REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB CRIM. NO. 132** (CTA Crim. Case No. O-940)
	Present:
- versus -	**RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
ZIEGFRIED LOO TIAN, (No. 1013, Juan Luna Street, Brgy. 27, Zone 1, Tondo, Manila) Respondent.	Promulgated: NOV 14 2025 2:30 pm

x - x

DECISION

BACORRO-VILLENA, J.:

This case once again brings to the fore the persistent challenge faced by the Court *En Banc* in resolving the issue of prescription in criminal tax cases, particularly in reconciling the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with conflicting judicial interpretations. The divergence between this Court's previous reliance on *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[1] (**Lim, Sr.**) and the more recent and definitive ruling of the Supreme Court in *People of the Philippines v. Ulysses Palconit Consebido*[2] (**Consebido**) compels a deliberate

[1] G.R. Nos. L-48134-37, 18 October 1990 [Per C.J. Fernan, Third Division].
[2] G.R. No. 258563, 02 April 2025 [Per J. Inting, *En Banc*].

departure from precedent that has proven legally untenable. To continue applying *Lim, Sr.* is to perpetuate a misapplication of the law and to undermine the government's right to prosecute tax offenses.

In *Consebido*, the Supreme Court categorically ruled that Section 281[3] of the NIRC of 1997, as amended, must be interpreted to mean that "the filing of the criminal complaint before the [Department of Justice (**DOJ**)] shall toll the running of the prescriptive period for offenses under the [NIRC of 1997, as amended], whether its commission was immediately known or unknown at the time of the violation." The Court further explained that the portion of its ruling declaring that "[t]his new rule shall apply prospectively" referred only to offenses covered by the 1991 Revised Rules on Summary Procedure[4] (**RRSP**) — later supplanted by the 2022 Rules on Expedited Procedure in the First Level Courts[5] (**REPFLC**) — and not to criminal tax offenses under the jurisdiction of the CTA. Quoted below is the pertinent discussion in *Consebido*:

> ...
> [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.**
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> 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.**
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> **<u>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.</u>**

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3 **SEC. 281**. *Prescription for Violations of any Provision of this Code.*

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

5 A.M. No. 08-8-7-SC, 01 March 2022.

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:

> **[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.**[6]
>
> ...

From the foregoing, *Consebido* clarified, with finality, that the prescriptive period in tax cases is tolled by the filing of the complaint before the DOJ, and that such interpretation merely affirms the correct construction of Section 281 from its inception, rather than declaring a new doctrine on prescription. Accordingly, *Consebido* must be applied retroactively to all cases governed by the said law, dating back to its effectivity, thereby displacing contrary applications premised on *Lim, Sr.* Any contrary view would only prolong doctrinal confusion and further erode public confidence in the just and consistent application of tax laws.

With the governing doctrine on prescription thus settled, the Court now turns to the antecedent facts and procedural backdrop of the present case to determine how these principles apply.

Before the Court *En Banc* is a "Verified Petition for Review (of the Resolution dated June 26, 2023)"[7] (**Verified Petition for Review**) filed *via* registered mail on 07 September 2023 by petitioner People of the Philippines (**petitioner/prosecution**), pursuant to Rule 43[8] of the Rules of Court (**ROC**), as amended[9], in accordance with Rule 9[10], Section 9(b)[11] of the Revised Rules of the Court of Tax Appeals[12] (**RRCTA**). It seeks the reversal and setting aside of the Resolution dated 05 April 2023[13] (**first assailed Resolution**) and Resolution dated 26 June 2023[14] (**second assailed Resolution**) of the Court's Third Division and Special

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6 *People of the Philippines v. Ulysses Palconit Consebido*, supra at note 2; Citations omitted, italics in the original text, emphasis and underscoring supplied.

7 *Rollo*, pp. 1-240, with annexes.

8 *Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.*

9 A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.

10 *Procedure in Criminal Cases.*

11 **SEC. 9**. *Appeal; period to appeal.* —

> ...
>
> (b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a **petition for review as provided in Rule 43 of the Rules of Court** within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. (Emphasis supplied)

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

13 Division Docket, pp. 228-231.

14 Id., pp. 246-249.

Third Division[15], respectively, in CTA Crim. Case No. O-940 entitled *People of the Philippines v. Ziegfried Loo Tian.*

The first assailed Resolution dismissed the case on the ground of prescription of the offense charged, while the second assailed Resolution denied petitioner's Motion for Reconsideration[16] (**MR**) thereto for lack of merit. The dispositive portions of the first and second assailed Resolutions read as follows:

<u>First Assailed Resolution dated 05 April 2023</u>

...

WHEREFORE, CTA Crim. Case No. 940 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

...

<u>Second Assailed Resolution dated 26 June 2023</u>

...

WHEREFORE, plaintiff's "Motion for Reconsideration (of the Resolution dated April 05, 2023)" is hereby **DENIED** for lack of merit.

SO ORDERED.

...

<u>PARTIES OF THE CASE</u>

Petitioner is represented by the Bureau of Internal Revenue (**BIR**), the government agency mandated to collect national revenue taxes, and is represented by the Commissioner of Internal Revenue (**CIR**) through Revenue Officers (**ROs**) Emerita D. Tan (**Tan**), Carine P. Balmeo (**Balmeo**), Dominador A. Callangan (**Callangan**), Arnel A. Boco (**Boco**) and Adelina P. See (**See**), with office address at Room 704, BIR National Office Building, BIR Road, Diliman, Quezon City.[17]

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[15] The Third Division and Special Third Division are both composed of Associate Justice Ma. Belen M. Ringpis-Liban, as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, as Members.

[16] Division Docket, pp. 232-240.

[17] Paragraph 7, PARTIES, Verified Petition for Review (of the Resolution dated June 26, 2023), supra at note 7, pp. 2-3.

Respondent Ziegfried Loo Tian (**respondent/Loo Tian**) is registered with the BIR Revenue District Office (**RDO**) No. 29 - Tondo, San Nicolas, Manila with Taxpayer Identification Number (**TIN**) 193-647-148-000. He is the sole proprietor of Golden Taste Food Services & General Merchandising engaged in the business of food catering and/or wholesale of general merchandise, with business address at No. 1013 Juan Luna St., Brgy. 27, Zone 4, Tondo, Manila.[18]

FACTS OF THE CASE

On 26 October 2022, the prosecution filed an Information[19] against respondent for violation of Section 254[20] of the NIRC of 1997, as amended, the accusatory portion thereof reads:

> ...
>
> That on April 15, 2012, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen and residing in the Philippines, and required by law, rules and regulations to file his Annual Income Tax Return (ITR) for taxable year 2011, did, then and there, willfully, unlawfully and feloniously attempt to evade or defeat tax as he deliberately failed to file his ITR for the said taxable year, which resulted to basic deficiency income tax in the amount of Fifty Two Million Nine Hundred Forty Two Thousand Eight Hundred Twenty Three Pesos and Seventy Nine Centavos (Php 52,942,823.79), exclusive of interests, penalties and surcharges to the damage and prejudice of the Government of the Republic of the Philippines.
>
> ...

The prosecution attached the following supporting documents to the Information:

1. Certified True Copy of the Resolution dated 11 May 2017[21], signed by Prosecution Attorney Jayvee Laurence B. Bandong, with recommending approval of CP Emilie Fe M. Delos Santos, Officer-in-Charge of the Anti-Fraud Division, and approved by Prosecutor General Victor C. Sepulveda;

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[18] Par. 8, id., p. 3.
[19] Division Docket, pp. 5-6.
[20] **SEC. 254**. *Attempt to Evade or Defeat Tax.*
[21] Division Docket, pp. 7-9.

2. Certified True Copy of the Resolution dated 01 September 2014[22], signed by Prosecution Attorney Jayvee Laurence B. Bandong, with recommending approval of Senior Assistant State Prosecutor Susan F. Dacanay, Chairperson of the Task Force on BIR, and approved by Prosecutor General Claro A. Arellano;

3. Certified True Copy of the National Prosecution Service (**NPS**) Investigation Data Form dated 05 July 2012;[23]

4. Certified True Copy of the Referral Letter dated 05 July 2012[24] of then BIR Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**), addressed to then Secretary of Justice Leila De Lima (**Secretary De Lima**); and,

5. Certified True Copy of the Joint Complaint-Affidavit (**JCA**) dated 05 July 2012[25] of ROs Tan, Balmeo, Callangan, Boco and See, with attached Annexes "A" to "T-104", inclusive of sub-markings.[26]

On 05 April 2023, the Third Division rendered the first assailed Resolution[27], dismissing the case on the ground of prescription of the offense charged. Aggrieved, petitioner filed an MR[28] thereto, but the Special Third Division[29] denied the same for lack of merit in the second assailed Resolution.[30]

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the Third Division and Special Third Division's rulings, on 07 September 2023, petitioner filed *via* registered mail the present Verified Petition for Review[31] before the Court *En Banc*, docketed as CTA EB Crim. No. 132. The Court *En Banc* received the same on 18 September 2023.

22 Id., pp. 10-19.
23 Id., p. 20.
24 Id., pp. 21-22.
25 Id., pp. 23-37.
26 Id., pp. 38-211.
27 Supra at note 13.
28 Supra at note 16.
29 The case was transferred to the Special Third Division pursuant to Administrative Circular No. 01-2023 dated 23 May 2013, Reorganizing the Divisions of the Court.
30 Supra at note 14.
31 Supra at note 7.

In a Resolution dated 09 November 2023[32], the Court *En Banc* directed petitioner to submit the List of Authorized Handling Lawyers pursuant to Paragraph B(2)(b)[33] of the Memorandum of Agreement (**MOA**) dated 17 March 2020[34] and Republic Act (**RA**) No. 10071, otherwise known as the Prosecution Service Act of 2010.

On 08 January 2024, petitioner filed a "Compliance with Submission (Re: Resolution dated November 09, 2023)"[35], which the Court *En Banc* noted and deemed sufficient compliance in its Resolution dated 18 April 2024.[36] In the same Resolution, the Court *En Banc* gave respondent a period of ten (10) days to file a Comment on the Verified Petition for Review.[37]

In a Minute Resolution dated 06 June 2024[38], the Court *En Banc* noted the Records Verification dated 14 May 2024[39], which stated that respondent failed to file his Comment on the Verified Petition for Review. Consequently, the case was deemed submitted for decision.

On 12 August 2024, respondent filed an "[MR] (Re: Notice/Resolution dated June 0[6], 2024) with Motion to Admit the Attached Comment/Opposition to the [Verified Petition for Review]"[40] (**MR with Motion to Admit**), stating that his failure to file Comment was not intentional but was due to the fact that his counsel, De Ramos and Bantigue Law Office, was not furnished a copy of the Verified Petition for Review.

In the Resolution dated 29 October 2024[41], the Court *En Banc* granted respondent's MR with Motion to Admit, thereby admitting

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32 *Rollo*, pp. 243-246.

33 B. HANDLING CASES

...

