

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**PEOPLE OF THE
PHILIPPINES,**
Petitioner,

CTA EB CRIM. NO. 090
(CTA Crim Case Nos. O-800
& O-801)

Present:

- versus -

**DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, JJ.**

**WINTELECOM, INC./HUA C.
UYCHİYONG (Treasurer),**
Respondents.

Promulgated:

JUN 21 2023

X -----X
 11:08 a.m.

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed on March 31, 2022 by petitioner, People of the Philippines, seeking the reversal and setting aside of the Resolutions dated July 23, 2021² and February 22, 2022,³ both rendered by this Court's First Division (Court in Division) in CTA Crim. Case Nos. O-800 and O-801, entitled "*People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)*, the dispositive portions of which read:



¹ *En Banc (EB)* docket, pp. 5-11.

² *Id.*, pp. 13-19.

³ *Id.*, pp. 20-23.

DECISION

CTA *EB* Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)
People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)
Page 2 of 18

x-----x

Resolution dated July 23, 2021:

WHEREFORE, accused's *Urgent Motion to Quash* is **GRANTED**. Accordingly, the *Informations* docketed as CTA Crim Case Nos. O-800 and O-801 are **DISMISSED**.

SO ORDERED.

Resolution dated February 22, 2022:

WHEREFORE, the plaintiff's Motion for Reconsideration (Resolution dated July 23, 2021) dated October 25, 2021 is **DENIED**.

SO ORDERED.

THE PARTIES

Petitioner People of the Philippines is represented by the Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City, and may be served with summons and other legal processes through counsel at the Legal Division, Revenue Region No. 6, 5th Floor BIR Bldg. I, Solana Street, Intramuros, Manila.⁴

Respondents Wintelecom, Inc. and Hua C. Uychiyong (Treasurer) are the accused in CTA Crim. Case Nos. O-800 and O-801 and may be served with summons and other legal processes through counsel on record Custodio Acorda Sicam & De Castro Law Offices, 15th Floor, BDO Towers, 8741 Paseo De Roxas corner Villar Street, Salcedo Village, 1227, Makati City.⁵

THE FACTS

Respondents Wintelecom, Inc. and Hua C. Uychiyong were indicted in CTA Criminal Case Nos. O-800 and O-801, under two (2) separate *Informations* filed on November 8, 2019, for violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.



⁴ *Id.*, p. 6.

⁵ *Id.*, p. 6.

DECISION

CTA EB Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)
People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)
Page 3 of 18

x-----x

Crim. Case No. O-800 was raffled to this Court’s First Division for completion of records, while Crim. Case No. O-801 was raffled to this Court’s Third Division.

The two (2) *Informations* were later amended to rectify the typographical error in the surname of one of the respondents – from HUA C. UYCHIONG to HUA C. UYCHIYONG, which read as follows:

Criminal Case No. O-800

AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **WINTELECOM, INC.**, a domestic corporation, and **HUA C. UYCHIYONG** being the Treasurer thereof, for wilful failure to pay national internal revenue taxes for taxable year 2007, in violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

“That in January 2012 and thereafter, in the City of Manila, and within the jurisdiction of this Honorable Court, accused, **WINTELECOM, INC.**, a domestic corporation and **HUA C. UYCHIYONG** being the treasurer thereof, required by law to file income tax return and pay the corresponding tax, did then and there wilfully, unlawfully and feloniously fail to pay the aggregate deficiency **Value-Added Tax (VAT)** for taxable year 2007 in the amount of Seven Million Nine Hundred Forty Nine Thousand Three Hundred Eighty Two Pesos and Forty Nine Centavos (P7,949,382.49), exclusive of surcharges and interests, corresponding to the four (4) quarters of taxable year 2009, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of final notice before seizure issued on January 29, 2012, to the damage and prejudice of the government.”

CONTRARY TO LAW.

Criminal Case No. O-801

AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **WINTELECOM, INC.**,

DECISION

CTA *EB* Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)

People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)

Page 4 of 18

x-----x

a domestic corporation, and **HUA C. UYCHİYONG** being the Treasurer thereof, for wilful failure to pay national internal revenue taxes for taxable year 2007, in violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

“That in January 2012 and thereafter, in the City of Manila, and within the jurisdiction of this Honorable Court, accused, **WİNTELECOM, INC.**, a domestic corporation and **HUA C. UYCHİYONG** being the treasurer thereof, required by law to file income tax return and to pay the corresponding tax, did then and there wilfully, unlawfully and feloniously fail to pay **deficiency income tax** for taxable year 2007 in the amount of Two Million Seven Hundred Twenty Five Thousand Five Hundred Two Pesos and Fifty Seven Centavos (P2,725,502.57), exclusive of surcharges and interests, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of final notice before seizure issued on January 29, 2012, to the damage and prejudice of the government.”

CONTRARY TO LAW.

On February 5, 2020, the Third Division in CTA Crim. Case No. O-801 found probable cause to issue a warrant of arrest against respondent Hua C. Uychiyong.

On March 9, 2020, respondent Hua C. Uychiyong voluntarily surrendered and submitted her person to the jurisdiction of the Third Division. She likewise posted the required cash bail bond for her provisional liberty.

On March 10, 2020, the Third Division issued a Resolution approving respondent Hua C. Uychiyong’s posting of the required bond and lifted the Warrant of Arrest issued against her in CTA Crim. Case No. O-801. The Third Division set the arraignment and Pre-Trial Conference of respondent Hua C. Uychiyong on April 1, 2020, and Preliminary Conference on April 2, 2020, to mark the parties’ documentary evidence.

DECISION

CTA EB Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)

People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)

Page 5 of 18

x-----x

Similarly, in CTA Crim. Case No. O-800, the First Division, in its Resolution dated March 11, 2020, found probable cause to issue a warrant of arrest against respondent Hua C. Uychiyong. Like in CTA Crim. Case No. O-801, respondent Hua C. Uychiyong voluntarily surrendered and submitted herself to the jurisdiction of the First Division and posted the required cash bail bond for her provisional liberty on February 26, 2021.

When arraigned in CTA Crim. Case No. O-801, respondent Hua C. Uychiyong, with the assistance of her counsel, pleaded not guilty to the crime charged.

During the hearing for the initial presentation of petitioner's evidence in CTA Crim. Case No. O-801, respondents' counsel manifested that he recently discovered that there is another case pending with the First Division of this Court (CTA Crim. Case No. O-800), pertaining to the same respondents and the same taxable year, except that the case pertains to deficiency Value-Added Tax (VAT), and that he intends to file a *Motion to Consolidate* CTA Crim. Case No. O-801 with CTA Crim. Case No. O-800, pending before the First Division.

On March 8, 2021, respondent Hua C. Uychiyong filed a *Motion to Consolidate* CTA Crim. Case No. O-801 with CTA Crim. Case No. O-800, the case bearing the lowest docket number and pending with the First Division, which the Third Division granted on March 10, 2021 subject to the conformity of the First Division.

On May 27, 2021, this Court's First Division signified its conformity and consolidated CTA Crim. Case No. O-801 with CTA Crim. Case No. O-800. Further, the First Division set the arraignment of respondent Hua C. Uychiyong and the Pre-Trial Conference on June 30, 2021, at 8:30 a.m., for both CTA Crim. Case Nos. O-800 and O-801.

On June 25, 2021, respondent Hua C. Uychiyong filed an *Urgent Motion to Quash*, praying that the *Amended Informations* in CTA Crim. Case Nos. O-800 and O-801, be quashed on the ground of prescription.

DECISION

CTA *EB* Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)

People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)

Page 6 of 18

x-----x

On June 30, 2021, in open court, petitioner manifested that it received a copy of respondent's *Urgent Motion* and will file its comment immediately after the hearing. Thus, the Court in Division ordered that respondent's *Urgent Motion to Quash* be deemed submitted for resolution upon filing of petitioner's comment.

On July 23, 2021, the Court in Division issued the assailed Resolution granting respondent's *Urgent Motion to Quash*. In finding for respondent, the Court in Division explained that the failure of the prosecution to timely file the *Informations* in Court, *i.e.*, within the five-year prescriptive period as provided under Section 281 of the NIRC of 1997, as amended, renders the present consolidated cases dismissible on the ground of prescription.

Petitioner moved for reconsideration, but the same was denied in the equally assailed Resolution of February 22, 2022.

On March 18, 2022, petitioner filed before the Court *En Banc* a *Motion for Extension of Time to File Petition for Review*, asking that it be given an additional period of fifteen (15) days from March 18, 2022, or until April 2, 2022, to file its *Petition for Review*.

On March 22, 2022, the Court *En Banc* issued a *Minute Resolution* granting petitioner's motion.

On March 31, 2022, petitioner filed the instant *Petition for Review*.

In the Resolution promulgated on May 25, 2022, the Court *En Banc* directed respondents to file their comment, not a motion to dismiss, to the *Petition for Review* within ten (10) days from notice.

On June 3, 2022, respondent Hua C. Uychiyong filed her *Comment* on petitioner's *Petition for Review*.

On June 23, 2022, the Court *En Banc* issued a Resolution submitting the present case for decision.

Hence, this Decision.

DECISION

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THE ISSUE

Petitioner ascribes the following error allegedly committed by the Court in Division:

WITH ALL DUE RESPECT, THE HONORABLE COURT A QUO ERRED IN GRANTING RESPONDENT'S MOTION TO QUASH AND IN DISMISSING THE INFORMATIONS DOCKETED AS CTA CRIM. CASE NOS. O-800 AND O-801 ON THE GROUND THAT THE INFORMATIONS WERE FILED BEYOND THE FIVE (5) YEAR PRESCRIPTIVE PERIOD.

Petitioner's Arguments:

Petitioner submits that the two (2) *Informations* in CTA Crim. Case Nos. O-800 and O-801 were filed within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended. It argues that the filing of the Complaint-Affidavit before the Department of Justice (DOJ) tolls the running of the prescriptive period for offenses punishable by special laws following the Supreme Court's ruling in *People v. Lee, Jr.*⁶

Here, the Final Assessment Notice (FAN) issued on May 3, 2011, became final and unappealable on June 2, 2011, given respondent's failure to file a valid protest. Thus, petitioner claims that when the complaint was filed with the DOJ on April 30, 2015, the criminal action was instituted within the five (5)-year prescriptive period.

Respondent Hua C. Uychiyong's Arguments:

At the outset, respondent Hua C. Uychiyong submits that petitioner is barred from appealing the dismissal of CTA Crim. Case Nos. O-800 and O-801. Citing Section 6, in relation to Section 3, Rule 117 of the Rules of Court, respondent contends that an order sustaining a motion to quash based on the extinguishment of the criminal action or liability is a bar to another prosecution.



⁶ G.R. No. 234618, September 16, 2019.

DECISION

CTA *EB* Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)

People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)

Page 8 of 18

x-----x

Respondent added that the exclusive effect of prescription in criminal cases is supported by the fact that dismissal on the ground of prescription of criminal liability is based on a substantive right. Respondent explains that dismissal on the ground of prescription is not an ordinary dismissal because such dismissal can be equated to a resolution of the case on the merits. According to respondent, such dismissal is considered dismissal upon the merits as it amounts to a declaration of the law regarding the respective rights and duties of the parties.

Thus, respondent submits that the dismissal of the *Informations* on the ground that the offense charged has prescribed is a resolution based on the merits and is, therefore, tantamount to an acquittal that is no longer appealable.

Assuming, for the sake of argument, that petitioner can still appeal the dismissal of the *Informations* with the Court *En Banc*, respondent submits that the Court in Division correctly dismissed CTA Crim. Case Nos. O-800 and O-801 for having been filed beyond the five (5)-year prescriptive period.

According to respondent, in assailing the Resolutions dated July 23, 2021 and February 22, 2023, petitioner argues that the Court in Division erred in granting respondent's *Urgent Motion to Quash*, asserting that when it filed the complaint with the DOJ on April 30, 2015, the same is within the five (5)-year prescriptive period from the finality of the FAN on June 2, 2011, following the ruling in *People v. Lee, Jr.* Respondent disagrees. According to respondent, there is no question that the FAN dated April 15, 2011 was issued on May 3, 2011 by the BIR and was supposedly served on Wintelecom on May 6, 2011. The assessment attained finality on June 5, 2011. Thus, it was only on June 5, 2011 that the alleged commission of the violation of the NIRC was "discovered."

Petitioner then instituted a criminal complaint with the DOJ against respondents on April 30, 2015. The *Informations* in these cases were filed on July 22, 2019. For respondent, prescription had long set in considering that from the time of the discovery of the alleged violation of the NIRC, which was on June 5, 2011, *up to* the filing of the two (2) *Information* on July 22, 2019, more than *five (5) years* have elapsed.

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DECISION

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Respondent further emphasizes that in *Lim, Sr. v. Court of Appeals*,⁷ the Supreme Court held that tax offenses under the NIRC are imprescriptible provided that “*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.*” According to respondent, petitioner’s reliance in *People v. Lee, Jr.*⁸ is misplaced, and the First Division correctly held that it is not applicable in this case as the same does not involve the prescriptive period for filing a criminal tax case. For respondent, the interpretation of the Supreme Court in *Lim, Sr. v. Court of Appeals*, on Section 354 of the NIRC of 1939 (1939 NIRC), is still controlling since Section 281 of the NIRC of 1997, as amended (1997 NIRC), is the same as Section 354 of the 1939 NIRC.

THE COURT EN BANC’S RULING

The instant *Petition for Review* is not impressed with merit.

The Court En Banc has jurisdiction over the instant Petition.

Before delving into the merits of the case, the Court *En Banc* shall determine whether the present *Petition for Review* was timely filed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

SEC. 3. *Who may appeal; period to file petition.* — xxx

xxx

xxx

xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein

⁷ G.R. Nos. L-48134-37, October 18, 1990.

⁸ *Supra* at note 6.

DECISION

CTA *EB* Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)
People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)
Page 10 of 18

x-----x

fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Records show that petitioner received the assailed Resolution on March 3, 2022. Thus, petitioner had fifteen (15) days from March 3, 2022, or until March 18, 2022, to file its *Petition for Review* before the Court *En Banc*.

On March 18, 2022, petitioner filed a *Motion for Extension of Time to file Petition for Review*,⁹ asking for an additional fifteen (15) days from March 18, 2022, or until April 2, 2022, to file its *Petition for Review*. Said motion was granted in the *Minute Resolution*¹⁰ dated March 22, 2022.

Considering that the present *Petition* was on March 31, 2022, within the extended period granted by the Court, the same was timely filed.

Having settled that the *Petition* was timely filed, We likewise rule that the Court has the requisite jurisdiction to take cognizance of this *Petition*.

Now, on the merits.

The Court in Division did not err in dismissing CTA Criminal Case Nos. O-800 and O-801 on the ground of prescription.

Petitioner asserts that the filing of the Complaint-Affidavit before the DOJ tolls the running of the prescriptive period for offenses punishable by special laws following the Supreme Court's ruling in *People v. Lee, Jr.*¹¹ Hence, considering that the FAN dated April 15, 2011, issued on May 3, 2011, became final and unappealable on June 2, 2011 for the failure of respondents to file a valid protest, the filing of the complaint with the DOJ on April 30, 2015, is within the five (5)-year prescriptive period.

We disagree.

⁹ *EB* docket, pp. 1-3.

¹⁰ *EB* docket, p. 4.

¹¹ *Supra* at note 6.



DECISION

CTA EB Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)
People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)
Page 11 of 18

x-----x

Section 281 of the 1997 NIRC, as amended, governs the prescriptive period for filing criminal actions for violations of any provisions of the NIRC, to wit:

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. (Emphasis, Ours)

The foregoing provision presents two (2) modes for the commencement of the period of prescription:

1. *First Mode:* From the day of the *commission* of the violation of the law; and,
2. *Second Mode:* If the day of the commission is unknown, from the *discovery* of the commission and the institution of judicial proceedings for its investigation and punishment.

In both instances, the period is interrupted when judicial proceedings are instituted against the guilty persons.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*¹² (*Lim case*), the Supreme Court elucidated the point when the prescription for criminal violation of the provisions of the NIRC, involving taxpayer's refusal to pay the deficiency income taxes due, commences to run to wit:



¹² *Supra* at note 7.

DECISION

CTA EB Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)

People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)

Page 12 of 18

x-----x

Relative to Criminal Case Nos. 1788 and 1789 which involved **petitioners' refusal to pay the deficiency income taxes due**, again both parties are in accord that by their nature, **the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers.** Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while **the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served** on petitioners' daughter-in-law.

We hold for the Government. Section 51 (b) of the Tax Code provides:

'(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.*'

Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. **The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.** [*Emphasis supplied*]

As aptly observed by the Court in Division, the foregoing pronouncement was even circularized through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,¹³ which stated:

For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990, in the case entitled "*Emilio E. Lim, Sr. et al. vs. Court of Appeals, et al.*", G.R. Nos. L-48134-37.



¹³ SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code*, November 26, 1990.

DECISION

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1. *When cause of action for willful failure to pay deficiency tax occurs.*

The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is **committed** only after receipt is coupled with refusal to pay the tax within the allotted period.

2. *Prescription under Section 280 of the Tax Code.*

- (a) **The 5-year prescriptive period in an offense or willful failure to pay a deficiency tax assessment commences to run only after the receipt of the final notice and demand by the taxpayer and he refuses to pay.** [*Emphasis supplied*]

In the instant case, it is undisputed that the prescription began to run after the lapse of the thirty (30) days from receipt of the FAN or after the FAN has become final, without respondent filing a protest or paying the deficiency tax assessed. This position is in accord with the ruling in the *Lim case*.

Records reveal that the FAN dated April 15, 2011 was issued on May 3, 2011 and received by respondent on May 6, 2011. Counting thirty (30) days from receipt of the FAN, the assessment attained finality on June 5, 2011. Under RMC No. 101-90, "*the offense is **committed** only after receipt is coupled with refusal to pay the tax within the allotted period.*" Thus, respondents' failure to pay the deficiency VAT and income tax for the taxable year 2007 was allegedly "committed" on June 5, 2011, and prescription began to run on the same date. Counting the five (5)-year prescriptive period from June 5, 2011, the offense/s prescribed on June 5, 2016.

Petitioner instituted a criminal complaint against respondents by filing a Joint Complaint-Affidavit with the DOJ on April 30, 2015. In its Resolution dated July 22, 2019, the DOJ found probable cause to indict respondents for alleged violation of Section 255 in relation to Sections 253(d) and 256 of the 1997 NIRC, as amended. The *Informations* in these cases were filed on November 8, 2019.

DECISION

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Thus, the issue confronting the Court *En Banc* is: WHICH EVENT TOLLS THE RUNNING OF THE FIVE (5)-YEAR PRESCRIPTIVE PERIOD - Is it the filing of the Joint Complaint-Affidavit with the DOJ on April 30, 2015, or the filing of the *Informations* on November 8, 2019?

The Court in Division has squarely addressed this issue in the assailed Resolution dated February 22, 2022.¹⁴ The disquisition of the court *a quo* on the matter is reiterated with approval:

Beginning with *People v. Tierra*,¹⁵ followed by *People v. Lim, Sr.*,¹⁶ and as applied by the Court in several cases,¹⁷ it has been consistently held that for offenses punishable under the NIRC, the filing of the complaint before the DOJ alone does not toll the running of the five (5)-year prescriptive period in Section 281 of the NIRC, as amended. In addition, **the filing of the information in court must also fall within such five (5)-year prescriptive period.** Simply put, the filing of the complaint before the DOJ and Information in court must not exceed the five (5)-year prescriptive period under Section 281 of the NIRC, as amended, lest the plaintiff be precluded from prosecuting the tax offense on the ground of prescription.

As discussed in the assailed Resolution, the accused were charged for two (2) counts of willful failure to pay tax punishable under Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended. Willful failure to pay tax is committed upon receipt of the final notice and demand, coupled with the taxpayer's refusal to pay the tax within the period prescribed. The FAN was received by accused Wintelecom, Inc. on May 6, 2011 giving the latter thirty (30) days, or until June 5, 2011 to pay the taxes assessed therein, but it failed. Hence, the five (5)-year prescriptive period commenced on June 5, 2011. Counting five (5) years from June 5, 2011, the plaintiff had until **June 5, 2016** to file the complaint before the DOJ and the Information in court. While the complaint before the DOJ was timely filed on April 30, 2015, the respective Information in CTA Crim. Case Nos. O-800 and O-801 were both belatedly filed on **November 8, 2019**. This bars the plaintiff from prosecuting the accused on the tax offenses charged under the respective Information in CTA Crim. Case Nos. O-800 and O-801. [*Emphasis supplied*]



¹⁴ Annex "B", *EB* docket, pp. 20-24.

¹⁵ G.R. Nos. L-17177-80, December 28, 1964.

¹⁶ G.R. Nos. L-48134-37, October 18, 1990.

¹⁷ *People v. Bernardo*, CTA *EB* Crim. No. 078, September 29, 2021; *People v. Bernardo*, CTA *EB* Crim. No. 079, July 7, 2021; *People v. Consebido*, CTA *EB* Crim. No. 076, January 27, 2021; and *People v. Castillo*, CTA *EB* Crim. No. 053, July 8, 2020.

DECISION

CTA *EB* Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)

People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)

Page 15 of 18

x-----x

As regards the applicability of the case of *People of the Philippines v. Mateo A. Lee, Jr.* cited in the instant *Petition for Review*, We find it fit to quote with affirmation the very apt observation of the Court in *Division*, *viz.*:¹⁸

There is no merit in the plaintiff's argument that the filing of the complaint before the DOJ suspends the running of the prescriptive period under Section 281 of the NIRC, as amended. The principle invoked by the plaintiff in *Lee, Jr.*, whereby the filing of the complaint before the DOJ suspends the running of the prescriptive period may not be applied in these cases because it refers to the suspension of the prescriptive period for offenses covered by Republic Act No. 3326. In contrast, the pronouncements in *Tierra* and *Lim, Sr.* used in deciding these cases specifically address **the suspension of prescriptive period covering offenses punishable under the NIRC under Section 354 (now 281) of the NIRC, as amended.** For this reason, the rulings of the Supreme Court in *Tierra* and *Lim, Sr.* are the doctrinal principles which are obtaining in these cases. [Emphasis supplied]

Given the foregoing, the Court *En Banc* finds that the filing of the *Information* in Court effectively tolls the running of the five (5)-year prescriptive period.

This is consistent with Section 2, Rule 9 of the RRCTA, as amended, which provides that the criminal actions before the CTA are instituted by the filing of *Information* and that the institution of the criminal action interrupts the running of the period of prescription, to wit:

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. ...

The institution of the criminal action shall interrupt the running of the period of prescription.
[Emphasis supplied]

¹⁸ Annex "B", *EB* docket, pp. 20-24.

DECISION

CTA *EB* Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)
People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)
Page 16 of 18

x-----x

We reiterate that from the alleged “commission” of the offense involving a violation of the NIRC on *June 5, 2011*, and the filing of the Joint Complaint-Affidavit on April 30, 2015, up to the filing of the two (2) *Informations* on *November 8, 2019*, more than *eight (8) years* have elapsed. Counting five (5) years from June 5, 2011, the prescriptive period to institute the criminal action under Section 281 of the 1997 NIRC, as amended, lapsed on *June 5, 2016*.


Being over three (3) years late, the right of the government to institute the subject cases against respondents had already prescribed when the *Informations* were filed before the Court in Division on November 8, 2019.

All told the Court *En Banc* finds no reversible error on the part of the Court in Division in granting respondents’ *Urgent Motion to Quash* and consequently dismissing the *Informations* docketed as CTA Crim. Case Nos. O-800 and O-801.

With the foregoing conclusion, We see no reason to resolve respondents’ remaining issue of whether petitioner is barred from appealing the subject dismissal.

WHEREFORE, premises considered, the *Petition for Review* is **DENIED** for lack of merit. The Resolutions dated July 23, 2021 and February 22, 2022 rendered by the Court’s First Division in CTA Crim. Case Nos. O-800 and O-801 are **AFFIRMED**.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

DECISION

CTA EB Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)

People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)

Page 17 of 18

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MA. BELEN RINGPIS-LIBAN

Associate Justice



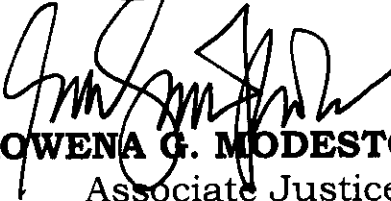
CATHERINE T. MANAHAN

Associate Justice



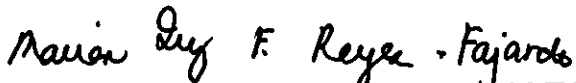
JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA G. MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



CORAZON G. FERRER-FLORES

Associate Justice

DECISION

CTA *EB* Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801)

People of the Philippines v. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)

Page 18 of 18

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO

Presiding Justice