REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-932**
	Members:
-versus-	**UY,** *Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
ANTONIO VALERIANO M. BERNARDO (A.V.M. BERNARDO ENGINEERING), *Accused.*	Promulgated: FEB 28 2023 2:05 p.m.

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RESOLUTION

For resolution is accused Antonio Valeriano M. Bernardo's *Consolidated Motion to Quash* filed on January 18, 2023, with plaintiff's *Comment/ Opposition [Re: Consolidated Motion to Quash dated January 9, 2023]* filed on January 31, 2023.

In his motion, accused argues that the period to institute criminal action against him has already prescribed pursuant to the 5-year prescriptive period under Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended. Accused states that a Joint Complaint-Affidavit (complaint) against him was filed by Revenue Officers Gina D. Floreza and Grace G. Marohomsalic with the Department of Justice (DOJ) on February 18, 2016. Accused argues that on September 6, 2022, or more than six (6) years after the alleged commission of the violation of the law, an Information was filed against him with this Court; hence, he prays that the Information be quashed for being filed beyond the prescriptive period.

Plaintiff, on the other hand, counters that in the case of *Republic of the Philippines v. Cojuangco, Jr.*,[1] citing *Presidential Commission on Good Government v. Desierto*,[2] there are two rules for determining when the prescriptive period shall begin to run: first, from the day of the commission of the violation of the law, if such commission is known; and second, from its discovery, if not then known, and the institution of judicial proceedings for its investigation and punishment.

Plaintiff argues that the 5-year prescriptive period under Section 281 of the NIRC of 1997, as amended, for filing criminal tax cases began to run and, at the same time, is interrupted upon filing the complaint with the DOJ, making tax cases practically imprescriptible.

Section 281 of the NIRC of 1997, as amended, provides:

> SEC. 281. *Prescription for Violations of any Provision of this Code.* - All violations of any provision of this Code shall prescribe after five (5) years.
>
> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines.

The above provision was interpreted in the landmark case of *Lim, Sr., et al. v. Court of Appeals* (*Lim*),[3] to wit:

> ... 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

[1] G.R. No. 139930, June 26, 2012.
[2] G.R. No. 135119, October 21, 2004.
[3] G.R. Nos. 48134-37, October 18, 1990.

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.**

... ...

... 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 <u>not</u> exceed five (5) years**. *(Emphasis supplied)*

The Supreme Court enunciated in *Lim* that tax criminal cases would seem to be imprescriptible for as long as the time from its discovery *and* preliminary investigation (through the filing of a complaint with the DOJ), *up to* the filing of the Information before the Court is not more than five (5) years.

This means that the 5-year prescriptive period shall be tolled upon filing an information with the Court.

More, the interpretation in *Lim* was adopted and clarified in Revenue Memorandum Circular No. 101-90,[4] to wit:

d) The 5-year prescriptive period in Section 280 of the Tax Code does not commence to run by the mere fact of discovery. This must be coupled by judicial proceedings, such as a preliminary investigation before the Prosecutor's Office, before the five (5) year limitation period begins to run.

The offenses under the Tax Code are seemingly imprescriptible for **as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years**. (*Emphasis supplied*)

[4] Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code, November 26, 1990.

This means that plaintiff, as early as 1990, has already recognized the ruling in *Lim* and understood the consequence of filing an information with the Court beyond the 5-year prescriptive period.

While it is true that the *Lim* case interpreted Section 354 of the old 1939 Tax Code,[5] said section was subsequently reproduced *verbatim* in Section 281 of the NIRC of 1997, as amended.[6]

Considering that the wording of Section 354 of the 1939 Tax Code was adopted and reproduced in Section 281 of the current Tax Code, the legislature is presumed to have adopted the construction placed upon such provision by the Supreme Court in the *Lim* case.[7]

As such, this Court has steadfastly adhered to the Supreme Court's pronouncement in *Lim* regarding the prescription of tax offenses in deciding the cases of *People v. Castillo*,[8] *People v. Consebido*,[9] *People v. Bernardo*,[10] and *People v. Balili*,[11] among others.

In this case, the Joint Complaint-Affidavit of Gina D. Floreza and Grace G. Marohomsalic was filed on February 18, 2016. It was only on that date that the prescriptive period commenced. Counting five (5) years therefrom, the prescriptive period lapsed on February 18, 2021.

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[5] Commonwealth Act No. 466, June 15, 1939.

[6] A comparison of Section 354 (of the 1939 Tax Code) and Section 281 (of the 1997 Tax Code), is as follows:

Section 354 of the 1939 Tax Code	**Section 281 of the NIRC of 1997, as amended**
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.	SEC. 281. *Prescription for Violations of any Provision of this Code.* - All violations of any provision of this Code shall prescribe after five (5) years. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. The term of prescription shall not run when the offender is absent from the Philippines.

[7] *People v. Castillo*, CTA. *EB* Crim. Case No. 053 (CTA Crim Case No. O-663) (Resolution), June 8, 2021.

[8] *Id.*

[9] CTA Crim. Case No. O-701 (Resolution), May 7, 2019.

[10] CTA *EB* Crim. Case No. 079 (CTA Crim. Case No. O-733) (Resolution), July 21, 2022.

[11] CTA Crim. Case No. A-8 (Case Nos. R-MKT-20-01449-CR and R-MKT-20-01450-CR), January 25, 2022.

The Information, however, was filed before this Court on September 6, 2022, or six (6) years, six (6) months, and nineteen (19) days after the Joint Complaint-Affidavit was filed. Thus, the right of the State to prosecute the accused has already prescribed under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, premises considered, the accused's *Consolidated Motion to Quash* is **GRANTED**.

Accordingly, this case is **DISMISSED** on the ground of prescription.

SO ORDERED.

ERLINDA P. UY
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice