REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. **O-942**

For: Violation of Section 255, paragraph 1, of the NIRC of 1997, as amended

- versus -

Members:

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

ZIEGFRIED LOO TIAN,
Accused.

Promulgated:
JUN 06 2023
2:45 p.m.

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RESOLUTION

For the Court's resolution is plaintiff's "Motion for Reconsideration (of the Resolution dated December 23, 2022)"[1] (**MR**), filed on 10 January 2023, without accused's comment despite due notice.[2]

The present MR assails the Court's Resolution dated 23 December 2022[3], dismissing the case on the ground of prescription. It argues that prescription has not set in, invoking the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[4] (**Lim**), where the Supreme Court pronounced that tax cases are practically imprescriptible. It posits that since the date of the commission of the violation is unknown[5], the five (5)-year prescriptive

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1 Annex **"B"** to plaintiff's *Formal Entry of Appearance with Motion for Reconsideration* dated 09 January 2023, id., pp. 225-233.
2 *Per* Records Verification dated 03 March 2023, Division Docket, p. 238.
3 Id., pp. 213-219.
4 G.R. Nos. L-48134-37, 18 October 1990.
5 Paragraph 15, Plaintiff's "Motion for Reconsideration (of the Resolution dated December 23, 2022)", supra at note 1, p. 228.

period commenced from the discovery and institution of judicial proceedings.[6]

Plaintiff argues that "the period of discovery and the institution of judicial proceedings" against the accused "not only triggers the commencement of the prescriptive period but also triggers the interruption of the same prescriptive period".[7]

We disagree.

Section 281 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which governs the prescriptive period for criminal tax actions, provides:

> ...
> **SEC. 281**. *Prescription for Violations of any Provision of this Code.* — **<u>All violations of any provision of this Code shall prescribe after five (5) years</u>**.
>
> 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, **<u>from the discovery thereof and the institution of judicial proceedings for its investigation and punishment</u>**.
>
> 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.[8]
> ...

To reiterate for emphasis, the proper interpretation of the foregoing provision has been settled in *Lim* to mean that tax cases are practically imprescriptible for as long as the period from the discovery *<u>and</u>* institution of judicial proceedings for its investigation and punishment, *<u>up to</u>* the filing of the information in court does not exceed five (5) years, *viz*:

> ...
> Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive**

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[6] Par. 17, id., p. 229.
[7] Par. 23, id., p. 230.
[8] Italics in the original text, emphasis and underscoring supplied.

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 Cases 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.**

. . .

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 [now, Section 281] 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.**[9]

. . .

Clearly, as herein plaintiff suggests, the Supreme Court declared in *Lim* that criminal tax cases are practically imprescriptible. However, plaintiff conveniently overlooks the part stating to the effect that such cases shall nevertheless prescribe if more than five (5) years have lapsed from the time of commencement of the investigation before the Department of Justice (**DOJ**), *i.e.*, the filing of a complaint-affidavit, up to the filing of the Information in Court.

The Court cannot depart from the foregoing interpretation as, under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), once a case has been decided one way, any other case involving exactly the same point at issue should be decided in the same manner.[10]

Furthermore, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) clearly provides that it is the institution of the criminal action which interrupts the prescriptive period, and that

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9 Italics in the original text and emphasis supplied.

10 *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.

criminal actions before the CTA are instituted by the filing of an Information:

> . . .
> 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.**[11]
> . . .

In this case, prescription began to run from the discovery and institution of proceedings for its investigation on 05 July 2012 (when the Joint Complaint-Affidavit[12] of concerned Revenue Officers was referred to the DOJ). Counting five (5) years therefrom, the prescriptive period to institute the criminal action lapsed on **05 July 2017**. Thus, the right of the government to institute the case against accused Ziegfried Loo Tian had already prescribed when the Information was filed on **26 October 2022**.

WHEREFORE, premises considered, plaintiff's "Motion for Reconsideration (of the Resolution dated December 23, 2022)" filed on 10 January 2023, is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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11 Italics in the original text, emphasis and underscoring supplied.
12 Division Docket, pp. 23-37.