**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## *SECOND DIVISION*

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| PEOPLE OF THE PHILIPPINES, *Plaintiff,* | **CTA Crim. Case Nos. O-728, O-730, O-732 and O-734** For: Violation of Section 255 in relation to Sections 253 & 256 of the National Internal Revenue Code of 1997, as amended. |
| -versus- | Members: **CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA**, *JJ.* |
| JUANCHITO D. BERNARDO, PRAXEDES P. BERNARDO and JDBEC, INCORPORATED, *Accused.* | Promulgated: DEC 02 2019 1:10 p.m. |

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## RESOLUTION

For this Court's Resolution is the prosecution's **"Motion for Reconsideration (to Resolution dated October 22, 2019)** filed on November 8, 2019, with accused's **"Opposition to the Motion for Reconsideration"** filed on November 19, 2019.

In the instant motion, the prosecution insists that this Court erred in dismissing the Informations on the ground of prescription.

The Motion for Reconsideration must fail. We do not find the reasons raised by the prosecution meritorious enough to warrant the attention of the members of this Court, as they are merely reiterations of the arguments it raised before this Court. Nonetheless, We shall pass upon the arguments for emphasis.

The law provides that all violations of any provision of the NIRC of 1997, as amended, prescribe after five years. The five-year prescriptive period commences to run from the day of the commission of the violation of the law, and if the same is not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

Further, the period of prescription is interrupted when proceedings are instituted against the tax violator and shall run again in the event the proceedings are dismissed for reasons not constituting jeopardy. Neither will prescription run if the offender is absent from the Philippines.

On its face, the law appears reasonable enough. The prescriptive period for instituting an action for criminal violations of NIRC of 1997, as amended, shall be five years. The contention arises upon a re-examination of when the prescriptive period is to commence.

As already discussed in the assailed Resolution, where the commission of the offense is known, the prescriptive period runs from the time of commission. On the other hand, where the commission of the offense is unknown, then prescription begins from the time of discovery and the institution of judicial proceedings. This is where the problem of imprescriptibility arises. We reiterate, Section 281, in part, states:

> "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."

Under the second mode of prescription, two problems of imprescriptibility arise. First, as stated by the Court in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[1], the period from the discovery up to the institution of judicial proceedings is indeterminate. What was not stated however, though implied, was that such period is veritably under the control of the Government, which may or may not choose to institute the required judicial proceedings, thereby precluding the prescriptive period from running.

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

Second, the phrase "from the discovery thereof and the institution of judicial proceedings" has been interpreted to mean exactly as it is stated, that is, discovery must be coupled with the institution of judicial proceedings in order for the prescriptive period to commence. Markedly, **such a literal interpretation not only causes the period of prescription to be indefinite but virtually amounts to no prescriptive period at all**. The moment of instituting judicial proceedings marks both the point at which the prescriptive period shall begin and the point where it will be interrupted. In effect, this means that the period does not ever begin to run since it is interrupted by the very same event from which it commences.

Thus, the judicial interpretation of the phrase "from the discovery thereof and the institution of judicial proceedings" renders offenses under the Tax Code practically imprescriptible because the Government's right to prosecute such offenses can never be barred by the passage of time.

It must be remembered that the statute in this case pertains to the prescription of criminal offenses of the Code. It cannot be overly emphasized that the taxpayer stands to be criminally punished for an offense that could have been committed 40, 50, or 60 years ago. Indeed, without an effective statute of limitations, this gives the Government a veritable *Sword of Damocles* to eternally and endlessly hang over the heads of taxpayers, making it fall when proof and evidence which might have been available to the taxpayer for his defense, have been eroded by the mere lapse of time.

For the prosecution's enlightenment, We reiterate our ruling in the assailed Resolution, to wit:

> "Taking into consideration the case of *Lim vs. CA* and RMC No. 101-90 together with *Tupaz vs. Ulep*, one is generally led to the conclusion that the institution of judicial proceedings for the investigation and punishment of the offense marks both the commencement and interruption of the prescriptive period.
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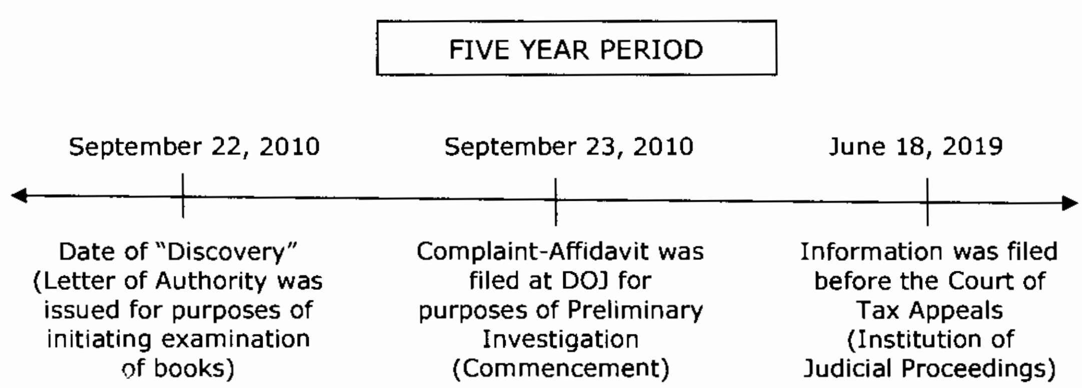
> This Court cannot countenance the foregoing conclusion. Suffice it to say that it is not only a distorted interpretation of the ruling in *Lim vs. CA*,

but it also reduces to absurdity the meaning of Section 281 of the NIRC of 1997, as amended. Such an interpretation would urge one to ask why Section 281 must be provided in the NIRC at all if the filing of the complaint before the prosecutor's office would commence the running of the prescriptive period and interrupt it at the same time.

Likewise, **this negates any possible efficacy of the prescriptive period which also renders the law ineffectual. Accordingly, it is a well-known principle in statutory interpretation that statutes must be construed in such a way as to give effect to the intention of the legislative authority, and so as to give a sensible meaning to the language of the statute and thus, avoid nonsensical or absurd results, departing to the extent unavoidable from the literal language of the statute**.

Again, inasmuch as Section 281 of the NIRC of 1997, as amended, must be construed in favor of the accused-taxpayer, **ALL interpretations of said section must incline towards prescriptibility. Obviously, to interpret such period as running perpetually violates the afore-mentioned statutory construction rule as well as the rights of the taxpayer-accused.**

Applying the foregoing, the case at bar falls within the second mode of prescription. Consequently, records reveal that the instant Informations were already filed beyond the five-year period. To illustrate:



> It can therefore be observed that prescription began to run on September 23, 2010, the date when the Complaint-Affidavit was filed before the DOJ, or on September 22, 2010, assuming that the issuance of the Letter of Authority would constitute as the date "discovery".
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> Next, the date of "discovery" together with the institution of judicial proceedings for preliminary investigation on September 23, 2010 shows that prescription began to run on September 23, 2010. Counting five (5) years therefrom, the prescriptive period lapsed on September 23, 2015. Unfortunately, the Informations were only filed before the CTA on June 18, 2019, which exceeds the five-year prescriptive period." (Emphases supplied)

Again, this Court cannot emphasize enough that Congress could not have intended for a taxpayer criminally charged for a violation of the NIRC of 1997, as amended, to stand at the mercy of the Government, who may choose to exercise its right to prosecute at a time most favorable to it. If it was, then the result would not only be incongruous but also irrational and even unjust.

Likewise, this Court maintains that substantial justice, equity and fair play take precedence over technicalities and legalisms. In *Zacarias Cometa and Herco Realty & Awicultural Corporation vs. Court Of Appeals and Jose Franco*, the Supreme Court held as follows:

> "Paraphrasing what we trenchantly pointed out in *Hermoso vs. CA*, we test a law by its result. A law should not be interpreted so as to cause an injustice. **There are laws which are generally valid but may seem arbitrary when applied in a particular sense because of its peculiar circumstances**. We are not bound to apply them in servile subservience to their language. More explicitly-
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> . . . **we interpret and apply the law not independently of but in consonance with justice**. Law and justice are inseparable, and we

> must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in particular case because of its peculiar circumstances. In such a situation, we are not bound, because only of our nature and functions, to apply them just the same, in slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.
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> As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence.

All told, the Court finds no compelling reason to reverse or set aside the assailed Resolution.

**WHEREFORE**, premises considered, the prosecution's "Motion for Reconsideration (to Resolution dated October 22, 2019) is hereby **DENIED**.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice