

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

**EN BANC**

**PEOPLE OF THE  
PHILIPPINES,**

*Petitioner,*

**CTA EB Crim No. 129  
(CTA Crim Case No. O-995)**

*Members:*

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

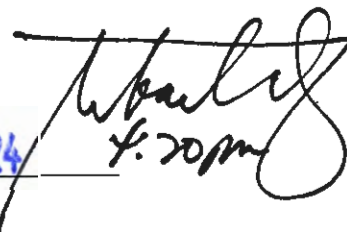
-versus-

**STAR ASSET MANAGEMENT  
NPL INC., MARK S.  
FRONDOSO AND JOSEPH  
RYAN R. SYCIP,**

*Respondents.*

Promulgated:

APR 22 2024



X- - - - -X

**DECISION**

**CUI-DAVID, J.:**

Before the Court *En Banc* is a *Petition for Review* dated June 30, 2023, filed by the People of the Philippines<sup>1</sup> (“**Petitioner**” or “**People**”), under Section 9(b), Rule 9<sup>2</sup> of the Revised Rules of the Court of Tax Appeals<sup>3</sup> (**RRCTA**), assailing the *Resolution* dated March 29, 2023 and *Resolution* dated May

<sup>1</sup> Received by the Court on July 6, 2023, posted on July 3, 2023; *En Banc (EB) Docket*, pp. 8-25.

<sup>2</sup> SECTION 9. Appeal; Period to Appeal. — ...

(b) An appeal to the Court en banc in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days.

<sup>3</sup> A.M. No. 05-11-07-CTA.



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26, 2023 (**assailed Resolutions**) of the First Division (**Court in Division**) in CTA Crim Case No. O-995 entitled *People of the Philippines v. Star Asset Management NPL., Mark S. Frondoso and Joseph Ryan R. Sycip, Unit 3A, One Orion Building, 11th Avenue, corner 38th Street, Bonifacio Global City, Taguig Metro Manila.*

**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. 8B-South NCR, 2/F BIR Building, No. 313 Sen. Gil Puyat Ave., Makati City.<sup>4</sup>

Respondent Star Asset Management NPL., Inc. (**Star Asset**) is a domestic corporation primarily engaged in the business of investing in or acquiring non-performing assets of financial institutions. It is registered with the BIR with Tax Identification No. 006-587-868-000 with the last known address, based on BIR records, at Unit 3A Orion Building, 11th Ave., Fort Bonifacio, Taguig City. Star Asset is one of the accused in CTA Crim. Case No. O-995.<sup>5</sup>

Respondents Mark S. Frondoso (**Frondoso**) and Joseph Ryan R. Sycip (**Sycip**) are the President and Treasurer, respectively, of Star Asset, based on the General Information Sheet (**GIS**) for the year 2017, with the last known address also at Unit 3A Orion Building, 11th Ave., Fort Bonifacio, Taguig City. They are among the accused in CTA Crim. Case No. O-995.<sup>6</sup>

**THE FACTS**

On December 4, 2015, the Letter of Authority eLA201200035448 (AUDM35/05532/2015) (**LOA**) was issued, authorizing the conduct of examination of the books of accounts and other accounting records for all internal revenue taxes of

<sup>4</sup> Petition for Review, par. 1, *EB Docket*, p. 9.

<sup>5</sup> *Id.* par. 2

<sup>6</sup> Petition for Review, par. 3, *EB Docket*, p. 9.

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Star Asset for the taxable year (**TY**) 2013. Said LOA was served to and received by Star Asset's authorized representative on January 6, 2016.<sup>7</sup>

In relation to the said LOA, a First Request for Presentation of Records was issued and served to Star Asset on February 3, 2016.<sup>8</sup>

On July 30, 2016, Star Asset executed a *Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code*, thereby extending the period to assess said taxpayer until December 31, 2017.<sup>9</sup> After investigation, the BIR concluded that Star Asset should be held liable for deficiency Income Tax (**IT**) and Expanded Withholding Tax (**EWT**) for TY 2013.

Then, the Commissioner of Internal Revenue (**CIR**) through Clavelina S. Nacar, then OIC-Regional Director of Revenue Region No. 8-Makati (**RD Nacar**) caused the issuance of Preliminary Assessment Notice (**PAN**) and Details of Discrepancies on December 16, 2016, against Star Asset, informing the said corporation of its assessed deficiency taxes for TY 2013. The PAN was served to and received by Star Asset on December 20, 2016.<sup>10</sup>

On January 11, 2017, a Formal Assessment Notice (**FAN**) and Details of Discrepancies were issued by RD Nacar against Star Asset assessing and demanding payments of its tax liabilities for TY 2013 in the total amount of ₱47,161,037.13, representing deficiency on IT and EWT, inclusive of surcharge and interest. Said FAN was served to Star Asset on **January 13, 2017**.<sup>11</sup>

Star Asset failed to file a protest within the thirty (30)-day period from receipt of FAN. With this, a Preliminary Collection Letter (**PCL**),<sup>12</sup> a Final Notice Before Seizure (**FNBS**),<sup>13</sup> and a Demand Before Suit<sup>14</sup> were issued and allegedly served to Star Asset on December 8, 2017, December 19, 2017, and February 18, 2021, respectively.

<sup>7</sup> Annex "D", Petition for Review, *EB* Docket, p. 42.

<sup>8</sup> Annex "E", Petition for Review, *EB* Docket, p. 43.

<sup>9</sup> Annex "F", Petition for Review, *EB* Docket, p. 44.

<sup>10</sup> Annex "G", Petition for Review, *EB* Docket, pp. 45-49.

<sup>11</sup> Annex "H", Petition for Review, *EB* Docket, pp. 50-55.

<sup>12</sup> Annex "I", Petition for Review, *EB* Docket, pp. 56-57.

<sup>13</sup> Annex "J", Petition for Review, *EB* Docket, pp. 58-59.

<sup>14</sup> Annex "K", Petition for Review, *EB* Docket, pp. 60-61.

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With this, Ellen Gay C. Teoxon, Rhodora C. Balazo, and Mohammad Ali Rodi executed a Joint Complaint-Affidavit, dated June 25, 2021, accusing respondents of violating Section 255 in relation to Sections 253 and 256 of the NIRC of 1997, as amended.

On March 9, 2022, the Department of Justice, through Criselda B. Teoxon-Yanga, issued a Resolution approving the filing of the *Information* against respondents.

Accordingly, on December 6, 2022, the *Information* was filed against respondents before the Court in Division.<sup>15</sup> The accusatory portion of the *Information* reads as follows:

"That on or about 18 February 2021, in Taguig City, and within the jurisdiction of this Honorable Court, accused MARK S. FRONDOSO and JOSEPH RYAN R. SYCIP, being the President and Treasurer, respectively, of Star Asset Management NPL Inc., which is engaged in the business of in and acquiring non-performing assets of financial institutions, with Tax Identification No. 006-587-868-000, and who is required by law, rules and regulations to file an accurate withholding tax return and to pay the correct withholding tax, did then and there knowingly, willfully and unlawfully fail to pay the deficiency expanded withholding tax in the amount of ONE MILLION TWO HUNDRED SEVEN THOUSAND SIX HUNDRED SEVENTY-THREE and 90/100 (P1,207,673.90) PESOS, exclusive of surcharge and interest, for taxable 2013 [sic], despite receipt of the Preliminary Assessment Notice, with Details Discrepancies, on 20 December 2016, and Formal Assessment Notice, with Details of Discrepancies, and Assessment Notice, on 13 January 2017, including prior and post-notices and demands to pay, the last of which being the Demand Before Suit dated 14 February 2021, without filing any protest, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount."

**CONTRARY TO LAW.**

On December 13, 2022, respondents filed the following: (i) a *Motion for Consolidation* and (ii) a *Motion to Dismiss/Motion to Quash Information with Motion to Hold Issuance or Quash Warrants of Arrest*.<sup>16</sup>

Pending resolution, the Court in Division issued a *Resolution* dated January 27, 2023,<sup>17</sup> which ordered petitioner

<sup>15</sup> Division Docket. p. 5.

<sup>16</sup> Division Docket, pp. 143-173.

<sup>17</sup> Division Docket, pp. 176-178.

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to submit certified true copies of the Prosecutor's Resolution dated March 9, 2022, Investigation Data Form, Referral Letter dated June 25, 2021 by the CIR, and Joint Complaint-Affidavit with annexes, within ten (10) days from receipt.<sup>18</sup>

On February 6, 2023, petitioner filed via email its *Compliance (on the Resolutions of the Honorable Court of Tax Appeals dated 25 January 2023 and 1 February 2023) [sic]*, without the certified true copies of the mentioned document on the Court's January 27, 2023 Resolution.

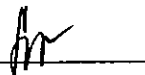
In relation to the above *Compliance*, on February 7, 2023, petitioner filed a *Manifestation* via email, stating that the prosecution e-filed the advanced copies of the required documents and that petitioner undertakes to furnish the Court in Division hard copies of the documents on February 7, 2023. Petitioner further manifested that the e-filing was due to "time constraints."<sup>19</sup> However, *Records Verification* dated February 21, 2023 reveals that the hard copies were not eventually received.<sup>20</sup>

On March 29, 2023, the Court in Division promulgated a *Resolution* dismissing CTA Crim Case No. O-995 for failure to show probable cause.<sup>21</sup> The dispositive portion reads:

**WHEREFORE**, premises considered, plaintiff's Information under CTA Crim. Case No. O-995 is hereby **DISMISSED** for failure to show probable cause. Accordingly, the Motion for Consolidation and Motion to Dismiss/Motion to Quash Information with Motion to Hold Issuance or Quash Warrants of Arrest filed by accused Mark S. Frondoso are hereby rendered **MOOT AND ACADEMIC**.

**SO ORDERED.**

Petitioner filed a *Motion for Reconsideration (Re: Resolution dated 29 March 2023)*<sup>22</sup> via email on April 14, 2023, which was followed by the filing of the hard copy on April 17, 2023. This was followed on April 19, 2023 by petitioner's filing via email a *Manifestation* with the attached *Joint Counter-Affidavit* dated September 20, 2021, and a *Compliance on the Resolutions of the Hon. Court of Tax Appeals dated January 25, 2023 and February 1, 2023*.<sup>23</sup>



<sup>18</sup> *Id.*, pp. 176-178.

<sup>19</sup> *Id.*, p. 179.

<sup>20</sup> *Id.*, p. 185.

<sup>21</sup> *Id.*, pp. 187-189.

<sup>22</sup> *Id.*, pp. 196-199.

<sup>23</sup> *Id.*, p. 351.

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On May 26, 2023, the Court in Division promulgated a *Resolution* denying petitioner's *Motion for Reconsideration*.<sup>24</sup> The dispositive portion reads:

**WHEREFORE**, premises considered, plaintiff's Motion for Reconsideration (Re: Resolution dated 29 March 2023) is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**PROCEEDINGS BEFORE THE COURT *EN BANC***

On June 19, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review*,<sup>25</sup> which the Court *En Banc* granted in a *Minute Resolution* dated June 29, 2023.<sup>26</sup> Accordingly, petitioner was given a final and non-extendible period of fifteen (15) days from June 17, 2023, or until July 2, 2023, to file its *Petition for Review*.

Considering that July 2, 2023 fell on a Sunday, on July 3, 2023, petitioner filed a *Petition for Review*.<sup>27</sup>

After being directed to file their comment through a *Minute Resolution* dated July 27, 2023,<sup>28</sup> respondents Mark S. Frondoso and Joseph Ryan R. Sycip filed a *Motion for Extension of Time to File Comment/Opposition* on August 14, 2023.<sup>29</sup>

On August 23, 2023, respondents Mark S. Frondoso and Joseph Ryan R. Sycip filed their *Comment/Opposition (Re: Petition for Review dated June 30, 2023)*.<sup>30</sup> Respondent Star Asset Management NPL, Inc. failed to file its comment on the *Petition for Review*.<sup>31</sup>

On October 10, 2023, the Court submitted the present case for decision.<sup>32</sup>

Hence, this *Decision*.



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<sup>24</sup> *Id.*, pp. 362-365.

<sup>25</sup> *EB* Docket, pp. 1-4.

<sup>26</sup> *Id.*, p. 7.

<sup>27</sup> *Supra* at note 1.

<sup>28</sup> *EB* Docket, p. 127.

<sup>29</sup> *Id.*, pp. 128-131.

<sup>30</sup> *Id.*, pp. 133-172.

<sup>31</sup> *Id.*, p. 302.

<sup>32</sup> *Id.*, p. 304.

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**THE ISSUE**

Petitioner submits the lone issue for the Court *En Banc*'s resolution as follows:

Whether or not the Court a quo erred in dismissing the information docketed as CTA Crim. Case No. O-995 on the ground that petitioner failed to show probable cause?

**Petitioner's Arguments**

Petitioner argues that it submitted certified true copies of the required documents and did not commit inexcusable negligence.<sup>33</sup> Petitioner also contends that it has no intention at all to undermine the order or procedure of the Court in Division as it attached certified true copies of the documents to its *Motion for Reconsideration (Re: Resolution dated 29 March 2023)*.<sup>34</sup> It further contends that the fact that Prosecutor Criselda B. Teoxon-Yanga attempted twice to comply with the order of the Court in Division negates any finding of inexcusable negligence.<sup>35</sup> Petitioner narrates that Prosecutor Teoxon-Yanga oversaw the preparation of the pleadings and made sure that the certified true copies of the required documents were complete before she entrusted the filing thereof to an office personnel,<sup>36</sup> and with this, "all the while petitioner thought that it was able to comply with the order of the Court's First Division."<sup>37</sup>

Thus, petitioner finds it "quite unfair for the Court *a quo* to rule that petitioner committed inexcusable negligence when [it] has attempted and showed genuine intention to comply with the Court's Order."<sup>38</sup>

Petitioner further argues that, even assuming that there is negligence on its part, this should not prejudice the interest of the State in prosecuting the instant case against respondents.<sup>39</sup>

Petitioner avers that there is no violation of respondents' right to a speedy trial. According to petitioner, the right cannot be invoked where to sustain the same would result in a clear

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<sup>33</sup> Petition for Review, par. 29; *EB Docket*, p. 14.

<sup>34</sup> *Id.*, par. 30; *EB Docket*, p. 15.

<sup>35</sup> *Id.*, par. 31; *EB Docket*, p. 15.

<sup>36</sup> *Id.*, par. 32; *EB Docket*, p. 15.

<sup>37</sup> *Id.*, par. 33; *EB Docket*, p. 15.

<sup>38</sup> *Id.*, par. 34; *EB Docket*, pp. 15-16.

<sup>39</sup> *Id.*, par. 35; *EB Docket*, p. 16.

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denial of due process to the prosecution.<sup>40</sup> Citing *Valencia v. Sandiganbayan*, petitioner states that “as significant as the right of an accused to a speedy trial is the right of the State to prosecute people who violate its penal laws.”<sup>41</sup> Petitioner cites that “where rigid application of the rules will result in a manifest miscarriage of justice, technicalities should be disregarded in order to resolve the case.”<sup>42</sup>

Petitioner likewise invokes that the assessment has become final, executory, and unappealable for the failure of respondents to file a protest within 30 days from receipt of FAN.<sup>43</sup> Petitioner also states that despite receipt of the assessment notices, there is a willful failure to pay on the part of respondents.<sup>44</sup>

**Respondents’ Counter-arguments**

In their *Comment*, respondents Frondoso and Sycip argue that the petition should be dismissed outright as prescription has already set in.<sup>45</sup> According to respondents, the five-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended, lapsed on February 13, 2022, and the Information was only filed with the Court in Division on December 6, 2022.

Further, respondents argue that the counsel’s inexcusable negligence is binding upon petitioner. According to respondents, petitioner failed to submit the required hard copies of the said Manifestation and Compliance in violation of CTA *En Banc* Resolution No. 4-2021.<sup>46</sup> Respondents also argue that rules of procedure cannot be relaxed when there is no compelling reason to do so<sup>47</sup> and that procedural rules are not mere technicalities that may be ignored at will.<sup>48</sup>

Respondents likewise argue that petitioner violated their right to a speedy trial. According to respondents, rules prescribing the time within which certain acts must be done are

<sup>40</sup> *Id.*, par. 37; *EB* Docket, p. 17.

<sup>41</sup> *Id.*, par. 38; *EB* Docket, pp. 17-18.

<sup>42</sup> *Id.*, pars. 40-44; *EB* Docket, pp. 18-20.

<sup>43</sup> *Id.*, pars. 45-47; *EB* Docket, pp. 20-22.

<sup>44</sup> *Id.*, par. 52; *EB* Docket, p. 23.

<sup>45</sup> *Comment*, pars. 24-32; *EB* Docket, pp. 142-148.

<sup>46</sup> *Id.*, par. 35; *EB* Docket, p. 149.

<sup>47</sup> *Id.*, par. 41; *EB* Docket, p. 151.

<sup>48</sup> *Id.*, par. 42; *EB* Docket, pp. 151-152.



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important in the speedy disposition of judicial proceedings.<sup>49</sup> For respondents, petitioner “glaringly failed to establish that there exist any ‘strong considerations of equity’ that could call for the relaxation of procedural rules.”<sup>50</sup>

Respondents contend that the officer who filed the *Information* had no authority to do so, given that the LOA was null and void for having been served upon respondent Star Asset beyond the required 30-day period from the date of its issuance.<sup>51</sup> Respondents also state that the *Information* is defective as it does not specifically establish that respondents are the responsible officers of respondent Star Asset,<sup>52</sup> it does not make reference to respondent Star Asset, the corporate taxpayer liable to pay the supposed withholding tax,<sup>53</sup> that Frondoso was a corporate officer in 2017, but not at the time the alleged violation was committed, and that the *Information* does not provide an allegation of an ultimate fact in the information showing that respondents, at the time the alleged crime was consummated, performed any act which demonstrated willfulness to violate the NIRC.<sup>54</sup>

**THE COURT *EN BANC*'S RULING**

***The Court En Banc has jurisdiction over the instant Petition.***

Before We proceed to the merits of the case, We shall first determine whether the Court *En Banc* has jurisdiction over the present *Petition*.

On March 29, 2023, the Court in Division promulgated a *Resolution* dismissing CTA Crim Case No. O-995. Petitioner received the resolution on April 3, 2023. Accordingly, petitioner had 15 days from receipt of the resolution, or until April 18, 2023, to file its Motion for Reconsideration.

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<sup>49</sup> *Id.*, par. 54; *EB* Docket, p. 154.

<sup>50</sup> *Id.*, par. 55; *EB* Docket, p. 155.

<sup>51</sup> *Id.*, pars. 60-73; *EB* Docket, pp. 156-159.

<sup>52</sup> *Id.*, pars. 74-89; *EB* Docket, pp. 160-163.

<sup>53</sup> *Id.*, pars. 90-91; *EB* Docket, p. 163.

<sup>54</sup> *Id.*, pars. 92-110; *EB* Docket, pp. 164-168.

*Mr*

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Within the reglementary period, on April 14, 2023, petitioner filed *via* email its *Motion for Reconsideration (Re: Resolution dated 29 March 2023)*.

On May 26, 2023, the Court in Division promulgated a *Resolution* denying petitioner's *Motion for Reconsideration*. The said resolution was received by petitioner on June 2, 2023. Accordingly, petitioner had 15 days from receipt of the said resolution, or until June 17, 2023, to file its *Petition for Review* before the Court *En Banc*.

Within the reglementary period, on June 19, 2023, petitioner filed its *Motion for Extension of Time to File Petition for Review*. To reiterate, the said *Motion* was granted, and petitioner filed the *Petition for Review* on July 3, 2023, within the extended period.

Having settled that the *Petition* was timely filed, the Court *En Banc* rules that it has jurisdiction to take cognizance of the same pursuant to Section 2(a)(1), Rule 4<sup>55</sup> of the RRCTA.

We shall now proceed to resolve the merit of the *Petition*.

***The offense charged had already prescribed when the Information was filed.***

Section 281 of the NIRC of 1997, as amended, provides:

*SEC. 281. Prescription for Violations of any Provision of this Code. - **All violations of any provision of this Code shall prescribe after five (5) years.***

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, **from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.**



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<sup>55</sup> Section 2. *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies --- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

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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. [*Emphasis and underscoring supplied.*]

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; or
2. *Second Mode:* When the day of the commission is unknown, from the *discovery* of the commission and the institution of judicial proceedings for its investigation and punishment.

Here, the *Information* filed against accused Star Asset, Frondoso, and Sycip, the latter two in their capacities as responsible corporate officers of Star Asset, was for willful failure to pay IT and EWT for TY 2013 under Section 255 in relation to Sections 253 and 256 of the NIRC of 1997, as amended.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals (Lim)*,<sup>56</sup> the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

Relative to Criminal Cases 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:

  
<sup>56</sup> G.R. Nos. 48134-37, October 18, 1990.

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“(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.*” (*Emphasis on the original*)

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 and underscoring supplied.*]

The BIR circularized the pronouncement in *Lim* through the issuance of Revenue Memorandum Circular (**RMC**) No. 101-90,<sup>57</sup> which states:

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.

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*]

<sup>57</sup> SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

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This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*,<sup>58</sup> where it was ruled that the crime of willful failure to pay tax, “by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer.”

Actual receipt of final notice and demand is indispensable. Absent any proof that the final notice and demand for payment were received by the taxpayer, the offense cannot be said to have been committed because no violation has yet been committed prior to the receipt of the letter assessment.

As to what interrupts prescription, Section 281 of the NIRC of 1997, as amended, provides that it is “when proceedings are instituted against the guilty persons.” This is explained in *Lim* to mean *the time when the Information is filed with the Court*.<sup>59</sup>

On November 22, 2005, the Supreme Court approved the RRCTA, where Section 2, Rule 9 thereof provides that the institution of criminal action is done by filing the information with the Court, which, in turn, interrupts the prescriptive period.<sup>60</sup>

From the foregoing, when the offense charged involves a taxpayer’s refusal to pay the taxes due, the five (5)-year prescriptive period begins to run from the time the payment period lapses without any payment or appeal being made by the taxpayer. The prescription continues to run until the information is filed in court.

Upon perusing the records, no original copies of the Assessment Notices were provided. However, assuming this Court gives probative value to the photocopies of the Assessment Notices that petitioner presented, this will show

<sup>58</sup> G.R. No. 127777, October 1, 1999.

<sup>59</sup> G.R. Nos. L-48134-37, October 18, 1990.

<sup>60</sup> RULE 9 - PROCEDURE IN CRIMINAL CASES

...  
SEC. 2. Institution of criminal actions. — All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

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

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that the Assessment Notices were personally served and received by respondent Star Asset on **January 13, 2017**.

Moreover, it was alleged in the Complaint-Affidavit that:<sup>61</sup>

10. Thereafter, on 11 January 2017, the Formal Assessment Notice (FAN) and Details of Discrepancies, were issued by then OIC-Regional Director CLAVELINA S. NACAR assessing and demanding payments of the tax liabilities for taxable year 2013 in the total amount of Php47,161,037.13 representing deficiency on Income Tax and Expanded Withholding Tax, inclusive of surcharge and interest. **Said FAN was served on STAR ASSET on 13 January 2017.** [*Emphasis supplied*]

Petitioner persistently invokes that the assessment has become final, executory, and unappealable because respondents failed to file a protest within 30 days from receipt of the FAN.<sup>62</sup>

Accordingly, since no protest was filed within 30 days from January 13, 2017, or until February 12, 2017, the FAN attained finality *upon the lapse* of the period on **February 13, 2017**, in accordance with Section 228 of the NIRC of 1997, as amended.<sup>63</sup>

The Supreme Court enunciated in *Lim* that tax criminal cases are basically imprescriptible. However, violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of the commission of the offense if known, and as applicable in this case, *i.e.*, the date of finality of the FAN/FLD, up to the date of filing of the *Information* before the Court.

Thus, pursuant to *Lim* and RMC No. 101-90, petitioner had five (5) years counted from February 13, 2017, or until **February 13, 2022**, to file the *Information* in Court. The *Information* dated March 9, 2022, was filed with this Court only on **December 6, 2022**.

<sup>61</sup> Par. 10, Joint Complaint-Affidavit, Annex "N". Petition for Review, *EB* Docket, p. 67; Details of Discrepancies, Annex "P," *EB* Docket, p. 87.

<sup>62</sup> Petition for Review, pars. 45-47, *EB* Docket, pp. 20-22.

<sup>63</sup> SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

...  
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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Clearly, the government's right to institute a criminal action against respondents-accused had already prescribed for *more than nine (9) months* when the *Information* was filed on **December 6, 2022**.

It must be stressed that prescription in criminal cases is a matter of substantive law.<sup>64</sup> Although prescription has not been raised as an issue, it is well-settled that if the pleadings or the evidence on record show that the claim is barred by prescription, the Court may *motu proprio* order its dismissal on said ground.<sup>65</sup>

In their *Comment*, respondents Frondoso and Sycip correctly observed that the petition should be dismissed outright as prescription has already set in.<sup>66</sup>

Accordingly, We dismiss the present *Petition* on the ground of prescription of the offense.

***The issue on the propriety of the assailed Resolutions has been rendered MOOT and ACADEMIC.***

In the instant case, the Court *En Banc*'s dismissal of the *Petition* based on prescription as discussed above, has rendered **MOOT and ACADEMIC** the issue on the propriety of the Court in Division's dismissal of CTA Crim. Case No. O-995 for petitioner's failure to show probable cause.

The Supreme Court's pronouncement in the case of *Sze v. Bureau of Internal Revenue*<sup>67</sup> is highly instructive, *viz.*:

The Court dismisses the petition for being moot and academic.

In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, the Court defined **moot and academic** as:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so

<sup>64</sup> *Reodica v. Court of Appeals*, G.R. No. 125066, July 8, 1998, 354 PHIL 90-111.

<sup>65</sup> *Commissioner of Internal Revenue v. Nippon Express (Philis.) Corp.*, G.R. No. 212920, September 16, 2015, 769 PHIL 861-871.

<sup>66</sup> *Comment*, pars. 24-32.

<sup>67</sup> G.R. No. 210238, January 6, 2020.

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that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced. (Citation omitted)

Here, the dismissal of the criminal cases on the ground of prescription rendered the issue on the propriety of the CA's decision in finding probable cause as moot and academic. Thus, **the Court finds it appropriate to abstain from passing upon the merits of this petition** where legal relief is neither needed nor called for. [*Emphasis supplied*]

Considering the foregoing, the Court deems it unnecessary to pass upon the propriety or merit of the Court in Division's dismissal of CTA Crim. Case No. O-995, where legal relief is no longer needed or called for.

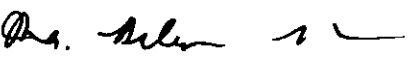
**WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **DISMISSED** on the ground of prescription of the offense and for being moot and academic.

**SO ORDERED.**

  
**LANEE S. CUI-DAVID**  
Associate Justice

WE CONCUR:

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice



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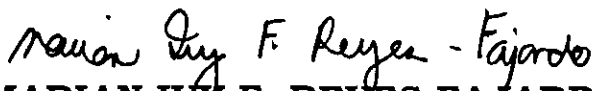
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**CATHERINE T. MANAHAN**  
Associate Justice

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice

*(Inhibited)*  
**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice

  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

  
**CORAZON G. FERRER-FLORES**  
Associate Justice

  
**HENRY S. ANGELES**  
Associate Justice



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**CERTIFICATION**

Pursuant to Article VIII, Section 13 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

