shall first determine whether the present Petition for Review was timely filed.

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[20] Assignment of Error of Fact and Law, *Petition for Review*, EB Docket, p. 8.

The Court *En Banc* finds that the Petition for Review was filed out of time, considering that the Resolution dated October 12, 2023 had already attained finality.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) explicitly provides:

> **RULE 15**
> **Motion for Reconsideration or New Trial**
>
> SECTION 1. Who May and When to File Motion. — **Any aggrieved party may seek a reconsideration or new trial of any decision**; resolution or order of the Court. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision, resolution or order of the Court in question**. (Emphasis supplied)

Meanwhile, Section 3, Rule 9 of the RRCTA mandates that all criminal actions shall be conducted and prosecuted under the direction and control of the public prosecutor, *viz*:

> Section 3. *Prosecution of criminal actions*. – **All criminal actions shall be conducted and prosecuted under the direction and control of the public prosecutor**. In criminal actions involving violation of the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, and violations of the Tariff and Customs Code or other laws enforced by the Bureau of Customs, **the prosecution may be conducted by their respective duly deputized legal officers**. (Emphasis supplied)

Well-settled is the rule that when a party is represented by a counsel on record, service of orders or notices must be made on the counsel on record. Service of orders or notices to the party or to any other lawyer does not bind the party and is not considered as notice under the law.[21]

In this case, the DOJ, as counsel of record, received a copy of the assailed Resolution on October 23, 2023.[22] Consequently, petitioner had fifteen (15) days from such receipt, or until November 7, 2023, within which to file its Motion for Reconsideration, pursuant to Section 1, Rule 15 of the RRCTA. The rule is and has been that the period for filing a motion for reconsideration is non-extendible.[23]

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[21] *Department of Education v. Nixon Q. Dela Torre, et. al.*, G.R. No. 216748, July 25, 2018.
[22] Docket (CTA Crim. No. O-1081), p. 84.
[23] *Apex Mining Co., Inc., v. Commissioner of Internal Revenue*, G.R. No. 122472, October 20, 2005.

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However, petitioner filed its Motion for Reconsideration only on January 5, 2024. In *People v. Mallari*,[24] the Supreme Court reiterated that:

> Judgments or orders become final and executory by operation of law and not by judicial declaration. **The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed**. The court need not even pronounce the finality of the order as the same becomes final by operation of law. (Emphasis supplied)

Accordingly, the assailed Resolution dated October 12, 2023 had already attained finality and is immutable and unalterable. Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.[25]

Assuming *arguendo* that the Resolution dated October 12, 2023 had not attained finality and the *Petition for Review* was seasonably filed, the Court would nevertheless deny the Petition for lack of legal authority on the part of petitioner to file the same.

Petitioner lacks the legal authority to file the Petition.

The Court *En Banc* rules that the Office of the Solicitor General (OSG) is the proper party to institute an appeal of criminal cases before this Court.

Section 10, Rule 9 of the RRCTA is categorical:

> **RULE 9**
> **PROCEDURE IN CRIMINAL CASES**
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> xxx xxx xxx
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> 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**

[24] G.R. No. 197164, December 4, 2019.
[25] *People v. Santiago y Magtuloy*, G.R. No. 228819, July 24, 2019.

> **jurisdiction**. He 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. (Emphasis supplied)

Thus, while the OSG may deputize BIR legal officers to appear before this Court in cases under the NIRC, such deputized officers remain under its direct control and supervision.

In fact, Revenue Memorandum Circular (RMC) No. 25-2010 contains the full text of the Memorandum of Agreement (MOA) executed between the OSG and the BIR. Under the MOA, the BIR expressly acknowledged the OSG's primary responsibility to represent the government in all appellate proceedings. Notably, Section B(2)(b) of the MOA requires the BIR to periodically submit to the OSG a list of its handling lawyers for purposes of deputation in cases elevated to the Court *En Banc*.

In *People v. Tuyay*,[26] the Supreme Court held that the BIR Special Prosecutors must attach copies of RMC 25-2010 and the corresponding deputization orders issued by the OSG to establish that they were duly authorized to file the petition for review.

A perusal of the records reveals that the Petition was filed by the Deputized Special Prosecutors of the BIR without appending RMC No. 25-2010. Worse, the OSG was not even copy furnished with the *Petition for Review*.[27] Absent any proof that petitioner was deputized by the OSG, petitioner lacks the authority to institute the Petition.

The Court's conclusion is reinforced by jurisprudence. In *Malayan Insurance Co., Inc. v. Piccio*,[28] where the private complainant appealed the criminal aspect of the case without the OSG's conformity, the Supreme Court held that:

> To expound, it is well-settled that the authority to represent the State in appeals of criminal cases before the Court and the CA is vested solely in the OSG which is the law office of the Government whose specific powers and functions include that of representing the

[26] G.R. No. 206579, December 1, 2021.
[27] EB Docket, pp. 10 to 11.
[28] G.R. No. 193681, August 6, 2014.

> Republic and/or the people before any court in any action which affects the welfare of the people as the ends of justice may require.
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> Accordingly; jurisprudence holds that if there is a dismissal of a criminal case by the trial court or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People. The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, the People are therefore deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court. In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, an **appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible.** (Emphasis supplied)

Similarly, in *Cu v. Ventura*,[29] where the private complainant also appealed the criminal aspect of the case without the OSG's conformity, the Supreme Court reiterated that:

> Again, jurisprudence holds that **if there is a dismissal of a criminal case by the trial court, or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People**. The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, the People are deemed as the real parties-in-interest in the criminal case and, therefore, **only the OSG can represent them in criminal proceedings pending in the CA or in this Court**. In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, **an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible.** (Emphasis supplied)

In the present case, petitioner assails the acquittal of the respondents by the Court in Division. In particular, petitioner asserts that the Court in Division erred in ruling that the crime has prescribed. As petitioner appealed the criminal aspect of the case without the OSG's conformity, the Petition must be dismissed for lack of legal personality.

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[29] G.R. No. 224567, September 26, 2018.

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Even assuming *arguendo* that the Court were to pass upon the merits of the case, the Petition would nonetheless be denied on the ground of prescription of the crime charged.

The crime has already prescribed.

The Court *En Banc* concurs with the ruling of the Court in Division that the crime has prescribed. In resolving the issue of prescription, the Court considers the following: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[30]

Pursuant to Section 281 of the Tax Code, all violations punishable under its provisions shall prescribe after five (5) years, *viz*:

> **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.
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> 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.
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> 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.

Thus, prescription begins to run from the day of commission of the offense, or if the date is unknown, from the date of discovery thereof. In either case, the institution of judicial proceedings interrupts the prescriptive period.

In the landmark case of *Lim, Sr. v. Court of Appeals*,[31] the Supreme Court discussed that:

> The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact

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[30] Domingo v. Sandiganbayan, G.R. No. 109376, January 20, 2000.
[31] G.R. Nos. 48134-37, October 18, 1990.

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of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.

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The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.** (Emphasis supplied)

Although the case was decided under the 1939 NIRC, the provision on the prescription of crimes under the old Tax Code is substantially identical to that found in the present law. Section 354 of the 1939 NIRC states that:

SEC. 354. *Prescription for Violations of Any Provisions 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.

Accordingly, the Supreme Court categorically ruled that where the date of the commission is unknown, the prescriptive period shall commence from the date of its discovery and shall continue to run until the Information filed in Court. Significantly, the Court explained that the filing of a Complaint-Affidavit before the DOJ for preliminary investigation does not suspend prescription and the five-year period continues to run until the filing of the Information in court.

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The Court is not unmindful of the Supreme Court's subsequent pronouncement in *People v. Consebido*,[32] where it was held that:

> The Court takes this opportunity to pronounce that **the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period.** While it is ideal that all cases are resolved promptly, the reality is that this is not done at all times, whether for valid reasons or not. The offended party, which is primarily the State, should not be prejudiced by any delay in the conduct of the preliminary investigation even for cases covered by summary procedure.
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> xxx xxx xxx
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> But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, **this new rule shall apply prospectively.** (Emphasis supplied)

However, *People v. Consebido* was promulgated only on April 2, 2025. The Court therein explicitly declared that the new rule shall be applied prospectively, in keeping with the principle that the interpretation most favorable to the accused must govern in matters of prescription.

Consequently, cases filed prior to said date must be governed by the Court's earlier interpretation of prescription in tax cases. In other words, the doctrine in *Lim, Sr. v. Court of Appeals* remains controlling to cases filed prior to the promulgation of *People v. Consebido*.

Jurisprudence cited below illustrates how the Supreme Court has consistently applied newly established doctrines prospectively in criminal cases.

In *People v. Lim*,[33] where the Supreme Court, in an earlier decision, laid down the mandatory policy to be enforced by the PDEA in drug-related arrests, the Supreme Court expressly declared that such policy applies only to cases filed in court after the promulgation of Lim, thus:

> The mandatory policy laid down in *Lim* should not be given retroactive effect. Pertinent portion of *Lim* clearly **indicates a prospective application of such policy**:
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[32] G.R. No. 258563, April 2, 2025.
[33] G.R. No. 231989, November 13, 2018.

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> Synonymous to "henceforth" are "from now on," "from this point forward," "henceforward," "afterward," "later," "subsequently," "hereupon" or "thereupon." Without doubt, the mandatory policy in *Lim* is applicable only to drug cases under R.A. No. 9165, as amended by R.A. No. 10640, filed **in court after the promulgation of *Lim* on September 4, 2018.**

Thus, the Supreme Court ruled that the mandatory policy should be applied prospectively, governing only those cases filed in court after the date of its promulgation.

Similarly, in *AAA261422 v. XXX261422*,[34] the Supreme Court reiterated that the guidelines in *Austria v. AAA*[35] could not be retroactively applied to cases that were still pending before its finality:

> Clearly, what the Petition aims to appeal, based on its contents, is not AAA261422's pecuniary interest civilly speaking, but the substantive merits determinative of XXX261422's criminal liability. Ordinarily, therefore, her admitted failure to obtain the OSG's participation in her appeal of the criminal aspect of the cases *a quo* justifies the appellate court's dismissal of her petition, as instructed by *Austria*. But as aptly stressed during the deliberations by Associate Justice Mario V. Lopez, the esteemed ponente of *Austria*, **the guidelines therein apply prospectively and does not therefore cover the present case as the same was resolved only by the appellate court on June 25, 2020 prior to the finality of *Austria* on March 24, 2023**. (Emphasis supplied)

Likewise, the Supreme Court did not apply the guidelines laid down in *Austria* to the above cited case since the case was still pending prior to the finality of *Austria* which was promulgated on March 24, 2023.

Applying the same principle, the *Consebido* doctrine cannot be applied to the present case, as the Information was filed on August 10, 2023, well before the promulgation of *People v. Consebido* on April 2, 2025. Therefore, the controlling rule in interpreting prescription is still the doctrine enunciated in *Lim, Sr. v. Court of Appeals.*

It bears reiterating that the *Lim* doctrine held that the prescriptive period continues to run until the institution of judicial proceedings in court, notwithstanding the filing of a complaint before the prosecutor's office. Thus, the Court in Division correctly applied the Lim doctrine in interpreting Section 281 of the 1997 NIRC. Specifically, it held that since the charges brought against the accused

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[34] G.R. No. 261422, November 13, 2023.
[35] G.R. No. 205275, June 28, 2022.

were for willful failure to pay taxes, the crime was committed the day immediately after the expiration of the period to pay as contained in the final demand issued by the BIR. The Court in Division thus ruled that the Information should have been filed within five (5) years from September 2015. As the *Information* was filed on August 10, 2023, the government's right to prosecute has already prescribed.[36]

The records reveal that the CIR denied respondent's administrative appeal of the FDDA in a Decision dated August 7, 2015.[37] In the same Decision, the CIR directed respondent to pay within thirty (30) days from receipt thereof, *viz*:

> This refers to the request for reconsideration filed by PGU GENERAL MERCHANDISE INCORPORATED ["PGU"] of the Decision rendered by then OIC Director Ma. Gracia B. Javier of Revenue Region No. 6, Manila, denying its protest against the assessment demanding payment of the aggregate amount of P 48,603,234.77 representing deficiency income tax, value-added tax, documentary stamp tax and compromise penalties for the taxable year 2008.
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> xxx xxx xxx
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> WHEREFORE, predicated on all the foregoing, the Decision denying PGU's protest against the Formal Letter of Demand and Assessment Notices with Assessment Numbers 33-08-IT-3604, 33-08-VT-3605, and 33-08-DS-3606 all dated August 30, 2012, demanding payment of the total amount of P 58,279,680.51 representing deficiency income tax, value-added tax, documentary stamp tax and compromise penalty for the calendar year is hereby affirmed in all respects.
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> Consequently, **PGU General Merchandise Incorporated is hereby ordered to pay the aforestated amount, plus increments that may have accrued thereon until the actual date of payment**, to the Collection Service, BIR National Office, Diliman, Quezon City, **within thirty (30) days from the receipt hereof**; otherwise collection thereof will be effected through the summary remedies provided by law.[38] (Emphasis supplied)

The BIR itself alleged in the Information that respondents willfully failed to pay deficiency VAT "despite final assessment notice, including prior and post notices and formal demands to pay, the last being in the nature of a final notice for them to pay the tax." Clearly, the crime of willful failure to pay taxes was committed upon the lapse of the 30-day period, or sometime in September 2015.

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[36] Docket (CTA Crim. No. O-1054), pp. 131 to 132.
[37] Docket (CTA Crim. No. O-1081), pp. 24 to 33.
[38] *Supra* note 37.

Consequently, the five-year prescriptive period under Section 281 began to run in September 2015. The government, through the DOJ, therefore had until September 2020 to institute judicial proceedings by filing the Information in court. However, the Information was filed only on August 10, 2023. Thus, the crime has already prescribed.

When a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.[39]

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Resolutions, dated October 12, 2023 and February 27, 2024, respectively, in CTA Case No. O-1081 are hereby **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

(With Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[39] *People v. Jabinal*, G.R. No. L-30061, February 27, 1974.

(I join J. Villena's CDO)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
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Promulgated:
NOV 18 2025 4:20pm

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my colleague, Associate Justice Henry S. Angeles, I register my dissent to the *ponencia*, to the extent that as it declares as prescribed the crime in herein case. On the other hand, I concur with *ponencia* in denying the Petition for Review and, consequently, affirming the First Division's Resolutions dated 12 October 2023[1] and 27 February 2024[2], for having been filed out of time and petitioner's lack of legal authority to file the petition.

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1 Division Docket, pp. 85-90.
2 Id., pp. 99-101.

PRESCRIPTION OF THE OFFENSE CHARGED

In the recent case of *People of the Philippines v. Ulysses Palconit Consebido*[3] (**Consebido**), the Supreme Court *En Banc* ruled that the filing of complaint before the prosecution office tolls the running of the five (5)-year prescriptive period for violations of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Consequently, the Supreme Court abandoned its long-standing ruling in *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[4] (**Lim, Sr.**), wherein the prescriptive period is tolled by the filing of Information with the court.

Although the *ponencia* recognized *Consebido*, it still applied the old doctrine in *Lim, Sr.* and declared the crime as prescribed. The *ponencia* ruled that *Consebido* must be applied prospectively (*i.e.*, from its promulgation on 02 April 2025), in keeping with the principle that the interpretation most favorable to the accused must govern in matters of prescription.

I respectfully advance a different view. I reiterate my stance in my Separate Opinion in *People of the Philippines v. Ziegfried Loo Tian*[5] that the pronouncement in *Consebido* should be applied retroactively, dating back to the effectivity of the NIRC of 1997.

<u>**First**</u>, in finding that the Court in *Consebido* explicitly declared that the new rule shall be applied prospectively, the *ponencia* refers to this portion of the decision:

> ...
>
> But in line with the time-honored principle that the interpretation that is the most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply prospectively.[6]
>
> ...

However, it is my view that the above portion in *Consebido* refers only to offenses covered by the 1991 Revised Rules on Summary Procedure (RRSP) and the 2022 Rules on Expedited Procedures in the First Level Courts (REPFLC). The Supreme Court found it necessary to revisit prior pronouncements on the tolling of prescription for offenses covered by these summary procedures, especially in light of

[3] G.R. No. 258563. 02 April 2025.
[4] G.R. Nos. 48134-37, 18 October 1990.
[5] CTA EB Crim. Case No. 112, 04 August 2025.
[6] Supra at note 3.

its rulings in *Republic of the Philippines v. The Honorable Aniano A. Desierto as Ombudsman, et al*[7] (Desierto), which held that prescription is interrupted by the institution of preliminary investigation only for special laws not covered by the RRSP, and *Pastor Corpus, Jr. y. Belmoro v. People of the Philippines*[8] (Corpus), which held that for light offenses, the timely filing of the information in court is necessary to toll prescription. The Supreme Court has now abandoned the said rulings in *Desierto* and *Corpus*, as they are inconsistent with its definitive pronouncement in *Consebido*. Accordingly, for offenses not covered by the RRSP or the REPFLC, this definitive rule must apply retroactively.

This Court would also err in invoking the time-honored principle on the prescription of crimes, which holds that the interpretation most favorable to the accused should be adopted[9], to justify declaring that the better rule is to apply *Consebido* prospectively on the ground that such application would favor the accused. Such reasoning misconstrues the essence of this basic principle of criminal law.

In the 1949 case of *Dominador B. Bustos v. Antonio G. Lucero, Judge of First Instance of Pampanga*[10], the Supreme Court drew a clear distinction between substantive and procedural law, thus:

> ...
>
> As applied to criminal law, **substantive law is that which declares what acts are crimes and prescribes the punishment for committing them**, as distinguished from the **procedural law which provides or regulates the steps by which one who commits a crime is to be punished.** (22 C. J. S., 49.) Preliminary investigation is eminently and essentially remedial; it is the first step taken in a criminal prosecution.
>
> ...

In a Separate Opinion penned by the late Chief Justice Renato C. Corona[11], it is evident that **the *pro reo* doctrine applies *only* to <u>ambiguities</u> in the <u>*substantive*</u> provisions of penal laws, particularly those defining the elements of a crime or the punishment**. **It does <u>*not*</u> extend to procedural matters, such as the computation or application of prescriptive periods**, *viz*:

> ...
>
> The fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law, is to resolve all doubts in

7 G.R. No. 136506, 16 January 2023.
8 G.R. No. 255740, 16 August 2023.
9 *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.
10 G.R. No. L-2068 (Resolution), 08 March 1949; Emphasis supplied.
11 See *People of the Philippines v. Beth Temporada*, G.R. No. 173473, 17 December 2008; Citations omitted, italics in the original text and emphasis supplied.

> favor of the accused. ***In dubio pro reo*. When in doubt, rule for the accused.** This is in consonance with the constitutional guarantee that the accused ought to be presumed innocent until and unless his guilt is established beyond reasonable doubt.
>
> Intimately intertwined with the *in dubio pro reo* principle is the **rule of lenity**. It is the doctrine that "**a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment.**"
>
> ...

Similarly, in *Salvador Estipona, Jr. y Asuela v. Hon. Frank E. Lobrigo, Presiding Judge of the Regional Trial Court, Branch 3, Legazpi City, Albay, and People of the Philippines*[12], although the case focused on plea bargaining, the Supreme Court reiterated the distinction between substantive and procedural law, emphasizing that **procedural rules fall within its exclusive domain** and that **their interpretation does <u>not</u> call for the application of *pro reo***, unless they directly affect substantive rights, to wit:

> ...
>
> **The Supreme Court's sole prerogative to issue, amend, or repeal procedural rules is limited to the preservation of substantive rights, *i.e.*, the former should not diminish, increase or modify the latter.** "Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions." *Fabian v. Hon. Desierto* laid down **the test for determining whether a rule is substantive or procedural in nature.**
>
>> It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. In fact, **a particular rule may be procedural in one context and substantive in another.** It is admitted that what is procedural and what is substantive is frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.
>>
>> **In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the *judicial process for enforcing rights and duties recognized by substantive law* and for justly administering remedy and redress for**

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[12] G.R. No. 226679, 15 August 2017; Citations omitted, italics in the original text and emphasis supplied.

> **a disregard or infraction of them.** If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but ***if it operates as a means of implementing an existing right then the rule deals merely with procedure.***
>
> ...

Relevantly, in *Fil-Estate Properties, Inc. and Fairways and Blue-Waters Resort and Country Club, Inc. v. Hon. Marietta J. Homena-Valencia, in her capacity as Presiding Judge of Branch 1, Regional Trial Court, Kalibo, Aklan, and Sullian Sy Naval*[13] (**Fil-Estate**), the Supreme Court explained the retroactivity of the "fresh period" rule in this wise:

> ...
>
> The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of **the general rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure.** Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.
>
> *Sps. De los Santos* reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect[.]
>
> ...

Applying the foregoing, considering that the *Consebido* doctrine on the interruption of the prescriptive period for criminal tax actions is in the nature of a procedural rule, it may be given retroactive effect to actions pending and undetermined upon its promulgation, there being no vested rights in the rules of procedure.[14]

Indubitably, with the principle explained categorically and in simple terms, the *pro reo* doctrine, also known as the rule of lenity, could only apply when there is doubt in construing the substantive provisions of a penal law — particularly those defining the elements of the crime or prescribing its penalty. Again, it does not apply to the interpretation of procedural rules, such as those governing the computation or interruption of prescription (unless such interpretation would directly affect or impair substantive rights).

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13 G.R. No. 173942 (Resolution), 25 June 2008; Italics in the original text and emphasis supplied.

14 See *Pfizer Inc., et al. v. Edwin V. Galan*, G.R. No. 143389, 25 May 2001.

The *Consebido* doctrine deals with the interpretation of a procedural rule — specifically, when the prescriptive period for criminal tax offenses under the NIRC of 1997, as amended, is interrupted. Jurisprudence consistently holds that procedural rules may be applied retroactively to cases pending and undetermined at the time of their promulgation, there being no vested rights in matters of procedure, as underscored in *Fil-Estate*. As such, the interpretation in *Consebido* does not involve a change in the definition of the crime or its penalties, but rather clarifies the judicial process for enforcing existing substantive rights. Accordingly, the *pro reo* principle finds no application unless the procedural rule's interpretation would directly impair a substantive right — a circumstance not present in this case.

<u>**Second**</u>, it is my humble view that since the Supreme Court's ruling in *Consebido* constitutes the correct interpretation of Section 281[15] of the NIRC of 1997, it is only proper that this interpretation be applied retroactively, from the time the NIRC of 1997 took effect, as may be inferred from the Supreme Court's discussion quoted below:

> ...
>
> **Notably, *Lim, Sr.* applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely noted that the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. This is no longer the case now, as observed in *Panaguiton*. 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.** This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.[16]
>
> ...

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15 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.

16 *People of the Philippines v. Ulysses Palconit Consebido*, supra at note 3; Citation omitted, italics in the original text and emphasis supplied.

From the foregoing, it is clear that the ruling in *Lim, Sr.*—which the CTA had long relied on to hold that preliminary investigation does not toll the running of the prescriptive period—was based on Section 354[17] of the NIRC of 1939. That provision was enacted at a time when preliminary investigations were conducted by justices of the peace, a procedural context that no longer applies. Having said that, the Supreme Court clarified that under Section 281[18] of the NIRC of 1997, the commencement of preliminary investigation interrupts the prescriptive period for the offense.

Third, that *Consebido* must be applied retroactively is further strengthened by the fact that the doctrine on prescription adopted therein is *not a new* doctrine on prescription.[19]

Lastly, as stated in *Consebido*, the Supreme Court recognized that while criminal cases should ideally be resolved promptly, delays are sometimes unavoidable. Therefore, the State, as the offended party, should not be disadvantaged by delays in the Department of Justice's (DOJ's) preliminary investigations.

Based on the foregoing, I respectfully submit that this Court, sitting *En Banc*, is now bound to abandon its previous position of applying *Lim, Sr.* to hold that, in criminal tax cases, the prescriptive period is tolled only upon the filing of the Information in Court. The five (5)-year prescriptive period is, instead, interrupted by the filing of a complaint with the DOJ for purposes of preliminary investigation, not by the filing of the Information with the Court.

In the present case, the five (5)-year prescriptive period started to run from the commission of the crime in September 2015 until it was tolled by the filing of the Complaint-Affidavit with the DOJ on 27 September 2018. Thus, contrary to the *ponencia*'s ruling, the right of the government to institute the case against respondent had not yet prescribed.

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17 SEC. 354. *Prescription for Violations of Any Provisions of This Code.* — All violations of any provisions of this Code shall prescribe after five 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.

18 Supra at note 9.

19 See *People of the Philippines, et al. v. Ascencion P. Olarte*, G.R. No. L-22465, 28 February 1967; *Roberto Brillante v. Court of Appeals and the People of the Philippines*, G.R. Nos. 118757 & 121571, 19 October 2004; *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, G.R. No. 135808, 06 October 2008; *Luis Panaguiton, Jr. v. Department of Justice, et al.*, G.R. No. 167571, 25 November 2008; *People of the Philippines v. Ma. Theresa Pangilinan*, G.R. No. 152662, 13 June 2012; *People of the Philippines v. Mateo A. Lee, Jr.* G.R. No. 234618, 16 September 2019.

TIMELINESS OF THE PETITION

Although prescription should no longer be considered a ground for dismissal, I concur with the *ponencia*'s finding that the instant petition was filed out of time since the First Division's Resolution dated 12 October 2023 had already attained finality. As borne by the records, DOJ, as the counsel of records, received the said Resolution on 23 October 2023.[20] However, it filed its Motion for Reconsideration[21] (**MR**) only 05 January 2024, when the fifteen (15)-day period to file an MR has already expired on 07 November 2023.

PETITIONER'S LEGAL AUTHORITY TO
FILE THE PETITION

Lastly, I further concur with the *ponencia* that the petition must be dismissed as the petitioner lacks the legal authority to file the petition. It was filed by the Special Prosecutors of the BIR without evidence that they are duly deputized by Office of the Solicitor General.

With the foregoing, I vote to: (**i**) **DENY** the Petition for Review filed by petitioner on 19 March 2024; and (**ii**) **AFFIRM** the First Division's Resolutions dated 12 October 2023 and 27 February 2024.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[20] See Notice of Resolution dated 13 October 2023, Division Docket, p. 84.
[21] Id., pp. 91-96.