REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

R-JELL MARKETING & CONSTRUCTION COMPANY, LILY PEDROSO, ERNESTO PEDROSO and ELVIN PEDROSO,
Accused.

CTA Crim. Case No. O-850

For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

x - x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

R-JELL MARKETING & CONSTRUCTION COMPANY, LILY PEDROSO, ERNESTO PEDROSO and ELVIN PEDROSO,
Accused.

CTA Crim. Case No. O-851

For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

x - x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

R-JELL MARKETING & CONSTRUCTION COMPANY, LILY PEDROSO, ERNESTO PEDROSO and ELVIN PEDROSO,
Accused.

CTA Crim. Case No. O-852

For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

x - x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

R-JELL MARKETING & CONSTRUCTION COMPANY, LILY PEDROSO, ERNESTO PEDROSO and ELVIN PEDROSO,
Accused.

CTA Crim. Case No. O-853

For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended.

Present:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated: JUN 30 2021

11:50 a.m.

x - x

RESOLUTION

For the Court's Resolution is accused's "Motion to Quash" filed on 26 February 2021, with plaintiff's "Comment/Opposition (To Accused's Motion to Quash)" filed on 14 May 2021 and received by the Court on 31 May 2021.

In the said Motion to Quash, accused moved for the quashal of the Informations filed against them on the ground of prescription, citing Rule 117, Section 3(g)[1] of the Revised Rules of Criminal Procedure, in relation to Section 281[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

According to the accused, the Joint Complaint-Affidavit was filed against them before the Department of Justice (**DOJ**) on **03 July 2014**, for their alleged violations of the NIRC of 1997, as amended, covering taxable periods 2005, 2006, 2007 and 2008.

Relatedly, the Resolution recommending the filing of Informations against them was issued on 10 September 2018, while the Informations were filed with this Court on **09 December 2020**.

Thus, as contended by the accused, the government's right to prosecute the instant cases against them has clearly prescribed, pursuant to this Court *En Banc*'s ruling in *People of the Philippines v. Ulysses Palconet Consebido*[3] (**Consebido**), citing the Supreme Court case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[4] (**Emilio E. Lim, Sr.**).

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1 **Sec. 3.** *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

...

(g) That the criminal action or liability has been extinguished[.]

...

2 **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.

3 CTA EB Crim. 076, 27 January 2021.

4 G.R. Nos. L-48134-37, 18 October 1990.

Applying the said rulings, the five-year period under Section 281 of the NIRC of 1997, as amended, began to run on **03 July 2014** upon the institution of the judicial proceedings against the accused before the DOJ, and ended on **03 July 2019** or five (5) years thereafter. Since the Informations were filed with the Court only on **09 December 2020** or one (1) year, five (5) months and six (6) days past the said five-year period, the government's right to file action had prescribed.

On the other hand, plaintiff, while agreeing with the pertinent dates alleged by accused, contends that the Informations were not immediately filed by the DOJ because of accused's filing of a "Motion for Reconsideration with Motion to Held in Abeyance the Filing of the Informations"[5] (**MR**). According to plaintiff, it was only on 29 April 2019 that the investigating prosecutor issued a Resolution denying the said MR.

Plaintiff adds that the filing of the Joint Complaint-Affidavit before the DOJ for preliminary investigation interrupted the running of the prescriptive period.

We resolve.

Section 281 of the NIRC of 1997, as amended, reads 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.[6]
>
> ...

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[5] While plaintiff claims that a copy of the said MR was attached to its Comment/Opposition, none was found in the records.

[6] Emphasis supplied.

In *Emilio E. Lim, Sr.*, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) to mean 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, *up to* the filing of the information in court does not exceed 5 years, *viz*:

> ...
>
> Not only 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 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.
>
> ...
>
> 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.**
>
> ...
>
> **Unless amended by the legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. 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 a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.[7]
>
> ...

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[7] Citation omitted and emphasis supplied.

Applying the foregoing in the case at bar, the prescriptive period began to run when the Joint Complaint-Affidavit was filed against accused before the DOJ on **03 July 2014**, as the date when the violation of the law was discovered and the institution of judicial proceedings for its investigation and punishment. Thus, plaintiff only had five (5) years from then or until **03 July 2019** within which to file the subject Informations with the Court. Notably, the said Informations were filed only with this Court on **09 December 2020**. As such, plaintiff's right to file the subject criminal actions has already prescribed.

As correctly pointed out by accused, *Emilio E. Lim, Sr.* was also recently applied by the Court *En Banc* in *Consebido*. In that case, the Complaint-Affidavit subject thereof was filed with the DOJ on 30 January 2014 (hence, the five-year period ends on 30 January 2019). However, the pertinent Informations were filed with this Court only on 18 March 2019. The Court *En Banc* thus ruled:

> . . .
>
> As explained in the *Lim* case, while tax cases are practically imprescriptible, such doctrine only applies 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".*** Conversely, where the period from the institution of judicial proceedings for the investigation until the filing of the information in court exceeds five (5) years, then the government's right to institute criminal action has prescribed. As discussed earlier, 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.
>
> Such being the case, We see no cogent reason to deviate from the findings and conclusions of the Court in Division in dismissing CTA Crim. Case Nos. 0-700, 0-702 and 0-703 on the ground of prescription.[8]
>
> . . .

With respect to plaintiff's allegation that accused's filing of an MR caused the delay in the filing of the subject Informations, the Court finds the same bereft of merit.

First, Section 281 of the NIRC of 1997, as amended, does not provide that filing of any MR on the Resolution finding probable cause

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8 Emphasis, italics and underscoring in the original text.

against the accused would interrupt the running of the prescriptive period.

Second, as alleged by plaintiff itself, the said MR was resolved by the DOJ as early as **29 April 2019**, or still within the five-year prescriptive period that would have ended on **03 July 2019**. Thus, the Court finds no valid reason as to why plaintiff still failed to file the subject Informations with this Court within the said five-year period even if the Resolution denying accused's MR was issued more than two (2) months prior to the end of such period.

With the foregoing, the Court is left with no choice but to quash the subject Informations as they are barred by prescription.

WHEREFORE, accused R-Jell Marketing & Construction Company, Lily Pedroso, Ernesto Pedroso and Elvin Pedroso's Motion to Quash is **GRANTED**. Accordingly, CTA Criminal Case Nos. O-850, O-851, O-852 and O-853 are hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice