

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. No. 093
(CTA Crim. Case Nos. O-850,
O-851, O-852, and O-853)

Present:

- versus -

COURT OF TAX APPEALS
SECOND DIVISION, R-JELL
MARKETING &
CONSTRUCTION COMPANY,
LILY PEDROSO, ERNESTO
PEDROSO, and ELVIN
PEDROSO,

Respondents.

DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

Promulgated:

AUG 29 2023

4:16 pm

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DECISION

REYES-FAJARDO, J.:

We resolve the Petition for Review¹ posted on April 4, 2022, challenging the Resolutions dated June 30, 2021² and March 15, 2022³ in CTA Crim. Case Nos. O-850, O-851, O-852, and O-853, whereby the Court in Division dismissed the criminal cases instituted against private respondents on the ground of prescription of tax offense under Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended.

¹ Rollo, pp. 1 to 33.

² Rollo, pp. 34 to 39.

³ Rollo, pp. 41 to 49.

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FACTS

On December 9, 2020, four (4) separate Informations⁴ were filed against private respondents R-Jell Marketing & Construction Company, Lily Pedroso, Ernesto Pedroso, and Elvin Pedroso, docketed as CTA Crim. Case Nos. O-850, O-851, O-852, and O-853. The Informations indicted them for various infractions under Section 255 of the 1997 National Internal Revenue Code, as amended. These Informations respectively read:

CTA Crim. Case No. O-850

That on or about April 2008, in Manila, within the jurisdiction of this Honorable Court, accused R-Jell Marketing and Construction Company, Lily R. Pedroso, Ernesto O. Pedroso and Elvin Louie R. Pedroso, required by law to file income tax returns and to pay tax, confederating with one another, did then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in the tax return by not declaring all the income of R-Jell Marketing and Construction Company for taxable year 2007, which resulted in the general partnership's basic deficiency income tax in the amount of Three Million Six Hundred Ninety Seven Thousand Eight Hundred Seventy Eight Pesos and Forty Three Centavos (3,697,878.43), exclusive of surcharges and interest, to the damage and prejudice of the government.

Contrary to Law.

CTA Crim. Case No. O-851

That on or about April 2006, in Manila, within the jurisdiction of this Honorable Court, accused R-Jell Marketing and Construction Company, Lily R. Pedroso, Ernesto O. Pedroso and Elvin Louie R. Pedroso, required by law to file income tax returns and to pay tax, conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in the tax return by not declaring all the income of R-Jell Marketing and Construction Company for taxable year 2005, which resulted in the general partnership's basic deficiency income tax in the amount of Five Million Nine Hundred Sixty Eight Thousand Two Hundred Eighty One Pesos and Fifty One Centavos

⁴ Docket (CTA Crim. Case No. O-850) pp. 5 to 7; Docket (CTA Crim. Case No. O-851), pp. 5 to 7; Docket (CTA Crim. Case No. O-852), pp. 1 to 3; Docket (CTA Crim. Case No. O-853), pp. 5 to 7.

(P5,968,281.51), exclusive of surcharges and interest, to the damage and prejudice of the government.

Contrary to Law.

CTA Crim. Case No. O-852

That on or about April 2007, in Manila, within the jurisdiction of this Honorable Court, accused R-Jell Marketing and Construction Company, Lily R. Pedroso, Ernesto O. Pedroso and Elvin Louie R. Pedroso, required by law to file income tax returns and to pay tax, conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in the tax return by not declaring all the income of R-Jell Marketing and Construction Company for taxable year 2006, which resulted in the general partnership's basic deficiency income tax in the amount of Six Million Seven Hundred Thirty Five Thousand and Six Hundred Eleven Pesos and Twenty Nine Centavos (P6,735,611.29) exclusive of surcharges and interest to the damage and prejudice of the government.

Contrary to Law.

CTA Crim. Case No. O-853

That on or about April 2009, in Manila, within the jurisdiction of this Honorable Court, accused R-Jell Marketing and Construction Company, Lily R. Pedroso, Ernesto O. Pedroso and Elvin Louie R. Pedroso, required by law to file income tax returns and to pay tax, conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in the tax return by not declaring all the income of R-Jell Marketing and Construction Company for taxable year 2008, which resulted in the general partnership's basic deficiency income tax in the amount of Three Million Two Hundred Forty Five Thousand Nine Hundred Five Pesos and Thirty Eight Centavos (P3,245,905.38), exclusive of surcharges and interest, to the damage and prejudice of the government.

Contrary to Law.

On December 15, 2020 and January 11, 2021, private respondents filed Motions to Consolidate,⁵ praying that CTA Crim. Case Nos. O-

⁵ Docket (CTA Crim. Case No. O-850), pp. 84 to 85; Docket (CTA Crim. Case No. O-850), pp. 108 to 111.

851, O-852, and O-853, be consolidated with CTA Crim Case No. O-850. By Resolutions dated January 8, 2021⁶ and March 8, 2021,⁷ said Motions were granted.

On February 26, 2021, private respondents filed a Motion to Quash, praying the Informations in CTA Crim. Case Nos. O-850 to O-853 be quashed because the government's right to institute criminal actions against them is barred by prescription.⁸

On June 30, 2021, the Court in Division rendered the assailed Resolution, the *fallo* of which states:

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

SO ORDERED.

Petitioner moved,⁹ but failed,¹⁰ to secure reversal of the challenged Resolution; hence, this petition.

ISSUE

Did the Court in Division err in dismissing CTA Crim. Case Nos. CTA Crim. Case Nos. O-850, O-851, O-852, and O-853, on the ground of prescription?

ARGUMENTS

Petitioner ascribes flaw in the Court in Division's utilization of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines (Lim)*,¹¹ as basis of dismissal of the criminal charges against respondents. Specifically, petitioner asserts that the dictum in

⁶ Docket (CTA Crim. Case No. O-850), pp. 112 to 113.

⁷ Docket (CTA Crim. Case No. O-850), pp. 176 to 177.

⁸ Docket (CTA Crim. Case No. O-850), pp. 131 to 138.

⁹ Docket (CTA Crim. Case No. O-850), pp. 216 to 236.

¹⁰ *Rollo*, pp. 41 to 49.

¹¹ G.R. Nos. L-48134-37, October 18, 1990.

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Lim that the running of the five (5)-year prescriptive period is tolled only upon the filing of Information in court is archaic.

According to petitioner, it is the filing of the criminal complaint for preliminary investigation with the Department of Justice (DOJ) which interrupts the running of the prescriptive period for tax offenses in Section 281 of the NIRC, as amended, following the pronouncements in *Panaquiton, Jr. v. Department of Justice, et al. (Panaquiton, Jr.)*,¹² *Ingco v. Sandiganbayan (Ingco)*,¹³ *Sanrio Company Limited v. Lim (Sanrio)*,¹⁴ and *People v. Pangilinan (Pangilinan)*,¹⁵ among others.

By way of Comment (To Petition for Review),¹⁶ private respondents counter that: (1) the cases invoked by petitioner to shore up its stance, do not involve tax cases; and (2) *Lim* interpreted then Section 354 (now Section 281) of the NIRC, as amended, and remains good jurisprudence to date; hence, the Court in Division correctly relied on *Lim* as basis of dismissal of the criminal charges against them.

RULING

We deny the Petition.

Section 281 of the NIRC, as amended, provides that criminal infractions under the Code shall prescribe after five (5) years, reckoned from the commission of tax offense, if known, and if not known, from discovery thereof *and* institution of judicial proceedings for investigation and punishment. Prescription thereof shall halt, upon institution of proceedings against the persons guilty thereof:

SECTION 281. *Prescription for Violations of any Provision of this Code.* -All violations of any provision of this Code shall prescribe after five (5) years.

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known

¹² G.R. No. 167571, November 25, 2008.

¹³ G.R. No. 112584, May 23, 1997.

¹⁴ G.R. No. 168662, February 19, 2008.

¹⁵ G.R. No. 152662, June 13, 2012.

¹⁶ *Rollo*, pp. 166 to 169.

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.
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Notably, Section 281 of the NIRC, as amended, is a replica of Section 354 of the 1939 NIRC. *Lim* interpreted Section 354 of the 1939 NIRC, as follows:

... The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. **Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings."** In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.

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... As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.

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Unless amended by the legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation. (*Emphases supplied*)

Indeed, *Lim* ordained that tax offenses are imprescriptible so long as the period from its discovery and institution of judicial

proceedings for investigation and punishment, up to the filing of information in court *do not exceed five (5) years*. Conversely, if the period from the institution of judicial proceedings for its investigation up to the filing of the information in court exceeds five (5) years, then the government's right to file criminal actions against errant persons would be barred by prescription.

Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals, too, buttresses *Lim*. Particularly, said provision declares that the running of prescriptive period is indeed tolled only upon the filing of information in court:

SECTION 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.¹⁷

On the strength of the above observations, the Court in Division correctly dismissed CTA Crim. Case Nos. O-850, O-851, O-852, and O-853 on the ground of prescription. To be precise, the BIR referred the Joint Complaint-Affidavit of Revenue Officers Nelson V. Gonzales, Maxima DC. Mones, Jonas P. Punzal, and Josefa C. Torrenueva with the DOJ for preliminary investigation on July 3, 2014. Given that such proceeding necessarily entails the investigation and consequent punishment of the subject offense, the five (5)-year prescriptive period begun to run on said date. Counting five (5) years from July 3, 2014, the prosecution had until July 3, 2019 to file the requisite Informations with the Court. *Ergo*, the belated filing of the Informations before the Court in Division on December 9, 2020, justifies the dismissal of CTA Crim. Case Nos. O-850, O-851, O-852, and O-853, on the ground of prescription.

¹⁷ Boldfacing supplied.

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Wanting in persuasiveness is petitioner's argument that *Lim* is obsolete. True, *Lim* construed Section 354 of the 1939 NIRC. Yet, the wordings in Section 354 of the 1939 NIRC are the same as that of Section 281 of the NIRC, as amended. Being so, the interpretation in *Lim* remains good jurisprudence to date.

Equally unavailing is petitioner's contention that the pronouncements in *Panaquiton, Jr., Ingco, Sanrio, and Pangilinan, i.e.*, the filing of the complaint before the DOJ tolls the running of prescriptive period, should be followed, instead of *Lim*. For one, *Panaquiton, Jr., Ingco, Sanrio, and Pangilinan* did not interpret the NIRC, as amended, whereas *Lim* construed prescription of tax offenses under the NIRC, as amended. For another, the factual milieu obtaining in *Panaquiton, Jr., Ingco, Sanrio, and Pangilinan*, on one hand, and *Lim*, on the other, are starkly different with one another. Therefore, the Court in Division correctly applied *Lim*, as basis for the dismissal of the criminal charges against private respondents.

WHEREFORE, the Petition for Review, posted on April 4, 2022, is **DENIED**, for lack of merit. The Resolutions dated June 30, 2021 and March 15, 2022, respectively, in CTA Crim. Case Nos. O-850, O-851, O-852, and O-853, are **AFFIRMED**.

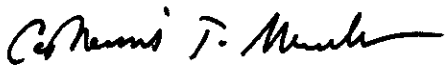
SO ORDERED.

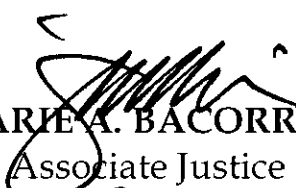

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We concur:

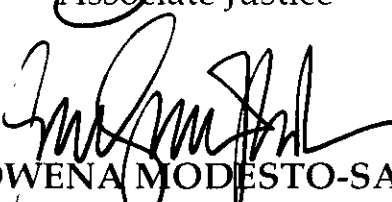

ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice



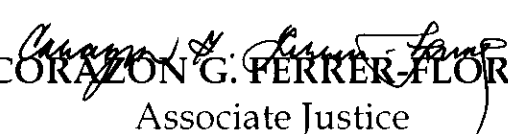
JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO
Presiding Justice