EN BANC

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

Promulgated:

April 2, 2025

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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 violation[2] 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 *Panaguiton, Jr. v. Department of Justice*[4] (*Panaguiton*) and *People v. Duque*[5] (*Duque*). In *Panaguiton*, the Court determined that the "proceedings" referred to in Section 2 of Act No. 3326[6]—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.

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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.

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.
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> 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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> 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.
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> 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.
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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 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 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.

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

> 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 (them 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

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[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*].

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."
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> 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

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

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:
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> ....
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> 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.***
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> 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 effective 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***

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

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 1978[15] 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

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[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