REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-*versus*-

FAIVO PASCUAL BARTOLOME,
Respondent.

CTA *EB* CRIM. NO. 140
(CTA CRIM. CASE No. O-985)

Members:

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

Promulgated:
OCT 09 2025 3:50 p.m.

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RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is petitioner's *Motion for Reconsideration [To the Decision promulgated on March 11, 2025]* posted on March 27, 2025 and electronically filed on March 21, 2025. Respondent did not file a comment on petitioner's *Motion for Reconsideration* within the time prescribed by the Court.[1]

Petitioner prays for the reversal of the Court *En Banc's* Decision (Assailed Decision) dated March 11, 2025, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* filed by People of the Philippines is **DENIED** for lack of merit.

[1] Records Verification Report dated June 19, 2025.

> Accordingly, the Court in Division's Resolutions dated August 9, 2023 and January 12, 2024 in CTA Criminal Case No. O-985 are hereby **AFFIRMED**.
>
> **SO ORDERED**.

Petitioner's *Motion for Reconsideration* is based on the sole argument that the filing of the complaint with the fiscal's office or the Department of Justice (DOJ) suspends the running of the five (5)-year prescriptive period for criminal tax cases, citing Section 1 of Rule 110 of the Revised Rules of Criminal Procedure.

Petitioner disagrees with the Court that it is the filing of the Information in Court that interrupts the five (5)-year prescriptive period pursuant to Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended, and quotes the decision of the Supreme Court in *People of the Philippines vs. Clemente Bautista,*[2] where it was supposedly ruled that "the prescriptive period remains tolled from the time the complaint was filed with the Office of the Prosecutor until such time...." Further, citing the case of *Tupaz vs. Ulep,*[3] petitioner bolsters its argument by the pronouncement of the Supreme Court therein that the complaint for preliminary investigation having been filed with the DOJ on June 8, 1989, the criminal action was deemed instituted within the five (5)-year prescriptive period. Applying these principles to the present case, petitioner insists that counted from February 5, 2016, the filing of the Joint Complaint-Affidavit before the DOJ for preliminary investigation on October 23, 2020 interrupted the running of prescription and remains so until the Information was filed before the Court of Tax Appeals (CTA) on December 5, 2022. It was, thus, erroneous on the part of the Court *En Banc* to affirm the Resolutions of the Court's First Division (Court in Division)[4] that filing of the Information against the accused in Court only on December 5, 2022 was already way beyond the five (5)-year prescriptive period, hence, should be dismissed.

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[2] G.R. No. 168641, April 27, 2007.
[3] G.R. No. 127777. October 1, 1999.
[4] Court Resolutions dated August 9, 2023 and January 12, 2024 issued by the First Division in *People of the Philippines vs. Faivo Pascual Bartolome*, CTA Crim. Case No. O-985, pp. 17-27.

RULING OF THE COURT

It must be recalled that the assailed *En Banc* Decision stemmed from the Court in Division's two (2) Resolutions dismissing the criminal charge against accused Favio Pascual Bartolome on the ground of prescription.

The facts show that respondent was charged with failure to pay deficiency value-added tax (VAT) for taxable year (TY) 2012 despite demand to pay under Section 255 of the 1997 NIRC, as amended. The demand to pay the alleged deficiency VAT was in the form of a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) served upon taxpayer on January 5, 2016 which was not validly protested making the same final, executory and demandable on February 5, 2016. The Court in Division ruled that the filing of the Information in Court on December 5, 2022 was way beyond the five (5)-year period counted from February 5, 2016, hence dismissible on the ground of prescription.

For clarity of discussion, we quote the relevant portions of the Resolution issued by the Court in Division on August 9, 2023, thus:

> Under Section 228 of the NIRC, the cause of action accrued after the BIR served the notice and demand to pay, *i.e.,* FLD/FAN, to the accused on January 5, 2016. Even with the demand to pay, the accused still refused to pay his deficiency taxes within the allotted period, as stated in the FLD/FAN. **Neither did the accused file a valid protest within thirty (30) days from January 5, 2016, or until February 4, 2016, making the assessment final and executory on February 5, 2016. Hence, the BIR posted the accused's tax case for enforcement of collection on March 17, 2016**.
>
> Applying *Lim* and *Tupaz,* the five (5)-year prescriptive period to indict the accused for failure to pay tax lapsed on February 5, 2021. **Thus, the right of the government to institute the case against the accused had already prescribed when the Information was filed before this Court on December 6,** *(sic)* **2022**.
>
> **WHEREFORE**, premises considered, CTA Crim. Case No. O-985 is **DISMISSED** on the ground of prescription. *(Emphases supplied)*

The Court *En Banc* affirmed the above ruling of the Court in Division in the assailed *EB* Decision by similarly applying the principle laid down in the case of *Emilio Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines.*[5] We quote the relevant portion of the assailed *EB* Decision, to wit:

> In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines,* the Supreme Court interpreting the above-quoted Section 281 of the 1997 NIRC, as amended (previously Section 354 of the NIRC), ruled that 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, the government's right to file an action will not prescribe.
>
> xxx xxx xxx
>
> Records show that the filing of the Information against the accused was filed in Court only on December 5, 2022 which is way beyond the five (5)-year prescriptive period provided under Section 281 of the 1997 NIRC, as amended, and implemented by Section 2, Rule 9 of the RRCTA. The Court in Division correctly dismissed the criminal case due to prescription. *(Emphasis not ours)*

Indeed, the jurisprudential milieu at the time the complaint was filed with the DOJ on October 23, 2020 and the Information with this Court on December 5, 2022 leaned towards the foregoing interpretation enunciated in the *Lim* case and the more recent case of *Corpus vs. People of the Philippines,*[6] *(Corpus* case*)* where the Supreme Court pronounced that it is the timely filing of the necessary Information before the court that tolls the running of the prescriptive period for criminal cases.

All this changed on April 2, 2025 when the Supreme Court promulgated its decision in the case of *People of the Philippines vs. Ulysses Palconit Consebido,*[7] *(Consebido* case*)* where it was categorically ruled that in criminal violations punishable under the 1997 NIRC, as amended, the criminal complaint filed with the DOJ tolls the running of the prescriptive period, and we quote, thus:

> As discussed above, the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period **for offenses under the 1997 NIRC, as amended,** whether its

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[5] G.R. Nos. 48134-37, October 18, 1990.
[6] G.R. No. 255740, August 16, 2023.
[7] G.R. No. 258563, April 2, 2025.

> commission was immediately known or unknown at the time of the violation. *(Emphasis supplied)*

In the *Consebido* case, the Supreme Court endeavored to discuss the prevailing jurisprudence on the tolling of offenses covered by the 1991 Revised Rules on Summary Procedure and the 2022 Rules on Expedited Procedures in the First Level Courts so as to distinguish between institution of proceedings for preliminary investigation and that of filing of the Information with the DOJ. We shall no longer belabor to discuss these distinctions here because as to criminal tax cases under the 1997 NIRC, as amended, the Supreme Court in the *Consebido* case is clear - the filing of the criminal complaint with the DOJ is the act that tolls the running of the five (5)-year prescriptive period pursuant to Section 281 of the 1997 NIRC, as amended, quoted as follows:

> **Section 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. *(Emphasis supplied)*

The *Consebido* case traced the wordings of Section 281 of the 1997 NIRC, as amended, to Section 2 of Act 3320 passed on December 4, 1926 at a time when the justice of the peace was the one conducting preliminary investigations of criminal offenses, thus the use of the words "judicial proceedings," hence, the need to revisit previous jurisprudence interpreting said Section 281.

The Supreme Court in the same case also elaborated upon the reckoning point of the five (5)-year period by stating that "the prescriptive period for violations of the NIRC that are not known at the time of the commission shall begin to run from its discovery." However, in the present case, this dictum is not relevant as the crime charged in the present case is the accused's willful failure to pay the deficiency VAT where the point of commission of the violation is quite clear, *i.e.*, finality of the assessment, as aptly discussed in the Resolution of the Court in Division dated August 9, 2023 when it stated that "when the offense charged involves a taxpayer's refusal to pay the taxes due, the date of commission of *which is known*, the five-year prescriptive period begins to run from the date the assessment notices became final and executory."

Counted from the time the assessments became final and executory on **February 5, 2016,** the prosecution had until **February 5, 2021** to institute criminal proceedings with the DOJ.

Applying the ruling of the Supreme Court in the *Consebido* case, the criminal complaint filed against the accused on October 23, 2020 with the DOJ is well-within the five (5)-year prescriptive period.

This Court cannot, however, *reverse* the assailed *EB* Decision because the prevailing ruling at the time of the commission of the criminal violation, *i.e.*, February 5, 2016, is enunciated by the Supreme Court in the *Lim* case where it was pronounced that 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 years, the government's right to file an action will not prescribe. We find it apt to quote portions of the *Lim* case, to wit:

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

To achieve a judicious ruling on the matter at hand, this Court is inclined to adopt the above ruling in the *Lim* case in determining the merits of the present *Motion for Reconsideration.* The Supreme Court has placed a premium on the prospective application of judicial decisions especially in cases where a different view is adopted. The ruling of the Supreme Court in the case of *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.,*[8] is instructive, and we quote:

> It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. xxx xxx xxx

The principle of prospectivity of judicial decisions was recognized in the case of *Albino S. Co vs. Court of Appeals and People of the Philippines,*[9] where the Supreme Court said, thus:

> The principle of prospectivity has also been applied to judicial decisions which, "although in themselves not laws, are nevertheless evidence of what the laws mean....(this being) the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system....

In that same case, the Supreme Court provided the rationale for their prospective application, to wit:

> A compelling rationalization of the prospectivity principle of judicial decisions is well set forth in the oft-cited case of *Chicot County Drainage Dist. v. Baxter States Bank,* 308 US 371, 374 [1940]. The Chicot doctrine advocates the imperative necessity to take account of the actual existence of a statute prior to its nullification **as an operative fact negating acceptance of 'a principle of absolute retroactive invalidity.'** *(Emphasis supplied)*

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[8] G.R. No. 110318, August 28, 1996.
[9] G.R. No. 100776, October 28, 1993.

Lastly, the *Consebido* case expressly provides that this new rule shall apply prospectively.

The abandonment of the doctrine laid down in the *Lim case* in so far as the tolling of the prescriptive period shall not serve to reverse the ruling of the Court in the assailed *En Banc* Decision and the conclusion on prescription of the crime charged stays.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (To the Decision promulgated on March 11, 2025)* posted on March 27, 2025 is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

(With due respect, see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB Crim. No. 140** (CTA Crim. Case No. O-985)
	Present:
- versus -	**RINGPIS-LIBAN**, *Acting P.J.*, **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
FAIVO PASCUAL BARTOLOME, Respondent.	Promulgated: OCT 09 2025 3:50 p.m.

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DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Associate Justice Catherine T. Manahan, I am constrained to register my dissent to the *ponencia*, as it denies petitioner People of the Philippines' (**petitioner**'s) "Motion for Reconsideration (To the Decision promulgated on March 11, 2025 [**assailed Decision**])" (**MR**), for lack of merit.

I, respectfully, am unable to subscribe to the affirmance of the assailed Decision's ruling that the government's right to prosecute the subject criminal action has already prescribed on the premise that the Supreme Court's declaration in *People of the Philippines v. Ulysses Palconit Consebido*[1] (**Consebido**) — that the five (5)-year prescriptive period for criminal tax offenses is tolled by the filing of a complaint before the Department of Justice (**DOJ**), rather than by the filing of an Information before the Court —

[1] G.R. No. 258563, 02 April 2025 [Per J. Inting, *En Banc*].

constitutes a supposed "new doctrine on prescription" that may be applied only prospectively.

Contrary to the view espoused in this Resolution, I submit that **the pronouncement in *Consebido* should be applied retroactively**, dating back to the effectivity of the National Internal Revenue Code (**NIRC**) of 1997. Section 281[2] of the NIRC of 1997, which governs the prescriptive period for criminal tax actions, expressly provides that the five (5)-year prescriptive period "shall be interrupted when proceedings are instituted against the guilty persons" and, according to *Consebido*, the proper interpretation thereof should be that the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period.

To be clear — and I take this opportunity to stress this to avoid creating further confusion and compounding its consequences — **the above ruling in *Consebido* is <u>not</u> a new doctrine on prescription**. In upholding the said interpretation, **the Supreme Court merely reaffirmed what should have been the correct construction of the relevant provision from the outset, thereby revealing, by implication, this Court's error in applying the doctrine in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[3] (Lim, Sr.), which was understood to have ruled that, in criminal tax cases such as the present one, the prescriptive period is tolled only upon the filing of the Information in court**.

At this juncture, I wish to highlight certain inaccurate assumptions, whether explicitly or implicitly stated in this Resolution that, in my humble view and with utmost due respect, must be withdrawn to ensure the fair and orderly administration of justice.

***First*, it is incorrect to assume that *Consebido* effectively abandoned *Lim, Sr.*, as the doctrines in these cases do not conflict with each other — unlike *Consebido vis-à-vis Republic of the Philippines v. The Honorable Aniano A. Desierto as Ombudsman, et al.*[4] (Desierto) and *Pastor Corpus, Jr. y Belmoro v. People of the Philippines*[5] (Corpus, Jr.), insofar as the tolling of the prescriptive periods for crimes covered**

[2] SEC. 281. *Prescription for Violations of any Provision of this Code*. — **<u>All violations of any provision of this Code shall prescribe after five (5) years</u>**.

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, **<u>from the discovery thereof and the institution of judicial proceedings for its investigation and punishment</u>**. (Emphasis and underscoring supplied)

[3] G.R. Nos. L-48134-37, 18 October 1990 [Per C.J. Fernan, Third Division].

[4] G.R. No. 136506, 16 January 2023 [Per J. Hernando, First Division].

[5] G.R. No. 255740, 16 August 2023 [Per J. J.Y. Lopez, Second Division].

by the 2022 Rules on Expedited Procedure in the First Level Courts[6] (REPFLC) is concerned.

In *Consebido*, the Supreme Court held that the prescriptive period for prosecuting crimes is tolled upon the filing of a complaint with the DOJ — not when the case reaches the court. **The High Court *specifically* clarified that under Section 281[7] of the NIRC of 1997, the prescriptive period for criminal tax offenses that are not immediately known starts from the time the violation is discovered and is interrupted once a preliminary investigation begins. This interpretation ensures that the intent of the law — to set a clear time limit for the prosecution of tax violations — is properly applied.**

To reiterate, for emphasis, **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 of the NIRC of 1997**. Thus, as aforesaid, 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:

> ...
>
> **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. **<u>The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense.</u>** 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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> ...

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6 A.M. No. 08-8-7-SC, 01 March 2022.
7 Supra at note 2.
8 Supra at note 1; Citation omitted, italics in the original text, emphasis and underscoring 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[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.

It bears noting that the latter portion of the decision in *Consebido*, which states that "[t]his new rule shall apply prospectively", refers only to offenses covered by the 1991 Revised Rules on Summary Procedure[11] (**RRSP**), which was supplanted by the REPFLC[12] (and thus, not to criminal tax offenses covered by the Revised Rules of the Court of Tax Appeals[13] [**RRCTA**]), *viz*:

> ...
> [E]ven if the commencement of preliminary investigation interrupted the running of the prescriptive period, the complaint should have been filed with the DOJ within five years from October 25, 2008, or not later than October 25, 2013. Thus, **the offense had already prescribed as early as when the Joint Complaint-Affidavit dated January 30, 2014, was filed.**
>
> In fine, the CTA *En Banc* did not err in affirming the dismissal of the Complaint.
>
> *The rule on the tolling of the prescriptive period for offenses*
>
> As discussed above, **the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the 1997 NIRC, as amended, whether its commission was immediately known or unknown at the time of the violation.**
>
> **Still, the Court deems it necessary to revisit the prevailing jurisprudence on the tolling of offenses covered by the 1991 Revised Rules on Summary Procedure as well as the 2022 Rules on Expedited Procedures in the First Level Courts.**

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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 2.

11 Resolution of the Court *En Banc* 1991, 15 October 1991.

12 Supra at note 6.

13 A.M. No. 05-11-07-CTA dated 22 November 2005.

In the recent case of *Republic v. Desierto*, the Court held that the rule in *Panaguiton, Jr.*, *i.e.*, prescription is tolled by the institution of proceedings for preliminary investigation, only applies to special laws that are not covered by the Revised Rules on Summary Procedure. For acts covered by special laws where the Revised Rules on Summary Procedure applies, prescription shall only be interrupted by the filing of the Information and not the commencement of preliminary investigation. This is based on Section 11 of the 1991 Revised Rules on Summary Procedure which states that "[t]he filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information: Provided, however, that in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de officio*."

The ruling in *Desierto* can be traced back to *Zaldivia v. Reyes, Jr.*, which involved a municipal ordinance. The Court held:

> Under Section 9 of the Rule on Summary Procedure, "the complaint or information shall be filed directly in court without need of a prior preliminary examination or preliminary investigation." Both parties agree that this provision does not prevent the prosecutor from conducting a preliminary investigation if he wants to. However, the case shall be deemed commenced only when it is filed in court, whether or not the prosecution decides to conduct a preliminary investigation. This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.

Subsequently, the Court pronounced in *People v. Pangilinan* that the ruling in *Zaldivia* does not apply to special laws. The Court later clarified in *Jadewell Parking Systems Corp. v. Lidua, Sr.* that "the doctrine of *Pangilinan* pertains to violations of special laws but *not* to ordinances." In *People v. Lee*, the Court explained that "*Jadewell* presents a different factual milieu as the issue involved therein was the prescriptive period for violation of a city ordinance, unlike here as well as in *[Pangilinan]* and *[the] other above-mentioned related cases*, where the issue refers to prescription of actions pertaining to violation of a special law." Thus, the Court said that *Jadewell* did not abandon the doctrine in *Pangilinan*.

The 1991 Revised Rules on Summary Procedure was supplanted by the 2022 Rules on Expedited Procedures in the First Level Courts. Rule II, Subsection B, Section 1 thereof states that "[t]he filing of criminal cases governed by the Rule on Summary Procedure shall either be by complaint or by information."

The DOJ likewise issued Circular No. 028, entitled the "2024 DOJ-NPS Rules on Summary Investigation and Expedited Preliminary Investigation," which applies when the penalty prescribed by the law is imprisonment of one day to six years, fine regardless of the amount, or both. A summary investigation shall be conducted if the prescribed penalty is imprisonment of one day to one year, fine regardless of the amount, or both. The investigating prosecutor must immediately resolve a case subject of summary investigation upon receipt of its records.

> **With this dilemma, 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. **The Court reiterates its reasoning in *People v. Olarte* that *"it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint."***
>
> In addition, Chief Justice Gesmundo extensively discussed the history of the pertinent laws and rules on the filing of complaint or information for criminal cases and the conduct of preliminary investigation in his Reflections. Based on an examination of these laws and rules, he aptly surmised:
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>> **[T]he use of the phrase "complaint or information" in Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule II, Subsection B, Section 1 of [the] 2022 Rules on Expedited Procedures in the First Level Courts**, for purposes of the tolling of the prescriptive period of offenses, must henceforth, be construed to refer to the filing of the complaint or information before the prosecution office."
>
> __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.**__
>
> **Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. __The ruling in *Desierto* and the subsequent case of *Corpus, Jr. v. People of the Philippines*, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned.__**[14]
>
> ...

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 *Desierto*, which held that prescription is interrupted by the institution of preliminary investigation only for special laws not covered by the RRSP, and *Corpus, Jr.*, which held that for light offenses, the timely filing of the information in court is necessary to toll prescription.

[14] Supra at note 1; Citations omitted, italics in the original text, emphasis and underscoring supplied.

Clearly, the Supreme Court has now abandoned the pertinent rulings in *Desierto* and *Corpus, Jr.*, 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 covered by the REPFLC.

The same concept of jurisprudential abandonment cannot be conveniently applied between *Consebido*, on one hand, and *Lim, Sr.*, on the other, precisely because there is no inconsistency between them. For criminal tax offenses committed under the NIRC of 1939, the doctrine in *Lim, Sr.* applies, whereas for those committed under the NIRC of 1997, *Consebido* is the controlling doctrine. Unfortunate as it may be, with due respect, I am of the humble opinion that this Court erred in failing to appreciate this crucial distinction. Accordingly, for criminal tax offenses covered by the RRCTA, and not by the RRSP or the REPFLC, the definitive rule in *Consebido* must apply retroactively.

Furthermore, 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 the 1967 case of *People of the Philippines, et al. v. Ascencion P. Olarte*[15] (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."**

The foregoing reiteration of the ruling in *Olarte*, coupled with the fact that the aforesaid prospective application was confined to offenses covered by the REPFLC, reveals the Supreme Court's intent to firmly settle the applicable rule on prescription of *all* criminal tax offenses committed since the effectivity of the NIRC of 1997.

It is also worth stressing that in *Consebido*, before the Supreme Court discussed the necessity of revisiting the prevailing jurisprudence on the tolling of offenses under the RRSP and the REPFLC, it had already settled the rule applicable to the parties in that case: the commencement of preliminary investigation interrupts the running of the prescriptive period. The Supreme Court upheld the CTA *En Banc*'s dismissal of the complaint not because the Information was filed

[15] G.R. No. L-22465, 28 February 1967 [Per J. J.B.L. Reyes, *En Banc*].

beyond the five (5)-year prescriptive period, but because the complaint itself was filed after the lapse of such period. In fact, the Supreme Court expressly applied the long-settled doctrine in *Olarte* in resolving the controversy in *Consebido*, which involved a criminal tax offense. On this score, respectfully, there should be no question that, with respect to criminal tax offenses, the *Consebido* doctrine applies retroactively.

***Second*, to be precise, it was not respondent, but this Court, that relied on the doctrine in *Lim, Sr.* in finding that the prosecution belatedly filed the subject Information on 05 December 2022 — more than five (5) years after the government's right to institute a criminal action had prescribed on 05 February 2021, reckoned from 05 February 2016, when the assessment became final and executory for respondent's failure to file a valid protest thereto within thirty (30) days from receipt of the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) on 05 January 2016.**

Respondent's reliance on the *Lim, Sr.* doctrine is immaterial because the controlling interpretation of Section 281[16] of the NIRC of 1997 rests with the Supreme Court, whose pronouncements form part of the legal system under Article 8[17] of the Civil Code of the Philippines. Even assuming that respondent invoked *Lim, Sr.* in good faith, such reliance cannot prevail over the Supreme Court's later and definitive construction in *Consebido*, which clarified that the filing of a complaint before the DOJ interrupts the prescriptive period for criminal tax offenses under the NIRC of 1997. **Once the Supreme Court clarifies the interpretation of a law, that ruling applies to all cases still pending[18], regardless of the parties' prior position or the lower court's earlier rulings to the contrary.**

Thus, this Court's consistent reliance, in a long line of cases, on the *Lim, Sr.* doctrine is of no consequence, as its decisions are not binding precedents. The principle of *stare decisis et non quieta movere*, which holds that once a case has been decided a certain way, any subsequent case involving the same legal issue should be resolved in the same manner[19], applies only to decisions promulgated by the Supreme Court.

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16 Supra at note 2.

17 Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

18 See *Jonathan Y. Dee v. Harvest All Investment Limited, et al.*, G.R. Nos. 224834 & 224871, 15 March 2017 [Per J. Perlas-Bernabe, First Division], citing *Jaime Tan, Jr., as Judicial Administrator of the Intestate Estate of Jaime C. Tan v. Hon. Court of Appeals (Ninth Special Div.), et al.*, G.R. No. 136368, 16 January 2002 [Per J. Puno, First Division]; *Oriental Assurance Corporation v. Solidbank Corporation*, G.R. No. 139882, 16 August 2000 [Per J. Panganiban, Third Division].

19 *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 174134, 30 July 2008 [Per J. Austria-Martinez, Third Division], citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R No. 149834, 02 May 2006 [Per J. Sandoval-Gutierrez, Second Division].

***Third*, I am of the opinion that this Court would err in invoking — albeit only in concept — the time-honored principle on the prescription of crimes, which holds that the interpretation most favorable to the accused should be adopted[20], to justify declaring that the better rule is to apply *Consebido* prospectively on the ground that such application would favor the accused (herein respondent). With due respect, 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*[21], 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[22], it is evident that **the *pro reo* doctrine applies *only* to ambiguities in the *substantive* provisions of penal laws, particularly those defining the elements of a crime or the punishment. It does *not* 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 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.**"
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> ...

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20 *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001 [Per J. De Leon, Jr., Second Division]

21 G.R. No. L-2068 (Resolution), 08 March 1949 [Per J. Tuason, *En Banc*]; Emphasis supplied.

22 See *People of the Philippines v. Beth Temporada*, G.R. No. 173473, 17 December 2008 [Per J. Ynares-Santiago, *En Banc*]; Citations omitted, italics in the original text and emphasis supplied.

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*[23], 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 not 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 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,*

[23] G.R. No. 226679, 15 August 2017 [Per J. Peralta, *En Banc*]; Citations omitted, italics in the original text and emphasis supplied.

and Sullian Sy Naval[24] (**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.[25]

It is thus clear that the *pro reo* doctrine, also known as the rule of lenity, applies only 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. 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.

Furthermore, with due respect, the 1993 case of *Albino S. Co v. Court of Appeals and People of the Philippines*[26] (**Co**) cannot be used to support the prospective application of *Consebido* in this case, as that case involved the protection of a **substantive right** of therein accused — the constitutional safeguard against *ex post facto* laws — where retroactive application of a later judicial interpretation (*Victor Que v. People of the Philippines and Intermediate Appellate Court*[27]) would have penalized acts that, under then-prevailing official guidance (a DOJ Circular), were not considered criminal. In

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[24] G.R. No. 173942 (Resolution), 25 June 2008 [Per J. Tinga, Special Second Division]; Italics in the original text and emphasis supplied.

[25] See *Pfizer Inc., et al. v. Edwin V. Galan*, G.R. No. 143389, 25 May 2001 [Per C.J. Davide, Jr., First Division].

[26] G.R. No. 100776, 28 October 1993 [Per C.J., Narvasa, *En Banc*].

[27] G.R. Nos. 75217-18 (Resolution), 21 September 1987 [Per J., Paras, Second Division].

that context, the Supreme Court properly applied the *pro reo* principle, as the ambiguity concerned the substantive scope of the penal statute and directly implicated the elements of the offense.

In contrast with *Co*, 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.

In light of the Supreme Court's categorical declaration in *Consebido*, which affirmed that the established doctrine on prescription applies to criminal tax cases, I respectfully submit that this Court, sitting *En Banc*, should thoughtfully reconsider its reliance on *Lim, Sr.* and align its rulings with the prevailing doctrine. Specifically, when the records clearly show that the prescriptive period was tolled by the filing of a complaint with the DOJ for purposes of preliminary investigation, consistency with *Consebido* requires that a dismissal grounded on *Lim, Sr.* be set aside and the criminal tax case remanded for trial.

Accordingly, in this case, the five (5)-year prescriptive period began to run on **05 February 2016**, the day after the last day for filing a protest against the FLD/FAN dated 21 December 2015. On this date, the assessment became final and executory, and the offense was deemed "committed." The criminal tax offense at issue is respondent Faivo Pascual Bartolome's (**respondent**'s) violation of Section 255[28] of the NIRC of 1997, as amended, specifically his willful failure to pay deficiency value-added tax (**VAT**) in the amount of ₱2,347,154.63 for the taxable year (**TY**) 2012. Thus, petitioner had only until **05 February 2021** within which to institute proceedings with the DOJ.

Since the concerned Revenue Officers referred their criminal complaint against respondent to the DOJ on **23 October 2020**, the institution

[28] SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

of judicial proceedings for preliminary investigation on that date effectively interrupted or tolled the prescriptive period. Hence, contrary to the Court *En Banc*'s ruling, the government's right to pursue the case against respondent had not yet prescribed when the Information was filed on **05 December 2022**.

All told, I vote to (1) **GRANT** petitioner's "Motion for Reconsideration (To the Decision promulgated on March 11, 2025)," (2) **REVERSE** and **SET ASIDE** the First Division's Resolutions dated 09 August 2023 and 12 January 2024 in CTA Crim. Case No. O-985, and (3) **REMAND** the case to the First Division for the conduct of the pre-trial conference and the arraignment of respondent Faivo Pascual Bartolome.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice