

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

EN BANC

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff-Appellant,

- versus -

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

CTA EB CRIM. NO. 118

(CTA CRIM. CASE NO. O-951)

For: Violation of Section 254 of the
National Internal Revenue Code
(NIRC) of 1997, as amended.

Present:

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

Promulgated:

AUG 29 2024

x ----- x

DECISION

FERRER-FLORES, J.:

Before this Court is the **Verified Petition for Review** (of the **Resolution dated March 01, 2023**) (*Verified Petition for Review*) filed on March 22, 2023 via registered mail by the **People of the Philippines** (**plaintiff-appellant**) against accused **Ziegfried Loo Tian** (**accused-appellee**) appealing the Resolution dated December 5, 2022 (**1st assailed Resolution**),¹ dismissing the case on the ground of prescription, and the Resolution dated March 1, 2023 (**2nd assailed Resolution**),² denying the

¹ *Rollo*, pp. 25 to 31.

² *Rollo*, pp. 32 to 35.

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motion for reconsideration, both rendered by the then Second Division of this Court³ (**Court in Division**).

The dispositive portions of the assailed Resolutions read as follows:

1st assailed Resolution

WHEREFORE, premises considered, the instant case is **DISMISSED** on the ground of prescription.

SO ORDERED.

2nd assailed Resolution

WHEREFORE, premises considered, prosecution's *Motion for Reconsideration* is **DENIED**.

SO ORDERED.

THE ANTECEDENT FACTS

On October 26, 2022, an *Information*⁴ was filed against accused-appellee for violation of Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which reads:

That on or before July 20, 2010, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, required by law to file his Quarterly Value-Added Tax Return (VAT return), did, then and there, willfully, unlawfully and feloniously attempt to evade and defeat payment of VAT for the second (2nd) quarter of taxable year 2010, by stating in the entry fields of the said return the word "exempt", when in truth and in fact said accused is not exempted as he failed to comply with the substantiation and reporting requirement under the tax law and revenue regulations, which resulted to deficiency tax in the amount of Three Million Two Hundred Ninety Three Thousand Three Hundred Twelve Pesos and Eighty Eight Centavos (Php3,293,312.88), exclusive of interests, penalties and surcharges to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW

Thereafter, the Court issued the *1st assailed Resolution* on December 5, 2022 dismissing the above *Information* on the ground of prescription.⁵

³ Composed of Associate Justice Erlinda P. Uy, Associate Justice Jean Marie A. Bacorro-Villena, and Associate Justice Lanee S. Cui-David.

⁴ Division Docket, p. 5.

⁵ *Rollo*, pp. 26 to 31.

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Aggrieved, plaintiff-appellant moved for reconsideration⁶ which was still denied for lack of merit in the 2nd assailed Resolution of the Court in Division.⁷

Hence, this Petition.

THE PROCEEDINGS BEFORE THE COURT EN BANC

On March 28, 2023, this Court received plaintiff-appellant's *Verified Petition for Review* filed via registered mail on March 22, 2023.⁸

Thereafter, on April 19, 2023, the Court directed plaintiff-appellant to file the proof of receipt of the 2nd assailed Resolution.⁹

On April 25, 2023, plaintiff-appellant submitted the required proof of date of receipt of the 2nd assailed Resolution through its *Compliance (Resolution dated April 19, 2023)*.¹⁰

In the Minute Resolution dated May 11, 2023, the Court noted plaintiff-appellant's *Compliance (Resolution dated March 14, 2023)* and directed accused-appellee to file his comment on the *Verified Petition for Review*.¹¹

The counsel for accused-appellee then filed a *Notice of Appearance*¹² on July 12, 2023, which was noted by the Court on July 17, 2023.¹³

On July 27, 2023, accused-appellee filed his *Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 01 March 2023)*.¹⁴

The Court noted accused-appellee's *Comment/Opposition* on August 22, 2023. On even date, the case was also submitted for decision.¹⁵

⁶ *Motion for Reconsideration (of Resolution dated December 05, 2022)*, Rollo, pp. 230 to 239.

⁷ Rollo, pp. 32 to 35.

⁸ Rollo, pp. 1 to 19.

⁹ Rollo, p. 242.

¹⁰ Filed via registered mail April 25, 2023 and received by the Court on May 3, 2023; Rollo, pp. 243 to 250.

¹¹ Rollo, p. 253.

¹² Rollo, pp. 254 to 257.

¹³ Minute Resolution dated July 17, 2023, Rollo, p. 279.

¹⁴ Rollo, pp. 259 to 278.

¹⁵ Minute Resolution dated August 22, 2023, Rollo, p. 280.

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THE ISSUE

In plaintiff-appellant's *Verified Petition for Review*, the sole error raised was that the Court in Division erred when it found no probable cause to charge accused-appellee Loo Tian for Section 254 of the NIRC of 1997, as amended, or willful attempt to evade or defeat the payment of value-added tax (VAT) for the second quarter of taxable year (TY) 2010.

THE ARGUMENTS

Plaintiff-appellant interposes the following arguments in support of its petition:

- A. 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,
- B. Accused-appellee should be held liable for willful attempt to evade or defeat tax for the second quarter of TY 2010 in violation of Section 254 of the NIRC of 1997, as amended.

On the other hand, accused-appellee counter-argues that:

- A. The right of the government to prosecute him has prescribed under Section 281 of the NIRC of 1997, as amended; and,
- B. The case must be dismissed for violation of the accused's right to speedy disposition of cases as the plaintiff took more than ten (10) years from the filing of the complaint to the filing of the Information in the Court of Tax Appeals (CTA).

THE RULING OF THE COURT

The *Verified Petition for Review* lacks merit.



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The Motion for Reconsideration of the 1st assailed Resolution was belatedly filed; hence, the 1st assailed Resolution has become final and executory.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that “[a]ny aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within **fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.**”

In plaintiff-appellant’s *Motion for Reconsideration*, it reckoned the fifteen (15)-day period to file the said motion from the receipt of the Bureau of Internal Revenue (BIR) National Office – Prosecution Division (NOPD), the alleged deputized special prosecutor, on **December 21, 2022**. A scrutiny of the records would show, however, that the Department of Justice (DOJ) received the *1st assailed Resolution* on **December 16, 2022**.¹⁶ A question now arises on whether the fifteen (15)-day period should be reckoned from the receipt of the DOJ or the BIR NOPD.

At first glance, there should be no conflict considering that, at the time the *1st assailed Resolution* was issued on December 12, 2022, there were no other special prosecutors¹⁷ to speak of. Thus, the fifteen (15)-day reglementary period to file a motion for reconsideration should simply be reckoned from the date of receipt by the DOJ on **December 16, 2022**. Counting fifteen (15) days therefrom, plaintiff-appellant had until December 31, 2022 within which to file a motion for reconsideration against the *1st assailed Resolution*. Since December 31, 2022 was a holiday, plaintiff-appellant had until **January 3, 2023**, the next working day, to file a motion for reconsideration.

Clearly, plaintiff-appellant’s *Motion for Reconsideration* in relation the *1st assailed Resolution* was belatedly filed on **January 5, 2023**.

Even if this Court is to consider the effect of the deputization of the BIR NOPD, such deputization should not affect the counting of the fifteen (15)-day reglementary period. No less than the Supreme Court has clarified that the period to file a motion for reconsideration should be reckoned from the receipt of the principal counsel and not from the receipt of the deputized counsel. In these cases, the Supreme Court held that the Office of the Solicitor General (OSG), the principal counsel therein, remains to be the principal

¹⁶ *Notice of Resolution* dated December 19, 2022, Division Docket, p. 207.

¹⁷ It was only on January 5, 2023 that the counsels from the BIR NOPD filed their Formal Entry of Appearance as *Deputized Special Prosecutors*.

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counsel and the service of legal processes to it is decisive. In the recent case of *Claudine Monette Baldovino-Torres vs. Jasper A. Torres*,¹⁸ the Supreme Court reiterated these rulings, viz:

The Court finds no merit in the contention that the OSG filed its Motion for Reconsideration out of time in the RTC. Admittedly, the public prosecutor in charge of the case, who was deputized by the OSG to appear on its behalf, received a copy of the RTC Decision on March 20, 2017. On the other hand, the OSG received its copy only on April 4, 2017.

In the case of *National Power Corporation v. National Labor Relations Commission* (NAPOCOR), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG.** In holding so, the Court emphasized **that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer.** As a consequence, **copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.**

The *NAPOCOR* case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**

In the same vein, **the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision on April 4, 2017.** Consequently, the filing by the OSG of its Motion for Reconsideration questioning the RTC Decision on April 18, 2017 was well within the reglementary period for filing such motion. **The counting of the period for its filing should be reckoned from the date of receipt of the assailed decision by the OSG and not by the public prosecutor.** This is because the public prosecutor acted as a mere representative of the OSG which, in turn, retained supervision and control over the former. (*Emphasis and underscoring supplied; citations omitted*)

Based on the foregoing jurisprudential pronouncements, when the party is represented by several counsels, such as when the principal counsel deputizes another lawyer from the government agency it represents, it is the receipt of the principal counsel that is binding and the date from which the fifteen (15)-day period is counted.

Verily, this Court will still find the *Motion for Reconsideration* filed out of time and hold that the *1st assailed Resolution* has become final,

¹⁸ *Baldovino-Torres vs Torres*, G.R. No. 248675, July 20, 2022, citing the cases of *National Power Corp. vs. National Labor Relations Commission*, G.R. Nos. 90933-61, May 29, 1997 and *Commissioner of Customs vs. Court of Tax Appeals*, G.R. No. 132929, March 27, 2000.

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executory and no longer appealable. Consequently, the same is already immutable and may no longer be modified in any respect.

In *People of the Philippines vs. Benedicta Mallari, et al. (Mallari)*,¹⁹ the Supreme Court ruled that the CTA First Division's December 14, 2009 Resolution had already attained finality because of petitioner's failure to file a motion for reconsideration within the fifteen (15)-day reglementary period allowed under the CTA's revised internal rules. As a result, it now becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the Court that rendered it or by the Highest Court of the land.

In fine, this Court can no longer entertain the present *Verified Petition for Review* as plaintiff-appellant's *Motion for Reconsideration* before the Court in Division was filed out of time; thus, it already lost its right to appeal. Failure to interpose a timely appeal deprives the appellate body of any opportunity to alter the final judgment, more so to entertain the appeal.²⁰

Even assuming *arguendo* that the *Motion for Reconsideration* was timely filed and, thus, the Court can entertain this *Petition*, the same will still be denied since the government's right to prosecute the case has already prescribed.

The Information was filed beyond the five (5)-year prescriptive period.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and, (3) the time the prescriptive period is interrupted.²¹

There is no dispute as to the ***first*** and ***second*** considerations. The issue, however, lies with the ***third*** consideration.

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

¹⁹ G.R. No.197164, December 4, 2019.

²⁰ *Bureau of Internal Revenue vs. TICO Insurance Co., Inc.*, G.R. No. 204226, April 18, 2022.

²¹ *Romualdez vs. Marcelo* (Resolution), G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan*.

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As to the ***first*** consideration, Section 281 of the NIRC of 1997, as amended, provides that violations of said 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.

Inasmuch as accused-appellee was charged for violation of Section 254 of the NIRC of 1997, as amended, the applicable prescriptive period is **five (5) years** as provided above.

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

- (1) If the day of 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.

A perusal of the Information shows that the violation alleged therein is that the accused “willfully, unlawfully and feloniously attempt to evade and defeat payment of VAT for the second (2nd) quarter of taxable year 2010, by stating in the entry fields of the said return the word ‘exempt’, when in truth and in fact said accused is not exempted [...]”. Such being an omission and misrepresentation on the part of the accused, the day of the commission of the violation is unknown until the same is discovered. Thus, the Court *En Banc* agrees with the finding of the Court in Division that the commencement of the prescriptive period is from the discovery of the commission and the institution of judicial proceedings for its investigation and punishment.

In the instant case, since, by the nature of the violation charged against the accused, the day of the commission of the violation was not known, the prescriptive period began to run when the violation was discovered and the case was indorsed by the Commission of Internal Revenue (CIR) for preliminary investigation to the DOJ on July 5, 2012.

The present controversy is with the ***third*** consideration, particularly, when the period of prescription is interrupted.



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Plaintiff-appellant claims that the discovery and the institution of judicial proceedings not only trigger the commencement of the prescriptive period but also trigger the interruption of the same prescriptive period pursuant to Section 281 of the NIRC of 1997, as amended. It likewise invokes Section 1 of Rule 110 of the Revised Rules on Criminal Procedure which provides:

SECTION 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;
- (b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws.

As such, plaintiff-appellant maintains that prescription has not set in as the filing of the complaint with the DOJ for the conduct of preliminary investigation triggered both the commencement and interruption of the running of the prescriptive period.

This Court cannot subscribe to such interpretation.

As early as 1990, the Supreme Court has held in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*²² (*Lim* case) that the prescriptive period is interrupted by the filing of the Information in Court. Specifically, it was declared therein that tax cases 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.

In 2005, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the RRCTA, which provides that the prescriptive period for violations of the NIRC of 1997, *inter alia*, is interrupted by the filing of

²² G.R. Nos. L-48134-37, October 18, 1990.

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an Information before the Court, consistent with the pronouncement in the *Lim* case.²³ Specifically, Section 2 of Rule 9 of the RRCTA reads:

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. (*Emphasis supplied*)

Based on the foregoing, criminal cases falling within the jurisdiction of the Court in Division is instituted by filing of the information before the said Court. Such institution of the criminal action before the Court shall interrupt the running of the period of prescription.

Evidently, plaintiff-appellant's reliance on Rule 110 of the Revised Rules on Criminal Procedure is misplaced considering that it only applies suppletorily to the RRCTA²⁴ and that the latter specifically provides that criminal actions are instituted by the filing of an Information before the CTA which filing shall interrupt the running of the prescriptive period.

In view of the foregoing disquisitions, **the running of the prescriptive period is interrupted by the filing of the Information before the Court** and not by the filing of the complaint before the DOJ.

As correctly found by the Court in Division, the right to prosecute the criminal action herein has prescribed.

Counting from the discovery of the violation of the NIRC of 1997, as amended, and the institution of judicial proceedings for preliminary investigation (i.e., CIR's referral of the case to the DOJ) on **July 5, 2012**, the Information should have been filed before this Court within five (5) years from July 5, 2012, or until July 5, 2017. Clearly, when the instant Information was filed before this Court on **October 26, 2022**, more than five (5) years have passed since the government's right to institute a criminal action prescribed.

²³ *Id.*

²⁴ Section 3 of Rule 1 of the RRCTA provides that "[t]he Rules of Court in the Philippines shall apply suppletorily to these Rules."

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All told, the Court *En Banc* finds no compelling reason to reverse the Court in Division's assailed Resolutions.

WHEREFORE, premises considered, plaintiff-appellant's *Verified Petition for Review (of the Resolution dated March 01, 2023)* is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated December 5, 2022 and March 1, 2023 in CTA Crim. Case No. O-951 are **AFFIRMED**.

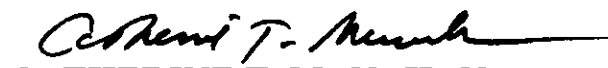
SO ORDERED.


CORAZON G. FERRER FLORES
Associate Justice

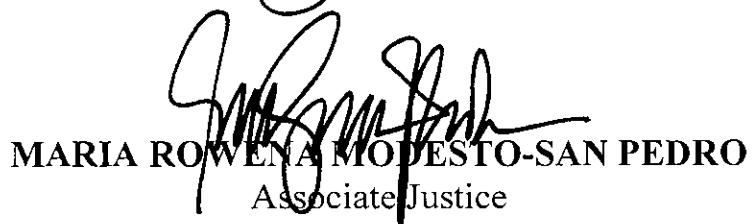
WE CONCUR:


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

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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LANEE S. CUI-DAVID

Associate Justice



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.



ROMAN G. DELROSARIO

Presiding Justice