REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-939
(NPS Docket No. XVI-INV-12G-00346)

For: Violation of Section 255, paragraph 1, of the National Internal Revenue Code of 1997, as amended.

- versus -

Members:

UY, *Chairperson,*
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

ZIEGFRIED LOO TIAN,
No. 1013, Juan Luna Street, Brgy. 7, Zone 1, Tondo, Manila.
(At-Large)
Accused.

Promulgated:

FEB 10 2023

9:1 a.m.

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RESOLUTION

The ***Formal Entry of Appearance with Motion for Reconsideration*** filed via registered mail on December 28, 2022 by Atty. Catherine Rose R. Tortoles, Atty. Jamaica Kay Dela Cruz, and Atty. Grace E. Untalan from the Bureau of Internal Revenue (BIR), National Office – Prosecution Division (NOPD) as counsels for the plaintiff is **NOTED**.

Accordingly, let all copies of orders and notices of this Court be furnished to the BIR Prosecution Division at 7th Floor, Room 704 Prosecution Division, BIR National Office Building, BIR Road, Diliman, Quezon City.

As regards the ***Motion for Reconsideration (of the Resolution dated December 05, 2022)*** attached to the *Formal Entry of Appearance with Motion for Reconsideration,* the Court finds the same without merit.

In its *Motion for Reconsideration*, the BIR NOPD prays that the Court: (1) set aside the *Resolution* dated December 5, 2022 dismissing the Information on the ground of prescription of the offense charged; and (2) issue an Order/Resolution setting the case for Arraignment and Pre-Trial.

According to the BIR NOPD, prescription has not set in, as the discovery and institution of judicial proceedings for the violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, against accused, not only triggered the commencement of the prescriptive period, but also the interruption of the same prescriptive period, on July 5, 2012, or the date of filing of the complaint with the DOJ.

The BIR NOPD explains that under Section 281 of the NIRC of 1997, as amended, the running of the prescriptive period commences from the discovery of the offense and the institution of judicial proceedings for its investigation and punishment. However, the BIR NOPD also points out that Section 281 of the NIRC of 1997, as amended, likewise provides for the interruption of the prescription period. Allegedly, the institution of judicial proceedings for the investigation and punishment of the offense triggers not only the commencement of the prescriptive period, but also the interruption of the same prescriptive period.

We do not agree.

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for the filing of actions for violations under the said Code, reads:

> "SECTION 281. *Prescription for Violations of any Provision of this Code.* — All violations of any provision of this Code shall **prescribe after Five (5) years**.
>
> **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." *(Emphasis supplied)*

At first blush, the BIR NOPD's interpretation of Section 281 of the NIRC of 1997, as amended, appears to be the evident interpretation, considering that under said section, if the day of the commission of the violation is unknown, "prescription shall begin to run from the discovery thereof and the institution of judicial proceedings for its investigation and punishment", while at the same time, "prescription shall be interrupted when proceedings are instituted against the guilty persons".

The above-mentioned interpretation leads to the conclusion that offenses under the NIRC of 1997, as amended, are imprescriptible considering that the running and interruption of the prescriptive period are both triggered by the same event, i.e., when proceedings are instituted against the guilty party.

However, a basic tenet of statutory construction is that laws should be construed in a manner that avoids absurdity or unreasonableness.[1] In the case of *Automotive Parts & Equipment Company, Incorporated, v. Jose B. Lingad, Secretary of Labor and Ruben F. Santos, Director, Bureau of Labor Standards,*[2] the Supreme Court held:

> "Nothing is better settled then that courts are not to give words a meaning which would lead to absurd or unreasonable consequence. That is a principle that goes back to In re Allen decided on October 29, 1903, where it was held that **a literal interpretation is to be rejected if it would be unjust or lead to absurd results**. That is a strong argument against its adoption. The words of Justice Laurel are particularly apt. Thus: "**The fact that the**

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[1] *Microsoft Corporation v. Rolando D. Manansala, et al.*, G.R. No. 166391, October 21, 2015.
[2] G.R. No. L-26406, October 31, 1969.

> **construction placed upon the statute by the appellants would lead to an absurdity is another argument for rejecting it** ... ."" *(Emphasis supplied)*

Thus, the Court cannot subscribe to the BIR NOPD's interpretation of Section 281 of the NIRC of 1997, as amended, as this will render the same purposeless. It seems illogical to include a provision on prescription that will never begin to run in the first place (considering that its running and interruption are triggered by the same event).

As explained by the Supreme Court in *Emilio E. Lim, Sr., and Antonia Sun Lim v. Court of Appeals and People of the Philippines*,[3] tax cases are practically imprescriptible only 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**, to wit:

> "Not only that. The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Case Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. **Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**
>
> xxx xxx xxx
>
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. As Section 354 stands in the statute book (and to this day it has remained unchanged)

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

> **it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years**." *(Emphasis and underscoring supplied)*

Likewise, in Revenue Memorandum Circular No. 101-90,[4] it is provided that "[t]he offenses under the Tax Code are seemingly 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**".

Contrary to the BIR NOPD's interpretation, the more reasonable interpretation of Section 281 of the NIRC of 1997, as amended, which will not lead to unjust or lead to absurd results, is that the five (5)-year prescriptive period for violations under the NIRC of 1997, as amended, commences to run, if the day of the commission of the violation is unknown, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. For purposes of commencement of the prescriptive period, preliminary investigation is considered as a "judicial proceeding for its investigation and punishment". Meanwhile, the five (5)-year prescriptive period shall be interrupted upon the filing of the Information in court. In other words, in order for violations under the NIRC of 1997, as amended, to be imprescriptible, the Information must be filed in court within five (5) years from preliminary investigation.

Applying the foregoing to the instant case, the filing of the Joint Complaint-Affidavit with the DOJ on July 5, 2012 is considered as the judicial proceeding for investigation which commenced the running of the five (5)-year prescriptive period. Accordingly, counting five (5) years from July 5, 2012, the prescriptive period lapsed on July 5, 2017. Clearly, prescription had already set in when the prosecution filed the subject *Information* before this Court on October 26, 2022.

WHEREFORE, in light of the foregoing considerations, the *Motion for Reconsideration (of the Resolution dated December 05, 2022)* filed on December 28, 2022 is **DENIED** for lack of merit.

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[4] Dated November 26, 1990; SUBJECT: Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.

Accordingly, the *Resolution* dated December 5, 2022 dismissing the instant case on the ground of prescription is hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice