REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus -

R-JELL MARKETING & CONSTRUCTION COMPANY, LILY PEDROSO, ERNESTO PEDROSO and ELVIN PEDROSO, Accused.

CTA Crim. Case No. **O-850**

For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

x - x

PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus -

R-JELL MARKETING & CONSTRUCTION COMPANY, LILY PEDROSO, ERNESTO PEDROSO and ELVIN PEDROSO, Accused.

CTA Crim. Case No. **O-851**

For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

x - x

PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus -

R-JELL MARKETING & CONSTRUCTION COMPANY, LILY PEDROSO, ERNESTO PEDROSO and ELVIN PEDROSO, Accused.

CTA Crim. Case No. **O-852**

For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

x - x

PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus -

R-JELL MARKETING & CONSTRUCTION COMPANY, LILY PEDROSO, ERNESTO PEDROSO and ELVIN PEDROSO, Accused.

CTA Crim. Case No. **O-853**

For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

Members:

CASTAÑEDA, JR., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated: MAR 15 2022

8:36 a.m.

x - x

RESOLUTION

For the Court's resolution are the following:

1. Accused Lily Pedroso, Ernesto Pedroso and Elvin Pedroso's (**accused**'s) "Motion to Release Bail Bond" (**Motion to Release**) filed on 16 July 2021, with plaintiff's "Comment/Opposition (To Accused's Motion to Release Bail Bond)" filed on 25 August 2021 and received by the Court on 08 October 2021; and,

2. Plaintiff's "Motion for Reconsideration" (**MR**) filed on 09 August 2021 and received by the Court on 01 October 2021, with accused's "Comment (To Motion for Reconsideration)" filed on 22 October 2021 and received by the Court on 16 February 2022.

Previously, the Court issued a Resolution dated 30 June 2021 dismissing the above-captioned consolidated cases on the ground of prescription.

In their Motion to Release, all the accused contend that in view of the dismissal of the cases against them, the cash bail bond they previously posted in the total amount of ₱360,000.00 may already be released.

In opposition thereto, plaintiff claims that the Court erred in dismissing the cases on the ground of prescription, as plaintiff was able to successfully toll the running of prescription with its timely filing of the Joint Complaint-Affidavit with the Department of Justice (**DOJ**).

Plaintiff also added that it has already filed the subject MR and will be exhausting all available legal remedies for the reconsideration and possible reversal of the 30 June 2021 Resolution; thus, its prayer for the denial of the Motion to Release.

In the MR, plaintiff extensively argued on the proper interpretation of Section 281[1] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

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[1] **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.

Specifically, plaintiff points out that a literal interpretation of paragraph 2 of Section 281 of the NIRC of 1997, as amended, suggests that two (2) elements must transpire in order to consider the running of the prescriptive period has begun: *first*, the element of discovery of the commission of the violation of the special law; and, *second*, the "institution of judicial proceedings for its investigation and punishment".

According to plaintiff, the issue of when prescription of a special law starts to run and when it is tolled was already settled in the case of *Luis Panaguiton, Jr. v. Department of Justice, et al.*[2] (**Panaguiton**), where the Supreme Court discussed the set-up of the Philippine judicial system in place during the passage of Act No. 3326.[3] It was explained therein that when the said law was passed, preliminary investigation was conducted by justices of the peace thus the phraseology in the law "institution of judicial proceedings for its investigation and punishment". As such, prescription of the offense is tolled once a complaint is filed with the justice of the peace for preliminary investigation.

Plaintiff adds that *Panaguiton* was thereafter followed by the cases of *Domingo Ingco, et al. v. Sandiganbayan*[4], *Sanrio Company Limited v. Edgar C. Lim, doing business as Orignamura Trading*[5], *Securities and Exchange Commission v. Interport Resources Corporation, et al.*[6] and *People of the Philippines v. Ma. Theresa Pangilinan.*[7]

Plaintiff argues that, in the cited cases, it was commonly held that the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription.

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.

2 G.R. No. 167571, 25 November 2008.
3 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.
4 G.R. No. 112584, 23 May 1997.
5 G.R. No. 168662, 19 February 2008.
6 G.R. No. 135808, 06 October 2008.
7 G.R. No. 152662, 13 June 2012.

According to plaintiff, there is no reason to treat the prescriptive period of violations of the NIRC of 1997, as amended, different from other special laws.

Plaintiff further asserts that the Supreme Court's inclusion of the phrase "up to the filing of the information in court does not exceed five (5) years" in *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[8] (**Lim**) runs counter to established law, rules and various jurisprudence regarding the running and suspension of the prescriptive period.

Moreover, *Lim* was decided in 1990 and resolved a controversy involving Commonwealth Act No. 466[9] or the NIRC of 1939 and since then, the Supreme Court decided several more cases shedding light on the same provisions of Act No. 3326 on the prescription of offenses relative to special laws.

Furthermore, plaintiff argues that in the series of *Behest Loans Cases*[10], it was also commonly ruled that if the violation of the special law is not known at the time it was committed, the prescription begins to run only from the discovery thereof.

In this case, the revenue officers received the Letter of Authority (**LOA**) on 05 November 2010 which they delivered to the accused on 08 November 2010.

Granting for the sake of argument that the revenue officers obtained on the same day the 20 May 2013 Sworn Certification from Amkor Technology Philippines, Inc., one of R-Jell Marketing & Construction Company's (**R-Jell's**) customers, the subject criminal actions have not yet prescribed.

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

9 AN ACT TO REVISE, AMEND AND CODIFY THE INTERNAL REVENUE LAWS OF THE PHILIPPINES.

10 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. Hon. Aniano A. Desierto, et al.*, G.R. No. 130140, 25 October 1999; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. Hon. Aniano A. Desierto, et al.*, G.R. No. 130817, 22 August 2001; *Presidential Commission on Good Government (Represented by Danilo R.V. Daniel) v. The Honorable Ombudsman Aniano A. Desierto*, G.R. No. 135119; 21 October 2004; *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. The Honorable Ombudsman*, G.R. No. 135350; 03 March 2006; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. Honorable Aniano A. Desierto as Ombudsman, et al.*, G.R. No. 135715, 13 April 2011.

Plaintiff claims that, from the time Bureau of Internal Revenue (**BIR**) discovered the commission of the offenses on 20 May 2013 until the filing of the Joint Complaint-Affidavit with the investigating prosecutor on 03 July 2014, only 409 days or one (1) year, one (1) month and thirteen (13) days have passed.

Even in the extreme scenario that the BIR is deemed to have discovered the fraud from the very issuance of the LOA on 05 November 2010, the criminal action is still timely filed considering that only 1,336 days or three (3) years, seven (7) months and twenty-eight (28) days have passed from the issuance of the said LOA.

In sum, plaintiff maintains that the filing of the Joint Complaint-Affidavit for preliminary investigation suspended the running of the period of prescription in accordance with Section 281 of the NIRC of 1997, as amended, and Section 1[11], Rule 110 of The Revised Rules of Criminal Procedure and applicable jurisprudence.

On the other hand, all the accused contend that the MR filed by the BIR does not have the public prosecutor's conformity rendering the same as a mere scrap of paper that should be expunged from the records citing *Marilou S. Laude, et al. v. Hon. Roline M. Ginez-Jabalde, et al.*[12]

As to the supposed inapplicability of *Lim*, accused argues that the same has been sufficiently explained in the very recent Court *En Banc* case of *People of the Philippines v. Virgilio B. Castillo.*[13] Moreover, *Panaguiton* did not expressly supersede, reverse or abandon *Lim*. In fact, the BIR itself adopted the ruling in *Lim* when it

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11 **Section 1.** *Institution of criminal actions.* — Criminal actions shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

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

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

12 G.R. No. 217456, 24 November 2015.

13 Resolution in CTA EB CRIM. No. 053 (CTA Crim. Case No. 0-663), 08 June 2021.

issued Revenue Memorandum Circular (**RMC**) No. 101-90[14] circularizing the salient features of the said case.

We resolve.

We shall address first the alleged formal defect raised by accused, that is, the BIR's MR was filed without the conformity of the public prosecutor; thus, the MR is deemed not filed and the 30 June 2021 Resolution has already attained finality and beyond appeal.

Accused are mistaken.

In plaintiff's Entry of Appearance[15] filed on 17 December 2020, it attached a certified true copy of Office of the Prosecutor General Office Order No. 0420 dated 01 January 2018[16] which deputizes the listed personnel of the BIR to prosecute criminal cases before this Court, the Regional Trial Courts (**RTCs**) and Metropolitan Trial Courts (**MTCs**). Among those who signed the instant MR is Atty. Zeus Gamaliel S. Mendoza who is listed as one of the deputized special prosecutors. Hence, accused's contention that the MR lacks the conformity of the public prosecutor is without merit.

As to the substantive aspect of the case, the crux of the controversy lies on whether *Lim* is still a binding jurisprudence.

According to plaintiff, it is no longer applicable in view of the more recent cases decided by the Supreme Court interpreting Act No. 3326 holding that the filing of complaint with the prosecutor interrupts the running of prescription. Since the provisions in Act No. 3326 is same as that in Section 281 of the NIRC of 1997, as amended, the interpretation in the more recent cases should be made applicable herein instead of *Lim*.

We do not agree.

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14 Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.

15 Division Docket (CTA Crim. Case No. O-850), pp. 90-92.

16 Id., p. 93.

It bears emphasizing that *Lim* specifically deals with the prosecution for violation of a tax law while the other cases cited by plaintiff deals with the prosecution of special penal laws not involving tax.

In *Lim*, it was unequivocally declared that "[a]s Section 354 stands in the statute book (and to this day it has remained unchanged) 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".

This is also consistent with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals[17] (**RRCTA**) which reads as follows:

> . . .
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> 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 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. (Rules of Court, Rule 110, sec. 2a; n)
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.**[18]
>
> . . .

Notably, under the said provision, criminal actions are instituted by filing of an information with the Court, which shall also prompt the interruption of the period of prescription.

From the foregoing, prescription of tax cases begins to run from the discovery *and* institution of proceedings for its investigation and shall only be tolled by the filing of an information with this Court.

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17 A.M. No. 05-11-07-CTA dated 22 November 2005.
18 Emphasis supplied.

Since more than five (5) years have passed from the filing of the subject Joint Complaint-Affidavit with the DOJ on 03 July 2014 until the filing of the subject Informations with this Court on 09 December 2020, the subject criminal actions have already prescribed.

As to plaintiff's contention that *Lim* cannot be applied herein as it was decided in 1990 and resolved a controversy involving the NIRC of 1939, We also do not agree.

First, the wordings of Section 354 of the NIRC of 1939 are the same as the present Section 281 of the NIRC of 1997, as amended. Thus, any interpretation by the Supreme Court on Section 354 of the NIRC of 1939 should equally apply in Section 281 of the NIRC of 1997, as amended.

Second, in enacting Section 281 of the NIRC of 1997, as amended, with the same provision as that of its predecessor Section 354 of the NIRC of 1939, the legislature is presumed to be aware of the construction placed thereon by the Supreme Court. In *Alfredo Montelibano, et al. v. The Honorable Felix S. Ferrer, et al.*[19], it was held that:

> ...
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> ... On the contrary, considering that said provisions of the Charter of the City of Manila had been consistently construed in the manner above indicated, before being incorporated in the Charter of the City of Bacolod, **the conclusion is inevitable that the framers of the latter had reproduced the former with intent of adopting, also its settled interpretation by the judicial department** (*In re* Dick, 38 Phil. 41, 77).
>
>> **In the interpretation of reenacted statutes the court will follow the construction which they received when previously in force. The legislature will be presumed to know the effect which such status originally had, and by reenactment to intend that they should again have the same effect...**
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>> ...
>>
>> . . . **Since it may be presumed that the legislature knew a construction, long acquieced in, which had been given by the courts to a statute re-enacted by the legislature, there is a presumption**

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[19] G.R. No. L-7899, 23 June 1955; Italics in the original text and emphasis supplied.

> **of an intention to adopt the construction as well as the language of the prior enactment. It is accordingly a settled rule of statutory construction that when a statute or a clause or provision thereof has been construed by a court of last resort, and the same is substantially re-enacted, the legislature may be regarded as adopting such construction**. (50 Am. Jur. 461)

. . .

From the foregoing, it is evident that *Lim* squarely applies to the instant case and We find no good reason to deviate from its tenets as it remains to be a good law with respect to tax cases.

Considering that plaintiff's right to file the instant cases has prescribed and the Informations filed against them were accordingly quashed, the cash bail bond previously posted by the accused in the total amount of ₱360,000.00 may already be released to them.

WHEREFORE, plaintiff's Motion for Reconsideration filed on 09 August 2021 is **DENIED** for lack of merit; while accused's Motion to Release Bail Bond filed on 16 July 2021 is **GRANTED**. Accordingly, the cash bail bond posted in the total amount of ₱360,000.00 is hereby **ORDERED** to release, subject to the usual accounting procedure and requirements.

SO ORDERED.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice