REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA EB Crim. No. 138** (CTA Crim. Case No. O-1054)
	Present:
-versus-	**RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
SHELMARK BUILDERS PHILS., INC. AND SANTIAGO C. BARANGAN, (No. 51 Pisces St., Carmel 5 Subdivision, Tandang Sora, Quezon City, At-Large), *Respondents.*	Promulgated: OCT 22 2025 4:25 pm

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DECISION

ANGELES, *J.*:

THE CASE

Before the Court *En Banc* is a *Verified Petition for Review (of the Resolution dated December 22, 2023)*,[1] assailing the Resolutions dated August 22, 2023,[2] dismissing the case on the ground of prescription, and December 22, 2023,[3] denying the prosecution's *Motion for Reconsideration*, promulgated by this Court's Second Division in CTA Crim. Case No. O-1054, the dispositive portions of which respectively read:

Resolution dated August 22, 2023:

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[1] Docket, pp. 1 to 22.
[2] Docket, pp. 91 to 96; Docket (CTA Crim. No. O-1054), pp. 127 to 132.
[3] Docket, pp. 113 to 117; Docket (CTA Crim. No. O-1054), pp. 121 to 125.

> "**WHEREFORE**, premises considered, the Court finds no probable cause to issue a warrant of arrest in view of the prescription of the criminal offense charged.
>
> Accordingly, CTA Criminal Case No. O-1054 is **DISMISSED** on the ground of prescription.
>
> **SO ORDERED.**"

<u>Resolution dated December 22, 2023</u>:

> "**WHEREFORE**, premises considered, the prosecution's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> On the other hand, the prosecution's **Formal Entry of Appearance** is **NOTED**.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is represented by the deputized special prosecutors from the Bureau of Internal Revenue (BIR). The latter is a government agency mandated to collect national revenue taxes, which in turn, is represented by the Commissioner of Internal Revenue (CIR).[4]

Respondent Shelmark Builders Phils., Inc. is a domestic corporation registered with the Securities and Exchange Commission (SEC) bearing SEC Registration No. 193007. Its primary purpose is to engage in general construction, enlarging, repairing, removing, developing, or otherwise engaging in any work upon buildings, roads, highways, manufacturing, plants, bridges, airfields, piers, docks, mines, shafts, waterworks, railroads, railway structures and all iron, steel, wood, masonry and earth construction and to make, execute, bid for and take or receive any contracts or assignment of contracts therefore, or in relation thereto or connected therewith, and to manufacture and furnish building materials and supplies connected therewith. Its registered address is at 51 Pisces St., Carmel 5 Subdivision, Tandang Sora, Quezon City.[5]

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[4] Par. 5, *Verified Petition for Review (of the Resolution dated December 22, 2023)*, Docket, p. 2.
[5] Par. 6, *Verified Petition for Review (of the Resolution dated December 22, 2023)*, Docket, pp. 2 to 3.

Respondent Santiago C. Barangan is the corporate treasurer and general manager of Shelmark Builders Phils. Inc.[6]

ANTECEDENT FACTS

On August 18, 2006, petitioner filed a *Joint Complaint-Affidavit*[7] with the Department of Justice (DOJ) against the respondents for violation of Sections 254, 255, 256, and 257, in relation to Sections 52(A), 105, and 114(A), of the National Internal Revenue Code of 1997 (1997 NIRC), as amended. Petitioner alleged that respondents deliberately failed to register their business with the BIR and that they deliberately failed to file the tax returns for taxable years 2001 to 2005.[8]

On April 20, 2023, an *Information*[9] was filed before the Court in Division against respondents which reads:

> "That on or about the 15th day of April 2006, in Quezon City, and within the jurisdiction of this Honorable Court, accused Shelmark Builders Phils., Inc., a domestic corporation, doing business in Quezon City and Santiago C. Barangan, being its Treasurer and General Manager, did then and there, willfully, unlawfully and feloniously fail to make and file its income tax return, at the time required by law, with the Bureau of Internal Revenue for taxable year 2005, much less pay the corresponding taxes thereto, amounting to One Million One Hundred Four Thousand Two Hundred Ninety-One Pesos and Twenty Centavos (P1,104,291.20), excluding charges and penalties thereon, despite demand, to the damage and prejudice of the Government.
>
> CONTRARY TO LAW."

The Information charged the respondents for an alleged violation of Section 255, in relation to Sections 253(d) and 256, of the 1997 NIRC, as amended.

PROCEEDINGS BEFORE THE COURT IN DIVISION

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[6] *Supra* note 5.
[7] Docket (CTA Crim. No. O-1054), pp. 98-101.
[8] *Id.*, p. 100.
[9] *Id.*, pp. 5 to 7.

In the Resolution dated May 26, 2023,[10] the Court gave the prosecution a period of five (5) days from receipt to: (1) submit the original or certified true copy of the Referral Letter from the CIR, Department of Justice (DOJ) Investigation Data Form, and the *Joint Complaint-Affidavit*; and (2) make the necessary clarifications in relation to the specific address/es of the signing prosecutors. Thus, the determination of probable cause for the issuance of Warrant of Arrest against the respondents was held in abeyance.

The prosecution posted its *Manifestation/Compliance* on June 13, 2023.[11]

The Court then issued the assailed Resolution dated August 22, 2023,[12] dismissing the case on the ground of prescription.

Aggrieved, the prosecution filed a *Motion for Reconsideration (of the Resolution dated August 22, 2023)* on September 8, 2023,[13] which the Court in Division denied for lack of merit, in the assailed Resolution dated December 22, 2023.[14]

Hence, this Petition.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Petitioner posted its *Verified Petition for Review (of the Resolution dated December 22, 2023)* on January 17, 2024.[15]

In the Notice of Resolution dated February 12, 2024,[16] the Court *En Banc* directed the respondents to file their comments, however, respondents failed to do so.[17]

The present case was submitted for decision on April 25, 2024.[18]

ASSIGNMENT OF ERROR

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[10] *Supra* note 7, pp. 90 to 92.
[11] *Id.*, pp. 96 to 97.
[12] *Id.*, pp. 127 to 132.
[13] *Id.*, pp. 109 to 118.
[14] *Id.*, pp. 121 to 125.
[15] *Supra* note 1.
[16] EB Docket, p. 119.
[17] Records Verification dated April 2, 2024 issued by the Judicial Records Division of this Court, EB Docket, p. 120.
[18] Notice of Resolution dated April 25, 2024, EB Docket, p. 121.

Petitioner alleges that the Court in Division committed the following error, to wit:

> "THE CTA – SECOND DIVISION ERRED WHEN IT FOUND NO PROBABLE CAUSE TO CHARGE RESPONDENT SHELMARK BUILDERS PHILS., INC. AND SANTIAGO C. BARANGAN FOR VIOLATION OF SECTION 255, IN RELATION TO SECTIONS 253(D) AND 256 OF THE NIRC OF 1997, AS AMENDED"[19]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner argues that prescription has not set in, as the period of discovery and the institution of judicial proceedings for the violation of Section 255, in relation to Sections 253 (D) and 256 of the 1997 NIRC, as amended, against respondent Shelmark Builders Phils. Inc. not only triggers the commencement of the prescriptive period, but at the same time triggers interruption of the same prescriptive period, on August 18, 2006, or the date of filing of complaint with the DOJ.

Petitioner also argues that respondents Shelmark Builders Phils., Inc. and Santiago C. Barangan should be held liable for willful failure to file income tax return for the taxable year 2005 in violation of Section 255, in relation to Sections 253 (D) and 256 of the 1997 NIRC, as amended.

RULING OF THE COURT

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

Section 3, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

RULE 9
PROCEDURE IN CRIMINAL CASES

xxx xxx xxx

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[19] Assignment of Error/s, *Verified Petition for Review (of the Resolution dated December 22, 2023)*, EB Docket, p. 11.

> 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)

In *National Power Corp. v. NLRC*,[20] the Supreme Court held that even if the Office of the Solicitor General (OSG) deputizes special attorneys as lawyer, the OSG is still the party entitled to be furnished copies of orders, notices, and decisions. This was also the same conclusion reached by the Supreme Court in *Republic of the Philippines v. Viaje*,[21] where the Supreme Court held that:

> The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." **But it is likewise settled that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.** In this case, records show that it was the OSG that first entered an appearance in behalf of the Republic; hence, it remains the principal counsel of record. **The appearance of the deputized counsel did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record.** Thus, the RTC properly acted within bounds when it relied on the rule that it is the notice to the OSG that is binding. (Emphasis supplied)

As such, the Supreme Court has consistently ruled that the service of decisions on the OSG is the proper basis for computing the reglementary period for filing of appeals and for determining whether a decision had attained finality.[22]

The same principles shall likewise find application in instances where the DOJ serves as the principal counsel and it deputized BIR

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[20] G.R. No. 90933-61, May 29, 1997.
[21] G.R. No. 180993, January 27, 2016.
[22] *Republic of the Philippines v. Court of Appeals*, G.R. No. L-48327, August 21, 1991; *The Director of Lands v. Medina*, G.R. No. L-41968, February 15, 1995; *Republic of the Philippines v. The Register of Deeds of Quezon*, G.R. No. 73974, May 31, 1995.

Special Prosecutors. 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.[23]

Given the foregoing, the deputization of BIR Prosecutors by the DOJ does not divest the latter of its supervision and control over such deputized lawyers. Consequently, the service of decisions upon the DOJ constitutes the proper basis for computing the reglementary period for filing of appeals and for determining whether a decision had attained finality.

In the present case, the DOJ received a copy of the assailed Resolution on December 29, 2023.[24] Consequently, the fifteen (15)-day period to file an appeal commences to run on that date. As such, petitioner had fifteen (15) days from such receipt or until January 15, 2024[25] to file a Petition for Review with the Court *En Banc*, pursuant to Section 9(b), Rule 9 of the RRCTA.

Petitioner filed the present Petition on January 17, 2024. Hence, the present Petition was filed out of time. In *People v. Mallari*,[26] the Supreme Court reiterated that:

> ...[J]udgments 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)

Since the assailed Resolution dated December 22, 2023 has already attained finality, it has become 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.[27]

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[23] *Department of Education v. Nixon Q. Dela Torre, et. al.*, G.R. No. 216748, July 25, 2018.
[24] Docket (CTA Crim. No. O-1054), p. 120.
[25] January 13, 2024 fell on a Saturday, the next working day was January 15, 2024.
[26] G.R. No. 197164, December 4, 2019.
[27] *People v. Santiago y Magtuloy*, G.R. No. 228819, July 24, 2019.

Even assuming the present Petition was filed on time, we rule to **DENY** the present Petition for lack of legal authority of the petitioner to file the petition with the Court *En Banc.*

Petitioner lacks the legal authority to file the petition.

Section 10, Rule 9 of the RRCTA provides that:

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

The foregoing provision is clear that the OSG is the proper party to institute an appeal with the Court *En Banc.* The same provision likewise authorizes the OSG to deputize the legal officers of the BIR in cases brought under the NIRC to the Court *En Banc.* However, such deputized legal officers shall remain under the direct control and supervision of the OSG at all times.

In *Malayan Insurance Company, Inc. v. Piccio,*[28] where the private complainant appealed the order of the trial court dismissing a criminal case, the Supreme Court held that:

> ...[I]t 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 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.

[28] G.R. No. 193681, August 6, 2014.

Similarly, in *Mamerto Austria v. AAA and BBB*,[29] the Supreme Court explained that:

> 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 private complainant 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 civil aspect of the case. **Hence, the Court dismissed for lack of legal standing or personality the appeals or petitions for *certiorari* filed by the private offended parties before the SC and CA, without the consent or conformity of the OSG, questioning the dismissal of the criminal case or acquittal of the accused.** (Emphasis supplied)

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 said 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 mandates 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*.[30]

In *People v. Tuyay*,[31] the Supreme Court held that the BIR Special Prosecutors must attach copies of RMC No. 25-2010 and the corresponding deputization orders issued by the OSG to establish that they were duly authorized by the OSG to file the petition for review.

In this case, the present Petition was filed by the Deputized Special Prosecutors of the BIR without submitting any deputization orders issued by the OSG. Petitioner merely appended a copy of the MOA between the OSG and the BIR.[32] Absent any proof of deputation

[29] G.R. No. 205275, June 28, 2022.
[30] *Supra* note 4, at p. 81.
[31] G.R. No. 206579, December 1, 2021.
[32] Rollo, pp. 28-32.

by the OSG, petitioner lacks the authority to institute the present Petition.

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.[33] Since the appeal was filed by the BIR Special Prosecutors and not the OSG. The Petition should be dismissed.

Even if we ruled on the merits of the case, we rule to deny the Petition due to prescription of the crime charged.

The crime has already prescribed.

Pursuant to Section 281 of the 1997 NIRC, as amended, 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.
>
> 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.

While it is settled that violations of Section 255 of the 1997 NIRC, as amended, shall prescribe in five (5) years, the question of what interrupts the running thereof remains unsettled.

This was finally decided in *People v. Consebido*,[34] where the Supreme Court held that:

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[33] *Supra* note 28.
[34] G.R. No. 258563, April 2, 2025.

> xxx [T]he 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
>
> 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)

At present, the filing of the complaint with the DOJ tolls the running of the prescriptive period. It bears emphasis that the foregoing ruling was promulgated on April 2, 2025. Notably, the Supreme Court expressly declared that its application shall be prospective in nature. Accordingly, the implications of its prospective application shall be discussed below.

In *People v. Lim*,[35] where the Supreme Court earlier promulgated a decision dated September 4, 2018 which laid down the mandatory policy to be enforced by the Philippine Drug and Enforcement Agency (PDEA) in relation to drug-related arrests, the Supreme Court explained that:

> 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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> xxx xxx xxx
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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.** (Emphasis supplied)

The Supreme Court held that the prospective application of the mandatory policy established in a prior decision meant that it would apply only to cases filed in court after the date of its promulgation.

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[35] G.R. No. 231989, November 13, 2018.

Similarly, in *AAA261422 v. XXX261422*,[36] where the private complainant filed a petition for certiorari questioning the criminal aspect of the case without the OSG's conformity, the Supreme Court reiterated that:

> 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 it was still pending prior to the finality of *Austria* which was promulgated on March 24, 2023. 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.[37]

Based on the foregoing, the *Consebido* doctrine should apply only to cases filed in court after its date of promulgation, April 2, 2025. Accordingly, the said doctrine is inapplicable in this case, as the Information was filed with the Court in Division on April 20, 2023.[38] It bears noting that, prior to the promulgation of the *Consebido* decision, the controlling jurisprudence was the doctrine laid down in *Lim, Sr. v. Court of Appeals*.[39]

The Court in Division committed no error in concluding that the crime has prescribed. In so ruling, it correctly applied the Lim doctrine in relation to Section 281 of the 1997 NIRC. In particular, it held that the *Information* should have been filed before this Court within five (5) years from August 18, 2006, or until August 18, 2011. Since the *Information* was filed on April 20, 2023, the government's right to prosecute has already prescribed.[40]

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[36] G.R. No. 261422, November 13, 2023.
[37] *People v. Pacificador*, G.R. No. 139405, March 13, 2001.
[38] *Supra* note 9.
[39] G.R. Nos. 48134-37, October 18, 1990.
[40] Docket (CTA Crim. No. O-1054), pp. 131 to 132.

The Court *En Banc* concurs. As emphasized in *Lim, Sr. v. Court of Appeals*,[41] the Supreme Court elucidated that:

> xxx 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.
>
> xxx xxx xxx
>
> 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)

Accordingly, the Supreme Court held 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. Consequently, the initiation of proceedings through the filing of a Complaint-Affidavit before the DOJ does not operate to suspend or toll the running of the prescriptive period.

While the *Lim, Sr. v. Court of Appeals* case was resolved prior to the effectivity of the 1997 NIRC, the provision on the prescription of crimes under the old Tax Code is substantially identical to that found in the present law. In particular, 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,

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[41] *Supra*, note 39.

> 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.

On the other hand, Section 281 of the 1997 NIRC, as amended, states that:

> **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.

Accordingly, the doctrine set forth in *Lim, Sr. v. Court of Appeals* is applicable to cases adjudicated under the 1997 NIRC, as amended, prior to the promulgation of the *Consebido* decision.

In the instant case, petitioner alleged that the date of the commission of the crime is unknown.[42] Consequently, pursuant to Section 281 of the 1997 NIRC, the five (5)-year prescriptive period commenced to run on the date of its discovery or August 18, 2006, the date when the Complaint-Affidavit was filed with the DOJ.

Applying the doctrine laid down in *Lim, Sr. v. Court of Appeals*, the DOJ had until August 18, 2011, or five (5) years from the date of discovery within which to file the corresponding Information in Court. However, as the *Information* was filed only on April 20, 2023 or more than eleven years (11) and eight (8) months from August 18, 2011, the crime has already prescribed.

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[42] Par. 29, *Verified Petition for Review (of the Resolution dated December 22, 2023)*, Docket, p. 15.

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.[43]

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Resolutions dated August 22, 2023 and December 22, 2023, respectively, in CTA Crim. Case No. O-1054 are **AFFIRMED.**

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

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

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

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
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

SHELMARK BUILDERS PHILS., INC. AND SANTIAGO C. BARANGAN, (No. 51 Pisces St., Carmel 5 Subdivision, Tandang Sora, Quezon City, At-Large).
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CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
OCT 22 2025 4:20 pm

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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 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 Second Division's Resolution dated 22 August 2023 and Resolution dated 22 December 2023 (**Assailed Resolution**), for having been filed out of time and petitioner's lack of legal authority to file the petition.

PRESCRIPTION OF THE OFFENSE CHARGED

The *ponencia*, at the outset, acknowledged the recent case of *People of the Philippines v. Ulysses Palconit Consebido* [1] (**Consebido**) where the Supreme Court *En Banc* declared that "the filing of complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period". However, the *ponencia* deemed *Consebido*'s application to be prospective in nature, thus, it should apply only to cases filed in court after its promulgation on 02 April 2025.

As the present case was filed prior to 02 April 2025, the *ponencia* applied the doctrine in the then prevailing case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines* [2] (**Lim, Sr.**) in which the prescriptive period is tolled by the filing of the Information before the Court, instead of the filing of the complaint before the prosecution office. Applying *Lim, Sr.*, the *ponencia* concluded that the Department of Justice (**DOJ**) has five (5) years from the date the crime was discovered on 18 August 2006 or until 18 August 2011 within which to file the Information with the Court. Since the Information was filed only on 20 April 2023, the *ponencia* declared that the crime has prescribed.

I respectfully advance a different view and reiterate my stance in my Separate Opinion in *People of the Philippines v. Ziegfried Loo Tian*[3] that the pronouncement in *Consebido* should be applied retroactively, dating back to the effectivity of the National Internal Revenue Code (**NIRC**) of 1997.

First, in concluding that *Consebido* should apply prospectively, the *ponencia* cites this portion of the decision:

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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.[4]
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> ...

I espouse a different interpretation. It is my view that the above portion in *Consebido* refers only to offenses covered by the 1991 Revised Rules on Summary Procedure and the 2022 Rules on Expedited Procedures in the First

[1] G.R. No. 258563, 02 April 2, 2025.
[2] G.R. Nos. L-48134-37, 18 October 1990.
[3] CTA EB Crim. Case No. 112, 04 August 2025.
[4] Supra at note 1; Citation omitted.

Level Courts (**Revised Rules on Expedited Procedures**) (and thus, not to criminal tax offenses covered by the Revised Rules of the Court of Tax Appeals [**RRCTA**]).

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 its rulings in *Republic of the Philippines v. The Honorable Aniano A. Desierto as Ombudsman, et al.*[5] (**Desierto**), which held that prescription is interrupted by the institution of preliminary investigation only for special laws not covered by the 1991 Revised Rules on Summary Procedure, and *Pastor Corpus, Jr. y Belmoro v. People of the Philippines*[6] (**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 aforesaid rulings in *Desierto* and *Corpus*, as they are inconsistent with its definitive pronouncement in *Consebido*—that the filing of a criminal complaint before the DOJ tolls the running of the prescriptive period, even for offenses potentially covered by the Revised Rules on Expedited Procedures. Accordingly, for offenses not covered by the 1991 Revised Rules on Summary Procedure or the Revised Rules on Expedited Procedures, this definitive rule must apply retroactively.

<u>Second</u>, it is my view that since the Supreme Court's ruling in *Consebido*—that the prescriptive period for criminal tax offenses is interrupted by the institution of judicial proceedings, particularly the commencement of preliminary investigation—**constitutes the proper and authoritative interpretation of Section 281[7] of the NIRC of 1997**, then this interpretation must be applied retroactively, *i.e.*, from the time the NIRC of 1997 took effect, as may be inferred from the Supreme Court's discussion quoted below:

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> 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.

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5 G.R. No. 136506, 16 January 2023.

6 G.R. No. 255740, 16 August 2023.

7 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 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.[8]
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> ...

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[9] 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[10] 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, as can be seen from the cases below.

In the 1967 case of *People of the Philippines, et al. v. Ascension P. Olarte*[11] (**Olarte**), which was later cited in *People of the Philippines v. Mateo A. Lee, Jr.*[12] (**Lee, Jr.**) and *People of the Philippines v. Ma. Theresa Pangilinan*[13] (**Pangilinan**), the Supreme Court settled divergent views as to the effect of filing a complaint with the Municipal Trial Court for purposes of preliminary investigation on the prescriptive period of the offense. The High Court therein held that the filing of the complaint for purposes of preliminary investigation interrupts the period of prescription of criminal responsibility. It explicitly adopted the ordinary sense of the word "instituted," ruling that it

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8 Supra at note 1: Citation omitted, italics in the original text and emphasis supplied.

9 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.

10 Supra at note 6.

11 G.R. No. L-22465, 28 February 1967.

12 G.R. No. 234618, 16 September 2019.

13 G.R. No. 152662, 13 June 2012.

includes the initiation of proceedings for preliminary investigation, not just the formal filing of an Information in Court.

Then, in the 2004 case of *Roberto Brillante v. Court of Appeals and the People of the Philippines*[14] (**Brillante**), citing the 1983 case of *Emiliano A. Francisco and Harry B. Bernardino v. The Honorable Court of Appeals and the People of the Philippines*[15] (**Francisco**), the Supreme Court said that the ruling in *Francisco* amplified the *Olarte* doctrine when it categorically ruled that the filing of a complaint with the fiscal's office suspends the running of the prescriptive period of a criminal offense.

Relevantly, in the 2008 case of *Luis Panaguiton, Jr. v. Department of Justice, et al.*[16] (**Panaguiton**), the Supreme Court had the occasion to discuss the structure of the judicial system during the enactment of Act No. 3326, as well as the prevailing jurisprudence at the time, which recognized that the filing of a complaint before the justice of the peace for purposes of preliminary investigation was sufficient to toll the prescriptive period. This conclusion is understandable, given that, during that period, it was the justice of the peace (or municipal judge) who was authorized to conduct the preliminary investigation.

Then, as emphasized in the 2012 case of *Pangilinan* and reiterated in the 2019 case of *Lee, Jr.*, the Supreme Court categorically ruled in *Panaguiton* that the commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses charged under Batas Pambansa (BP) Blg. 22. This followed the Supreme Court's declaration that there is no longer any distinction between cases prosecuted under the Revised Penal Code (**RPC**) and those covered by special laws with respect to the interruption of the period of prescription, *viz*:

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> Since BP Blg. 22 is a special law that imposes a penalty of imprisonment of not less than thirty (30) days but not more than one year or by a fine for its violation, it therefor prescribes in four (4) years in accordance with the aforecited law. The running of the prescriptive period, however, should be tolled upon the institution of proceedings against the guilty person.

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14 G.R. Nos. 118757 & 121571, 19 October 2004.
15 G.R. No. L-45674, 30 May 1983.
16 G.R. No. 167571, 25 November 2008.

> In the old but oft-cited case of *People v. Olarte*, this Court ruled that the filing of the complaint in the Municipal Court even if it be merely for purposes of preliminary examination or investigation, should, and thus, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits. This ruling was broadened by the Court in the case of *Francisco, et al. v. Court of Appeals, et al.* when it held that the filing of the complaint with the Fiscal's Office also suspends the running of the prescriptive period of a criminal offense.
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> Respondent's contention that a different rule should be applied to cases involving special laws is bereft of merit. **There is no more distinction between cases under the RPC and those covered by special laws with respect to the interruption of the period of prescription.** The ruling in *Zaldivia v. Reyes, Jr.* is not controlling in special laws. In *Llenes v. Dicdican, Ingco, et al. v. Sandiganbayan, Brillante v. CA, and Sanrio Company Limited v. Lim*, cases involving special laws, this Court held that the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription. In *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court even ruled that investigations conducted by the Securities and Exchange Commission for violations of the Revised Securities Act and the Securities Regulation Code effectively interrupts the prescription period because it is equivalent to the preliminary investigation conducted by the DOJ in criminal cases.
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> In fact, in the case of *Panaguiton, Jr. v. Department of Justice*, which is in all fours with the instant case, this Court categorically ruled that commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses they had been charged under BP Blg. 22. Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control, like the accused's delaying tactics or the delay and inefficiency of the investigating agencies.[17]
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> ...

From the foregoing declarations, it can be inferred that the phrase "when proceedings are instituted against the guilty person", as used in the law, was understood—*even then*—to include the filing of a complaint for purposes of preliminary investigation, and not merely the filing of an Information before the Court. As such, it is evident that the law intends for the prescriptive period to be interrupted at the very first formal investigative step, as preliminary investigation is deemed to partake of the nature of a judicial proceeding that suspends the running of prescription.

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[17] Supra at note 13; Citations omitted, italics in the original text and emphasis supplied.

Furthermore, in *Securities and Exchange Commission v. Interport Resources Corporation, et al.*[18] (**Interport**), the Supreme Court explained that it is a well-settled doctrine that the conduct of a preliminary investigation—which serves as a procedural safeguard to determine whether a crime has been committed and whether there is probable cause to charge the accused—interrupts the running of the prescriptive period.

It is also worth noting that, in his Concurring Opinion in *Interport*, Supreme Court Associate Justice Dante O. Tiñga (Ret.) emphasized that any form of investigation instituted against the guilty person which may ultimately lead to prosecution, as provided by law, is sufficient to toll the running of the prescriptive period.

From the foregoing, in all criminal cases—whether prosecuted under the RPC or special laws—the prescriptive period is interrupted upon the commencement of proceedings for the prosecution of the accused, which is effectively accomplished through the initiation of a preliminary investigation, the first formal investigative step that marks the institution of criminal proceedings against the accused.

Fourth, 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 DOJ's preliminary investigations. The Supreme Court also reiterated its ruling in *Olarte*, emphasizing that "it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under [their] control. All that the victim of the offense may do on [their] part to initiate the prosecution is to file the requisite complaint."

Thus, in light of the Supreme Court's recent categorical pronouncement affirming that the established doctrine on prescription applies to criminal tax cases, 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.

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18 G.R. No. 135808, 06 October 2008.

As to when the five (5)-year prescriptive period commenced to run, *Consebido* provides that Section 281 of the 1997 NIRC incorporates the Discovery Rule or the Blameless Ignorance Doctrine which computes prescription from the date of discovery in view of the propensity of tax evaders to come up with devious methods to thwart the Bureau of Internal Revenue's (**BIR**'s) investigation and conceal the commission of the offense. As an exception, *Consebido* instructs that the said doctrine does not apply "when there are reasonable means to be aware of the commission of the offense, the prescriptive period should be reckoned from the date of commission of the offense."

Here, the BIR would have been able to ascertain that accused did not file its 2005 income tax return. However, the Court's Second Division found that based on the Commissioner of Internal Revenue's *Referral Letter* dated 18 August 2006, the BIR's preliminary investigation revealed that the accused failed to register with the BIR and has not been filing income tax returns.[19] Hence, the Discovery Rule applies and the five (5)-year prescriptive period was triggered when the crime was discovered (*i.e.*, when the Complaint-Affidavit was filed with the DOJ on 18 August 2006). This same act interrupted or tolled the running of the prescriptive period.

Thus, contrary to the *ponencia*'s ruling, the right of the government to institute the case against respondent had not yet prescribed when the Information was filed with the Court on 20 April 2023.

TIMELINESS OF THE PETITION

Although prescription should no longer be considered a ground for dismissal, I concur with the *ponencia* finding that the instant petition was filed out of time when petitioner filed the petition on 17 January 2024 even though its fifteen (15)-day period to appeal has already expired on 15 January 2024, petitioner having received the Assailed Resolution on 29 December 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 Deputized Prosecutors of the BIR without submitting any deputization orders from the Office of the Solicitor General.

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[19] See Resolution dated 22 August 2023, *rollo*, p. 94.

With the foregoing, I vote to: (**i**) **DENY** the Petition for Review filed by petitioner on 23 January 2024; and (**ii**) **AFFIRM** the Second Division's Resolutions dated 22 August 2023 and 22 December 2023.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice