REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA EB CRIM. NO. 114** (CTA Crim. Case No. O-973)
	Present:
- *versus* -	Ringpis-Liban, P.J., Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, Cui-David, Ferrer-Flores, and Angeles, JJ.
LOGISTICS.COM CORPORATION, JOVAN G. TRIAS, ARMAN R. ONG AND ERMA O. AUNARIO, *Respondents.*	Promulgated: FEB 24 2026 1:45

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RESOLUTION

RINGPIS-LIBAN, P.J.:

This resolves the Motion for Reconsideration filed by petitioner via registered mail on November 28, 2024, assailing the Decision dated November 8, 2024 which denied its Amended Verified Petition for Review for lack of merit.

Petitioner insists that prescription has not set in and that there is a *prima facie* case against respondents for violation of Section 255, in relation to Section 253, of the National Internal Revenue Code of 1997, as amended (1997 NIRC). Petitioner asserts that the filing of the complaint before the prosecutor's office interrupted the period of prescription.

The Court finds no merit in petitioner's Motion for Reconsideration. There is no compelling reason to reverse or modify the assailed Decision dated November 8, 2024.

The Court stands by its ruling in the assailed Decision that petitioner's right to initiate this case against respondents had already expired by the time the Information was filed.

The Court is mindful of the Supreme Court's ruling in *People v. Consebido*,[1] where it was categorically held that the filing of a criminal complaint before the Department of Justice (DOJ) shall toll the running of the prescriptive period for offenses under the 1997 NIRC, whether the commission thereof was immediately known or unknown at the time of the violation. However, said ruling cannot be applied to the present case considering that the Supreme Court limited its application to prospective cases, consistent with the principle that the interpretation most favorable to the accused should govern the prescription of crimes. It pertinently held:

> "But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply prospectively.
>
> Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. The ruling in *Desierto* and the subsequent case of *Corpus, Jr. v. People of the Philippines*, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned." *(Citations omitted)*

Response to Associate Justice Jean Marie A. Bacorro-Villena's Dissenting Opinion

Contrary to the view espoused in Associate Justice Jean Marie A. Bacorro-Villena's Dissenting Opinion, the prospective application of *Consebido* is not, and cannot be, confined solely to criminal cases governed by the 1991 Revised Rules on Summary Procedure or the 2022 Rules on Expedited Procedures in the First Level Courts. The text of *Consebido* imposes no such limitation. While she cites a portion of the decision to justify a restrictive reading, a closer examination of the very paragraphs she quotes reveals that the Supreme Court's pronouncement on prospectivity pertains to the entirety of the *Consebido* ruling and applies to all criminal cases. It was never intended to be so narrowly confined.

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[1] G.R. No. 258563, April 2, 2025 ("*Consebido*").

The reference to these summary rules was merely contextual. The Supreme Court sought to reconcile the apparent inconsistencies in earlier rulings involving offenses cognizable under them. The Supreme Court deemed it prudent to resolve the conflicting doctrines on prescription applicable to criminal cases governed by these summary rules, as distinguished from those covered by the regular rules on criminal procedure where the proper application of the rules on the tolling of prescription has long been settled.

This reconciliation served as a prelude to the Supreme Court's integration of the rules on tolling of prescriptive periods for all offenses, notwithstanding the Supreme Court's earlier categorical ruling on the tolling of prescription for offenses under the 1997 NIRC. In integrating these rules, the Supreme Court stated that "**henceforth**, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period."

The use of the word "henceforth" in the concluding paragraph of *Consebido*, which was likewise cited in the Dissenting Opinion, is particularly significant. It unequivocally signifies that, from that point forward, the new rule on the tolling of prescription for all criminal cases would apply—marking a clear doctrinal shift from prior jurisprudence on the commencement, computation, and interruption of prescription of offenses. The Supreme Court's deliberate use of this term unmistakably conveys the general and prospective application of *Consebido*, thereby negating the restrictive interpretation advanced in the Dissenting Opinion.

Specifically, the majority takes exception to the following propositions and conclusions advanced in the Dissenting Opinion. These find no support in the text and language of *Consebido* itself, or in the reasoning and intent underlying the Supreme Court's ruling. These are:

1. The ruling in *Consebido* is not a new doctrine on prescription;

2. *Consebido* never abandoned the ruling in *Lim, Sr. v. Court of Appeals,*[2] as their respective doctrines do not conflict with each other;

3. *Consebido* and *Lim, Sr.* may be reconciled by limiting the application of *Lim, Sr.* to criminal tax offenses committed under the National Internal Revenue Code of 1939, while *Consebido* applies to criminal tax cases arising under the 1997 NIRC;

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[2] G.R. Nos. L-48134-37, October 18, 1990 ("*Lim, Sr.*").

4. *Consebido* merely clarifies what interrupts the prescriptive period for criminal tax offenses;

5. The rule of lenity does not apply to procedural matters unless a procedural rule impairs substantive rights; and

6. Prescription is procedural in nature.

While *Consebido* is clarificatory in form, as it sought "to re-examine its ruling in *Lim, Sr.* and to clarify the prescriptive period under Section 281 of the 1997 NIRC, specifically with respect to violations that are unknown at the time of its commission," it, in fact, introduced a new controlling interpretation of the law. The Supreme Court ruled that the prescriptive period for offenses whose commission was not known shall begin to run from their discovery, and that the institution of proceedings for preliminary investigation interrupts the running of the period. This departs from *Lim, Sr.*, which treated the prescriptive period as commencing only upon both the discovery of the offense and the institution of judicial proceedings for its investigation and punishment. Thus, although the Supreme Court characterized its pronouncement as a clarification, the *Consebido* ruling effectively modified the prevailing operative rule.

In *Lim, Sr.*, the Supreme Court expressly observed that criminal tax offenses are "practically imprescriptible" so long as the period between the discovery of the offense and the 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 statutory construction was discarded in *Consebido,* where the Supreme Court adopted the line of reasoning earlier enunciated in *People v. Duque,*[3] *Panaguiton, Jr. v. Department of Justice,*[4] and *Presidential Commission on Good Government v. The Ombudsman*[5] to harmonize the paragraphs of Section 281. Hence, *Consebido* effectively overturned the *Lim, Sr.* construction insofar as it required both discovery and institution of judicial proceedings for its investigation and punishment to trigger prescription. In light of the foregoing, there is no need to reconcile *Consebido* and *Lim, Sr.* in the manner suggested in the Dissenting Opinion, nor is it accurate to claim that *Consebido* merely clarifies what interrupts the prescriptive period for criminal tax offenses. If there were merit to the claim that *Consebido* does not lay down a new doctrine on the prescription of tax offenses, then the Dissenting Opinion would have no basis to insist on its retroactive application.

The majority also begs to differ with the Dissenting Opinion's proposition that the rule of lenity does not apply to procedural matters unless a procedural rule impairs substantive rights, premised on the assertion that the law on prescription of crimes is merely procedural in nature. This position clearly rests

[3] G.R. No. 100285, August 13, 1992.
[4] G.R. No. 167571, November 25, 2008.
[5] G.R. No. 206357, November 12, 2014, 746 Phil. 995.

on a misapprehension of the nature of the concept of prescription of crimes as it relates to the substantive-procedural law distinction.

A statute prescribing the period within which crimes may be prosecuted is an act of grace and liberality on the part of the State in favor of the accused.[6] It is more than a mere statute of repose, such as the statute of limitations in civil actions, which simply seeks to bar stale claims arising long after the fact.[7] Prescription of offense represents the State's voluntary surrender of its sovereign power to prosecute offenses after the lapse of a definite period of time.[8] It extinguishes not merely the right to prosecute but the penal liability itself. Once prescription sets in, the State loses the power to impose punishment, not just the procedural mechanism to do so.[9] The nature of the law on prescription of crimes and its underlying policy considerations were aptly explained by the Supreme Court in *People v. Moran*,[10] as follows:

> We should at first observe that a mistake is sometimes made in applying to statute of limitation in criminal suits the construction that has been given to statutes of limitation in civil suits. The two classes of statutes, however, are essentially different. In civil suits the statute is interposed by the legislature as an impartial arbiter between two contending parties. In the construction of the statute, therefore, there is no intendment to be made in favor of either party. Neither grants the right to the other; there is therefore no grantor against whom the ordinary presumptions of construction are to be made. But it is otherwise when a statute of limitation is granted by the State. **Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. <u>The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense</u>;** that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from **henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. <u>Hence it is that statutes of limitation are to be liberally construed in favor of the defendant</u>,** not only because such liberality of construction belongs to all acts of amnesty and grace, but because **the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt.** Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes enforcing such promptitude should be vigorously maintained.

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[6] *People v. Pacificador,* G.R. No. 139405, March 13, 2001.
[7] *People v. Reyes,* G.R. No. 74226-27, July 27, 1989.
[8] *People v. Duque*, G.R. No. 100285, August 13, 1992.
[9] *People v. Castro*, G.R. No. L-6407, July 29, 1954.
[10] G.R. No. 17905, January 27, 1923, citing Wharton, CRIMINAL PLEADING AND PRACTICE 9th Ed. (1889), p. 215.

> **They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subaltern, and to secure for criminal trials the best evidence that can be obtained."** *(Emphasis and underscoring supplied)*

The foregoing discussion makes clear that statutes governing prescription of crimes are substantive, not merely procedural, in nature. Prescription of offense determines the existence of criminal liability. It sets the boundaries of the State's penal authority and defines the substantive right of the accused to be immune from further prosecution for the offense to which such right has attached.

At any rate, the Supreme Court has categorically held that prescription in criminal cases is a matter of substantive law, as it involves a substantive right.[11] It has consistently ruled in a number of cases[12]—the most recent being *Consebido* itself—that in interpreting laws on prescription of crimes, the construction most favorable to the accused must prevail. These categorical pronouncements should foreclose any further debate on the nature of prescription of crimes as anything other than substantive law. To insist otherwise defies both logic and settled jurisprudence.

Given the foregoing discussion, it is evident that the entirety of the *Consebido* ruling cannot be applied retroactively where such application would prejudice the accused, as in this case.

ACCORDINGLY, petitioner's Motion for Reconsideration (of the Decision dated November 8, 2024) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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[11] *Zaldivia v. Reyes, Jr.*, G.R. No. 102342, July 3, 1992 citing *People v. Castro*, 95 Phil. 463.
[12] *People v. Moran*, G.R. No. 17905, January 27, 1923; *People v. Yu Hai*, G.R. No. L-9598, August 15, 1956; *People v. Reyes*, G.R. No. 74226-27, July 27, 1989; *People v. Pacificador*, G.R. No. 139405, March 13, 2001; *Romualdez v. Marcelo*, G.R. Nos. 165510-33 (Resolution), July 28, 2006; *Republic v. Desierto*, G.R. No. 136506, January 16, 2023; *Causing v. People*, G.R. No. 258524, October 11, 2023.

WE CONCUR:

With due respect, please see Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. 114
(CTA Crim. Case No. O-973)

- versus -

Present:

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

LOGISTICS.COM CORPORATION, JOVAN G. TRIAS, ARMAN R. ONG and ERMA O. AUNARIO,
Diezmo Road, Pulo, Cabuyao City, Laguna,
Respondents.

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DISSENTING OPINION

BACORRO-VILLENA, J.:

With utmost due respect to the Hon. Presiding Justice Ma. Belen M. Ringpis-Liban, I am constrained to register my dissent to the *ponencia*, as it denies petitioner People of the Philippines' (**petitioner**'s) "Motion for Reconsideration (of the Decision dated November 8, 2024)"[1] (**MR**), for lack of merit.

This case once again brings to the fore the persistent challenge faced by the Court *En Banc* in resolving the issue of prescription in criminal tax cases, particularly in reconciling the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with conflicting judicial

[1] *Rollo*, pp. 156-170.

interpretations. The divergence between this Court's previous reliance on *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[2] (**Lim, Sr.**) and the more recent and definitive ruling of the Supreme Court in *People of the Philippines v. Ulysses Palconit Consebido*[3] (**Consebido**) compels a deliberate departure from precedent that has proven legally untenable. To continue applying *Lim, Sr.* is to perpetuate a misapplication of the law and to undermine the government's right to prosecute tax offenses.

In *Consebido*, the Supreme Court categorically ruled that Section 281[4] of the NIRC of 1997, as amended, must be interpreted to mean that "the filing of the criminal complaint before the [Department of Justice (**DOJ**)] shall toll the running of the prescriptive period for offenses under the [NIRC of 1997, as amended], whether its commission was immediately known or unknown at the time of the violation." The Court further explained that the portion of its ruling declaring that "[t]his new rule shall apply prospectively" referred only to offenses covered by the 1991 Revised Rules on Summary Procedure[5] (**RRSP**) — later supplanted by the 2022 Rules on Expedited Procedures in the First Level Courts[6] (**REPFLC**) — and not to criminal tax offenses under the jurisdiction of the CTA. Quoted below is the pertinent discussion in *Consebido*:

> ...
> [E]ven if the commencement of preliminary investigation interrupted the running of the prescriptive period, the complaint should have been filed with the DOJ within five years from October 25, 2008, or not later than October 25, 2013. Thus, **the offense had already prescribed as early as when the Joint Complaint-Affidavit dated January 30, 2014, was filed.**
>
> In fine, the CTA *En Banc* did not err in affirming the dismissal of the Complaint.
>
> *The rule on the tolling of the prescriptive period for offenses*
>
> As discussed above, **the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the 1997 NIRC, as amended, whether its commission was immediately known or unknown at the time of the violation.**

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[2] G.R. Nos. L-48134-37, 18 October 1990.
[3] G.R. No. 258563, 02 April 2025.
[4] 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.** (Emphasis and underscoring supplied)
[5] Resolution of the Court *En Banc* 1991, 15 October 1991.
[6] A.M. No. 08-8-7-SC, 01 March 2022.

Still, the Court deems it necessary to revisit the prevailing jurisprudence on the tolling of offenses covered by the 1991 Revised Rules on Summary Procedure as well as the 2022 Rules on Expedited Procedures in the First Level Courts.

In the recent case of *Republic v. Desierto*, the Court held that the rule in *Panaguiton, Jr.*, *i.e.*, prescription is tolled by the institution of proceedings for preliminary investigation, only applies to special laws that are not covered by the Revised Rules on Summary Procedure. For acts covered by special laws where the Revised Rules on Summary Procedure applies, prescription shall only be interrupted by the filing of the Information and not the commencement of preliminary investigation. This is based on Section 11 of the 1991 Revised Rules on Summary Procedure which states that "[t]he filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information: Provided, however, that in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de officio*."

The ruling in *Desierto* can be traced back to *Zaldivia v. Reyes, Jr.*, which involved a municipal ordinance. The Court held:

> Under Section 9 of the Rule on Summary Procedure, "the complaint or information shall be filed directly in court without need of a prior preliminary examination or preliminary investigation." Both parties agree that this provision does not prevent the prosecutor from conducting a preliminary investigation if he wants to. However, the case shall be deemed commenced only when it is filed in court, whether or not the prosecution decides to conduct a preliminary investigation. This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.

Subsequently, the Court pronounced in *People v. Pangilinan* that the ruling in *Zaldivia* does not apply to special laws. The Court later clarified in *Jadewell Parking Systems Corp. v. Lidua, Sr.* that "the doctrine of *Pangilinan* pertains to violations of special laws but *not* to ordinances." In *People v. Lee*, the Court explained that "*Jadewell* presents a different factual milieu as the issue involved therein was the prescriptive period for violation of a city ordinance, unlike here as well as in *[Pangilinan]* and *[the] other above-mentioned related cases*, where the issue refers to prescription of actions pertaining to violation of a special law." Thus, the Court said that *Jadewell* did not abandon the doctrine in *Pangilinan*.

The 1991 Revised Rules on Summary Procedure was supplanted by the 2022 Rules on Expedited Procedures in the First Level Courts. Rule II, Subsection B, Section 1 thereof states that "[t]he filing of criminal cases governed by the Rule on Summary Procedure shall either be by complaint or by information."

The DOJ likewise issued Circular No. 028, entitled the "2024 DOJ-NPS Rules on Summary Investigation and Expedited Preliminary Investigation," which applies when the penalty prescribed by the law is imprisonment of one day to six years, fine regardless of the amount, or both.

A summary investigation shall be conducted if the prescribed penalty is imprisonment of one day to one year, fine regardless of the amount, or both. The investigating prosecutor must immediately resolve a case subject of summary investigation upon receipt of its records.

With this dilemma, the Court takes this opportunity to pronounce that <u>the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period</u>. While it is ideal that all cases are resolved promptly, the reality is that this is not done at all times, whether for valid reasons or not. The offended party, which is primarily the State, should not be prejudiced by any delay in the conduct of the preliminary investigation even for cases covered by summary procedure. **The Court reiterates its reasoning in *People v. Olarte* that *"it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint."***

In addition, Chief Justice Gesmundo extensively discussed the history of the pertinent laws and rules on the filing of complaint or information for criminal cases and the conduct of preliminary investigation in his Reflections. Based on an examination of these laws and rules, he aptly surmised:

> [T]**he use of the phrase "complaint or information" in Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule II, Subsection B, Section 1 of [the] 2022 Rules on Expedited Procedures in the First Level Courts**, for purposes of the tolling of the prescriptive period of offenses, must henceforth, be construed to refer to the filing of the complaint or information before the prosecution office."

<u>But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, **this new rule shall apply prospectively**.</u>

Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. <u>The ruling in *Desierto* and the subsequent case of *Corpus, Jr. v. People of the Philippines*, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned.</u>[7]

...

From the foregoing, *Consebido* clarified, with finality, that the prescriptive period in tax cases is tolled by the filing of the complaint before the DOJ, and that such interpretation merely affirms the correct construction

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7 *People of the Philippines v. Ulysses Palconit Consebido*, supra at note 3; Citations omitted, italics in the original text, emphasis and underscoring supplied.

of Section 281 from its inception, rather than declaring a new doctrine on prescription. Accordingly, *Consebido* must be applied retroactively to all cases governed by the said law, dating back to its effectivity, thereby displacing contrary applications premised on *Lim, Sr.* Any contrary view would only prolong doctrinal confusion and further erode public confidence in the just and consistent application of tax laws.

With the governing doctrine on prescription thus settled, I submit that a careful examination of the antecedent facts and procedural backdrop of the present case leads to a different conclusion as to the proper application of these principles.

Petitioner seeks the reversal of the Court *En Banc*'s Decision dated 08 November 2024[8] (**assailed Decision**), which denied petitioner's "Verified Petition for Review (of the Resolution dated March 06, 2023)"[9] (**Verified Petition for Review**) for lack of merit and affirmed the First Division's Resolutions dated 30 January 2023[10] and 06 March 2023.[11]

In the present MR[12], petitioner *first* argues that the Court *En Banc*'s interpretation of the Supreme Court's ruling in *Lim, Sr.*[13], *i.e.*, that the five (5)-year prescriptive period under Section 281[14] of the NIRC of 1997, as amended, commences upon discovery of the violation and the institution of judicial proceedings for its investigation and punishment, and is tolled only by the filing of an Information before the Court, does not align with the general principles on prescription applicable to criminal actions. Petitioner contends that there is no compelling reason to treat criminal actions under the NIRC differently, and that jurisprudence supports the application of these principles uniformly across all criminal cases, without distinction.

As such, petitioner maintains its position that the filing of the Joint Complaint-Affidavit[15] (**JCA**) before the DOJ for preliminary investigation interrupted the running of the five (5)-year prescriptive period, and the period remained tolled upon the subsequent filing of the Information[16] before the Court of Tax Appeals (**CTA**).

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8 Division Docket, pp. 126-151.
9 Id., pp. 1-67, with annexes.
10 Division Docket, pp. 101-107.
11 Id., pp. 132-135.
12 Supra at note 1.
13 Supra at note 2.
14 Supra at note 4.
15 Division Docket, pp. 20-27.
16 Id., pp. 5-6.

Petitioner contends that the Supreme Court has applied the general rules on prescription in one case involving a criminal tax violation under the same law. In this regard, petitioner cites *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*[17] (**Tupaz**), which involved the offense of willful failure to pay deficiency income tax (**IT**). In that case, petitioner claims that the Supreme Court categorically held that the filing of a criminal complaint before the DOJ tolls the running of the prescriptive period.

Petitioner argues that the ruling in *Tupaz* should prevail over *Lim, Sr.* as *Tupaz* was decided in 1999 or nine (9) years after the promulgation of *Lim, Sr.* and involved the application of Section 281[18] of the NIRC of 1997, as amended. In contrast, *Lim, Sr.* interpreted Section 354[19] of the NIRC of 1939.

According to petitioner, to perpetuate *Lim, Sr.* for tax cases alone would not be in keeping with the legislative intent behind Section 281 of the NIRC of 1997, as amended, as well as the construction placed upon by this Court in its precursor, Section 2[20] of Act No. 3326,[21] as amended, in a long line of cases, namely, *Hermis Carlos Perez v. Sandiganbayan and the Ombudsman*[22] (**Perez**), *Luis Panaguiton, Jr. v. Department of Justice, et al.*[23] (**Panaguiton, Jr.**), *Securities and Exchange Commission v. Interport Resources Corporation, et al.*[24] (**Interport**), *Sanrio Company Limited v. Edgar C. Lim, doing business as Orignamura Trading*[25] (**Sanrio**), *Domingo Ingco, et al. v. Sandiganbayan*[26] (**Ingco**), *People of the Philippines v. Ma. Theresa Pangilinan*[27] (**Pangilinan**), *People of the Philippines v. Napoleon Duque*[28] (**Duque**) and *Tupaz.* Thus, the

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17 G.R. No. 127777, 01 October 1999.

18 Supra at note 4.

19 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.

20 SEC. 2. 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 person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

21 AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

22 G.R. No. 245862, 03 November 2020.

23 G.R. No. 167571, 25 November 2008.

24 G.R. No. 135808, 06 October 2008.

25 G.R. No. 168662, 19 February 2008.

26 G.R. No. 112584, 23 May 1997.

27 G.R. No. 152662, 13 June 2012.

28 G.R. No. 100285, 13 August 1992.

correct rule should be that the filing of the complaint before the prosecutor's office interrupted the period of prescription.

Thus, based on the provisions of Section 281[29] of the NIRC of 1997, as amended, and the aforementioned Supreme Court rulings, petitioner insists that the filing of the JCA[30] with the DOJ on 28 February 2019 effectively tolled the running of the five (5)-year prescriptive period.

Petitioner further contends that Section 2,[31] Rule 9 of the Revised Rules of the Court of Tax Appeals[32] (**RRCTA**) merely reiterates the principle that the filing of criminal actions before the CTA interrupts the running of the prescriptive period. Petitioner emphasizes that this rule does not negate the established principle that the filing of a complaint with the prosecutor's office likewise suspends the prescriptive period.

Accordingly, petitioner argues that the prescriptive period continues to be tolled from the filing of the JCA with the Office of the Prosecutor until the filing of the Information before this Court, and remains so until respondent Logistics.com Corporation (**respondent corporation**) and respondents Jovan G. Trias (**Trias**), Arman R. Ong (**Ong**) and Erma O. Aunario (**Aunario**) (collectively, "**respondents**"), who are being sued in their capacities as respondent corporation's President, General Manager and Treasurer, respectively, are either convicted or acquitted.

The crux of the controversy lies on whether *Lim, Sr.* remains binding jurisprudence for purposes of determining when the prescriptive period for violations of the NIRC of 1997, as amended, is interrupted or tolled.

After an assiduous review and a second hard look at the case records and petitioner's expounded arguments *vis-à-vis* relevant jurisprudence, it is my considered view that the Court *En Banc* is constrained to reconsider its earlier disquisitions articulated in the assailed Decision.[33]

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[29] Supra at note 4.

[30] Supra at note 15.

[31] 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. *(Rules of Court, Rule 110, Sec. 1, par. 2a)* (Emphasis supplied)

[32] A.M. No. 05-11-07-CTA dated 22 November 2005.

[33] Supra at note 8.

To recall, the Court *En Banc* affirmed the dismissal of petitioner's criminal action against respondents on the ground of prescription. At the time the subject Information[34] was filed before this Court on 05 December 2022, more than two (2) years had already elapsed since the government's right to institute the criminal action had prescribed on 04 September 2020, reckoned from the finality of the assessment — the day after the last day for filing a judicial appeal, which fell on 05 September 2015.

Applying *Lim, Sr.*, which held that tax cases are practically imprescriptible so long as the period from discovery *and* initiation of judicial proceedings ***up to*** **the filing of the information in court** does not exceed five (5) years, and in light of the express provision of Section 2,[35] Rule 9 of the RRCTA, the Court *En Banc* ruled that for violations under a tax law, the five (5)-year prescriptive period is interrupted by the filing of the Information in Court — not by the filing of a complaint with the DOJ.

With due respect, I submit that the ruling above deviates from the general rule on prescription applicable to criminal actions for offenses requiring preliminary investigation — whether under the Revised Penal Code (**RPC**) or special laws — that the prescriptive period is interrupted by the filing of a complaint with the fiscal's office for purposes of preliminary investigation against the accused.

In reexamining the merits of Our ruling above, it is necessary to closely review the relevant provisions of Section 281 of the NIRC of 1997, as amended, which govern the prescriptive period for criminal tax actions, *viz*:

> ...
>
> 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.[36]
>
> ...

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[34] Supra at note 16.
[35] Supra at note 31.
[36] Italics in the original text, emphasis and underscoring supplied.

The aforequoted provision expressly states that the prescriptive period shall be interrupted when "**proceedings are instituted against the guilty persons.**" A meaningful resolution of the issue at hand requires a clear understanding of what constitutes the "institution of proceedings" sufficient to interrupt the running of the prescriptive period. To this end, it is necessary to refer to established jurisprudence interpreting similar provisions under both the RPC, as amended, and Act No. 3326[37], as amended, which respectively govern the prescription of felonies and violations of special laws, to wit:

RPC, as amended	**Act No. 3326, as amended**
ART. 91. *Computation of prescription of offenses.* — **The period of prescription** shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and **shall be interrupted by the filing of the complaint or information,** and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him. The term of prescription shall not run when the offender is absent from the Philippine Archipelago. (Emphasis supplied)	SEC. 2. 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 person**, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

Evidently, Section 281[38] of the NIRC of 1997, as amended, substantially mirrors the prescriptive provisions cited above, particularly Section 2 of Act No. 3326, as amended. Given that the NIRC of 1997, as amended, is itself a special law, there is no justification for treating it differently from other special laws when determining the point at which the prescriptive period is deemed interrupted.

PRELIMINARY INVESTIGATION TOLLS PRESCRIPTION

In the 1967 case of *People of the Philippines, et al. v. Ascencion P. Olarte*[39] (**Olarte**), which was later cited in *People of the Philippines v. Mateo*

[37] Supra at note 21.
[38] Supra at p. 10.
[39] G.R. No. L-22465, 28 February 1967.

A. Lee, Jr.[40] (**Lee, Jr.**) and *Pangilinan,*[41] the Supreme Court settled divergent views as to the **effect of filing a complaint** with the Municipal Trial Court **for purposes of preliminary investigation** on the prescriptive period of the offense. The High Court therein held that the filing of the complaint for purposes of preliminary investigation **interrupts the period of prescription of criminal responsibility**. It explicitly adopted the ordinary sense of the word "instituted", ruling that it includes the initiation of proceedings for preliminary investigation, not just the formal filing of an Information in Court.

Then, in the 2004 case of *Roberto Brillante v. Court of Appeals and the People of the Philippines*[42] (**Brillante**), citing the 1983 case of *Emiliano A. Francisco and Harry B. Bernardino v. The Honorable Court of Appeals and the People of the Philippines*[43] (**Francisco**), the Supreme Court said that the ruling in *Francisco* amplified the *Olarte* doctrine when it categorically ruled that **the filing of a complaint with the fiscal's office suspends the running of the prescriptive period of a criminal offense**.

Relevantly, in the 2008 case of *Panaguiton, Jr.*,[44] the Supreme Court had the occasion to discuss the structure of the judicial system during the enactment of Act No. 3326,[45] as well as the prevailing jurisprudence at the time, which recognized that **the filing of a complaint before the justice of the peace for purposes of preliminary investigation was sufficient to toll the prescriptive period**. This conclusion is understandable, given that, during that period, it was the justice of the peace (or municipal judge) who was authorized to conduct the preliminary investigation.

Then, as emphasized in the 2012 case of *Pangilinan* and reiterated in the 2019 case of *Lee, Jr.*, the Supreme Court categorically ruled in *Panaguiton, Jr.* that the **commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses charged under Batas Pambansa (BP) Blg. 22.** This followed the Supreme Court's declaration that **there is no longer any distinction between cases prosecuted under the RPC and those covered by special laws with respect to the interruption of the period of prescription**, *viz*:

[40] G.R. No. 234618, 16 September 2019.
[41] Supra at note 27.
[42] G.R. Nos. 118757 & 121571, 19 October 2004.
[43] G.R. No. L-45674, 30 May 1983.
[44] Supra at note 23.
[45] Supra at note 21.

> ...
>
> Since **BP Blg. 22 is a special law** that imposes a penalty of imprisonment of not less than thirty (30) days but not more than one year or by a fine for its violation, it therefor prescribes in four (4) years in accordance with the aforecited law. **The running of the prescriptive period, however, should be tolled upon the institution of proceedings against the guilty person.**
>
> In the old but oft-cited case of *People v. Olarte*, this Court ruled that **the filing of the complaint in the Municipal Court even if it be merely for purposes of preliminary examination or investigation, should, and thus, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits**. This ruling was broadened by the Court in the case of *Francisco, et al. v. Court of Appeals, et al.* when it held that **the filing of the complaint with the Fiscal's Office also suspends the running of the prescriptive period of a criminal offense**.
>
> Respondent's contention that a different rule should be applied to cases involving special laws is bereft of merit. **There is no more distinction between cases under the RPC and those covered by special laws with respect to the interruption of the period of prescription.** The ruling in *Zaldivia v. Reyes, Jr.* is not controlling in special laws. In *Llenes v. Dicdican, Ingco, et al. v. Sandiganbayan, Brillante v. CA, and Sanrio Company Limited v. Lim*, cases involving special laws, this Court held that the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription. In *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court even ruled that investigations conducted by the Securities and Exchange Commission for violations of the Revised Securities Act and the Securities Regulation Code effectively interrupts the prescription period because it is equivalent to the preliminary investigation conducted by the DOJ in criminal cases.
>
> **In fact, in the case of *Panaguiton, Jr. v. Department of Justice*, which is in all fours with the instant case, this Court categorically ruled that commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses they had been charged under BP Blg. 22.** Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control, like the accused's delaying tactics or the delay and inefficiency of the investigating agencies.[46]
>
> ...

From the foregoing declarations, it can be inferred that the phrase "**when proceedings are instituted against the guilty person**", as used in the law, was understood — even then — to include the filing of a complaint for purposes of preliminary investigation, and not merely the filing of an

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[46] *People of the Philippines v. Ma. Theresa Pangilinan*, supra at note 41; Citations omitted, italics in the original text and emphasis supplied.

Information before the Court. **As such, it is evident that the law intends for the prescriptive period to be interrupted at the very first formal investigative step, as preliminary investigation is deemed to partake of the nature of a judicial proceeding that suspends the running of prescription.**

Furthermore, in *Interport,*[47] the Supreme Court explained that it is a well-settled doctrine that the conduct of a preliminary investigation — which serves as a procedural safeguard to determine whether a crime has been committed and whether there is probable cause to charge the accused — interrupts the running of the prescriptive period.

It is also worth noting that, in his Concurring Opinion in *Interport*, then Supreme Court Associate Justice Dante O. Tiñga (Ret.) emphasized that **any form of investigation** instituted against the guilty person which **may ultimately lead to prosecution**, as provided by law, is sufficient to toll the running of the prescriptive period.

Clearly, from the foregoing, in all criminal cases — whether prosecuted under the RPC or special laws — the prescriptive period is interrupted upon the commencement of proceedings for the prosecution of the accused, which is effectively accomplished through the initiation of a preliminary investigation, the first formal investigative step that marks the institution of criminal proceedings against the accused.

Now, if the Court *En Banc* were to sustain the interpretation in the 1990 case of *Lim, Sr. vis-à-vis* Section 2,[48] Rule 9 of the RRCTA[49] — that it is the filing of an Information with the Court which interrupts the five (5)-year prescriptive period under Section 281[50] of the NIRC of 1997, as amended — such a ruling would, in my respectful view, constitute a clear departure from the established doctrine on prescription applicable to *all* criminal cases. This would run counter to the principle of *stare decisis et non quieta movere*, which holds that once a case has been decided a certain way, any subsequent case involving the same legal issue should be resolved in the same manner.[51]

In this regard, I wish to stress that treating the NIRC of 1997, as amended, differently merely because it is a special law lacks persuasive basis.

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47 Supra at note 24.
48 Supra at note 31.
49 Supra at note 32.
50 Supra at p. 10.
51 *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 174134, 30 July 2008, citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R No. 149834, 02 May 2006.

The Supreme Court has consistently held, even in criminal cases involving violations of special laws, that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused.

Specifically, in *Pangilinan*, the Supreme Court emphasized that the cases of *Ingco* (involving Republic Act [**RA**] No. 3019 or the Anti-Graft and Corrupt Practices Act), *Sanrio* (involving RA 8293 or the Intellectual Property Code), and *Interport* (involving the Revised Securities Act and the Securities Regulation Code) all concerned violations of special laws. Yet, in each of these cases, the Supreme Court consistently ruled that the institution of proceedings for preliminary investigation against the accused interrupts the running of the prescriptive period.

SECTION 2, RULE 9 OF THE REVISED RULES OF THE COURT OF TAX APPEALS (RRCTA) HARMONIZED WITH SECTION 1(a), RULE 110 OF THE REVISED RULES OF CRIMINAL PROCEDURE (RRCP)

Moreover, *Lim, Sr.* aligns with Section 2[52], Rule 9 of the RRCTA, it bears emphasizing that an alternative interpretation of the second paragraph of that provision exists — one that harmonizes it with the established doctrine cited above. Instead of construing it solely in relation to the first paragraph, it may be read in conjunction with Section 1(a)[53], Rule 110 of the Revised Rules of Criminal Procedure (**RRCP**), which provides that for offenses where a preliminary investigation is required, the criminal action shall be instituted by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

While it is true that the provisions of the RRCP apply only suppletorily to the RRCTA, it is nonetheless important to emphasize that the second paragraph of Section 2, Rule 9 of the RRCTA (specifically the italicized portion at the end) explicitly references Section 1(a), Rule 110 of the RRCP. That provision clearly states that, for offenses requiring preliminary investigation, a criminal action is deemed instituted upon the filing of a complaint with the proper officer for the purpose of conducting the required preliminary investigation.

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[52] Supra at note 31.

[53] SEC. 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.** (Emphasis supplied)

On the other hand, the first paragraph of Section 2, Rule 9 of the RRCTA may be construed as referring exclusively to the institution of proceedings before the Court in Division, which is effected solely through the filing of an Information. This must be distinguished from the institution of proceedings against guilty persons — which, under Section 281[54] of the NIRC of 1997, as amended, interrupts the running of the prescriptive period — as already settled by the Supreme Court to refer to the filing of a complaint for purposes of preliminary investigation.

Moreover, petitioner correctly observed that in *Tupaz*, which involved the offense of willful failure to pay deficiency IT, the Supreme Court held that the offense had not prescribed because the filing of the complaint for preliminary investigation with the DOJ constituted the institution of the criminal action within the five (5)-year prescriptive period. This conclusion was reached despite the earlier ruling in *Lim, Sr.*, which held that the prescriptive period continues to run until the filing of the Information in Court.

CONSEBIDO IS NOT A NEW DOCTRINE ON PRESCRIPTION GOVERNING OFFENSES UNDER THE 1997 NIRC AND THUS SHOULD BE APPLIED RETROACTIVELY

Settling the matter conclusively, the Supreme Court in the recent case of *Consebido* held that the five (5)-year prescriptive period for criminal tax offenses is tolled by the filing of a complaint before the DOJ, not by the filing of an Information before the Court. With all due respect, **this pronouncement in *Consebido* should be applied retroactively**, dating back to the effectivity of the NIRC of 1997. Section 281 of the NIRC of 1997, which governs the prescriptive period for criminal tax actions, expressly provides that the five (5)-year prescriptive period "shall be interrupted when proceedings are instituted against the guilty persons" and, according to *Consebido*, the proper interpretation thereof should be that the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period.

To be clear, **the above ruling in *Consebido* is <u>not</u> a new doctrine on prescription**. In upholding the said interpretation, **the Supreme Court merely reaffirmed what should have been the correct construction of the relevant provision from the outset, thereby revealing, by implication, this Court's error in applying the doctrine in *Lim, Sr.*,**

[54] Supra at p. 10.

which was understood to have ruled that, in criminal tax cases such as the present one, the prescriptive period is tolled only upon the filing of the Information in Court.

It is also worth stressing that it would be incorrect to assume that *Consebido* effectively abandoned *Lim, Sr.*, as the doctrines in these cases do not conflict with each other — unlike *Consebido vis-à-vis Republic of the Philippines v. The Honorable Aniano A. Desierto as Ombudsman, et al.*[55] (Desierto) and *Pastor Corpus, Jr. y Belmoro v. People of the Philippines*[56] (Corpus, Jr.), insofar as the tolling of the prescriptive periods for crimes covered by the REPFLC[57] is concerned.

RECONCILIATION: THE *LIM, SR.* DOCTRINE APPLIES UNDER THE 1939 NIRC, WHILE THE *CONSEBIDO* DOCTRINE APPLIES UNDER THE 1997 NIRC

In *Consebido*, the Supreme Court held that the prescriptive period for prosecuting crimes is tolled upon the filing of a complaint with the DOJ — not when the case reaches the court. **The High Court *specifically* clarified that under Section 281[58] of the NIRC of 1997, the prescriptive period for criminal tax offenses that are not immediately known starts from the time the violation is discovered and is interrupted once a preliminary investigation begins. This interpretation ensures that the intent of the law — to set a clear time limit for the prosecution of tax violations — is properly applied.**

To reiterate, for emphasis, **the Supreme Court's ruling in *Consebido*** — that the prescriptive period for criminal tax offenses is interrupted by the institution of judicial proceedings, particularly the commencement of preliminary investigation — **constitutes the proper and authoritative interpretation of Section 281 of the NIRC of 1997**. Thus, as aforesaid, this interpretation must be applied retroactively, *i.e.*, from the time the NIRC of 1997 took effect, as may be inferred from the Supreme Court's discussion quoted below:

> ...
>
> **Notably, *Lim, Sr.* applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely**

[55] G.R. No. 136506, 16 January 2023.
[56] G.R. No. 255740, 16 August 2023.
[57] Supra at note 6.
[58] Supra at p. 10.

> **noted that the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. This is no longer the case now, as observed in *Panaguiton*. Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery.** The adoption of the interpretation in *Duque* is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. **<u>The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense.</u>** This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.[59]
>
> ...

From the foregoing, **it is clear that the ruling in *Lim, Sr.*** — which the CTA had long relied on to hold that preliminary investigation does not toll the running of the prescriptive period — **was based on Section 354[60] of the NIRC of 1939**. That provision was enacted at a time when preliminary investigations were conducted by justices of the peace, a procedural context that no longer applies. Having said that, the Supreme Court clarified that under Section 281[61] of the NIRC of 1997, the commencement of preliminary investigation interrupts the prescriptive period for the offense.

As earlier noted, the latter portion of the decision in *Consebido*, which states that "[t]his new rule shall apply prospectively", refers only to offenses covered by the RRSP,[62] which was supplanted by the REPFLC[63] (and thus, not to criminal tax offenses covered by the RRCTA[64]).

The Supreme Court found it necessary to revisit prior pronouncements on the tolling of prescription for offenses covered by these summary procedures, especially in light of its rulings in *Desierto*, which held that prescription is interrupted by the institution of preliminary investigation only for special laws not covered by the RRSP[65], and *Corpus, Jr.*, which held that

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59 *People of the Philippines v. Ulysses Paleonit Consebido*, supra at note 3; Citation omitted, italics in the original text, emphasis and underscoring supplied.
60 Supra at note 19.
61 Supra at p. 10.
62 Supra at note 5.
63 Supra at note 6.
64 Supra at note 32.
65 Supra at note 5.

for light offenses, the timely filing of the Information in Court is necessary to toll prescription.

Clearly, the Supreme Court has now abandoned the pertinent rulings in *Desierto* and *Corpus, Jr.*, as they are inconsistent with its definitive pronouncement in *Consebido* — that the filing of a criminal complaint before the DOJ tolls the running of the prescriptive period, even for offenses covered by the REPFLC.[66]

Respectfully, the same concept of jurisprudential abandonment cannot be conveniently applied between *Consebido*, on one hand, and *Lim, Sr.*, on the other, precisely because there is no inconsistency between them. For criminal tax offenses committed under the NIRC of 1939, the doctrine in *Lim, Sr.* applies, whereas for those committed under the NIRC of 1997, *Consebido* is the controlling doctrine. Unfortunate as it may be, the First Division erred in failing to appreciate this crucial distinction. Accordingly, for criminal tax offenses covered by the RRCTA, and not by the RRSP or the REPFLC, the definitive rule in *Consebido* must apply retroactively.

POLICY CONSIDERATIONS: DELAY IN THE CONDUCT OF PRELIMINARY INVESTIGATION SHOULD NOT PREJUDICE THE STATE

Furthermore, as stated in *Consebido*, the Supreme Court recognized that while criminal cases should ideally be resolved promptly, delays are sometimes unavoidable. Therefore, the State, as the offended party, should not be disadvantaged by delays in the DOJ's preliminary investigations. **The Supreme Court also reiterated its ruling in the 1967 case of *Olarte*,[67] emphasizing that "it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under [their] control. All that the victim of the offense may do on [their] part to initiate the prosecution is to file the requisite complaint."**

The foregoing reiteration of the ruling in *Olarte*, coupled with the fact that the aforesaid prospective application was confined to offenses covered by the REPFLC,[68] reveals the Supreme Court's intent to firmly settle the applicable rule on prescription of *all* criminal tax offenses committed since the effectivity of the NIRC of 1997.

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66 Supra at note 6
67 Supra at note 39.
68 Supra at note 6.

It is likewise worth stressing that in *Consebido*, before the Supreme Court discussed the necessity of revisiting the prevailing jurisprudence on the tolling of offenses under the RRSP and the REPFLC, it had already settled the rule applicable to the parties in that case: the commencement of preliminary investigation interrupts the running of the prescriptive period. The Supreme Court upheld the CTA *En Banc*'s dismissal of the complaint not because the Information was filed beyond the five (5)-year prescriptive period, but because the complaint itself was filed after the lapse of such period. In fact, the Supreme Court expressly applied the long-settled doctrine in *Olarte* in resolving the controversy in *Consebido*, which involved a criminal tax offense. On this score, I respectfully submit that there should be no question that, with respect to criminal tax offenses, the *Consebido* doctrine applies retroactively.

THE *CONSEBIDO* DOCTRINE MERELY CLARIFIES WHAT INTERRUPTS THE PRESCRIPTIVE PERIOD FOR CRIMINAL TAX OFFENSES

Additionally, it should be noted that it was not respondents, but this Court, that relied on the doctrine in *Lim, Sr.* in finding that the prosecution belatedly filed the subject Information[69] on 05 December 2022 — more than five (5) years after the government's right to institute a criminal action had prescribed on 04 September 2020, reckoned from 05 September 2015, the finality of the assessment or the day after the last day for filing a judicial appeal.

Respondents' reliance on the *Lim, Sr.* doctrine would be immaterial because the controlling interpretation of Section 281[70] of the NIRC of 1997 rests with the Supreme Court, whose pronouncements form part of the legal system under Article 8[71] of the Civil Code of the Philippines. Even assuming that respondents invoked *Lim, Sr.* in good faith, such reliance cannot prevail over the Supreme Court's later and definitive construction in *Consebido*, which clarified that the filing of a complaint before the DOJ interrupts the prescriptive period for criminal tax offenses under the NIRC of 1997. **Once the Supreme Court clarifies the interpretation of a law, that ruling**

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69 Supra at note 16.
70 Supra at p. 10.
71 Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

applies to all cases still pending,[72] regardless of the parties' prior position or the lower court's earlier rulings to the contrary.

Thus, this Court's consistent reliance, in a long line of cases, on the *Lim, Sr.* doctrine is of no consequence, as its decisions are not binding precedents. The principle of *stare decisis et non quieta movere*, which holds that once a case has been decided a certain way, any subsequent case involving the same legal issue should be resolved in the same manner,[73] applies only to decisions promulgated by the Supreme Court.

RULE OF LENITY (*PRO REO*) DOES NOT APPLY TO PROCEDURAL MATTERS UNLESS A PROCEDURAL RULE IMPAIRS SUBSTANTIVE RIGHTS

This Court would also err in invoking the time-honored principle on the prescription of crimes, which holds that the interpretation most favorable to the accused should be adopted,[74] to justify declaring that the better rule is to apply *Consebido* prospectively on the ground that such application would favor the accused (herein respondent). Such reasoning misconstrues the essence of this basic principle of criminal law.

In the 1949 case of *Dominador B. Bustos v. Antonio G. Lucero, Judge of First Instance of Pampanga,*[75] the Supreme Court drew a clear distinction between substantive and procedural law, thus:

> ...
> As applied to criminal law, **substantive law is that which declares what acts are crimes and prescribes the punishment for committing them**, as distinguished from the **procedural law which provides or regulates the steps by which one who commits a crime is to be punished**. (22 C. J. S., 49.) Preliminary investigation is eminently and essentially remedial; it is the first step taken in a criminal prosecution.
> ...

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[72] See *Jonathan Y. Dee v. Harvest All Investment Limited, et al.*, G.R. Nos. 224834 & 224871, 15 March 2017, citing *Jaime Tan, Jr., as Judicial Administrator of the Intestate Estate of Jaime C. Tan v. Hon. Court of Appeals (Ninth Special Div.), et al.*, G.R. No. 136368, 16 January 2002; *Oriental Assurance Corporation v. Solidbank Corporation*, G.R. No. 139882, 16 August 2000.

[73] *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 174134, 30 July 2008, citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R No. 149834, 02 May 2006.

[74] *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.

[75] G.R. No. L-2068 (Resolution), 08 March 1949; Emphasis supplied.

In a separate opinion penned by the late Chief Justice Renato C. Corona,[76] it is evident that **the *pro reo* doctrine applies *only* to ambiguities in the *substantive* provisions of penal laws, particularly those defining the elements of a crime or the punishment. It does *not* extend to procedural matters, such as the computation or application of prescriptive periods**, *viz*:

> ...
>
> The fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law, is to resolve all doubts in favor of the accused. ***In dubio pro reo*. When in doubt, rule for the accused.** This is in consonance with the constitutional guarantee that the accused ought to be presumed innocent until and unless his guilt is established beyond reasonable doubt.
>
> Intimately intertwined with the *in dubio pro reo* principle is the **rule of lenity.** It is the doctrine that **"a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment."**
>
> ...

Similarly, in *Salvador Estipona, Jr. y Asuela v. Hon. Frank E. Lobrigo, Presiding Judge of the Regional Trial Court, Branch 3, Legazpi City, Albay, and People of the Philippines,*[77] although the case focused on plea bargaining, the Supreme Court reiterated the distinction between substantive and procedural law, emphasizing that **procedural rules fall within its exclusive domain** and that **their interpretation does not call for the application of *pro reo***, unless they directly affect substantive rights, to wit:

> ...
>
> **The Supreme Court's sole prerogative to issue, amend, or repeal procedural rules is limited to the preservation of substantive rights, *i.e.*, the former should not diminish, increase or modify the latter.** "Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions." *Fabian v. Hon. Desierto* laid down **the test for determining whether a rule is substantive or procedural in nature**.
>
>> It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. In fact, **a particular rule may be procedural in one**

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76 See *People of the Philippines v. Beth Temporada*, G.R. No. 173473, 17 December 2008; Citations omitted, italics in the original text and emphasis supplied.

77 G.R. No. 226679, 15 August 2017; Citations omitted, italics in the original text and emphasis supplied.

> **context and substantive in another.** It is admitted that what is procedural and what is substantive is frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.
>
> **In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the *judicial process for enforcing rights and duties recognized by substantive law* and for justly administering remedy and redress for a disregard or infraction of them.** If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but ***if it operates as a means of implementing an existing right then the rule deals merely with procedure.***
>
> ...

Relevantly, in *Fil-Estate Properties, Inc. and Fairways and Blue-Waters Resort and Country Club, Inc. v. Hon. Marietta J. Homena-Valencia, in her capacity as Presiding Judge of Branch 1, Regional Trial Court, Kalibo, Aklan, and Sullian Sy Naval*[78] (**Fil-Estate**), the Supreme Court explained the retroactivity of the "fresh period" rule in this wise:

> ...
>
> The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of **the general rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure.** Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.
>
> *Sps. De los Santos* reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect[.]
>
> ...

Applying the foregoing, considering that the *Consebido* doctrine on the interruption of the prescriptive period for criminal tax actions is in the nature of a procedural rule, it may be given retroactive effect to actions pending and undetermined upon its promulgation, there being no vested rights in the rules of procedure.[79]

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78 G.R. No. 173942 (Resolution), 25 June 2008; Citations omitted, italics in the original text and emphasis supplied.

79 See *Pfizer Inc., et al. v. Edwin V. Galan*, G.R. No. 143389, 25 May 2001.

It is thus clear that the *pro reo* doctrine, also known as the rule of lenity, applies only when there is doubt in construing the substantive provisions of a penal law — particularly those defining the elements of the crime or prescribing its penalty. It does not apply to the interpretation of procedural rules, such as those governing the computation or interruption of prescription, unless such interpretation would directly affect or impair substantive rights.

The *Consebido* doctrine deals with the interpretation of a **procedural rule** — specifically, when the prescriptive period for criminal tax offenses under the NIRC of 1997, as amended, is interrupted. Jurisprudence consistently holds that procedural rules may be applied retroactively to cases pending and undetermined at the time of their promulgation, there being no vested rights in matters of procedure, as underscored in *Fil-Estate*. As such, the interpretation in *Consebido* does not involve a change in the definition of the crime or its penalties, but rather clarifies the judicial process for enforcing existing substantive rights. Accordingly, the *pro reo* principle finds no application unless the procedural rule's interpretation would directly impair a substantive right — a circumstance not present in this case.

In light of the Supreme Court's categorical declaration in *Consebido*, which affirmed that the established doctrine on prescription applies to criminal tax cases, I am of the considered view that this Court, sitting *En Banc*, ought to reconsider its reliance on *Lim, Sr.* and align its rulings with the prevailing doctrine. Specifically, when the records clearly show that the prescriptive period was tolled by the filing of a complaint with the DOJ for purposes of preliminary investigation, consistency with *Consebido* requires that a dismissal grounded on *Lim, Sr.* be set aside and the criminal tax case remanded for trial.

Accordingly, in this case, the five (5)-year prescriptive period began to run on **05 September 2015**, the day after the last day for filing a judicial appeal against the Final Decision on Disputed Assessment[80] (**FDDA**). On this date, the assessment became final and executory, and the offense was deemed "committed." The criminal tax offense at issue is respondent corporation's violation of Section 255[81] of the NIRC of 1997, as amended, specifically the willful failure to pay deficiency IT in the amount of ₱31,272,966.72 for the taxable year (**TY**) 2010. Thus, petitioner had only until **<u>04 September 2020</u>** within which to institute proceedings with the DOJ.

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80 Annex H, Division Docket, pp. 50-53.

81 **SEC. 255**. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

Since the concerned Revenue Officers referred their criminal complaint against respondents to the DOJ on **28 February 2019**, the institution of judicial proceedings for preliminary investigation on that date effectively interrupted or tolled the prescriptive period. Hence, contrary to the Court *En Banc*'s ruling, the government's right to pursue the case against respondents had not yet prescribed when the Information[82] was filed on **05 December 2022**.

All told, I vote to: **(i) GRANT** petitioner's "Motion for Reconsideration (of the Decision dated November 8, 2024)" filed on 28 November 2024; **(ii) REVERSE** and **SET ASIDE** the First Division's Resolutions dated 30 January 2023 and 06 March 2023 in CTA Crim. Case No. O-973; and **(iii) REMAND** the case to the First Division for the conduct of the pre-trial conference and the arraignment of respondents Jovan G. Trias, Arman R. Ong and Erma O. Aunario.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[82] Supra at note 16.