REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SHELMARK BUILDERS PHILS., INC. AND SANTIAGO C. BARANGAN,
No. 51 Pisces St., Carmel 5 Subdivision, Tandang Sora, Quezon City,
(At-Large),
Accused.

CTA CRIM. CASE NO. O-1054
For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended

Members:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

DEC 22 2023

x - x

RESOLUTION

Before this Court is prosecution's **Formal Entry of Appearance with Motion for Reconsideration**, filed on September 8, 2023.

To recall, in the Resolution dated August 22, 2023 (assailed Resolution), the Court dismissed the instant case on the ground of prescription.

The prosecution now moves for reconsideration, praying that the Court reverse and set aside the assailed Resolution dismissing the Information.

Likewise, the Bureau of Internal Revenue (BIR) formally entered its appearance as Deputized Special Prosecutors in accordance with Office Order No. 0282 issued by the Department of Justice (DOJ).

Accordingly, the ***Formal Entry of Appearance*** of the BIR is **NOTED**.

In the ***Motion for Reconsideration***, the prosecution argues that, contrary to the findings of the Court, prescription has not set in, as the instant case involves an offense punishable by a special law, the National Internal Revenue Code (NIRC) of 1997, as amended; therefore, the filing of the complaint with the prosecutor's office interrupts the prescription period, as provided under Section 2 of Act No. 3326.

The prosecution states that under Section 2 of Act No. 3326, there are two rules in determining when the prescriptive period shall begin to run, *viz*: (1) from the day of the commission of the violation of law, if such is known; and (2) from its discovery, if not then known, and the institution of judicial proceedings for its investigation and punishment. The prosecution alleges that the case falls under the second rule and that the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines* (*Lim* case)[1] applies to such rule.

Further, the prosecution insists that, pursuant to Section 281 of the NIRC of 1997, as amended, institution of judicial proceedings for the investigation and punishment of the offense triggers both the commencement of the prescriptive period, as well as the interruption of the same period. Hence, prescription has not set in as the filing of the complaint with the DOJ on August 18, 2006 served as the commencement and interruption of the prescriptive period.

The *Motion for Reconsideration* lacks merit.

The facts of the case are not in dispute. The Joint Complaint-Affidavit for tax evasion against the accused was filed before the DOJ on August 18, 2006, while the Information dated September 12, 2022 was filed before this Court only on April 20, 2023.

In the assailed Resolution, this Court cited the same case proffered by the prosecution in its motion, the *Lim* case;[2] however, unlike the prosecution, this Court concluded that the instant case was filed with the Court eleven (11) years and eight (8) months too late.

In interpreting Section 281 of the NIRC, as amended, and the *Lim* case, the prosecution argues that it is the filing of the Joint Complaint-Affidavit that tolls the running of the prescriptive period under Section 1 of Rule 110 of the Rules of Court of 1997, as amended.

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

To recall, as held in the assailed Resolution, based on Section 281 of the NIRC of 1997, as amended, and the *Lim case*,[3] where the commission of the violation of the law is not known, the prescriptive period begins to run from:

(1) Discovery; and
(2) Institution of judicial proceedings.

It is worthy to reiterate and to point out the pronouncement of the Supreme Court in the said *Lim case*,[4] to wit:

> "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.**"

Based on the foregoing, it is clear that from the discovery and institution of judicial proceedings, up to the filing of the information in Court should be within five years and should not exceed such period.

As to the tolling of the prescriptive period, the prosecution advances its interpretation that, while the filing of the Joint Complaint-Affidavit before the DOJ commences the running of the period, the same event also tolls the period.

We cannot subscribe to such interpretation.

As early as 1990, the Supreme Court has held in the *Lim* case[5] that the prescriptive period is interrupted by the filing of Information in court. In 2005, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), which provided for the interruption of the prescriptive period under Section 2 of Rule 9 of the said Rules, to wit:

"RULE 9
PROCEDURE IN CRIMINAL CASES

xxx xxx xxx

[3] *Id.*
[4] *Id.*
[5] *Id.*

> SEC. 2. *Institution of criminal actions.* — **All criminal actions before the Court in Division** in the exercise of its original jurisdiction shall be **instituted by the filing of an information in the name of the People of the Philippines**. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing. *(Rules of Court, Rule 110, sec. 2a; n)*
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> **The institution of the criminal action shall interrupt the running of the period of prescription**. *(Rules of Court, Rule 110, sec. 1, par. 2a)*" *(Emphasis supplied)*

Based on the foregoing, criminal cases falling within the jurisdiction of the Court in Division is instituted by filing the information before the said court. Such institution of the criminal action before the court shall interrupt the running of the period of prescription.

Counting five (5) years from the filing of the Joint Complaint-Affidavit before the DOJ on **August 18, 2006**, the government's right to institute a criminal action prescribed on <u>August 18, 2011</u>. Clearly, when the instant Information was filed before this Court on <u>April 20, 2023</u>, eleven (11) years and eight (8) months have passed since the right to institute a criminal action prescribed.

Considering the clear requirement under the law, and the length of delay in this case, the prosecution's assertion that its right to due process and to have its day in Court are unavailing.

All told, this Court finds no cogent reason to disturb its ruling in the assailed Resolution.

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice