REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

LUISA CHUAHIONG y GOCHECO,
1550 Bambang St., Sta. Cruz, Manila,
(AT-LARGE),
Accused.

CTA Crim. Case No. O-1015
(NPS Docket No. XVI-INV-14K-00396)

For: Violation of Section 255 of the NIRC of 1997, as amended
(Failure to Pay Value-Added Tax)

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

Promulgated:

JAN 26 2023
3:50 p.m.

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RESOLUTION

For the Court's resolution is an Information, filed on 6 December 2022, against accused Luisa Chuahoing y Gocheco, for willful failure to pay Value-Added Tax for the four (4) quarters of Taxable Year 2007, in violation of ***Section 255 of the National Internal Revenue Code of 1997, as amended*** (***"NIRC"***).

The Court finds that the instant Case must be dismissed on the ground of prescription.

Section 281 of the NIRC, which governs the prescriptive period for the filing of criminal actions under said Code, states:

> "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.
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> 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. [...]"

Meanwhile, the Supreme Court ruled in ***Emilio E. Lim, Sr., and Antonio Sun Lim v. Court of Appeals and People of the Philippines***[1] (***"the Lim Case"***) as follows:

> "Not only that. The Solicitor General stresses that Section 354 [of the Tax Code of 1939] speaks not only of discovery of 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.' [sic] 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 Case 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 for a crime, it was only on September 1, 1969 that the prescriptive period commenced.
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> XXX XXX XXX
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> [...] As Section 354 stands in the statute book [...] 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."

This Court has since followed the construction of the prescriptive period as laid out in the ***Lim Case***, above, as in ***People v. Castillo***[2] (**"the Castillo Case"**), ***People v. Consebido***,[3] ***People v. Bernardo***,[4] and ***People v. Balili***.[5] We ruled in the ***Castillo Case*** in this wise:

> "For the second mode of prescription, the filing of a Joint Complaint-Affidavit with the DOJ for preliminary investigation, taken together with the finality of the assessment or the point of 'discover,' triggers the commencement of the running of the period of prescription. The period of prescription shall thereafter be interrupted with the institution of criminal action before the CTA through the filing of an information in the name of the People of the Philippines. Necessarily, the information should be filed within the five-year prescriptive period; otherwise, there is nothing to be interrupted as the prescriptive period has already lapsed."

From the foregoing, the government's right to prosecute a criminal offense under the ***NIRC*** prescribes five (5) years after either (a) the commission of said offense; or (b) the discovery of the offense *and* the

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[1] G.R. Nos L-48134-37, 18 October 1990.
[2] CTA *EB* Crim. Case No. 053 (CTA Crim. Case No. O-663), 8 June 2021.
[3] CTA Crim. Case No. O-701, 7 May 2019.
[4] CTA *EB* Crim Case No. 079 (CTA Crim. Case No. O-733), 21 July 2022.
[5] CTA Crim. Case No. A-8 (Case Nos. R-MKT-20-01449-CR and R-MKT-20-01450-CR), 25 July 2022.

institution of judicial proceedings for the investigation and punishment of the offense, if the same was not known by the government at the time of its commission. The ***Lim Case***,[6] meanwhile, identifies a preliminary investigation as the "proceedings for investigation and punishment" that toll the commencement of the prescriptive period. In brief, if the government is unaware of a criminal offense under the NIRC at the time of its commission, the government's right to prosecute said offense prescribes five (5) years after the institution of a preliminary investigation via the filing of a Joint Complaint-Affidavit with the Department of Justice ("DOJ").

The record shows that the Joint Complaint-Affidavit for the instant case was filed with the Department of Justice on 6 November 2014.[7] The prescriptive period thus lapsed on 6 November 2019, five (5) years after said filing. However, the instant Information was only filed with this Court on 6 December 2022, over eight (8) years after the filing of the Joint Complaint-Affidavit. Being over three (3) years late, it is therefore indisputable that the government's right to prosecute this criminal offense has already prescribed.

There is thus nothing for the Court to do but to dismiss this case.

WHEREFORE, CTA Crim. Case No. O-1015 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[6] The ruling in the Lim Case was based on ***Section 354 of the Tax Code of 1939***. However, the wording of said section is identical to that of ***Section 281 of the NIRC***. As such, the interpretation laid down there is still applicable to the present case.

[7] *See* Joint Complaint-Affidavit, Records.