REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-*versus*-

FAIVO PASCUAL BARTOLOME,
Respondent.

CTA EB CRIM. NO. 149
(CTA Crim. Case No. O-984)

Present:

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

Promulgated:
DEC 02 2025

x - x

DECISION

ANGELES, *J.*:

Before the Court *En Banc* is a *Petition for Review*[1] filed by the People of the Philippines (petitioner) against Faivo Pascual Bartolome (respondent), praying for the reversal of the Resolutions dated December 4, 2023[2] and April 4, 2024[3] (assailed Resolutions), promulgated by the First Division (Court in Division) in CTA Crim. Case No. O-984, which ultimately dismissed the case on the ground of prescription of the offense charged.

ANTECEDENTS

On December 5, 2022, an *Information*[4] was filed against respondent for willful failure to pay National Internal Revenue Tax for taxable year (TY) 2012, in violation of Section 255 of the National

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[1] *En Banc* (EB) Docket, pp. 1-10, with Annexes.
[2] EB Docket, pp. 17-23.
[3] EB Docket, pp. 26-30.
[4] Division Docket, pp. 5-7.

Internal Revenue Code of 1997, as amended (Tax Code). The *Information* partially reads, to wit:

> "That on or about December 14, 2016, in Laoag City, Ilocos Norte, and within the jurisdiction of this Honorable Court, accused FAIVO PASCUAL BARTOLOME, owner and proprietor of Dashma Computer Systems and Services, and Ilocostop Convenience Stores, who is engaged in the wholesale and/or retail of electronics, in customer services, and in the operation of convenience stores, with Tax Identification Number 129-864-120-000 and who is required by law, rules and regulations to pay the correct amount of income tax, did then and there knowingly, wilfully and unlawfully fail and refuse to pay deficiency income tax in the amount of One Million Ten Thousand Five Hundred Eleven and 39/100 (Php 1,010,511.39) Pesos, exclusive of interest and surcharge, for taxable year 2012, despite receipt of the Preliminary Assessment Notice with details of discrepancies, on December 14, 2015, and of the Formal Letter of Demand and Final Assessment Notice with details of discrepancies, on January 5, 2016, including prior and post notices and demands to pay, the last of which being the Second Collection letter dated December 14, 2016, and his failure to file a valid protest on the said assessment within the prescribed period, to the damage and prejudice of the Government of the Philippines in the aforesaid amount, exclusive of interest and surcharge."

In the Resolution dated March 30, 2023,[5] the Court in Division found the existence of probable cause and ordered that a warrant of arrest be issued against respondent.

On April 25, 2023, respondent voluntarily surrendered to the police authorities[6] but was released upon posting his cash bail bond in the amount of Sixty Thousand Pesos (P 60,000.00).[7] His arraignment and pre-trial was thereafter set on July 5, 2023 at 8:30 a.m.[8]

On June 7, 2023, petitioner filed a *Motion for Leave to Admit Pre-Trial Brief* with attached *Pre-Trial Brief*.[9] The Court in Division granted the said *Motion* and reset the previously scheduled arraignment and pre-trial of respondent to August 16, 2023 at 8:30 a.m.[10]

On August 7, 2023, in view of respondent's failure to file his Pre-Trial Brief and the directive of the Court in Division ordering him to file the same within ten (10) days from notice, the Court in Division

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[5] Division Docket, pp. 89-92.
[6] *Certificate of Detention* dated April 25, 2023, Division Docket, p. 114.
[7] *Order of Release* dated April 25, 2023, Division Docket, p. 121.
[8] Resolution dated May 19, 2023, Division Docket, p. 125.
[9] Division Docket, pp. 127-130.
[10] Resolution dated June 29, 2023, Division Docket, p. 138.

again reset the arraignment and pre-trial of respondent to September 6, 2023 at 8:30 a.m.[11] Meanwhile, the Preliminary Conference set on August 16, 2023 proceeded as scheduled.[12]

Respondent still failed to file his Pre-Trial Brief.[13] On September 6, 2023, during the hearing supposedly for the arraignment and pre-trial of respondent, counsels for respondent moved to suspend the arraignment and pre-trial, and to be allowed to file a Motion to Quash under Rule 117 of the Rules of Court, as amended (ROC). The Court in Division granted the said Motion in open court, and gave respondent ten (10) days to file a Motion to Quash.[14]

Respondent filed a *Motion to Quash*,[15] while petitioner filed a *Comment/Opposition [Re: Motion to Quash dated September 18, 2023]*.[16] Due to the said filings, the arraignment and pre-trial of respondent was cancelled indefinitely.[17]

The Court in Division promulgated the assailed December 4, 2023 Resolution[18] which granted respondent's *Motion to Quash* and dismissed the case on the ground that the offense charged had already prescribed. The dispositive portion of the said Resolution provides, *viz.*:

> **WHEREFORE**, the foregoing premises considered, accused's "Motion to Quash" filed on 18 September 2023 is hereby **GRANTED**. Accordingly, the Information filed against accused FAIVO PASCUAL BARTOLOME for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, for willful failure or refusal to pay tax is **DISMISSED** on the ground that the offense charged has already prescribed.

Petitioner filed a *Motion for Reconsideration (of the Resolution dated December 4, 2023)*,[19] to which respondent filed no comment.[20]

The Court in Division then promulgated the assailed April 4, 2024 Resolution[21] which denied the said *Motion* for lack of merit, thus:

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[11] Resolution dated August 7, 2023, Division Docket, p. 145.
[12] Division Docket, pp. 146-151.
[13] *Records Verification* dated September 6, 2023, Division Docket, p. 264.
[14] *Order* dated September 6, 2023, Division Docket, pp. 262-263.
[15] Division Docket, pp. 267-273.
[16] Division Docket, pp. 275-279.
[17] *Order* dated November 13, 2023, Division Docket, p. 281.
[18] *Supra*, note 2.
[19] Division Docket, pp. 290-296.
[20] *Records Verification* dated February 2, 2024, Division Docket, p. 301.
[21] *Supra*, note 3.

> **WHEREFORE,** premises considered, plaintiff's "Motion for Reconsideration (of the Resolution dated December 4, 2023)" filed on 18 December 2023, is **DENIED** for lack of merit.

Aggrieved, petitioner filed the instant *Petition* via registered mail on April 26, 2024, which was received by this Court on May 2, 2024. Respondent failed to file a comment to the instant *Petition.*[22]

The case was submitted for decision on November 6, 2024.

ASSIGNMENT OF ERROR

Petitioner assigns the following error allegedly committed by the Court in Division:

> THE HONORABLE CTA FIRST DIVISION ERRED WHEN IT DISMISSED THE INFORMATION FOR SECTION 255 OF THE NIRC OF 1997, AS AMENDED OR WILLFUL FAILURE TO PAY DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2012 AGAINST RESPONDENT BARTOLOME, ON THE GROUND THAT THE OFFENSE CHARGED HAS ALREADY PRESCRIBED.[23]

Petitioner disagrees with the ruling of the Court in Division that the prescription of five (5) years of the offense of willful failure to pay tax is counted up to the filing of the Information in Court. Petitioner points out that a more recent case has been decided by the Supreme Court regarding willful failure to pay tax, citing *Tupaz v. Ulep.*[24]

Petitioner also argues that Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) merely reiterates the fact that criminal actions filed before the CTA shall interrupt the running of the period of prescription because the prescriptive period does not begin to run anew after the investigating prosecutor's recommendation to file the proper criminal Information with the CTA. Petitioner points out that such fact does not overcome the fact that the filing of the complaint with the fiscal's office already suspended the running of the prescriptive period. Thus, the prescriptive period remains tolled from the time the complaint was filed with the Office of the Prosecutor until such time that an Information was filed with the court and respondent is either convicted or acquitted.

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[22] *Records Verification* dated October 10, 2024, EB Docket, p. 80.
[23] *Petition for Review* dated April 26, 2024, EB Docket, p. 5.
[24] G.R. No. 127777, October 1, 1999.

Petitioner likewise cites *People v. Bautista*[25] as basis for asserting that the Bureau of Internal Revenue's (BIR's) filing of the Joint Complaint-Affidavit before the Department of Justice (DOJ) for preliminary investigation on October 23, 2020, interrupted the running of prescription, which remained tolled and/or interrupted when the Information was instituted before this Court.

Petitioner further states 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, and that all that the victim may do on his part to initiate the prosecution is to file the requisite complaint. Here, the DOJ incurred some delay in the filing of the Information, but such mistake or negligence should not unduly prejudice the interests of the State which also has the right to due process.

RULING OF THE COURT *EN BANC*

The BIR Special Prosecutors lack legal authority to file the instant *Petition for Review*

Time and again, the Court *En Banc* has dismissed appeals filed by BIR Special Prosecutors in criminal cases decided by the Court in Division, on the ground that such appeals were filed without the requisite authority from the Office of the Solicitor General (OSG).

At the outset, pursuant to Section 10, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), it is the OSG that shall represent the People of the Philippines in all cases brought to the CTA in the exercise of its appellate jurisdiction. The OSG may deputize BIR legal officers in cases under the Tax Code or other laws enforced by the BIR, provided that such deputized legal officers shall remain at all times under the direct control and supervision of the OSG.[26]

This is consistent with Section 35 of the Administrative Code of 1982,[27] which vests in the OSG the power and responsibility to represent the government in all criminal proceedings before the Supreme Court and Court of Appeals, and allows the deputization of legal officers of government departments, bureaus, agencies and offices to assist the OSG and to appear or represent the government in

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[25] G.R. No. 168641, April 27, 2007.
[26] A.M. No. 05-11-07-CTA, November 22, 2005.
[27] Executive Order No. 292 , July 25, 1987.

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cases involving their respective offices, brought before the courts, subject to the OSG's control and supervision over such legal officers.

Thus, as early as in the cases of *Commissioner of Internal Revenue v. La Suerte Cigar & Cigarette Factory*[28] and *LG Electronics Philippines, Inc v. Commissioner of Internal Revenue*,[29] the Supreme Court recognized the long established procedure in requiring the OSG to represent the interest of the government, the OSG having the primary responsibility to appear for the government in appellate proceedings. It was also declared in *Cariño v. De Castro*[30] that the OSG is the appellate counsel of the People of the Philippines in all criminal cases.

Equally noteworthy is the High Court's ruling in *Republic v. "G" Holdings Inc.*,[31] where it recognized the power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist the OSG in cases involving their respective offices.

In this case, the instant *Petition* was filed by BIR Special Prosecutors. To support the latter's deputization, petitioner attaches to the said *Petition* a copy of the following:

1. Office Order No. 0282 dated April 19, 2023 issued by the Office of the Prosecutor General of the DOJ, deputizing/designating certain lawyers from the BIR as Special Prosecutors in the prosecution of tax cases in judicial courts, subject to the supervision and control of the Office of the Prosecutor General;[32] and,

2. Memorandum of Agreement (MOA) dated March 17, 2010 executed between the BIR and OSG, which states in part:

> 2. Cases appealed before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals *En Banc*.
>
>   a. The OSG hereby deputizes BIR handling lawyers to:
>   i. Appear before the Courts; and
>   ii. Continue the prosecution/litigation of appealed tax cases before the Regional Trial Courts; Court of Appeals and the Court of Tax Appeals *En Banc*.

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[28] G.R. No. 144942, July 4, 2002.
[29] G.R. No. 165451, December 3, 2014.
[30] G.R. No. 176084, April 30, 2008.
[31] G.R. No. 141241, November 22, 2005.
[32] Annex "C", *Petition for Review* dated April 26, 2024, EB Docket, p. 31.

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> The BIR handling lawyer shall have the following responsibilities:
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> i. To appear before courts; and
> ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case.
>
> b. The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.

Anent the *first* document, it bears stressing that such deputization was issued by the Office of the Prosecutor General of the DOJ, and not by the OSG as mandated by Section 10, Rule 9 of the RRCTA and the aforementioned jurisprudence.

As for the *second* document, while the same appears to be a general grant of authority by the OSG in favor of BIR handling lawyers to appear and continue the prosecution/litigation of appealed tax cases before the Court *En Banc*, it also shows the corresponding obligation of the BIR to submit a list of handling lawyers to the OSG for purposes of deputization. A holistic reading of Sections 2(a) and 2(b) of the above-cited MOA reveals that based on the BIR and OSG's own agreement, the grant of authority to BIR handling lawyers under Section 2(a), is concurrent with the requirement under Section 2(b), as it would be illogical to interpret Section 2(a) independently of Section 2(b) of the same provision.

As such, as far as this Court is concerned, in cases appealed before Us, while the OSG has deputized in general BIR handling lawyers to appear and continue the prosecution/litigation of appealed tax cases, it must still be proved that the BIR lawyer actually handling the case was included in a list submitted to the OSG for deputization. A contrary ruling allowing any and all BIR handling lawyers to file an appeal with the Court *En Banc* without any proof of authority or approval from, or at least notice to the OSG, would completely remove such BIR handling lawyers from the direct control and supervision of the OSG, in violation of the RRCTA and prevailing jurisprudence on the matter.

Verily, in *People v. Tuyay*,[33] the Supreme Court upheld the ruling of the CTA *En Banc* which dismissed the petition for review filed before

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[33] G.R. No. 206579, December 1, 2021.

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the latter because petitioner was represented by BIR Special Prosecutors, and not by the OSG, without any proof of proper deputization in favor of the BIR. The High Court also referred to copies of Revenue Memorandum Circular (RMC) No. 25-2010, which contains the provisions of the aforementioned MOA, and deputization orders of the OSG as "required documents" that must be attached to the appeal to prove that the BIR Special Prosecutors were duly deputized by the OSG to file the petition for review.[34]

In view of the foregoing disquisition, We find the documents attached to the instant *Petition* insufficient to convince this Court that the BIR Special Prosecutors were duly deputized **by the OSG** to file the present appeal.

Further, in view of the principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, an appeal of a criminal case not filed by the People as represented by the OSG is perforce dismissible.[35]

Therefore, with the instant *Petition* suffering from the basic infirmity of lack of the requisite imprimatur from the OSG, the same is dismissible on such ground.[36]

Let it be emphasized that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in accordance with the provisions of law. Thus, one who seeks to avail the right to appeal must comply with the requirements of the rules; otherwise, such right is lost.[37]

But even if this Court were to gloss over the foregoing fatal defect, the instant *Petition* must still be denied due to prescription of the crime charged.

The Court in Division was correct in dismissing the case as petitioner's right to file the same had already prescribed

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[34] *Id.*
[35] *Malayan Insurance Co., Inc. v. Piccio*, G.R. No. 193681, August 6, 2014.
[36] *Republic v. "G" Holdings Inc.*, G.R. No. 141241, November 22, 2005.
[37] *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005.

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Generally, 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 was interrupted.[38]

In relation to the prescription of violations of any provision of the Tax Code, Section 281 thereof provides the relevant rules, *viz.*:

> 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 date 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)*

Section 2, Rule 9 of the RRCTA further provides that the institution of criminal actions shall interrupt the running of the period of prescription. The said provision reads:

> Section 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 Republic 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 criminal actions shall interrupt the running of the period of prescription.** *(Emphasis supplied)*

Based on the foregoing provisions, it can be readily said that: **(1)** all violations of any provision of the Tax Code shall prescribe after five (5) years; **(2)** the five (5)-year prescriptive period shall begin to run from the date of the commission of the violation, or if the same was not

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[38] *Domingo v. Sandiganbayan*, G.R. No. 109376, January 20, 2000.

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known at the time, from the discovery thereof; and **(3)** only the institution of the criminal action shall interrupt the running of the five (5)-year prescriptive period.

In this case, seeing that the crime charged in the *Information* is violation of Section 255 of the Tax Code, or failure to pay tax, there is no dispute that the applicable prescriptive period is five (5) years. There is also no dispute that since the present case involves a taxpayer's refusal to pay deficiency taxes due, the date of the commission of the violations is known.

What remains at issue is the proper reckoning point for the commencement of the five (5)-year prescriptive period, and the point of its interruption.

In this regard, We agree with the findings of the Court in Division that the five (5)-year prescriptive period started to run when the subject Formal Letter of Demand (FLD) and Assessment Notices (ANs)[39] attained finality for failure of respondent to file a valid protest thereto within thirty (30) days from receipt of the same on January 5, 2016, or on **February 4, 2016**; and that such period was interrupted only when the *Information* was filed in Court on **December 5, 2022.**[40] Considering that the five (5)-year prescriptive period ended on **February 4, 2021**, at the time of the filing of the *Information* with the Court on December 5, 2022, the crime charged had, indeed, already prescribed.[41]

In arriving at the foregoing conclusion, the Court in Division cited, among others, the case of *Lim, Sr. v. Court of Appeals*,[42] where the Supreme Court ruled that when dealing with criminal prosecutions for refusing to pay deficiency taxes, it is only when the final notice and demand for payment of the deficiency taxes is served on the taxpayer that the cause of action on the part of the BIR accrues. This is so because prior to the receipt of the final assessment, no violation has yet been committed by the taxpayer. The offense is committed only after receipt is coupled with the willful refusal to pay the taxes due within the allotted period.[43]

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[39] Division Docket, p. 36.
[40] Division Docket, p. 5.
[41] *Supra*, note 2.
[42] G.R. Nos. 48134-37, October 18, 1990.
[43] *Id.*

Relatedly, RMC No. 101-90[44] was issued to clarify certain matters in the *Lim* case, including the following:

> 1. *When cause of action for willful failure to pay deficiency tax occurs.*
>
> The cause of action for willful failure to pay deficiency tax occurs **when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is committed only after receipt is coupled with refusal to pay the tax within the allotted period.**
>
> 2. *Prescription under Section 280 [now Section 281] of the Tax Code.*
>
> a) The 5-year prescriptive period in an offense [of] willful failure to pay a deficiency tax assessment **commences to run only after the receipt of the final notice and demand by the taxpayer and he refuses to pay.**
>
> b) [In] a protested assessment, the 5-year period starts from the service of the final notice and demand disposing of the protest, and not from the date of the original assessment.
>
> xxx xxx xxx
>
> *(Emphasis supplied)*

Considering the aforementioned ruling in the *Lim* case, as recognized in RMC No. 101-90, the Court in Division was correct in reckoning the five (5)-year prescriptive period from the finality of the subject FLD and ANs on February 4, 2016, *i.e.*, upon the expiration of the period to file a protest to the subject assessment, where no protest was filed. It was only at this time that the cause of action of petitioner accrued, because despite notice and demand, respondent still willfully refused to pay the taxes due within the allotted period.

The Court in Division was likewise correct in citing the RRCTA and the *Lim* case as basis for holding that the five (5)-year prescriptive period was suspended by the filing of the *Information* with the Court on December 5, 2022, and **not** by the filing of the complaint with the fiscal's office on October 23, 2020.[45]

It bears stressing that at the time the *Information* was filed in court, and at the time the Assailed Resolutions were promulgated by the Court in Division, the controlling jurisprudence on the issue of

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[44] SUBJECT: *Determination of when cause of action for willful failure to pay deficiency tax occurs; and prescription under Section 280 of the Tax Code*, November 26, 1990.

[45] Division Docket, pp. 15-24.

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prescription of violation of Section 255 of the Tax Code was the *Lim* case. In the said case, the Supreme Court categorically stated that the five (5)-year prescriptive period runs up to the filing of the Information in court.

While this Court is aware of the Supreme Court's ruling in the 2025 case of *People v. Consebido*,[46] where it was held that the filing of the complaint with the fiscal's office tolls the running of the prescriptive period, We are equally mindful that such ruling shall apply prospectively, 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. Thus, the new doctrine laid down in the *Consebido* case is inapplicable to the present case.

For all these reasons, We find that the Court in Division committed no error in concluding that at the time of the filing of the *Information* with the Court, petitioner's right to file the same had already prescribed, thereby warranting the dismissal of the case.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED.** Accordingly, the Resolutions dated December 4, 2023 and April 4, 2024, are **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[46] G.R. No. 258563, April 2, 2025.

(With Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
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FAIVO PASCUAL BARTOLOME,
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Present:

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MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
DEC 02 2025 3:00pm

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* insofar as it ruled that petitioner lacks the legal authority to file the petition. I, therefore, agree that the instant Petition for Review must be dismissed and that the First Division's Resolutions dated 04 December 2023[1] and 04 April 2024[2] be affirmed. However, on the *ponencia*'s declaration that the crime charged has prescribed, I respectfully forward my dissent.

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[1] *Rollo*, pp. 17-23.
[2] Id., pp. 26-30.

PRESCRIPTION OF THE OFFENSE CHARGED

In the recent case of *People of the Philippines v. Ulysses Palconit Consebido*[3] (**Consebido**), the Supreme Court *En Banc* ruled that the filing of complaint before the prosecution office tolls the running of the five (5)-year prescriptive period for violations of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Consequently, the Supreme Court abandoned its long-standing ruling in *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[4] (**Lim, Sr.**), wherein the prescriptive period is tolled by the filing of Information with the court.

Although the *ponencia* recognized *Consebido*, it still applied the old doctrine in *Lim, Sr.* and declared the crime as prescribed. The *ponencia* ruled that *Consebido* must be applied prospectively (*i.e.*, from its promulgation on 02 April 2025), in keeping with the principle that the interpretation most favorable to the accused should be adopted with respect to laws on prescription of crimes.

I espouse a different view based on the legal grounds cited below.

I, thus, reiterate my stance in my Separate Opinion in *People of the Philippines v. Ziegfried Loo Tian*[5] and my Concurring and Dissenting Opinion in *People of the Philippines v. Shelmark Builders., Inc. et al.*[6] that the pronouncement in *Consebido* should be applied retroactively, dating back to the effectivity of the NIRC of 1997.

<u>First</u>, in finding that *Consebido* should be applied prospectively, the *ponencia* may have considered this portion of the decision:

> ...
>
> But in line with the time-honored principle that the interpretation that is the most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply *prospectively*.[7]
>
> ...

However, it is my view that the above portion in *Consebido* refers *only* to offenses covered by the 1991 Revised Rules on Summary

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[3] G.R. No. 258563, 02 April 2025.

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

[5] CTA EB Crim. Case No. 112, 04 August 2025.

[6] CTA EB Crim. Case No. 138, 22 October 2025.

[7] Supra at note 3; Citation omitted and italics supplied.

Procedure (RRSP) and the 2022 Rules on Expedited Procedures in the First Level Courts (REPFLC). 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 *Republic of the Philippines v. The Honorable Aniano A. Desierto as Ombudsman, et al*[8] (Desierto), which held that prescription is interrupted by the institution of preliminary investigation only for special laws not covered by the RRSP, and *Pastor Corpus, Jr. y. Belmoro v. People of the Philippines*[9] (Corpus), which held that for light offenses, the timely filing of the information in court is necessary to toll prescription. The Supreme Court has now abandoned the said rulings in *Desierto* and *Corpus*, as they are inconsistent with its definitive pronouncement in *Consebido*. Accordingly, for offenses not covered by the RRSP or the REPFLC, this definitive rule must apply retroactively.

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[10], to justify declaring that the better rule is to apply *Consebido* prospectively on the ground that such application would favor the accused. 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*[11], 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.
>
> ...

In a Separate Opinion penned by the late Chief Justice Renato C. Corona[12], it is evident that **the *pro reo* doctrine applies *only* to <u>ambiguities</u> in the <u>*substantive*</u> provisions of penal laws, particularly those defining the elements of a crime or the punishment. It does <u>not</u>**

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[8] G.R. No. 136506, 16 January 2023.

[9] G.R. No. 255740, 16 August 2023.

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

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

[12] 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.

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*[13], 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 <u>not</u> 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 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

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

> 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*[14] (**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.[15]

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

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

Indubitably, with the principle explained categorically and in simple terms, the *pro reo* doctrine, also known as the rule of lenity, could only apply 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. Again, 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.

<u>Second</u>, it is my humble view that since the Supreme Court's ruling in *Consebido* constitutes the correct interpretation of Section 281[16] of the NIRC of 1997, it is only proper that this interpretation be applied retroactively, 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 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. **The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense.** 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

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[16] 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.

> 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.[17]
>
> ...

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[18] 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[19] of the NIRC of 1997, the commencement of preliminary investigation interrupts the prescriptive period for the offense.

__Third__, that *Consebido* must be applied retroactively is further strengthened by the fact that the doctrine on prescription adopted therein is *not a new* doctrine on prescription.[20]

__Lastly__, 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 Department of Justice's (DOJ's) preliminary investigations.

Based on the foregoing, I respectfully submit that this Court, sitting *En Banc*, is now bound to abandon its previous position of applying *Lim, Sr.* to hold that, in criminal tax cases, the prescriptive period is tolled only upon the filing of the Information in Court. The five (5)-year prescriptive period is,

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[17] *People of the Philippines v. Ulysses Palconit Consebido*, supra at note 3; Citation omitted, italics in the original text and emphasis supplied.

[18] 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.

[19] Supra at note 16.

[20] See *People of the Philippines, et al. v. Ascencion P. Olarte*, G.R. No. L-22465, 28 February 1967; *Roberto Brillante v. Court of Appeals and the People of the Philippines*, G.R. Nos. 118757 & 121571, 19 October 2004; *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, G.R. No. 135808, 06 October 2008; *Luis Panaguiton, Jr. v. Department of Justice, et al.*, G.R. No. 167571, 25 November 2008; *People of the Philippines v. Ma. Theresa Pangilinan*, G.R. No. 152662, 13 June 2012; *People of the Philippines v. Mateo A. Lee, Jr.* G.R. No. 234618, 16 September 2019.

instead, interrupted by the filing of a complaint with the DOJ for purposes of preliminary investigation, not by the filing of the Information with the Court.

In the present case, the five (5)-year prescriptive period started to run from the commission of the crime on 04 February 2016 until it was tolled by the filing of the complaint with the fiscal's office on 09 October 2020. Thus, contrary to the *ponencia*'s ruling, the right of the government to institute the case against respondent had not yet prescribed.

PETITIONER'S LEGAL AUTHORITY TO FILE THE PETITION

Although prescription should no longer be considered a ground for dismissal, I concur with the *ponencia*'s finding that the instant petition must be dismissed as the petitioner lacks the legal authority to file the petition. It was filed by the "Deputized Special Prosecutors" of the BIR without evidence that they are duly deputized by Office of the Solicitor General.

With the foregoing, I vote to **DENY** the Petition for Review filed by petitioner on 02 May 2024 and **AFFIRM** the First Division's Resolutions dated 04 December 2023 and 04 April 2024.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice