REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

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

CTA Crim Case No. O-945

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

Members:

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

Promulgated:

DEC 05 2022

9:05 a.m.

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RESOLUTION

In the *Information* filed on 26 October 2022, accused **ZIEGFRIED LOO TIAN** was charged with violation of Section 255 of the National Internal Revenue Code ("**NIRC**") of 1997, as amended, allegedly committed as follows:

> "That on or before January 20, 2011, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, filed his Quarterly Value-Added Tax Return (VAT return), for fourth (4') quarter of taxable year 2010, knowing fully well that he is required by the law and by the rules and regulations to supply correct and accurate information within the period mentioned therein, did then and there, willfully, unlawfully and feloniously failed to supply correct and accurate information in his VAT return by stating in the entry fields of the said return the word "exempt", when in truth and in fact said accused is not exempted as he failed to comply with the substantiation and reporting requirement under the tax law and revenue regulations, which willful failure to supply correct and accurate information resulted to the damage and prejudice of the Government in the amount of Two Million Seven Hundred Ninety Four Thousand Eight Hundred Thirteen Pesos and Thirty Seven Centavos (Php 2,794,813.37), exclusive of interests, penalties and surcharges.

CONTRARY TO LAW."

In support of the indictment, the prosecution attached the following documents:

1. *Resolution* issued by the Department of Justice – Manila, dated 11 May 2017;
2. *Resolution* issued by the Department of Justice – Manila, dated 1 September 2014;
3. *Referral Letter* dated 5 July 2012, signed by Commissioner of Internal Revenue Kim S. Jacinto-Henares, recommending the criminal prosecution of accused;
4. *Joint Complaint-Affidavit* of Emerita D. Tan, Carine P. Balmeo, Dominador A. Callangan, Arnel A. Boco, and Adelina P. See, dated 5 July 2012, including the following annexes:
   a. *Certification* from the Bureau of Internal Revenue dated 28 May 2012;
   b. *Memorandum* addressed to Adelina P. See dated 18 June 2012;
   c. *Letter* addressed to the Gaudencio S. Pangilinan, Director of Bureau of Corrections, signed by Assistant Commissioner James H. Roldan dated 19 June 2012;
   d. *Letter of Authority* with no. LOA-211-2012-00000072 dated 21 June 2012;
   e. *Certification* from the Department of Trade and Industry dated 25 June 2012;
   f. *Certification* from the Bureau of Permits of the City of Manila dated 27 June 2012;
   g. *First Indorsement* from the Department of Justice dated 29 July 2010;
   h. *Certificate of Payment with Tax Component* issued by the Bureau of Corrections dated 28 June 2012;
   i. *Certification* issued by the Bureau of Internal Revenue, Revenue District Office No. 29, dated 4 June 2012;
   j. *Annual Income Tax Return* (BIR Form No. 1701) of accused for taxable year 2010;
   k. *Quarterly Value-Added Tax Returns* (BIR Form No. 2550Q) of accused for eight (8) taxable quarters from 2010 to 2011; and
   l. *Tax Remittance Advice* signed by Revenue Officer Carine P. Balmeo.

After a judicious review of the *Information, Resolution, Joint Complaint-Affidavit,* and supporting documents filed and or submitted by the Prosecution Attorney, We note that the alleged violation has already prescribed. Section 281 of the NIRC of 1997, as amended, 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, **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 and underscoring supplied*)

The above provision was interpreted in the landmark case of *Lim, Sr. vs. Court of Appeals* (*Lim* case)[1] 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 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.**
>
> But according to the Lim spouses, that argument had precisely been raised, considered and found without merit in the case of People vs. Ching Lak which had perfunctorily dismissed the Government's position in this wise:
>
>> "Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, suffice it to state that the theory is not supported by any provision of law and we need not elucidate thereon.
>
> 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**

[1] G.R. Nos. 48134-37. 18 October 1990. 268 SCRA 680-692.

> **(and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for <u>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</u>.** *(Emphasis and underscoring supplied; citations omitted)*

The Supreme Court enunciated in *Lim* that tax criminal cases are basically imprescriptible. However, violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of commencement of the investigation before the Department of Justice, *i.e.*, the filing of a complaint-affidavit, up to the filing of the *Information* before the Court.

The *Lim* case interpreted Section 354 of the 1939 Tax Code,[2] which was subsequently reproduced in Section 281 of the NIRC of 1997, as amended. We compare:

Section 354 of the 1939 Tax Code	**Section 281 of the NIRC of 1997**
SECTION 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.	*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

[2] Commonwealth Act No. 466, 15 June 1939.

Considering that the wording of Section 354 of the 1939 NIRC was adopted and reproduced in Section 281 of the 1997 NIRC, the legislature is presumed to have adopted the construction placed upon such provision by the Supreme Court in the *Lim* case.[3]

As such, this Court has steadfastly adhered to this interpretation of the Supreme Court as in *People vs. Castillo*,[4] *People vs. Consebido*,[5] *People vs. Bernardo*,[6] and *People vs. Balili*,[7] among other criminal cases.

In *People vs. Castillo*,[8] We ruled:

> For the second mode of prescription, **<u>the filing of a Joint Complaint-Affidavit with the DOJ for preliminary investigation, taken together with the finality of the assessment or the point of "discovery," triggers the commencement of the running of the period of prescription.</u> The period of prescription shall thereafter be interrupted with the institution of criminal action before the CTA through the filing of an information in the name of the People of the Philippines. <u>Necessarily, the information should be filed within the five-year prescriptive period</u>; otherwise, there is nothing to be interrupted as the prescriptive period has already lapsed.** *(Emphasis and underscoring supplied)*

In the instant case, the *Joint Complaint-Affidavit* of Emerita D. Tan, Carine P. Balmeo, Dominador A. Callangan, Arnel A. Boco, and Adelina P. See, was filed on 5 July 2012. It is on that date that the running of the prescriptive period commenced. Accordingly, the Information should have been filed on or before **5 July 2017**. The *Information* was filed before this Court only on **26 October 2022**, or 10 years, 3 months, and 21 days after the *Joint Complaint-Affidavit* was filed. Clearly, the right of the State to prosecute the accused is already barred by prescription.

It must be stressed that prescription in criminal cases is a matter of substantive law.[9] Although prescription has not been raised as an issue, it is well-settled that if the pleadings or the evidence on record show that the claim is barred by

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[3] *People vs. Castillo*. C.T.A. *EB* Crim. Case No. 053 (C.T.A. Crim Case No. O-663) (Resolution), 8 June 2021.
[4] C.T.A. *EB* Crim. Case No. 053 (C.T.A. Crim Case No. O-663) (Resolution), 8 June 2021.
[5] C.T.A. Crim. Case No. O-701 (Resolution), 7 May 2019.
[6] C.T.A. *EB* Crim. Case No. 079 (C.T.A. Crim. Case No. O-733) (Resolution), 21 July 2022.
[7] C.T.A. Crim. Case No. A-8 (Case Nos. R-MKT-20-01449-CR and R-MKT-20-01450-CR), 25 January 2022.
[8] *Supra* at note 4.
[9] *Reodica vs. Court of Appeals*, G.R. No. 125066, 8 July 1998, 354 SCRA 90-111.

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prescription, the Court may *motu proprio* order its dismissal on said ground.[10]

WHEREFORE, premises considered, the instant case is **DISMISSED** on the ground of prescription.

SO ORDERED.

ERLINDA P. UY
Associate Justice

(On Official Business)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

[10] *Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corp.*, G.R. No. 212920, 16 September 2015, 769 SCRA 861-871