



Republic of the Philippines

Supreme Court

Baguio City

EN BANC

SUPREME COURT OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,

OF THE
Petitioner,

G.R. No. 258563

Present:

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.**

- versus -

ULYSSES PALCONIT
CONSEBIDO,*

Respondent.

Promulgated:

April 2, 2025

[Signature]

DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ filed by the People of the Philippines (petitioner), through the Office of the Solicitor

* Referred to as "Ulysses Palconit Consebido" in some parts of the *rollo*.

** On leave but left a concurring vote.

¹ *Rollo*, pp. 19-42.

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General, assailing the Decision² dated January 6, 2021, and the Resolution³ dated January 5, 2022, of the Court of Tax Appeals (CTA) *En Banc* in CTA EB CRIM NO. 069. The CTA *En Banc* affirmed the Resolutions dated April 2, 2019,⁴ and May 7, 2019,⁵ of the CTA Second Division (2nd Division) in CTA CRIM CASE NO. O-701 which dismissed the Information for Willful Failure to File a Quarterly Value-Added Tax (VAT) Return, in violation of Section 255,⁶ in relation to Section 114,⁷ of the National Internal Revenue

² *Id.* at 55–64. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro of the CTA *En Banc*, Court of Tax Appeals, Quezon City.

³ *Id.* at 66–69. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo, and Lanee S. Cui-David of the CTA *En Banc*, Court of Tax Appeals, Quezon City.

⁴ *Id.* at 99–102. Penned by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla of the Second Division, Court of Tax Appeals, Quezon City.

⁵ *Id.* at 115–117. Penned by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla of the Second Division, Court of Tax Appeals, Quezon City.

⁶ SECTION 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos ([PHP]10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos ([PHP]10,000) but not more than Twenty thousand pesos ([PHP]20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

⁷ SECTION 114. *Return and Payment of Value-added Tax.* —

(A) *In General.* — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: *Provided,* That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

(B) *Where to File the Return and Pay the Tax.* — Except as the Commissioner otherwise permits, the return shall be filed with and the tax paid to an authorized agent bank, Revenue Collection Officer or duly authorized city or municipal Treasurer in the Philippines located within the revenue district where the taxpayer is registered or required to register.

(C) *Withholding of Creditable Value-added Tax.* — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: *Provided, however,* That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): *Provided, further,* That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.

Code (1997 NIRC) against Ulysses Palconit Consebido (Consebido).

The Antecedents

In a Joint Complaint-Affidavit⁸ dated January 30, 2014, Bureau of Internal Revenue (BIR) Officers Gina D. Floreza and Vivencio M. Gapasin charged Consebido with Willful Failure to File a Quarterly VAT Return. On even date, the BIR Officers referred the Complaint-Affidavit to the Department of Justice (DOJ).⁹

On March 18, 2019, an Information¹⁰ against Consebido was filed before the CTA, stating:

That on or about October 25, 2008, in Roxas, Palawan[,] and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, doing business under the name and style SEVEN DIGIT CONSTRUCTION AND SUPPLIES, and at that time required by law, rules and regulations to file his quarterly Value Added Tax (VAT) return did, then and there, willfully, unlawfully and feloniously fail to file his quarterly VAT return for the 3rd quarter of taxable year 2008, which resulted in basic deficiency quarterly VAT of [PHP] 4,184,566.10 for the 3rd quarter of taxable year 2008, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW.¹¹

The case was docketed as Criminal Case No. O-701 before the CTA.¹²

The Ruling of the CTA 2nd Division

The CTA 2nd Division dismissed the case on the ground of prescription in its Resolution¹³ dated April 2, 2019; thus:

WHEREFORE, CTA Criminal Case No. O-701 is hereby DISMISSED on the ground of prescription.

SO ORDERED.¹⁴

⁸ CTA Second Division records, pp. 172–183.

⁹ *Rollo*, p. 100.

¹⁰ CTA Second Division records, pp. 8–10. Filed by Assistant State Prosecutor Christine T. Perolino and approved by Senior Deputy State Prosecutor Richard Anthony D. Fadullon.

¹¹ *Id.* at 8–9.

¹² *Rollo*, p. 23.

¹³ *Id.* at 99–102.

¹⁴ *Id.* at 102.

The CTA 2nd Division held that the Information was filed beyond the five-year prescriptive period in Section 281 of the 1997 NIRC. According to the CTA 2nd Division, prescription began to run on the day of the discovery, which is January 30, 2014, together with the proceedings for the preliminary investigation. It noted that the period lapsed on January 30, 2019; the Information was filed only on March 18, 2019.¹⁵

Petitioner filed a motion for reconsideration which the CTA 2nd Division denied in the Resolution dated May 7, 2019.¹⁶ Thereafter, petitioner filed a Petition for Review¹⁷ before CTA *En Banc*.

The Ruling of the CTA En Banc

In its Decision¹⁸ dated January 6, 2021, the CTA *En Banc* denied the Petition and affirmed the ruling of the CTA 2nd Division. The CTA *En Banc* opined that pursuant to the Court's ruling in *Lim, Sr. v. Court of Appeals*,¹⁹ the date of discovery and the institution of judicial proceedings for investigation and punishment up to the filing of the Information in court should not exceed the five-year prescriptive period under Article 354 of Commonwealth Act No. 466 or the "National Internal Revenue Code of 1939" (1939 NIRC). The CTA *En Banc* observed that Article 354 of the 1939 NIRC and Article 281 of the 1997 NIRC are identically worded. Accordingly, the CTA *En Banc* ruled that the Information in the present case should have been filed not later than January 30, 2019, or five years from the date of discovery on January 30, 2014. The filing of the Information on March 18, 2019, was clearly beyond the period.²⁰

Petitioner prayed for the CTA *En Banc* to reconsider its Decision but to no avail.²¹

Hence, it filed the present Petition before the Court.

Petitioner's Arguments

Petitioner contends that: (1) under Section 281 of the 1997 NIRC, the

¹⁵ *Id.* at 100–102.

¹⁶ *Id.* at 115–117.

¹⁷ *Id.* at 82–96.

¹⁸ *Id.* at 55–64.

¹⁹ 268 Phil. 680 (1990).

²⁰ *Rollo*, pp. 60–62.

²¹ *Id.* at 66–69.

prescriptive period would only run from the discovery of the commission of the violation *and* the institution of judicial proceedings for its investigation and commission; (2) being a special act, the governing law on prescription for violations of the 1997 NIRC is Section 2 of Act 3326;²² (3) the Court has already settled that under Section 2 of Act 3326, prescription shall begin from the date of the commission of the offense or if unknown, then it shall be counted on the date of discovery. It further contends that the filing of the complaint with the DOJ for preliminary investigation interrupted the prescriptive period, and thus, its action has not yet prescribed because the filing of the complaint with the DOJ interrupted the prescriptive period; and (4) even assuming otherwise, its legal arguments should be favored over the termination of the proceedings on purely technical grounds.²³

Respondent's Arguments

Citing the case of *Lim, Sr.*, Consebido maintains that the prescriptive period cannot commence and be interrupted at the same time by the institution of judicial proceedings; hence, the CTA *En Banc* correctly held that petitioner's action had prescribed.²⁴

The Issue

The issue is whether the CTA *En Banc* erred in affirming the dismissal of the Information on the ground of prescription.

The Ruling of the Court

The Court denies the Petition.

The prescriptive period for violations of the NIRC that are not known at the time of its commission shall begin to run from its discovery

At the outset, it must be stressed that the prescriptive period for violations of the 1997 NIRC is governed by Section 281 thereof, which provides:

²² 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 (1926).

²³ *Rollo*, pp. 30-40.

²⁴ *Id.* at 150-154.



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.

As observed by the CTA *En Banc*, Section 281 of the 1997 NIRC is identical to Section 354 of the 1939 NIRC²⁵ that reads:

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.

The proper understanding of Section 354 was discussed by the Court in *Lim, Sr.*:

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.

²⁵ Commonwealth Act No. 466 (1939).

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 (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.*²⁶ (Emphasis supplied; and citation omitted)

Based on *Lim, Sr.*, the prescriptive period for violations of the 1939 NIRC where the date of its commission is unknown, shall begin to run from the discovery of its commission until an Information is filed with the court. Stated otherwise, the Information must be filed within five years from the discovery of the commission of the violation. This implies that the preliminary investigation does not toll the running of the prescriptive period.

The Court takes this opportunity to re-examine its ruling in *Lim, Sr.* and to clarify the prescriptive period under Section 281 of the 1997 NIRC, specifically with respect to violations that are unknown at the time of its commission.

There are two components in determining when the prescriptive period shall begin to run under Section 281: *first*, the discovery of the commission of the violation; and *second*, the institution of judicial proceedings for its investigation and punishment. As observed in *Lim, Sr.*, this makes the prosecution of offenses under the 1997 NIRC practically imprescriptible as the prescriptive period will only begin to run upon the institution of judicial proceedings. But the next paragraph of Section 281 states that “prescription shall be interrupted when proceedings are instituted against the guilty persons[.]” If *Lim, Sr.* is to be followed, prescription would both be started and interrupted by the institution of proceedings against the accused.

²⁶ *Lim, Sr. v. Court of Appeals*, 268 Phil. 680, 688-689 (1990).



This is not the first time that the Court encountered this conundrum.

Petitioner duly pointed out that Section 2 of Act No. 3326 is similarly worded to the second and third paragraphs of Section 281 of the 1997 NIRC. Section 2 provides:

SECTION 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 proceedings 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.

When Act No. 3326 was passed on December 4, 1926, it was the justice of the peace that conducted the preliminary investigation of criminal offenses. Accordingly, the filing of the complaint with the justice of the peace also signified the institution of criminal proceedings against the accused. The prevailing rule then was that the filing of the complaint with the justice of the peace tolled the prescription of the offense.²⁷ The Court thus clarified in *Panaguiton, Jr. v. Department of Justice*²⁸ that the term “proceedings” in Section 2 of Act No. 3326 should now be understood to include those before the executive branch of government. Hence, preliminary investigation tolls prescription, the reason being that “to rule otherwise would deprive the injured party the right to obtain vindication on account of delays that are not under his control.”²⁹

In *People v. Duque*,³⁰ the Court held that the phrase “‘institution of judicial proceedings for its investigation and punishment’ may be either disregarded as surplusage or should be deemed preceded by the word ‘until.’”³¹ A literal reading of Section 2 of Act No. 3326 would be unfavorable to the accused and is unnecessary. The Court opined that “the prescription period would both begin and be interrupted by the same occurrences the net effect would be that the prescription period would not have effectively begun, having been rendered academic by the simultaneous interruption of that same period.”³² The Court affirmed this interpretation in *Presidential Commission on Good Government v. The Ombudsman*³³ and added that this interpretation is consistent with the second paragraph of Section 2 of Act No. 3326.³⁴

²⁷ See *Panaguiton, Jr. v. Department of Justice*, 592 Phil. 286, 295 (2008).

²⁸ *Id.*

²⁹ *Id.* at 297, citing *People v. Olarte*, 19 Phil. 494, 500 (1967).

³⁰ 287 Phil. 669 (1992).

³¹ *Id.* at 681.

³² *Id.* at 679–680.

³³ 746 Phil. 995 (2014).

³⁴ *Id.* at 1005.

Notably, *Lim, Sr.* applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely noted that the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. This is no longer the case now, as observed in *Panaguition*. Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery. The adoption of the interpretation in *Duque* is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense. This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results.³⁵ Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.

As explained in *Panaguition, Jr.* and reiterated in *Desierto*, the injured party, i.e., the government, should not be penalized for the delays in the investigation even if the complaint is timely filed. If there is undue delay in the preliminary investigation, what should be invoked by the accused is the violation of their right to speedy disposition of cases under Article III, Section 16 of the Constitution and not the prescription of the offense.

The most favorable interpretation to the accused should be adopted with respect to laws on prescription of crimes.³⁶ As pointed out by Chief Justice Gesmundo during the deliberation, the prescriptive period of a penal provision is an amnesty granted by the State in favor of the defendant. It is a surrender by the State of its right to prosecute and, as such, a liberal construction in favor of the defendant is proper.

The Court stresses that the date of discovery of the commission of the violation is not necessarily synonymous to the date of the filing of the complaint. Discovery is “the act, process, or an instance of gaining knowledge

³⁵ See *Board of Commissioners of the Bureau of Immigration and the Jail Warden v. Wenle*, 937 Phil. 148, 221–222 (2023). See *Microsoft Corp. v. Manansala*, 772 Phil. 14, 22 (2015); See also *The Philippine American Life and General Insurance Co. v. The Secretary of Finance*, 747 Phil. 811, 824 (2014); See further *Civil Service Commission v. Court of Appeals*, 696 Phil. 230, 248–249 (2012); and *Secretary of Justice v. Koruga*, 604 Phil. 405, 416 (2009).

³⁶ *Republic v. Desierto*, 933 Phil. 373, 408 (2023). See also *Presidential Commission on Good Government v. The Ombudsman*, 746 Phil. 995, 1003–1004 (2014).

of or ascertaining the existence of something previously unknown or unrecognized.”³⁷ Simply put, the date of discovery is when it becomes known that a violation of the 1997 NIRC was committed. The filing of the complaint is not the reckoning point for the discovery unless it so happens that the complaint was filed on the very same day that the violation was discovered.

As aptly suggested by Associate Justice Dimaampao, the wording of Section 281 of the 1997 NIRC should be brought to the attention of the Legislature. Thus, a copy of this Decision must be given to the Senate of the Philippines and the House of Representatives for their appropriate action.

The alleged offense of respondent has prescribed

To be sure, Section 281 of the 1997 NIRC incorporates the Discovery Rule or the Blameless Ignorance Doctrine which computes prescription from the date of discovery in view of the propensity of tax evaders to come up with devious methods to thwart the BIR’s investigation and conceal the commission of the offense. Taken together with the presumption that tax returns have been prepared and filed by the taxpayer “in good faith, in observance of the ordinary course of business, and in compliance with the applicable rules and regulations,”³⁸ the BIR could not have discovered that a taxpayer had filed a fraudulent return at the time of its filing.

It must be stressed, however, that the Discovery Rule does not apply to all offenses punishable under the 1997 NIRC. In cases where the information, data, or records, from which the crime is based could be plainly discovered or were readily available to the public, or when there are reasonable means to be aware of the commission of the offense, the prescriptive period should be reckoned from the date of commission of the offense.³⁹

Here, the Court finds that the Discovery Rule is not applicable to the present case considering that the BIR had reasonable means to ascertain that Consebido failed to file his quarterly VAT return for the 3rd quarter of the taxable year 2008 given the circumstances, as will be discussed below.

³⁷ *Baylosis, Sr. v. People*, 556 Phil. 684, 690 (2007).

³⁸ *McDonald’s Philippines Realty Corp. v. Commissioner of Internal Revenue*, 945 Phil. 365, 394 (2023), citing *Collector of Internal Revenue v. Central Azucarera De Tarlac*, G.R. Nos. L-11760 & 11761, July 31, 1958, and RULES OF COURT, Rule 131, secs. 3(q) and 3(ff).

³⁹ *See Del Rosario v. People*, 834 Phil. 419, 433 (2018).

The complaint against Consebido stemmed from the payments he received from the Provincial Government of Palawan in relation to the construction of infrastructure projects using the Malampaya Funds.⁴⁰

A careful review of the records reveals that Consebido, who was doing business under the name Seven Digit Construction and Supplies,⁴¹ is VAT-registered.⁴²

Section 114 of the 1997 NIRC, as amended by Republic Act No. 9337,⁴³ the applicable law at that time, partly provides that “[e]very person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.”⁴⁴

In addition, the Joint Complaint-Affidavit against Consebido states that he was required to file a monthly VAT return and a consolidated quarterly VAT return pursuant to Section 114 of the 1997 NIRC, as amended by Republic Act No. 9337.⁴⁵ Copies of Consebido’s Monthly VAT Declaration, or BIR Form No. 2550M, for January, May, and June 2008, were attached to the Joint Complaint-Affidavit.⁴⁶

More, Section 114(c)⁴⁷ of the 1997 NIRC, as amended by Republic Act No. 9337, requires the government, or any of its political subdivisions, to

⁴⁰ *Rollo*, p. 24.

⁴¹ CTA Second Division *rollo*, p. 185.

⁴² Please *see* the Official Receipt issued by respondent to the Provincial Government of Palawan, *id.* at 289–291.

⁴³ Approved on May 25, 2005.

⁴⁴ Section 114 of the 1997 NIRC was further amended by Republic Act No. 11976, titled, “Ease of Paying Taxes Act,” approved on January 5, 2024:

SEC. 114. *Return and Payment of Value-Added Tax.* —

(A) *In General.* — Every person liable to pay the value-added tax imposed under this Title shall file, either electronically or manually, a quarterly return of the amount of his gross sales within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay, either electronically or manually, the value-added tax on a monthly basis: *Provided, finally,* That beginning January 1, 2023, the filing and payment required under this Subsection shall be done within twenty-five (25) days following the close of each taxable quarter.

⁴⁵ CTA Second Division *records*, p. 179.

⁴⁶ *Id.* at 335–337.

⁴⁷ SEC. 114. *Return and Payment of Value-added Tax.* —

....
(C) *Withholding of Value-Added Tax.* — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: *Provided,* That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

withhold VAT before making payment on account of each purchase of goods and services which are subject to VAT. The same provision requires the VAT withheld to be remitted within 10 days following the end of the month the withholding was made. That being so, it cannot be said that it was difficult for the BIR to discover that Consebido received payments that may be subject to VAT because the Provincial Government of Palawan was required to report it by law.

Evidently, the BIR expected Consebido to regularly file his monthly and quarterly VAT returns. Coupled with the fact that it is mandatory for government contractors, such as Consebido, to file their income and business tax returns and other required information electronically using the BIR's Electronic Filing and Payment System since April 1, 2005,⁴⁸ the BIR could readily generate from its system the list of tax returns which Consebido is required to file but failed to do so. Simply put, Consebido's failure to file his Quarterly VAT return for the 3rd quarter of the taxable year 2008 on the deadline fixed by law, i.e., October 25, 2008, could have easily been discovered by the BIR.

Verily, the Discovery Rule is not applicable in the case. The prescriptive period should not be counted from the date of discovery of the alleged violation, which the parties all agreed to be January 30, 2014,⁴⁹ but on October 25, 2008, the date when Consebido purportedly failed to file his return.

Considering the foregoing, even if the commencement of preliminary investigation interrupted the running of the prescriptive period, the complaint should have been filed with the DOJ within five years from October 25, 2008, or not later than October 25, 2013. Thus, the offense had already prescribed as early as when the Joint Complaint-Affidavit dated January 30, 2014, was filed.

In fine, the CTA *En Banc* did not err in affirming the dismissal of the Complaint.

The rule on the tolling of the prescriptive period for offenses

As discussed above, the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the 1997

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.

⁴⁸ See Rules and Regulations Implementing Executive Order No. 398, s. 2005, Revenue Regulations No. 03-05, Section 4.1.

⁴⁹ See *rollo*, pp. 107-108 and 152-154, respectively.

NIRC, as amended, whether its commission was immediately known or unknown at the time of the violation.

Still, the Court deems it necessary to revisit the prevailing jurisprudence on the tolling of offenses covered by the 1991 Revised Rules on Summary Procedure as well as the 2022 Rules on Expedited Procedures in the First Level Courts.

In the recent case of *Republic v. Desierto*,⁵⁰ the Court held that the rule in *Panaguiton, Jr.*, i.e., prescription is tolled by the institution of proceedings for preliminary investigation, only applies to special laws that are not covered by the Revised Rules on Summary Procedure.⁵¹ For acts covered by special laws where the Revised Rules on Summary Procedure applies, prescription shall only be interrupted by the filing of the Information and not the commencement of preliminary investigation.⁵² This is based on Section 11 of the 1991 Revised Rules on Summary Procedure which states that “[t]he filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information: Provided, however, that in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de officio*.”

The ruling in *Desierto* can be traced back to *Zaldivia v. Reyes, Jr.*,⁵³ which involved a municipal ordinance. The Court held:

Under Section 9 of the Rule on Summary Procedure, “the complaint or information shall be filed directly in court without need of a prior preliminary examination or preliminary investigation.” Both parties agree that this provision does not prevent the prosecutor from conducting a preliminary investigation if he wants to. However, the case shall be deemed commenced only when it is filed in court, whether or not the prosecution decides to conduct a preliminary investigation. This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.⁵⁴

Subsequently, the Court pronounced in *People v. Pangilinan*⁵⁵ that the ruling in *Zaldivia* does not apply to special laws. The Court later clarified in *Jadewell Parking Systems Corp. v. Lidua, Sr.*⁵⁶ that “the doctrine of *Pangilinan* pertains to violations of special laws but *not* to ordinances.” In *People v. Lee*,⁵⁷ the Court explained that “*Jadewell* presents a different factual milieu as the issue involved therein was the prescriptive period for violation

⁵⁰ 933 Phil. 373 (2023).

⁵¹ Approved on October 15, 1991.

⁵² *Republic v. Desierto*, 933 Phil. 373, 419–421 (2023).

⁵³ 286 Phil 375 (1992).

⁵⁴ *Id.* at 382.

⁵⁵ 687 Phil. 95, 104 (2012).

⁵⁶ 719 Phil 1 (2013).

⁵⁷ 863 Phil. 134 (2019).

of a city ordinance, unlike here as well as in [*Pangilinan*] and [*the*] *other above-mentioned related cases*, where the issue refers to prescription of actions pertaining to violation of a special law.” Thus, the Court said that *Jadewell* did not abandon the doctrine in *Pangilinan*.⁵⁸

The 1991 Revised Rules on Summary Procedure was supplanted by the 2022 Rules on Expedited Procedures in the First Level Courts.⁵⁹ Rule II, Subsection B, Section 1 thereof states that “[t]he filing of criminal cases governed by the Rule on Summary Procedure shall either be by complaint or by information.”⁶⁰

The DOJ likewise issued Circular No. 028, entitled the “2024 DOJ-NPS Rules on Summary Investigation and Expedited Preliminary Investigation,” which applies when the penalty prescribed by the law is imprisonment of one day to six years, fine regardless of the amount, or both.⁶¹ A summary investigation shall be conducted if the prescribed penalty is imprisonment of one day to one year, fine regardless of the amount, or both.⁶² The investigating prosecutor must immediately resolve a case subject of summary investigation upon receipt of its records.

With this dilemma, the Court takes this opportunity to pronounce that the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period. While it is ideal that all cases are resolved promptly, the reality is that this is not done at all times, whether for valid reasons or not. The offended party, which is primarily the State, should not be prejudiced by any delay in the conduct of the preliminary investigation even for cases covered by summary procedure. The Court reiterates its reasoning in *People v. Olarte*⁶³ that “*it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint.*”⁶⁴

In addition, Chief Justice Gesmundo extensively discussed the history of the pertinent laws and rules on the filing of complaint or information for criminal cases and the conduct of preliminary investigation in his Reflections.⁶⁵ Based on an examination of these laws and rules, he aptly surmised:

⁵⁸ *Id.* at 143.

⁵⁹ A.M. No. 08-8-7-SC, March 1, 2022.

⁶⁰ Underlining in the original.

⁶¹ Rule I, Section 2.

⁶² Rule IV, Section 6.

⁶³ 125 Phil. 895 (1967).

⁶⁴ *Id.* at 902.

⁶⁵ Pages 8–12 of Chief Justice Gesmundo’s Reflections.

[T]he use of the phrase “complaint or information” in Article 91⁶⁶ of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule II, Subsection B, Section 1 of [the] 2022 Rules on Expedited Procedures in the First Level Courts, for purposes of the tolling of the prescriptive period of offenses, must henceforth, be construed to refer to the filing of the complaint or information before the prosecution office.”⁶⁷

But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes,⁶⁸ this new rule shall apply prospectively.

Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts,⁶⁹ shall toll the running of the prescriptive period. The ruling in *Desierto* and the subsequent case of *Corpus, Jr. v. People of the Philippines*,⁷⁰ insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated January 6, 2021, and the Resolution dated January 5, 2022, of the Court of Tax Appeals *En Banc* in CTA EB CRIM No. 069 are **AFFIRMED**.

Let copies of this Decision be furnished to the Senate of the Philippines and the House of Representatives for their information and appropriate action.

⁶⁶ ARTICLE 91. Computation of Prescription of Offenses. — The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

⁶⁷ Page 13 of Chief Justice Gesmundo’s Reflections.

⁶⁸ *Republic v. Desierto*, 933 Phil. 373, 408 (2023).

⁶⁹ Rule I, Section 1(B) of the 2022 Rules on Expedited Procedures in the First Level Courts states: The following criminal cases shall be governed by the Rule on Summary Procedure:

(1) Violations of traffic laws, rules and regulations;

(2) Violations of the rental law;

(3) Violations of municipal or city ordinances;

(4) Violations of *Batas Pambansa Blg. 22* (the Bouncing Checks Law); and

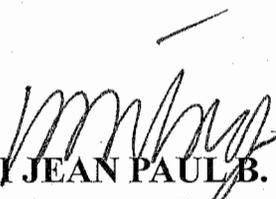
(5) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding one (1) year, or a fine not exceeding Fifty Thousand Pesos ([PHP] 50,000.00), or both, regardless of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom. In offenses involving damage to property through criminal negligence under Article 365 of the Revised Penal Code, this Rule shall govern where the imposable fine does not exceed One Hundred Fifty Thousand Pesos ([PHP] 150,000.00).

If the prescribed penalty consists of imprisonment and/or a fine, the prescribed imprisonment shall be the basis for determining the applicable procedure.

All other cases not included herein shall be governed the regular rules of procedure.

⁷⁰ 946 Phil. 88 (2023).

SO ORDERED.

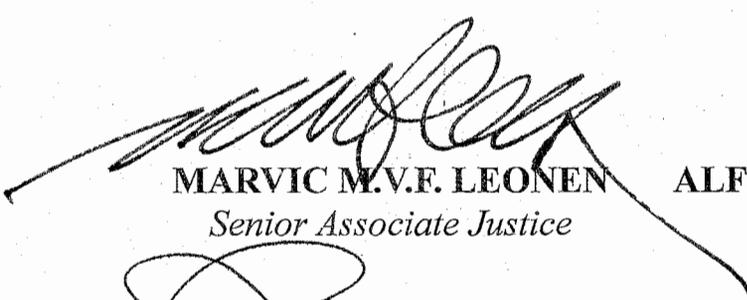


HENRI JEAN PAUL B. INTING
Associate Justice

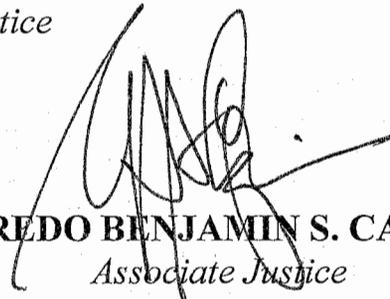
WE CONCUR:



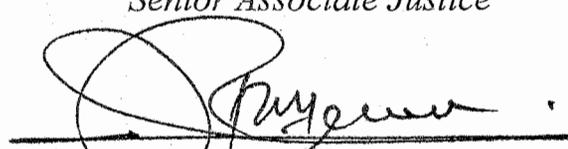
ALEXANDER G. GESMUNDO
Chief Justice



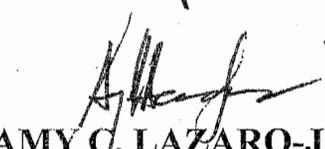
MARVIC M.V.F. LEONEN
Senior Associate Justice



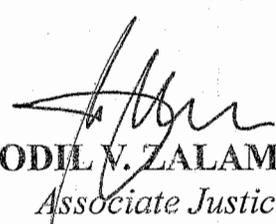
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



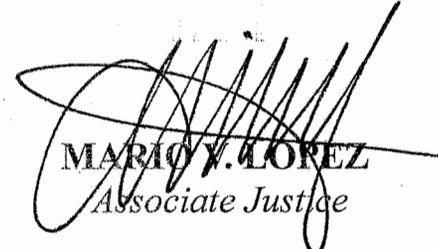
RAMON PAUL L. HERNANDO
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



MARIO V. LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

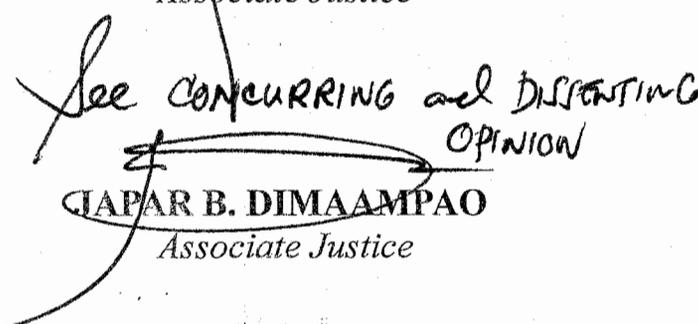


RICARDO R. ROSARIO
Associate Justice



JHOSEP V. LOPEZ
Associate Justice

See CONCURRING and DISSENTING OPINION

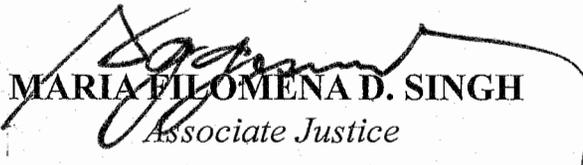


CIAPAR B. DIMAAMPAO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

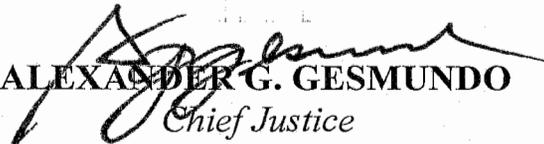

ANTONIO T. KHO, JR.
Associate Justice

(On leave but left a concurring vote)


MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice

EN BANC

G.R. No. 258563 – PEOPLE OF THE PHILIPPINES, Petitioner, v. ULYSSES PALCONIT CONSEBIDO, Respondent.

Promulgated:

April 2, 2025

X

CONCURRING AND DISSENTING OPINION

DIMAAMPAO, J.:

The *ponencia* overturns the doctrine laid down in *Lim, Sr. v. Court of Appeals*¹ (*Lim*), which declared that Section 354 (now Section 281) of the National Internal Revenue Code (NIRC) of 1939 reckons the running of the prescription of violations of the Tax Code from both the discovery of the fraud *and* the institution of judicial proceedings. The *ponencia* posits that this provision should be interpreted as reckoning the running of the prescriptive period solely on the discovery of the violation² and the filing of a complaint before the Department of Justice tolls the prescriptive period.³ It bases this interpretation from the Court's pronouncements in *Panaguition, Jr. v. Department of Justice*⁴ (*Panaguition*) and *People v. Duque*⁵ (*Duque*). In *Panaguition*, the Court determined that the "proceedings" referred to in Section 2 of Act No. 3326⁶—a provision sharing the wording of Section 281—must be read as including proceedings conducted by the executive branch, i.e., preliminary investigation. In *Duque*, the Court held that the phrase "institution of judicial proceedings for its investigation and punishment" should either be disregarded or deemed preceded by the word "until." Otherwise, the prescriptive period can never commence given that it would begin and be interrupted by the same occurrences.

While I agree it is high time for the Court to take a second look at the doctrine in *Lim*, I do not share the proposition of the majority to completely abandon the same. Rather, I believe the Court should take this opportunity to clarify the doctrine in obeisance to legislative intent.

In order to elucidate my position, an extensive review of the history of the tax provision is in order.

¹ 268 Phil. 680-692 (1990) [Per C.J. Fernan, Third Division].

² *Ponencia*, pp. 9–10.

³ *Id.* at 14–15.

⁴ 592 Phil. 286-298 (2008) [Per J. Tinga, Second Division].

⁵ 287 Phil. 669-683 (1992) [Per J. Feliciano, Third Division].

⁶ Act No. 3326 (1926), 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.

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The provision first appears in its present form under Section 354 of Commonwealth Act No. 466, otherwise known as the NIRC of 1939:

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.

In Presidential Decree No. 1158, or the NIRC of 1977, the provision was renumbered but remained unchanged:

SECTION 340. Prescription for violations of any provision of this Code.
— All violations of any provision 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.

It was around this time that the Court promulgated *Lim*, albeit the applicable law in that case was the NIRC of 1939 given that the purported violations occurred in 1958 and 1959.

In *Lim*, the Court affirmed the assertion of the Solicitor General that Section 354 of the NIRC of 1939 requires the concurrence of both the discovery of the violation and the institution of judicial proceedings before the five-year prescriptive period may begin to run:

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

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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 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.

....

Unless amended by the Legislature, Section 354 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.⁷

Notably, this specific interpretation of the provision does not appear to have been reiterated by the Court in subsequent case law up to the present date.

Thereafter, the provision was again carried over in Republic Act No. 8424, or the NIRC of 1997, although it was again renumbered:

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.

⁷ *Lim, Sr. v. Court of Appeals*, supra note 1.

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The term of prescription shall not run when the offender is absent from the Philippines.

All in all, it is self-evident that the provision itself remained unchanged from its first iteration, even with the change in the processes involving the institution of criminal proceedings, specifically that the “investigation of the charge for purposes of prosecution [became] the exclusive function of the executive branch.”⁸

Based on this fact alone, there is ample reason to reject the majority’s stance in applying analogously the jurisprudence reinterpreting the provisions of Act No. 3326 to Section 281 of the NIRC of 1997.

Act No. 3326, unlike the NIRC, has not been subject to amendment except in 1929 by Act No. 3585 and in 1930 by Act No. 3763. Since then, no legislative act has been passed, either affirming, modifying, or repealing Act No. 3326.

This should be contradistinguished from the NIRC which has gone through several amendments as a whole, while Section 281 remained unchanged. From this, it may be reasonably inferred that the legislators simply did not see it fit to alter the same notwithstanding the ostensible evolution in the “judicial proceedings” for criminal cases from the time that investigations began from filing a complaint with the justices of the peace.

It bears stressing that when the NIRC of 1997 was passed, *Lim* already espoused the doctrine that Section 281 (then Section 354) required the concurrence of both discovery and institution of judicial proceedings for the prescriptive period to begin. Moreover, the doctrine in *Duque* reinterpreting Act No. 3326 was likewise existent. Still, Section 281 was not amended to “correct” the contemporary interpretation of the Court.

It is a basic principle in statutory construction that in the enactment of statutes, it is presumed that the Legislature “understood the language it used and to have acted with full idea of what it wanted to accomplish”⁹ and that the law was passed “with deliberation [and] with full knowledge of all existing ones on the subject.”¹⁰ Guided by the foregoing, it must be assumed that Congress deliberately chose to retain the reckoning point of prescriptive periods for tax offenses under the NIRC from both the discovery *and* the

⁸ *Panaguiton, Jr. v. Department of Justice*, supra note 3 citing the Concurring Opinion of Justice Tinga in *Securities and Exchange Commission v. Interport Resources Corp.*, 588 Phil. 651-731 (2008) [Per J. Chico-Nazario, *En Banc*].

⁹ *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, 750 Phil. 748-766 (2015) [Per J. Perlas-Bernabe, First Division] citing *P. J. Kiener Co., Ltd. v. David*, 92 Phil. 945-947 (1953) [Per J. Tuason, *En Banc*].

¹⁰ *Calleja v. Executive Secretary*, G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, *En Banc*] citing *Mecano v. Commission on Audit*, 290-A Phil. 272, 283 (1992) [Per J. Campos, Jr., *En Banc*].

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institution of judicial proceedings as it is understood in its modern meaning, i.e., the filing of an Information before the courts. Unless the resulting effect offends the fundamental law of the land, the Court is in no position to override the prerogative of Congress.

Interestingly, this is not the first time that applying the exact wording of the provisions of the NIRC has resulted in an absurd situation. In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc. (Carrier Air)*,¹¹ the Court likewise examined the issues surrounding Section 229 on the lack of a period provided for the Commissioner of Internal Revenue to act on administrative claims for refund of erroneously or illegally collected taxes before judicial claims for refund may be filed. The wording of the law led to ludicrous situations wherein taxpayers may file an administrative claim two days before the two-year period lapses and then file their judicial claim a day after. Still, the Court held that “the silence or insufficiency in the law on the reasonable period for the Commissioner’s action is one that can be addressed not by judicial pronouncement, but by appropriate legislation.”¹²

As intimated by now retired Senior Associate Justice Estela M. Perlas-Bernabe in her Concurring Opinion in *Carrier Air*:

Whether or not the CIR should be given a mandatory period of review of administrative claims as a condition precedent to the filing of a judicial claim goes into the wisdom of the law. It is well-settled that the Court cannot supplant its own wisdom with that of Congress as this goes beyond the purview of its power of judicial review. As the Court has held, “[t]he courts may or may not agree with the legislature upon the wisdom or necessity of the law. Their disagreement, however, furnishes no basis for pronouncing a statute illegal. If the particular statute is within the constitutional power of the legislature to enact, whether the courts agree or not in the wisdom of its enactment, is a matter of no concern.”

In this regard, the proper recourse against the curtailment of the CIR’s power to first rule on administrative claim, as herein stated, is to seek the amendment of Section 229. **“[I]f the law is too narrow in scope, it is for the Legislature rather than the courts to expand it.’ It is only when all other means of determining the legislative intention fail that a court may look into the effect of the law; otherwise, the interpretation becomes judicial legislation.”** (Emphasis supplied)

Undeniably, striking down portions of Section 281 or inserting words or phrases therein to arrive at a more logical and reasonable application of the prescriptive period, as in *Duque*, would be tantamount to judicial legislation. To reiterate, the Legislature consistently maintained the wording of the

¹¹ G.R. No. 226592, July 27, 2021 [Per J. Leonen, *En Banc*].

¹² *Id.*

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provision by positive acts. This deliberateness cannot be ignored or set aside by the Court.

