REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ZIEGFRIED LOO TIAN,
Accused.

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

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

Present:

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

Promulgated:
DEC 23 2022
9:15 a.m.

x - x

RESOLUTION

On 26 October 2022, the plaintiff filed an Information[1] against herein accused **ZIEGFRIED LOO TIAN** (**accused**), for violation of Section 255[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, allegedly committed as follows:

> ...
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> "That on or before April 20, 2010, 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 first (1st) 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

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[1] Division Docket, pp. 5-6.

[2] **SEC. 255**. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — ...

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 Three Million One Hundred Seventy Two Thousand Three Hundred Five Pesos and Fifty Eight (Php 3,172,305.58), exclusive of interests, penalties and surcharges.

CONTRARY TO LAW."

. . .

The plaintiff attached the following supporting documents to the Information for the Court's examination:

1. Certified True Copy of the Resolution dated 11 May 2017, signed by Prosecution Attorney Jayvee Laurence B. Bandong, with recommending approval of CP Emilie Fe M. Delos Santos, Officer-in-Charge of the Anti-Fraud Division, and approved by Prosecutor General Victor C. Sepulveda;[3]

2. Certified True Copy of the Resolution dated 01 September 2014, signed by Prosecution Attorney Jayvee Laurence B. Bandong, with recommending approval of Senior Assistant State Prosecutor Susan F. Dacanay, Chairperson of the Task Force on Bureau of Internal Revenue (**BIR**), and approved by Prosecutor General Claro A. Arellano;[4]

3. Certified True Copy of the National Prosecution Service Investigation Data Form dated 05 July 2012;[5]

4. Certified True Copy of the Referral Letter dated 05 July 2012 of the BIR Commissioner Kim S. Jacinto-Henares, addressed to then Secretary of Justice Leila De Lima;[6] and,

5. Certified True Copy of the Joint Complaint-Affidavit dated 05 July 2012[7] of Revenue Officers (**ROs**) Emerita D. Tan (**Tan**), Carine P. Balmeo (**Balmeo**), Dominador A. Callangan (**Callangan**), Arnel A. Boco (**Boco**) and Adelina P. See (**See**), with attached Annexes "A" to "T-104", inclusive of sub-markings.[8]

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3 Division Docket, pp. 7-9.
4 Id., pp. 10-19.
5 Id., p. 20.
6 Id., pp. 21-22.
7 Id., pp. 23-37.
8 Id., pp. 38-211.

Pursuant to Section 4[9] of Rule 9 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), the Court shall determine the existence or non-existence of probable cause for the issuance of a warrant of arrest and, upon service thereof to the accused, acquire jurisdiction over the person of the latter. In the said provision, the Court shall go over the preliminary pieces of evidence submitted by the plaintiff and accordingly attached to the Information filed against the accused. In the same provision, it is also provided that the Court may dismiss the case if the evidence fails to establish probable cause.

After a careful consideration of the allegations in the Information[10] and personal evaluation of the supporting documents[11] submitted, this Court, however, finds that the right to institute the criminal action has already prescribed.

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.[12]

Relevantly, Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

> ...
> **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.

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9 SEC. 4. *Warrant of arrest.* — Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice. (Emphasis and underscoring supplied.)

10 Supra at note 1.

11 Supra at notes 3-8.

12 *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government*, G.R. Nos. 165510-33, 28 July 2006, citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division) and The People of the Philippines*, G.R. No. 109376, 20 January 2000.

> **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.[13]
>
> ...

The above provision is clear that the period of prescription for the offense charged is five (5) years. As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

Based on the foregoing provision, the period of prescription commences to run from the day of the perpetration of the offense, and if not known, from its discovery and the institution of judicial proceedings for its investigation and punishment. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment.[14] The <u>second paragraph</u> of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third paragraph</u> likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[15] (**Emilio E. Lim, Sr.**), the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section

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13 Italics in the original text and emphasis supplied.

14 *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

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

281 of the NIRC of 1997, as amended) to mean that tax cases 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, *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 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.**
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> . . .
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> 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.**
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> . . .
>
> **Unless amended by the legislature, Section 354 [now, Section 281] stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government.** In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.[16]
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> . . .

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16 Italics in the original text, citation omitted and emphasis supplied.

In this case, the records show that the BIR referred the Joint Complaint-Affidavit[17] of ROs Tan, Balmeo, Callangan, Boco and See with the Department of Justice (**DOJ**) for preliminary investigation on **05 July 2012** (the date when the violation of the law was discovered and the institution of judicial proceedings for its investigation and punishment). Thus, the plaintiff only had five (5) years from then, or until **05 July 2017**, within which to file the subject Information with the Court. Notably, the said Information was filed with this Court only on **26 October 2022**. As such, the plaintiff's right to file the subject criminal action has already prescribed.

The ruling in *Emilio E. Lim, Sr.* was also recently applied by the Court *En Banc* in *People of the Philippines v. Ulysses Palconet Consebido.*[18] In that case, the Complaint-Affidavit subject thereof was filed with the DOJ on 30 January 2014; hence, the five (5)-year prescriptive period ended on 30 January 2019. However, the pertinent Informations were filed with this Court only on 18 March 2019. The Court *En Banc* thus ruled:

> . . .
>
> As explained in the *Lim* case, while tax cases are practically imprescriptible, such doctrine only applies 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".*** Conversely, where the period from the institution of judicial proceedings for the investigation until the filing of the information in court exceeds five (5) years, then the government's right to institute criminal action has prescribed. As discussed earlier, considering that in the instant case, the period from the filing of the preliminary investigation with the DOJ up to the filing of the *Informations* before the Court in Division exceeded five (5) years, petitioner is barred from instituting the subject tax cases against respondent.
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> Such being the case, We see no cogent reason to deviate from the findings and conclusions of the Court in Division in dismissing CTA Crim. Case Nos. 0-700, 0-702 and 0-703 on the ground of prescription.[19]
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> . . .

The present Information[20], while dated 01 September 2014, was filed with the Court only on **26 October 2022**. Thus, the right of the government to institute the case against accused Ziegfried Loo

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[17] Supra at note 7.
[18] CTA EB Crim. 076, 27 January 2021.
[19] Emphasis, italics and underscoring in the original text.
[20] Supra at note 1.

Tian had already prescribed when the Information was filed on 26 October 2022, justifying thus the dismissal of the present case.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[21] Evidently, in this case, prescription has automatically set in when the plaintiff failed to file the present Information[22] within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, in light of the foregoing considerations, CTA Criminal Case No. O-942 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

ERLINDA P. UY
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

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21 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.

22 Supra at note 1.