2. Cases appealed before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals *En Banc*.

...

b. **The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.** (Emphasis supplied)

34 Annex "A" to Verified Petition for Review, supra at note 7, pp. 25-29.

35 *Rollo*, pp. 248-253, with Annex "A".

36 Id., pp. 256-257.

37 Id.

38 Id., p. 259.

39 Id., p. 258.

40 Id., pp. 260-280, with attached Comment/Opposition.

41 Id., pp. 283-286.

respondent's "Comment/Opposition"[42] and, accordingly, deeming the case submitted anew for decision.

ISSUE

The main issue for the Court *En Banc*'s determination is whether the Third Division and Special Third Division erred in finding no probable cause to charge respondent for violation of Section 254[43] of the NIRC of 1997, as amended, or willful attempt to evade or defeat the payment of income tax (**IT**) for the taxable year (**TY**) 2011.

ARGUMENTS

Petitioner raises the following arguments in support of the present Verified Petition for Review:

1. Prescription has not set in as the period of discovery and the institution of judicial proceedings for violation of Section 254 of the NIRC of 1997, as amended, not only triggers the commencement of the prescriptive period but, at the same time, triggers the interruption of the same prescriptive period; and,

2. Respondent should be held liable for willful attempt to evade or defeat the payment of IT for TY 2011 in violation of Section 254 of the NIRC of 1997, as amended.

Respondent, on the other hand, counter-argues that:

1. The right of the government to prosecute him has prescribed under Section 281[44] of the NIRC of 1997, as amended; and,

2. The case must be dismissed for violation of his right to speedy disposition of cases as petitioner took more than

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[42] Supra at note 40, pp. 264-280.
[43] Supra at note 20.
[44] Supra at note **Error! Bookmark not defined.**.

10 years from the filing of the JCA to the filing of the Information in Court.

<u>RULING OF THE COURT *EN BANC*</u>

Before going into the merits of the case, We find it propitious to first determine whether the Court *En Banc* has jurisdiction over the present petition.

THE COURT *EN BANC* HAS JURISDICTION OVER THE PRESENT PETITION.

The Special Third Division issued the second assailed Resolution denying petitioner's MR[45] on 26 June 2023. Petitioner received the said assailed Resolution on 23 August 2023.[46]

Under Section 2(f)[47], Rule 4 in relation to Section 9(b), Rule 9 of the RRCTA, petitioner had fifteen (15) days from 23 August 2023, or until 07 September 2023, within which to file its appeal before this Court.

Accordingly, on 07 September 2023, petitioner timely filed *via* registered mail the present Verified Petition for Review.[48] Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

After a thorough consideration of the arguments raised by the parties *vis-à-vis* the pertinent laws, rules and regulations, the Court *En Banc* finds merit in the present Verified Petition for Review. However, the case should still be dismissed, albeit on a different ground—the

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45 Supra at note 16.

46 See Notice of Resolution dated 29 June 2023, Division Docket, p. 245.

47 **SEC. 2.** *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

...

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs[.]

48 Supra at note 7.

violation of respondent constitutional right to speedy disposition of cases.

PRESCRIPTION OF THE OFFENSE CHARGED

In resolving the issue of the prescription of the offense charged, the following factors should be considered: (1) the period of prescription for the offense charged; (2) the time when the prescriptive period starts to run; and (3) the time when the prescriptive period is interrupted.[49]

The ***first*** and ***second considerations*** are undisputed. The issue, however, arises with the ***third consideration***.

For an orderly disposition of the issues, We will briefly address the ***first*** and ***second considerations*** before proceeding to the ***third***.

I. THE PRESCRIPTIVE PERIOD FOR TAX EVASION UNDER SECTION 254 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, IS FIVE (5) YEARS UNDER SECTION 281 OF THE NIRC OF 1997, AS AMENDED.

Regarding the ***first consideration***, *i.e.*, prescriptive period of the offense charged, Section 281 of the NIRC of 1997, as amended, governs the prescriptive period for criminal tax actions and provides as follows:

> ...
>
> SEC. 281. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribe after five (5) years.**
>
> **Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.**

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[49] See *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government*, G.R. Nos. 165510-33 (Resolution), 28 July 2006 [Per J. Ynares-Santiago, Special First Division], citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division) and The People of the Philippines*, G.R. No. 109376, 20 January 2000 [Per C.J. Davide, Jr., First Division].

> **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.[50]
>
> ...

The above provision clearly states that the prescriptive period for all violations of the NIRC of 1997, as amended, including the offense charged in this case (*i.e.*, tax evasion under Section 254[51] of the NIRC of 1997, as amended), is **five (5) years**.

II. SINCE THE DAY OF THE COMMISSION OF TAX EVASION IS UNKNOWN AT THE TIME, THE PRESCRIPTIVE PERIOD BEGINS TO RUN UPON ITS DISCOVERY AND THE INSTITUTION OF JUDICIAL PROCEEDINGS FOR ITS INVESTIGATION AND PUNISHMENT.

With regard to the ***second consideration***, *i.e.*, the time when the prescriptive period starts to run, Section 281 of the NIRC of 1997, as amended, provides for two (2) reckoning points for when the prescriptive period begins to run:

1. If the day of the commission is known, prescription begins to run from the day of the commission of the violation of the law; or,

2. If the day of the commission is **unknown**, from its discovery **and** the institution of judicial proceedings for its investigation and punishment.

As can be gleaned from the Third Division and Special Third Division's assailed Resolutions, the date of the tax offense's commission in this case is unknown. Therefore, the applicable reckoning point is the date of discovery of the violation and the institution of judicial proceedings for its investigation and punishment.

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50 Italics in the original text and emphasis supplied.
51 Supra at note 20.

A plain reading of the Information[52] reveals that the alleged violation of Section 254[53] of the NIRC of 1997, as amended, is that respondent "willfully, unlawfully and feloniously attempt[ed] to evade or defeat tax as he deliberately failed to file his ITR for the said taxable year [...]."

Since the crime of tax evasion involves an omission and misrepresentation by respondent, the date of the commission of the violation is unknown until it is discovered. Thus, the Court *En Banc* agrees with the Third Division and Special Third Division's finding that the prescriptive period commences from the discovery of the violation **and** the institution of judicial proceedings for its investigation and punishment.

In the case of *Lim, Sr.*, the Supreme Court discussed the commencement of the prescriptive period where the day of the commission of the violation is unknown and what is contemplated by the term "judicial proceedings," to wit:

> ...
>
> With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of *discovery* of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.
>
> On behalf of the Government, the Solicitor General counters that **the crime of filing false returns can be considered "discovered" only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment** and therefore required the petitioners to pay P1,237,190.55 in deficiency taxes that the tax infractions were discovered.

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52 Supra at note 19.
53 Supra at note 20.

> Not only that. The Solicitor General stresses that **Section 354 [now Section 281] speaks not only of discovery of the fraud but also institution of judicial proceedings.** Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. **It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**
>
> ...
>
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 [now Section 281] 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.**[54]
>
> ...

Clearly from the foregoing, where the date of the commission of the violation is unknown, the five (5)-year prescriptive period begins to run from: (1) the discovery of the violation; and (2) the institution of judicial proceedings of its investigation and punishment, *i.e.*, when the tax offense is indorsed to the Prosecutor's Office for preliminary investigation.

In this case, due to the nature of the tax evasion charge against respondent, the date of the commission of the violation is unknown (as earlier stated). Therefore, the five (5)-year prescriptive period began to run from the discovery of the violation and, subsequently, when the case was indorsed by the CIR, then Commissioner Henares, for preliminary investigation in her Referral Letter dated 05 July 2012[55], addressed to the DOJ through then Secretary De Lima.

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[54] *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*, supra at note 1; Citation omitted, italics in the original text, and emphasis and underscoring supplied.

[55] Supra at note 24.

Additionally, the BIR's designated ROs, who initiated the criminal complaint against respondent, executed the JCA on 05 July 2012[56], as indicated on the document. Furthermore, in the Certification[57] of State Prosecutor Cesar D. Calubag (**State Prosecutor Calubag**), found on the last page of the JCA, ROs Tan, Balmeo, Callangan, Boco and See subscribed and swore to the JCA in his presence on that same date.

Clearly, for purposes of reckoning the five (5)-year prescriptive period, Commissioner Henares' Referral Letter and State Prosecutor Calubag's Certification both confirm that respondent's alleged offense of tax evasion in the payment of IT for TY 2011 was indorsed to the DOJ for preliminary investigation on 05 July 2012.

Applying the ruling in *Lim, Sr.*, since a preliminary investigation is a proceeding for the investigation and punishment of a crime, the five (5)-year prescriptive period commenced on **05 July 2012.**

III. THE PRESCRIPTIVE PERIOD FOR TAX EVASION IS INTERRUPTED BY THE FILING OF THE JOINT COMPLAINT-AFFIDAVIT (JCA) WITH THE DEPARTMENT OF JUSTICE (DOJ) FOR PURPOSES OF PRELIMINARY INVESTIGATION.

As earlier mentioned, the present controversy lies with the ***third consideration***, *i.e.*, the time when the prescriptive period is interrupted.

Petitioner claims that the discovery and the institution of judicial proceedings not only trigger the commencement of the prescriptive period but also interrupt it, pursuant to Section 281[58] of the NIRC of 1997, as amended. In support of this theory, petitioner cites Section 1, Rule 110 of the Revised Rules on Criminal Procedure (**RRCP**), which provides that, for offenses requiring a preliminary investigation, criminal actions shall be instituted by filing a complaint with the proper officer for purposes of conducting the requisite preliminary investigation.

56 Supra at note 25, p. 36.
57 Supra at note 25, p. 37.
58 Supra at pp. 9-10.

Petitioner thus maintains that prescription has not set in, as the filing of the JCA with the DOJ for the conduct of a preliminary investigation triggered both the commencement and interruption of the prescriptive period.

We agree with petitioner.

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, expressly states that the prescriptive period shall be interrupted when "**proceedings are instituted against the guilty persons**." A meaningful resolution of the issue at hand requires a clear understanding of what constitutes the "institution of proceedings" sufficient to interrupt the running of the prescriptive period. To this end, it is necessary to refer to established jurisprudence interpreting similar provisions under both the Revised Penal Code (**RPC**), as amended, and Act No. 3326[59], as amended, which respectively govern the prescription of felonies and violations of special laws, to wit:

RPC, as amended	**Act No. 3326, as amended**
ART. 91. *Computation of prescription of offenses.* — **The period of prescription** shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and **shall be interrupted by the filing of the complaint or information**, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him. The term of prescription shall not run when the offender is absent from the Philippine Archipelago. (Emphasis supplied)	SEC. 2. 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 person**, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

59 AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

Evidently, Section 281[60] of the NIRC of 1997, as amended, substantially mirrors the prescriptive provisions cited above, particularly Section 2 of Act No. 3326, as amended. Given that the NIRC of 1997, as amended, is itself a special law, there is no justification for treating it differently from other special laws when determining the point at which the prescriptive period is deemed interrupted.

In the 1967 case of *People of the Philippines, et al. v. Ascencion P. Olarte*[61] (**Olarte**), which was later cited in *People of the Philippines v. Mateo A. Lee, Jr.*[62] (**Lee, Jr.**) and *People of the Philippines v. Ma. Theresa Pangilinan*[63] (**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 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*[64] (**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*[65] (**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.*[66] (**Panaguiton**), the Supreme Court had the occasion to discuss the structure of the judicial system during the enactment of Act No. 3326[67], 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**

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60 Supra at pp. 9-10.
61 G.R. No. L-22465, 28 February 1967 [Per J. J.B.L. Reyes, *En Banc*].
62 G.R. No. 234618, 16 September 2019 [Per J. Peralta, Third Division].
63 G.R. No. 152662, 13 June 2012 [Per J. Perez, Second Division].
64 G.R. Nos. 118757 & 121571, 19 October 2004 [Per J. Tinga, Second Division].
65 G.R. No. L-45674, 30 May 1983 [Per J. De Castro, Second Division].
66 G.R. No. 167571, 25 November 2008 [Per J. Tinga, Second Division].
67 Supra at note 59.

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 RPC and those covered by special laws with respect to the interruption of the period of prescription**, *viz*:

> ...
>
> 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.**
>
> 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.**
>
> 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.
>
> **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.[68]
>
> ...

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.

Furthermore, in *Securities and Exchange Commission v. Interport Resources Corporation, et al.*[69] (**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*, then Supreme Court Associate Justice Dante O. Tiñga (Ret.) emphasized that **any form of investigation** instituted against the

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68 *People of the Philippines v. Ma. Theresa Pangilinan*, supra at note 63; Citations omitted, italics in the original text and emphasis supplied.

69 G.R. No. 135808, 06 October 2008 [Per J. Chico-Nazario, *En Banc*].

guilty person which **may ultimately lead to prosecution**, as provided by law, is sufficient to toll the running of the prescriptive period.

Clearly, 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.

Now, if the Court *En Banc* were to sustain the interpretation in the 1990 case of *Lim, Sr. vis-à-vis* Section 2[70], Rule 9 of the RRCTA[71] — that it is the filing of an Information with the Court which interrupts the five (5)-year prescriptive period under Section 281[72] of the NIRC of 1997, as amended — such a ruling would constitute a clear departure from the established doctrine on prescription applicable to *all* criminal cases. This would run counter to 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.[73]

In this regard, to hold that the NIRC of 1997, as amended, should be treated differently simply because it is a special law is unpersuasive. The Supreme Court has consistently held, even in criminal cases involving violations of special laws, that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused.

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70 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.

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)

71 Supra at note 12.

72 Supra at pp. 9-10.

73 *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].

Specifically, in *Pangilinan*, the Supreme Court emphasized that the cases of *Ingco* (involving Republic Act [**RA**] No. 3019 or the Anti-Graft and Corrupt Practices Act), *Sanrio* (involving RA 8293 or the Intellectual Property Code), and *Interport* (involving the Revised Securities Act and the Securities Regulation Code) all concerned violations of special laws. Yet, in each of these cases, the Supreme Court consistently ruled that the institution of proceedings for preliminary investigation against the accused interrupts the running of the prescriptive period.

Moreover, *Lim, Sr.* aligns with Section 2, Rule 9 of the RRCTA, it bears emphasizing that an alternative interpretation of the second paragraph of that provision exists — one that harmonizes it with the established doctrine cited above. Instead of construing it solely in relation to the first paragraph, as petitioner correctly argued, it may be read in conjunction with Section 1(a)[74], Rule 110 of the Revised Rules of Criminal Procedure (**RRCP**), which provides that for offenses where a preliminary investigation is required, the criminal action shall be instituted by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

While it is true that the provisions of the RRCP apply only suppletorily to the RRCTA, it is nonetheless important to emphasize that the second paragraph of Section 2[75], Rule 9 of the RRCTA (specifically the italicized portion at the end) explicitly references Section 1(a), Rule 110 of the RRCP. That provision clearly states that, for offenses requiring preliminary investigation, a criminal action is deemed instituted upon the filing of a complaint with the proper officer for the purpose of conducting the required preliminary investigation.

On the other hand, the first paragraph of Section 2, Rule 9 of the RRCTA may be construed as referring exclusively to the institution of proceedings before the Court in Division, which is effected solely through the filing of an Information. This must be distinguished from the institution of proceedings against guilty persons — which, under Section 281[76] of the NIRC of 1997, as amended, interrupts the running of

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74 SEC. 1. *Institution of Criminal Actions.* — Criminal actions shall be instituted as follows:
(a) **For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.** (Emphasis supplied)

75 Supra at note 70.

76 Supra at pp. 9-10.

the prescriptive period — as already settled by the Supreme Court to refer to the filing of a complaint for purposes of preliminary investigation.

Moreover, petitioner correctly observed that in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*[77] (**Tupaz**), which involved the offense of willful failure to pay deficiency IT, the Supreme Court held that the offense had not prescribed because the filing of the complaint for preliminary investigation with the DOJ constituted the institution of the criminal action within the five (5)-year prescriptive period. This conclusion was reached despite the earlier ruling in *Lim, Sr.*, which held that the prescriptive period continues to run until the filing of the Information in Court.

Settling the matter conclusively, the Supreme Court in the recent case of *Consebido* held that the five (5)-year prescriptive period for criminal tax offenses is tolled by the filing of a complaint before the DOJ, not by the filing of an Information before the Court. **This pronouncement in *Consebido* should be applied retroactively**, dating back to the effectivity of the NIRC of 1997. Section 281 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, **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 *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.**

It is also worth stressing that it would be incorrect to assume that *Consebido* effectively abandoned *Lim, Sr.*, as the doctrines in

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77 G.R. No. 127777, 01 October 1999 [Per J. Pardo, First Division].

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.*[78] (Desierto) and *Pastor Corpus, Jr. y Belmoro v. People of the Philippines*[79] (Corpus, Jr.), insofar as the tolling of the prescriptive periods for crimes covered by the 2022 Rules on Expedited Procedure in the First Level Courts[80] (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[81] 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

[78] G.R. No. 136506, 16 January 2023 [Per J. Hernando, First Division].
[79] G.R. No. 255740, 16 August 2023 [Per J. J.Y. Lopez, Second Division].
[80] Supra at note 5.
[81] Supra at pp. 9-10.

> 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.[82]
>
> ...

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[83] 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[84] of the NIRC of 1997, the commencement of preliminary investigation interrupts the prescriptive period for the offense.

As earlier noted, 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 RRSP[85], which was supplanted by the REPFLC[86] (and thus, not to criminal tax offenses covered by the RRCTA[87]).

The Supreme Court found it necessary to revisit prior pronouncements on the tolling of prescription for offenses covered by

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82 *People of the Philippines v. Ulysses Palconit Consebido*, supra at note 2; Citation omitted, italics in the original text, emphasis and underscoring supplied.

83 **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.

84 Supra at pp. 9-10.

85 Supra at note 4.

86 Supra at note 5.

87 Supra at note 12.

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[88], and *Corpus, Jr.*, which held that for light offenses, the timely filing of the information in Court is necessary to toll prescription.

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.[89]

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, the Third Division erred in failing to appreciate this crucial distinction. Accordingly, for criminal tax offenses covered by the RRCTA, and not by the RRSP[90] or the REPFLC[91], 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 *Olarte*[92], 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."**

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88 Supra at note 4.
89 Supra at note 5.
90 Supra at note 4.
91 Supra at note 5.
92 Supra at note 61.

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 likewise 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 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, there should be no question that, with respect to criminal tax offenses, the *Consebido* doctrine applies retroactively.

Additionally, it should be noted that 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[93] on 26 October 2022 — more than five (5) years after the government's right to institute a criminal action had prescribed on 05 July 2017, reckoned from 05 July 2012, when the JCA[94] of the concerned Revenue Officers was referred to the DOJ for preliminary investigation.

Respondent's reliance on the *Lim, Sr.* doctrine is immaterial because the controlling interpretation of Section 281[95] of the NIRC of 1997 rests with the Supreme Court, whose pronouncements form part of the legal system under Article 8[96] 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

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93 Supra at note 19.
94 Supra at note 25.
95 Supra at pp. 9-10.
96 Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

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[97], 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[98], applies only to decisions promulgated by the Supreme Court.

This Court would also err in invoking the time-honored principle on the prescription of crimes, which holds that the interpretation most favorable to the accused should be adopted[99], to justify declaring that the better rule is to apply *Consebido* prospectively on the ground that such application would favor the accused (herein respondent). 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*[100], the Supreme Court drew a clear distinction between substantive and procedural law, thus:

> ...
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> 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

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97 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].

98 *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].

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

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

> 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[101], 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.**"
>
> ...

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*[102], 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

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101 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.

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

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, and Sullian Sy Naval*[103] (**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**

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

> **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.[104]

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.

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.

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

In light of the Supreme Court's categorical declaration in *Consebido*, which affirmed that the established doctrine on prescription applies to criminal tax cases, this Court, sitting *En Banc*, ought to 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 upon the discovery of respondent's violation of Section 254[105] of the NIRC of 1997, as amended, or willful attempt to evade or defeat the payment of IT for TY 2011, and the institution of judicial proceedings for preliminary investigation on **05 July 2012** — when the JCA[106] of the concerned Revenue Officers was referred to the DOJ. That same act also interrupted or tolled the running of the prescriptive period. Thus, contrary to the Third Division and Special Third's ruling, the right of the government to institute the case against respondent had not yet prescribed when the Information[107] was filed on **26 October 2022**.

Now, although prescription should no longer be considered a ground for dismissal, the Court *En Banc* must nevertheless address the separate issue raised by respondent regarding the alleged violation of his constitutional right to speedy disposition of cases. As this issue is independent of the issue of prescription and may, on its own, justify the dismissal of the case, the Court *En Banc* remains duty-bound to consider and resolve the matter.

RESPONDENT'S RIGHT TO SPEEDY
DISPOSITION OF CASES

Respondent seeks the dismissal of the case on the ground of inordinate delay, invoking his constitutional right to speedy disposition

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105 Supra at note 20.
106 Supra at note 25.
107 Supra at note 19.

of cases under Section 16[108], Article III[109] of the 1987 Philippine Constitution, as interpreted in *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, et al.*[110] (**Cagang**). He argues that the prosecution took over ten (10) years — from the filing of the JCA[111] on 05 July 2012 to the filing of the Information[112] on 26 October 2022 — to file the Information before the CTA, far exceeding the timeframe prescribed under Section 3(f)[113], Rule 112 of the RRCP. Respondent highlights that the DOJ initially resolved the complaint only on 01 September 2014—more than two (2) years after its filing — and further took until 11 May 2017 to resolve the motion for reconsideration, with the Information being filed over five (5) years thereafter.

Citing *Francisco S. Tatad v. The Sandiganbayan and the Tanodbayan*[114] (**Tatad**) and *People of the Philippines v. Hon. Sandiganbayan, First Division & Third Division, et al.*[115] (**Sandiganbayan**), respondent maintains that delays far shorter than those in the present case were previously deemed inordinate and sufficient to warrant dismissal. He stresses that the delay remains unjustified and unexplained, and asserts that the burden has shifted to the prosecution to prove that such delay was reasonable. Finally, respondent claims that he timely invoked his right to speedy disposition of cases in his "Comment/Opposition"[116] to the present Petition for Review, thus entitling him to relief.

We find merit in respondent's arguments.

In *Cagang*, the Supreme Court laid down definitive guidelines in resolving the issue involving the right to speedy disposition of cases, synthesized as follows:

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108 SEC. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

109 Bill of Rights.

110 G.R. Nos. 206438 and 206458 & 210141-42, 31 July 2018 [Per J. Leonen, *En Banc*].

111 Supra at note 25.

112 Supra at note 19.

113 SEC. 3. *Procedure.* — The preliminary investigation shall be conducted in the following manner:

...

(f) **Within ten (10) days after the investigation**, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (Emphasis supplied)

114 G.R. Nos. 72335-39, 21 March 1988 [Per J. Yap, *En Banc*].

115 G.R. Nos. 188165 & 189063, 11 December 2013 [Per J. Bersamin, First Division].

116 Supra at note 40, pp. 259-278.

> ...
>
> [I]nordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and **may** result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.
>
> **The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.**[117]
>
> ...

In line with the "balancing test" adopted from the American case of *Barker v. Wingo*[118], the Supreme Court in *Cagang* stressed that courts must consider the following factors when determining the existence of inordinate delay: (1) the length of delay; (2) the reason for delay; (3) the defendant's assertion or non-assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay.[119]

As regards the burden of proving delay, the Supreme Court held in *Cagang* that if the alleged delay extends beyond the prescribed periods, the burden shifts to the prosecution to demonstrate that the delay was reasonable under the circumstances and that accused did not suffer prejudice as a result of such delay, *viz*:

> ...
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> For the court to appreciate a violation of the right to speedy disposition of cases, delay must not be attributable to the defense.

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117 Supra at note 110; Emphasis supplied.
118 407 U.S. 514 (1972).
119 Supra at note 110.

Certain unreasonable actions by the accused will be taken against them. This includes delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case. When proven, this may constitute a waiver of the right to speedy trial or the right to speedy disposition of cases.

If it has been alleged that there was delay beyond the given time periods, the burden of proof *shifts*. The prosecution will now have the burden to prove that there was no violation of the right to speedy trial or the right to speedy disposition of cases. *Gonzales v. Sandiganbayan* states that "vexatious, capricious, and oppressive delays," "unjustified postponements of the trial," or "when without cause or justifiable motive a long period of time is allowed to elapse without the party having his [or her] case tried" are instances that may be considered as violations of the right to speedy disposition of cases. The prosecution must be able to prove that it followed established procedure in prosecuting the case. It must also prove that any delay incurred was justified, such as the complexity of the cases involved or the vast amount of evidence that must be presented.

The prosecution must likewise prove that no prejudice was suffered by the accused as a result of the delay. ...

...

The consequences of delay, however, do not only affect the accused. The prosecution of the case will also be made difficult the longer the period of time passes. ...

...

The consequences of the prosecution's failure to discharge this burden are severe. Rule 119, Section 9 of the Rules of Court requires that the case against the accused be dismissed if there has been a violation of the right to speedy trial[.]

...

Tatad, as qualified by *Angchangco*, likewise mandates the dismissal of the case if there is a violation of the right to speedy disposition of cases. The immediate dismissal of cases is also warranted if it is proven that there was malicious prosecution, if the cases were politically motivated, or other similar instances. Once these circumstances have been proven, there is no need for the defense to discharge its burden to prove that the delay was inordinate.

To summarize, inordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and may result in

> the dismissal of the case against the accused. **The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules.** If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. **If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.**
>
> The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. **If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result.** The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.[120]
>
> ...

Clearly from the foregoing parameters, determining inordinate delay requires a holistic assessment of the circumstances, focusing on three (3) main factors: (1) the reasonableness of the time taken to resolve the case; (2) the complexity of the issues involved, and (3) the timely invocation of the right to speedy disposition of cases. Delay must not be attributed to the defense, as actions like unjustified absences or dilatory motions may constitute a waiver of the right. Importantly, when the delay alleged exceeds the timeframes provided by law or rules, the burden shifts to the prosecution to prove that the delay was justified — such as by case complexity or the volume of evidence — and that no prejudice was suffered by the accused. Failure to discharge this burden may lead to the dismissal of the case.

In this case, from the time the JCA[121] was filed on 05 July 2012 until the filing of the Information[122] on 26 October 2022, more than ten (10) years have lapsed. Of this period: (1) it took over two (2) years to resolve the initial complaint (until 01 September 2014); (2) nearly three (3) more years to resolve the motion for reconsideration (until 11 May 2017); and

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120 Supra at note 110; Citations omitted, italics in the original text and emphasis supplied.

121 Supra at note 25.

122 Supra at note 19.

(3) over five (5) additional years passed before the Information was filed (on 26 October 2022).

Such delays were neither sufficiently explained nor justified by petitioner. Following the guidelines in *Cagang*, the burden shifted to the prosecution to prove that the delay was reasonable and not oppressive. Petitioner failed to discharge this burden. Moreover, respondent timely invoked his right to speedy disposition of cases in his Comment/ Opposition[123] to the Petition for Review. He was unable to assert this right before the Third Division, understandably so, as the case had already been dismissed on the ground of prescription prior to his arraignment.

What underscores the gravity of the delay in this case is the fact that the DOJ had already determined the existence of probable cause to charge respondent as early as 01 September 2014. At that point, the legal and factual issues had been sufficiently addressed, and no further investigation was warranted. Yet, despite this clear finding, the prosecution failed to file the Information for over eight (8) years, offering no satisfactory justification for such inordinate lapse of time. This prolonged inaction, absent any compelling reason, runs afoul of the constitutional guarantee of a speedy disposition of cases and undermines the fair and efficient administration of justice.

Notably, such unexplained delay cannot be countenanced. The right to speedy disposition of cases is not a mere technicality — it is a fundamental right guaranteed by the Constitution to prevent oppression and harassment through vexatious legal processes.

In the case of *Tahira S. Ismael and Aida U. Ajijon v. People of the Philippines*[124], the Supreme Court acknowledged that "the silence of the accused during the period of delay cannot be easily construed as a waiver or surrender of the right to speedy disposition of cases. Indeed, the actual intention to relinquish the right must be shown."

Considering that nothing in the records indicates that respondent committed any overt act that contributed to the delay in the filing of the Information against him, this Court must indulge every reasonable

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123 Supra at note 40116.

124 G.R. Nos. 234435-36, 06 February 2023 [Per J. M.V. Lopez, Second Division].

presumption against the existence and validity of such waiver of his right to speedy disposition of cases.[125] Pertinently, as held in *Rene C. Figueroa v. Sandiganbayan, Special Third Division, et al.*[126] (**Figueroa**), the burden is not upon the accused to ensure that the wheels of justice continue to turn. Rather, it is for the State to guarantee that the cases are disposed of within a reasonable period.[127] Thus, as similarly ruled in *Figueroa*, it is sufficient that herein respondent raised the constitutional violation after the Second Division admitted the Information and prior to his arraignment.[128]

At this point, it is worth stressing that the objective of the right to speedy disposition of cases is to spur dispatch in the administration of justice and to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to a speedy trial, its objective is to assure that an innocent person may be free from the anxiety and expense of litigation or if otherwise, to have his guilt determined within the shortest possible time compatible with the presentation and consideration of whatever legitimate defense he may raise. This unrest and the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.[129]

In fine, while the criminal action has not yet prescribed, the prolonged and unjustified delay of more than ten (10) years between the filing of the JCA[130] and the subsequent filing of the Information[131] before the Third Division constitutes a violation of respondent's right to speedy disposition of cases, thereby warranting the dismissal of this case.

WHEREFORE, with the foregoing considerations, the present "Verified Petition for Review (of the Resolution dated [26 June 2023]" filed by petitioner People of the Philippines on 07 September 2023 is hereby **PARTIALLY GRANTED**. Accordingly, the Third Division's Resolution dated 05 April 2023 and the Special Third Division's Resolution dated 26 June 2023 in CTA Crim. Case No. O-940, declaring

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125 See *People of the Philippines v. Ricardo Bodoso y Bolor*, G.R. Nos. 149382-149383, 05 March 2003 [Per J. Bellosillo, *En Banc*].
126 G.R. Nos. 235965-66, 15 February 2022 [Per J. M.V. Lopez, First Division].
127 Id.
128 Id.
129 Id., citing *Rafael L. Coscolluela v. Sandiganbayan (First Division) and People of the Philippines*, G.R. Nos. 191411 & 191871, 15 July 2013 [Per J. Perlas-Bernabe, Second Division].
130 Supra at note 25.
131 Supra at note 19.

that the offense charged has prescribed, are **REVERSED** and **SET ASIDE**. Nonetheless, the criminal case is hereby **DISMISSED** on the ground of violation of respondent Ziegfried Loo Tian's right to speedy disposition of cases.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

With Separate Opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Maria Ivy F. Reyes-Fajardo
With due respect, I join Acting Presiding Justice Liban's Separate Opinion
MARIAN IVY F. REYES-FAJARDO
Associate Justice

I join Acting Presiding Justice Liban's Separate Opinion
LANEE S. CUI-DAVID
Associate Justice

With due respect, I join Acting Presiding Justice Liban's Separate Opinion
CORAZON G. FERRER-FLORES
Associate Justice

With due respect, I join Acting Presiding Justice's Separate Opinion
HENRY S. ANGELES
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,

CTA EB CRIM. NO. 132
(CTA Crim. Case No. O-940)

Present:

Ringpis-Liban, Acting *P.J.*,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, and
Angeles, *JJ.*

- versus -

ZIEGFRIED LOO TIAN,
(No. 1013 Juan Luna Street,
Brgy. 27, Zone 1, Tondo, Manila)
Respondent.

Promulgated:
NOV 14 2025 2:30pm

x---x

SEPARATE OPINION

RINGPIS-LIBAN, *J.*:

I concur in the result.

I agree that the holding in *People of Philippines v. Ulysses Palconit Consebido*,[1] which was promulgated on April 2, 2025 prior to this decision, is already applicable to this case. Nevertheless, I maintain the view that *Consebido* should be applied *prospectively*. This intention is clear from a textual reading of the Supreme Court *En Banc* case:

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[1] G.R. Nos. 258563, April 2, 2025 (*Consebido*).

> "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:
>
>> [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.
>
> <u>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</u>, <u>this new rule shall apply prospectively</u>.
>
> <u>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</u>. 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." (*Underscoring supplied; citations omitted*)

Because *Consebido* itself called for the *prospective* application of its pronouncement on prescription, I differ from the view which called for its *retroactive application to all cases governed by Section 281 of the National Internal Revenue Code of 1997 (1997 NIRC), dating back to its effectivity and even "displacing contrary applications premised on" Lim v. Court of Appeals.*[2]

Ma. Belen S-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[2] G.R. Nos. L-48134-37, October 18, 1990.