Corollary thereto, there is a need to correct the conclusions of the Court of Tax Appeals *En Banc* in its resolution of the case at bench. It appears that in “applying *Lim*” the tax court misunderstood the import of the doctrine espoused therein. In holding that the criminal violations of respondent have prescribed, the Court of Tax Appeals *En Banc* ratiocinated that:¹³

The commencement of the prescriptive period as provided in the above-cited provision (previously Section 354 of the NIRC of 1939) was interpreted by no less than the Supreme Court in *Lim v. CA* in the following manner, to wit:

....

Evident from the foregoing, both the date of discovery and the institution of judicial proceedings for investigation and punishment are significant events in the prosecution of any infraction of the Tax Code. It was observed that 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, the government's right to file a criminal action does not prescribe. ***Conversely, if the period from the institution of judicial proceedings for its investigation up to the filing of the information in court exceeds five (5) years, then the government's right to file an action has prescribed.***

As found by the Court in Division, the Joint Complaint-Affidavit of the investigating revenue officers was filed with the DOJ for preliminary investigation on January 30, 2014. ***Thus, the point in time which constitutes “discovery” together with the institution of judicial proceedings for preliminary investigation, show that prescription began to run on January 30, 2014.*** Applying the law and *Lim v. CA*, the 5-year prescriptive period from January 30, 2014 lapsed on January 30, 2019. In fine, when the Information was filed before the Court in Division on March 18, 2019, the 5-year prescriptive period had already lapsed. Hence, the Court in Division correctly ruled that the Information dated March 18, 2019 against Respondent could no longer be entertained as it was filed beyond the 5-year prescriptive period. (Emphasis supplied)

The foregoing application of the *Lim* doctrine effectively reckons the prescriptive period from the discovery of the violation and institution of executive proceedings, i.e., preliminary investigation, and sets the end of the five-year period to the filing of the Information before the courts. However, this is essentially the doctrine in *Duque* where the word “until” is read into the provision before the words “institution of judicial proceedings”. Worse, this application effectively curtails the third paragraph of the provision which states that “prescription shall be ***interrupted when proceedings are instituted***

¹³ *People v. Consebido*, C.T.A. EB Crim. Case No. 069 (C.T.A. Crim. Case No. O-701), January 6, 2021.

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against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.”¹⁴

This misapprehension appears to have been borne by the following ambiguous statement in *Lim*:

... As Section 354 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.* (Emphasis supplied)

However, the foregoing statement should be understood from the context of the reality of when the NIRC of 1939 was in effect. As earlier intimated, at that time, the judicial proceedings for the investigation and punishment of offenses began from the filing of the complaint with the justice of the peace. Thus, if the provision were to be taken on its face, similar to Act No. 3326, the discovery of the offense coupled with the filing of a complaint with the justice of the peace operated to begin and interrupt the prescriptive period.

Upon the creation of the National Prosecution Service in 1978¹⁵ and reorganization of the judiciary in 1980,¹⁶ the task of investigating criminal charges for the purposes of prosecution became the sole province of the executive branch. The shift in the criminal investigation process without the concurrent shift in the wording of the law led to the ambiguous statement in *Lim* that the prescriptive period began upon discovery and filing of a complaint with the fiscal, and ran until the filing of the Information in court.

Nonetheless, as above-discussed, the Legislature chose to retain the phrase “institution of judicial proceedings” notwithstanding that the criminal investigation process no longer began with the courts. Thus, the provision itself should be understood to mean that the prescriptive period begins both from the discovery and the filing of the Information in court, without consideration of the period in between, i.e., the preliminary investigation of the prosecution. Moreover, the filing of the Information will likewise interrupt the period “and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.” To reiterate, while this may seem absurd or irrational, and appears to heavily favor the government, it goes into the wisdom of the law. As the Court held in *Lim*, “[i]n 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

¹⁴ Emphasis supplied.

¹⁵ Presidential Decree No. 1275 (1978), Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service.

¹⁶ Batas Pambansa Blg. 129, (1981), The Judiciary Reorganization Act of 1980.

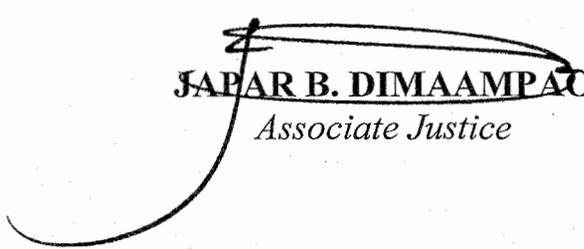
limitations in such cases will not be presumed in the absence of clear legislation.”

Still, the accused-taxpayers are not left without remedy. If the preliminary investigation spans several years, the accused-taxpayer may still raise the defense of a violation of their right to the speedy disposition of cases. This defense is wholly separate from the defense of prescription. Moreover, they may likewise argue that the offense charged is not covered by the Discovery Rule.

On that point, I wholly concur with the *ponencia* insofar as it held that the Discovery Rule does not apply to the criminal charge in this case as the Bureau of Internal Revenue had reasonable means to ascertain respondent’s failure to file his tax return for 2008. Thus, regardless of my disagreement with the *ponencia*’s proposal to abandon *Lim*, I still concur in the result of dismissing the Information against respondent on the ground of prescription.

In view though of the problems that arise from the present wording of Section 281 of the NIRC, and in observance of the principle of separation of powers, I wholeheartedly support the *ponencia* in directing that a copy of the Decision be furnished to both the Lower and Upper Houses of Congress for remedial legislation.

In summary, I vote to **DENY** the petition, but I maintain that the doctrine laid down in *Lim* should be upheld, subject to the clarification above discussed.


JAPAR B. DIMAAMPAO
Associate Justice