19-000187-0034

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM CASE NO. O-717

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

BONIFACIO CUSTODIO DEL ROSARIO,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASSISTANT STATE PROSECUTOR SUSAN T. VILLANUEVA
Department of Justice
Padre Faura St., Ermita, Manila

ATTY. RAMON B. LORENZO
ATTY. MYRNA R. SANTELICES
Bureau of Internal Revenue - Revenue Region No. 6
Legal Division, BIR Building I, Solana Street
Intramuros, Manila

GREETINGS:

You are hereby notified by these presents that on **April 3, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 4, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-717**
- versus -	Members:
BONIFACIO CUSTODIO DEL ROSARIO, Bonnie Del Rosario Caltex Services Station 2263-B Jose Abad Santos Street, Brgy. 227, Zone 21, District II, Tondo, Manila, Accused.	**DEL ROSARIO**, P.J., Chairperson, **BACORRO-VILLENA**, and **CUI-DAVID**, JJ. Promulgated: APR 03 2024; 3:30PM

x - x

RESOLUTION

This resolves plaintiff's **Motion for Reconsideration with Leave of Court and Entry of Appearance (Re: Resolution dated 19 February 2024)** filed on March 20, 2024 praying for the Court to: (1) set aside the Resolution promulgated on February 19, 2024; (2) issue a new Resolution finding probable cause to issue a warrant of arrest and setting the case for trial; and, (3) note the Entry of Appearance of the signatories in the Motion as special prosecutors for plaintiff.

In the assailed Resolution dated February 19, 2024, the Court withdrew the case from the archives, dismissed the same by reason of prescription of the offense charged, and recalled and set aside the Alias Warrant of Arrest against accused.

In the present Motion, plaintiff submits that the prescriptive period for violations of the National Internal Revenue Code of 1997, as amended (NIRC), being a special law, is interrupted by the filing of the complaint before the Department of Justice (DOJ) for purposes of conducting preliminary investigation, citing the case of *People of the*

Philippines vs. Mateo A. Lee, Jr.[1] Plaintiff argues that since the Formal Letter of Demand/Final Assessment Notice became final and executory on February 23, 2014 and that plaintiff had five (5) years counted from such date within which to file a case against accused, the filing of the Joint Complaint-Affidavit before the DOJ on September 27, 2018 effectively tolled the running of the period of prescription.

At the outset, it should be noted that plaintiff, through the DOJ, received the assailed Resolution on February 26, 2024. Counting fifteen (15) days therefrom, plaintiff had until March 12, 2024 within which to file a Motion for Reconsideration or New Trial. Plaintiff, however, filed the subject Motion only on March 20, 2024, or eight (8) days late. Thus, the Motion was filed out of time, and hence, should be dismissed outright.

But even if the Motion is timely filed, it is still dismissible for lack of merit.

Contrary to plaintiff's argument, the ruling in *Lee, Jr.* does not apply in the present case. The doctrine laid down by *Lee, Jr.*, *i.e.*, the filing of the complaint before the DOJ suspends the running of the prescriptive period, applies only when the special law does not provide for a prescriptive period for the offense.[2]

The present case charges accused with Willful Failure to Pay Tax under Section 255 of the NIRC, in relation to Sections 253 and 256 thereof. Section 281 of the NIRC sets a prescriptive period of five (5) years for all violations of the provisions of the NIRC, hence, *Lee, Jr.* does not apply.

As discussed in the assailed Resolution dated February 19, 2024, the prescriptive period to file a criminal case for violations of the NIRC is tolled only when the Information is filed before the Court pursuant to *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*,[3] and Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals.

Clearly, plaintiff failed to present cogent reason to justify the reconsideration sought.

WHEREFORE, premises considered, plaintiff's **Motion for Reconsideration with Leave of Court (Re: Resolution dated 19**

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[1] G.R. No. 234618, September 16, 2019.
[2] Section 1, Act No. 3326. "Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: xxx."
[3] G.R. No. 48134-37, October 18, 1990.

February 2024) is **DENIED** for being filed out of time and for lack of merit.

The **Entry of Appearance** of plaintiff's special prosecutors from the Legal Division of the Bureau of Internal Revenue Revenue Region 6, namely: Atty. Ramon B. Lorenzo and Atty. Myrna R. Santelices, is **NOTED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice