REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PEOPLE OF THE PHILIPPINES, ***as represented by the Solicitor General through the Bureau of Internal Revenue,*** *Petitioner,* -*versus*- **ANTONIO VALERIANO M. BERNARDO (A.V.M. BERNARDO ENGINEERING) (AT LARGE: Address: No. 604 T. Santiago St., Lingunan, Valenzuela City, Metro Manila),** *Respondent.*	**CTA** ***EB*** **CRIM. NO. 122** (CTA Crim. Case No. O-933) Present: **DEL ROSARIO, P.J.,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.* Promulgated: JAN 11 2024 3:57 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is an Amended Verified Petition for Review[1] ("Petition"), filed by the People of the Philippines via registered mail on 18 July 2023 and received by this Court *En Banc* on 21 July 2023, with respondent Antonio Valeriano M. Bernardo's Opposition (To Petitioner's Petition for Review) ("Comment"),[2] filed

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[1] *EB* Records, pp. 123-142.
[2] *Id.*, pp. 109-118.

on 30 May 2023. The Petition seeks[3] the reversal and setting aside of the Resolution,[4] dated 28 February 2023 ("Assailed Dismissal"), which dismissed the Information,[5] filed before the Court of Tax Appeals Second Division ("Court in Division"), on the ground of prescription, and the Resolution,[6] dated 27 April 2023 ("Assailed Denial"), which denied petitioner's Motion for Reconsideration to the Dismissal for lack of merit.

The Parties

Petitioner People of the Philippines is represented by the Bureau of Internal Revenue ("BIR"), the government agency mandated to collect national internal revenue taxes, the Commissioner of Internal ("CIR"), and Revenue Officers ("RO") Gina D. Floreza and Grace G. Marohomsalic.[7]

Respondent Bernardo, meanwhile, is allegedly the sole proprietor of A.V.M. Bernardo Engineering, which is engaged in the design, fabrication, and installation of food processing and slaughterhouse equipment. He is registered with BIR RDO No. 24 – Valenzuela City.[8]

The Facts

On or about 28 May 2013, respondent allegedly failed to supply correct and accurate information in his income tax return ("ITR") for taxable year 2012, in violation of ***Sec. 255 of the National Internal Revenue Code of 1997, as amended*** ("***NIRC***").[9] This prompted then-CIR Kim S. Jacinto Henares to refer the case for preliminary investigation with the Department of Justice ("DOJ") on 18 February 2016.[10] Acting on this referral, the DOJ issued a Resolution[11] on 28 July 2017, recommending the filing of Informations against respondent.

The DOJ then filed an Information before the Court of Tax Appeals ("CTA") in Division on 6 September 2022.[12]

Acting on the Information, the Court in Division issued a Warrant of Arrest[13] against respondent on 21 September 2022 and, responding to its receipt of a return[14] of said Warrant of Arrest, an Alias Warrant of Arrest[15] on 25 October 2022.

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3 *See* Amended Verified Petition for Review, p. 19, *id.*, pp. 141.
4 Division Records, pp. 200-204.
5 Division Records, pp. 5-7.
6 Division Records, pp. 237-241.
7 *See* "Parties", Amended Verified Petition for Review, pp. 3-4, *EB* Records, pp. 125-126.
8 *Ibid.*
9 *See* Information, pp. 1-2, Division Records, pp. 5-6.
10 *See* Letter, dated 16 February 2016, *id.*, pp. 18-20.
11 *Id.*, pp. 8-17.
12 *Supra* note 5.
13 Division Records, p. 131.
14 *Id.*, p. 133.
15 *Id.*, p. 146.

Later, respondent voluntarily surrendered himself and submitted to the jurisdiction of the Court in Division.[16] The Court then ordered both parties to file their respective Pre-Trial Briefs,[17] with petitioner submitting its Pre-Trial Brief[18] on 10 January 2023.

Rather than filing his own Pre-Trial Brief, however, respondent filed a Consolidated Motion to Quash[19] in CTA Crim. Case Nos. O-931, O-932, O-933, and O-934. After petitioner filed its Comment/Opposition[20] thereto via registered mail on 24 January 2023, the Court in Division granted the Motion to Quash, for CTA Crim. Case No. O-933, in the Assailed Dismissal, dated 28 February 2023.

Aggrieved, petitioner filed a Motion for Reconsideration[21] ("MR") to the Assailed Dismissal via registered mail on 8 March 2023, to which respondent interposed his objections through his Opposition,[22] filed on 24 March 2023. The Court in Division denied the MR in the Assailed Denial, dated 27 April 2023.

Further aggrieved, petitioner filed a Petition for Review[23] before this Court *En Banc* via registered mail on 18 May 2023. Respondent filed his Opposition to the same on 30 May 2023.

Acting on the Petition for Review, this Court promulgated a Resolution[24] on 11 July 2023, ordering petitioner to file an Amended Petition for Review which was compliant with ***Sec. 10, Rule 9 of the Revised Rules of the Court of Tax Appeals, as amended*** ("***RRCTA***"). Respondent complied by filing the instant Petition via registered mail on 18 July 2023. The Court acknowledged petitioner's compliance, and the filing of respondent's Opposition, by submitting the case for decision on 23 October 2023.[25]

Hence, this Decision.

<u>The Issue</u>

Petitioner claims that the Court in Division erred when it dismissed the case against respondent.[26]

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16 *See* Order, dated 5 December 2022, *id.*, p. 148.
17 *Ibid.*
18 *Id.*, pp. 167-171.
19 *Id.*, pp. 173-179.
20 *Id.*, pp. 182-189.
21 *Id.*, pp. 206-215.
22 *Id.*, pp. 220-228.
23 *EB* Records, pp. 1-19.
24 *Id.*, pp. 120-122.
25 *See* Resolution, dated 23 October 2023, *id.*, pp. 245-246.
26 *See* Amended Verified Petition for Review, p. 6, *id.*, p. 128.

The Arguments

Petitioner raises the following arguments:

(a) The filing of a complaint with the DOJ both triggers *and* interrupts the prescriptive period for prosecuting a violation of the ***NIRC***; thus, the government's right to prosecute this case has not yet prescribed;[27] and

(b) Respondent should be held liable for his deliberate failure to supply correct and accurate information in his ITR for taxable year 2013, in violation of ***Sec. 254 of the NIRC***.[28]

Meanwhile, in his Opposition, respondent reiterates, with approval, the findings of the Court in Division.

The Ruling of the Court

The Petition for Review lacks merit.

It does not escape the Court's notice that petitioner's present arguments on prescription, the central issue here, are a near-verbatim rehash of those it already raised in its MR before the Court in Division. The sole differences are merely formal, insubstantial, and do not even attempt to address the point raised in the Assailed Denial.

Crucially, petitioner is silent on ***Sec. 2, Rule 9 of the RRCTA:***

> "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.
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> **The institution of the criminal action shall interrupt the running of the period of prescription.**"
> (Emphasis supplied.)

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[27] *See* Amended Verified Petition for Review, pp. 7-12, *id.*, pp. 129-134.

[28] *See* Amended Verified Petition for Review, pp. 12-18, *id.*, pp. 134-140. Note that the Information filed before the Court in Division accused respondent of violating of ***Sec. 255 of the NIRC*** for failing to supply correct information in his 2012 ITR, while petitioner now accused respondent of violating ***Sec. 254 of the NIRC*** for failing to supply correct information in his *2013* ITR. The latter correspond with the accusations against respondent in the Information docketed as CTA Crim. Case No. O-932, but they do not correspond with the accusations in the Information for the case at bar.

The above is clear and unequivocal. The institution of a criminal action interrupts the running of the prescriptive period, and all criminal actions before the Court in Division are instituted through the filing of an Information before said Court. As such, for criminal cases heard before the CTA, it is the filing of an Information before said Court, *not the filing of a complaint before the DOJ*, that interrupts the prescriptive period. The Court in Division, through the Assailed Denial, already brought the above to the attention of petitioner. Despite this, the instant Petition lacks any mention of the relevant provision to refute the Court's position.

There is no need to belabor the issue any further. The reasoning set forth in the Assailed Denial, its discussion on the prescriptive period, still stands uncontroverted, given that the instant Petition raises no new points. Any disquisition by this Court *En Banc* would consist in merely parroting what has already been lucidly and clearly asserted by the Court in Division.

Having failed to address the Court in Division's use of ***Sec. 2, Rule 9 of the RRCTA***, or any of its major points in the Assailed Denial, petitioner fails to persuade the Court *En Banc* that the period of prescription had not yet set in when it filed the Information in this case. Concomitantly, it fails to convince us that the Court in Division committed any reversible error in dismissing the case against respondent.

Given that the right of the state to prosecute respondent has already prescribed, it is now also unnecessary to address petitioner's second argument on the alleged violation of ***Sec. 254 of the NIRC***.

The Court *En Banc*, in brief, sees no compelling reason to reverse the rulings of the Court in Division.

WHEREFORE, petitioner's Amended Verified Petition for Review, filed via registered mail on 18 July 2023, is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

ROMAN G. DEL ROSARIO
Presiding Justice