22-000599-0057

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-976 & O-977

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EMILU`S SUPERMARKET SYSTEMS, INC. and REGIDOR R. MATA,
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
SR. ASST. STATE PROS. ZENAMAR J. L. MACHACON-CAPARROS
Department of Justice
Padre Faura Street Ermita, Manila 1000

ATTY. CATHERINE P. CANTOS
ATTY. DIANA MICHELLE B. CASINILLO
ATTY. MARK ANTHONY R. ROJO
Bureau of Internal Revenue
Revenue Region 9A-CaBaMiro
Legal Division, 3rd Floor, Liana's Junction Plaza
Brgy. Poblacion IV, City of Sto. Tomas, Batangas

REGIDOR R. MATA
1013 Samala Marquez St.
Binakayan, Kawit, Cavite

MENDOZA NAVARRO-MENDOZA & PARTNERS LAW OFFICES
Units 205 and 501, Amberland Plaza
Doña Julia Vargas Ave. & Jade Drive
Ortigas Center, 1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **December 4, 2024,**a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 6, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case Nos. **O-976** and **O-977**
	For: Violation of Section 255, in relation to Sections 253(d) & 256 of the NIRC of 1997, as amended
- versus -	Members:
	DEL ROSARIO, P.J., *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, JJ.
EMILU'S SUPERMARKET SYSTEMS, INC. and **REGIDOR R. MATA**, Accused.	Promulgated: DEC 04 2024; 1:20 PM

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RESOLUTION

For the Court's resolution is plaintiff People of the Philippines' (**plaintiff**'s) "Motion for Reconsideration [of the Resolution dated May 29, 2024]"[1] (**MR**) filed *via* LBC (an accredited courier service provider[2]) on 20 June 2024[3], praying for the reversal of the Resolution dated 29 May 2024[4] (**assailed Resolution**), which dismissed the instant cases due to prescription and thereby rendered moot and academic accused **EMILU'S SUPERMARKET SYSTEMS, INC.** and **REGIDOR R. MATA**'s (collectively, **accused**'s/**ESSI** and **Mata**'s) "Demurrer to Evidence"[5] (**Demurrer**).

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1 Division Docket (CTA Crim. Case Nos. O-976 & O-977), Volume II, pp. 1156-1165.
2 Office of the Court Administrator (**OCA**) Circular No. 22-2024 re: Nationwide Coverage of the Reaccreditation of LBC Express, Inc. for a period of one (1) year, from 17 January 2024 to 16 January 2025.
3 Received by the Court on 21 June 2024.
4 Division Docket (CTA Crim. Case Nos. O-976 & O-977), Volume II, pp. 1139-1155.
5 Id., pp. 1045-1077.

In compliance with the Court's directive, accused filed their "Comment/Opposition (Re: Motion for Reconsideration dated 20 June 2024)"[6] (**Comment/Opposition**) on 12 July 2024.

In the instant MR[7], plaintiff argues that the willfulness of the failure to pay tax, a key element of the offense, was only established when respondent continued to refuse payment of the deficiency taxes despite receiving collection notices from the Bureau of Internal Revenue (**BIR**). Plaintiff asserts that the manner of the offense's commission, as well as the nature and extent of the refusal to pay, was definitively determined at that point. In other words, the element of "willful failure to pay the taxes" became evident through the accused's blatant refusal to settle the deficiency taxes, despite receiving collection letters such as the Preliminary Collection Letter[8] (**PCL**) dated 13 June 2012, the Final Notice Before Seizure[9] (**FNBS**) dated 11 July 2012 and the Warrant of Distraint and/or Levy[10] (**WDL**) dated 06 March 2015. As such, the discovery of the crime should instead be reckoned from the issuance of the WDL on 06 March 2015.

Plaintiff further argues that the institution of the criminal action before the Department of Justice (**DOJ**) for purposes of preliminary investigation effectively tolled the running of the prescriptive period. Citing *People of the Philippines v. Mateo A. Lee, Jr.*[11] (**Lee, Jr.**), plaintiff insists that the five (5)-year prescriptive period is interrupted by the institution of proceedings for preliminary investigation against accused; as such, the filing of the Joint Complaint Affidavit[12] (**JCA**) before the DOJ tolled the running of the said prescriptive period under Section 281[13] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

Accused, on the other hand, contends that the instant MR violates their constitutionally protected right against double jeopardy, particularly as there is no allegation of any applicable exceptional circumstances. Accused theorizes that the dismissal of the instant cases was based on insufficient evidence and the denial of their right to a speedy trial. As a result, they are deemed acquitted, and such an

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6 Id., pp. 1172-1184, with Annex "A".
7 Supra at note 1.
8 Exhibit "P-15", Division Docket (CTA Crim. Case No. O-976), Volume I, p. 208.
9 Exhibit "P-17", id., p. 210.
10 Exhibit "P-19", id., p. 212.
11 G.R. No. 234618, 16 September 2019.
12 Exhibit "P-27", Division Docket (CTA Crim. Case No. O-976), Volume I, pp. 232-277, with annexes.
13 **SEC. 281**. *Prescription for Violations of any Provision of this Code.*

acquittal cannot be reviewed without placing them in double jeopardy, absent a showing of grave abuse of discretion by this Court in dismissing these cases.

As regards plaintiff's argument that the offense was only discovered when it became clear that accused blatantly ignored the demand for payment, accused asserts that this is a new theory introduced only in the instant MR[14] and may not be considered for the first time at this stage of the proceedings.

Lastly, accused echoes this Court's ruling that the cases filed against them should be dismissed on the ground of prescription, as the subject Informations[15] were filed only on 05 December 2022, which is more than ten (10) years after the commission of the offense or the finality of the assessment on 20 February 2012 (*i.e.*, the day after the deadline for filing a protest against the Formal Letter of Demand[16] and Assessment Notices[17] [**FLD/FANs**]) and clearly beyond the five (5)-year prescriptive period for violations of the NIRC of 1997, as amended.

We resolve.

After careful consideration of the parties' arguments, this Court finds no merit in plaintiff's MR.

At the outset, most of plaintiff's arguments have already been considered and addressed in the assailed Resolution.[18] Nevertheless, for emphasis, the Court will revisit the crux of plaintiff's contention, which essentially questions the applicability of the Supreme Court's decision in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[19] (**Lim, Sr.**) in light of the more recent decision in *Lee, Jr.*

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14 Supra at note 1.
15 Division Docket (CTA Crim. Case No. O-976), Volume I, pp. 5-7; Division Docket (CTA Crim. Case No. O-977), pp. 5-7.
16 Exhibits "P-13" to "P-13-1", Division Docket (CTA Crim. Case No. O-976), Volume I, pp. 203-206, with Details of Discrepancies.
17 Exhibits "P-12" to "P-12-2"; id., pp. 278-280.
18 Supra at note 4.
19 G.R. Nos. L-48134-37, 18 October 1990.

According to plaintiff, the above recent interpretation of Act No. 3326[20] provides that filing a complaint with the prosecutor interrupts the running of the prescriptive period. Since the provisions in Section 2[21] of Act No. 3326 are the same as those in Section 281[22] of the NIRC of 1997, as amended, the interpretation in the more recent case of *Lee, Jr.* should be applied here instead of *Lim, Sr.*

We disagree.

It is important to emphasize that *Lim, Sr.* specifically addresses the prosecution for violations of a tax law (*i.e.*, the NIRC of 1997, as amended), while *Lee, Jr.*, cited by plaintiff, involves the prosecution of violations under special penal laws unrelated to tax.

As held in the assailed Resolution[23], the ruling in *Lim, Sr.* that the filing of an Information in Court interrupts the running of prescriptive period is consistent with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals[24] (**RRCTA**), which reads as follows:

> . . .
>
> **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

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[20] 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.

[21] **SEC. 2.** 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 proceeding for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

[22] **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.

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.

[23] Supra at note 4.

[24] A.M. No. 05-11-07-CTA dated 22 November 2005.

> 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.**[25]
>
> . . .

The RRCTA clearly states that the institution of a criminal action interrupts the running of the prescription period, which occurs upon the filing of the Information with this Court (not by filing the complaint with the DOJ).

Thus, in view of *Lim, Sr.* and the RRCTA, this Court reiterates that the prescriptive period for a tax case begins 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* institution of proceedings for its investigation and shall only be tolled by the filing of an Information with this Court.

To reiterate, herein plaintiff had five (5) years from 20 February 2012 (*i.e.*, the day after the deadline for filing a protest against the FLD/FANs[26]), or until **19 February 2017**, within which to file the separate Informations in court. Since the subject Informations[27] were filed only on **05 December 2022**, *ten (10) years, nine (9) months and twenty-one (21) days have elapsed* since the commission of the violation on **20 February 2012** and the criminal action had already *prescribed for five (5) years, nine (9) months and twenty (20) days* reckoned from **19 February 2017** (*i.e.*, the last day of the five [5]-year prescriptive period). Evidently, plaintiff's right to file these criminal actions has already prescribed.

Thus, unless and until the Supreme Court modifies or reverses *Lim, Sr.*, this Court shall be bound by the said ruling in cases involving prosecutions for violation of the NIRC of 1997, as amended.

On the issue of double jeopardy, this Court finds that the filing of the instant MR does not constitute a violation of accused's right against double jeopardy. It should be noted that the filing of an MR is a plain and adequate remedy expressly available under the law and is not

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[25] Emphasis supplied and italics in the original text.
[26] Exhibits "P-13" to "P-13-1" and "P-12" to "P-12-2", supra at notes 16 and 17, respectively.
[27] Supra at note 15.

equivalent to an appeal.[28] Such procedural remedy allows the court an opportunity to correct its own errors or address any possible oversight, including the miscalculation of the prescriptive period.[29]

The Supreme Court has held that an MR merely asks the same court to reconsider its ruling without transferring the case to a higher court or re-opening the case for a new trial.[30] This means that an MR does not subject the accused to a second prosecution that would constitute double jeopardy; rather, it serves as a procedural remedy allowing the court to address any possible oversight or error in its ruling.[31]

Lastly, plaintiff's argument regarding the alleged "willful refusal to pay taxes", based on accused's blatant disregard of BIR's demands for payment, introduces a new theory raised for the first time in the instant MR. Procedural rules, however, prohibit the introduction of new arguments or theories not previously raised at this stage of the proceedings.[32]

In any case, even if this Court were to consider plaintiff's argument and begin reckoning the commission of the offense from the service of the WDL on 06 March 2015, the ruling would remain unchanged. The prosecution would still have only five (5) years from that date, or until 06 March 2020, to file the separate Informations with this Court. Since the subject Informations were filed only on 05 December 2022, plaintiff's right to file these criminal actions has already prescribed.

Accordingly, the Court finds no cogent reason to disturb the assailed Resolution.

ACCORDINGLY, plaintiff's "Motion for Reconsideration [of the Resolution dated May 29, 2024]" filed on 20 June 2024 is **DENIED** for lack of merit.

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28 See *People of the Philippines v. Hon. Perfecto A.S. Laguio, Jr., in his capacity as Presiding Judge, Branch 18, RTC, Manila, et al.*, G.R. No. 128587, 16 March 2007.

29 Id.

30 See *Barrio Fiesta Restaurant, et al. v. Helen C. Beronia*, G.R. No. 206690, 11 July 2016.

31 See *People of the Philippines v. Hon. Perfecto A.S. Laguio, Jr., in his capacity as Presiding Judge, Branch 18, RTC, Manila, et al.*, supra at note 28.

32 See *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta, namely: Eduardo M. Reterta, Consuelo M. Reterta, and Avelina M. Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, 17 August 2011.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice