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THIRD DIVISION

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

EMILIO E. LIM, SR. and ANTONIA SUN LIM, *petitioners, vs.* **COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; FAILURE TO FILE RETURN OR TO PAY TAX, PENALTY; PRESCRIPTION FOR VIOLATIONS OF ANY OF THE PROVISIONS OF THE CODE. — It must be made clear that what we are dealing here are *criminal prosecutions* for filing fraudulent income tax returns and for refusing to pay deficiency taxes. The governing penal provision of the National Internal Revenue Code is Section 73 in conjunction with Section 354. The dispute centers on the interpretation of Section 354 because in an effort to exculpate themselves, petitioners have raised the defense of prescription. x x x "Section 73. Penalty for failure to file return or to pay tax. — Anyone liable to pay the tax, to make a return or to supply information required under this Code, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than six months, or both. Any individual or any officer of any corporation, or general co-partnership x x x, required by law to make, render, sign or verify any return or to supply any information, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this Code to be made, shall be punished by a fine of not exceeding four thousand pesos or by imprisonment for not exceeding one year, or both." "Section 354. Prescription for violations of any provisions of this Code. — All violations of any provision of this Code shall prescribe after five years. *"Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment."* x x x As Section 354 stands

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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.

2. **ID.; ID.; ASSESSMENT AND PAYMENT OF DEFICIENCY TAX; THE CAUSE OF ACTION ON THE PART OF THE BUREAU OF INTERNAL REVENUE ACCRUES UPON RECEIPT OF THE FINAL NOTICE AND DEMAND FOR PAYMENT OF THE DEFICIENCY TAXES BY THE TAX PAYER.** — 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 alloted 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.

3. **ID.; IN CRIMINAL CASES, STATUTES OF LIMITATIONS ARE ACTS OF GRACE AND RECEIVE A STRICT CONSTRUCTION IN FAVOR OF THE GOVERNMENT.** — 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.

4. **ID.; NATIONAL INTERNAL REVENUE CODE; CRIMINAL CONVICTION FOR A VIOLATION OF ANY PENAL PROVISION THEREIN DOES NOT AMOUNT AT THE**

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SAME TIME TO A DECISION FOR THE PAYMENT OF THE UNPAID TAXES. — In the case of *People vs. Tierra,* we reiterated the ruling in *People vs. Arnault*, that there is no legal sanction for the imposition of payment of the civil indemnity to the Government in a criminal proceeding for violation of income tax laws. Thus: "x x x While Section 73 of the National Internal Revenue Code provides for the imposition of the penalty for refusal or neglect to pay income tax or to make a return thereof, by imprisonment or fine, or both, it fails to provide for the collection of said tax in criminal proceedings. As well contended by counsel for appellant, Chapters I and II of Title IX of the National Internal Revenue Code provides only for civil remedies for the collection of the income tax, and under Section 316, the civil remedy is either by distraint of goods, chattels, *etc.*, or by judicial action. It is a commonly accepted principle of law that the method prescribed by statute for the collection of taxes is generally exclusive, and unless a contrary intent be gathered from the statute, it should be followed strictly." Under the cited *Tierra* and *Arnault cases*, it is clear that criminal conviction for a violation of any penal provision in the Tax Code does not amount at the same time to a decision for the payment of the unpaid taxes inasmuch as there is no specific provision in the Tax Code to that effect.

APPEARANCES OF COUNSEL

Santiago, Fornier, Tinga & Associates for petitioners.
The Solicitor General for respondents.

D E C I S I O N

FERNAN, *C.J.*:

The instant petition for review on *certiorari* seeks the reversal of the Court of Appeals decision dated September 1, 1977 which affirmed *in toto* the judgments of the then Court of First Instance of Manila, Branch VI in four (4) criminal cases instituted by the Bureau of Internal Revenue against petitioners.[1]

[1] *Rollo*, p. 118.

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The facts as found by the trial court and affirmed by the Appellate Court are substantially as follows:

Petitioner spouses Emilio E. Lim, Sr. and Antonia Sun Lim, with business address at No. 336 Nueva Street, Manila, were engaged in the dealership of various household appliances. They filed income tax returns for the years 1958 and 1959.

On October 5, 1959, a raid was conducted at their business address by the National Bureau of Investigation by virtue of a search warrant issued by Judge Wenceslao L. Cornejo of the City Court of Manila. A similar raid was made on petitioners' premises at 111 12th Street, Quezon City. Seized from the Lim couple were business and accounting records which served as bases for an investigation undertaken by the Bureau of Internal Revenue (BIR).

On October 14, 1960, the Chief of the Investigation Division of the BIR informed petitioners that revenue examiners had been authorized to examine their books of account.

On September 30, 1964 Senior Revenue Examiner Raphael S. Daet submitted a memorandum with the findings that the income tax returns filed by petitioners for the years 1958 and 1959 were false or fraudulent. Daet recommended that an assessment of ₱835,127.00 be made against the petitioners.

Accordingly, on April 7, 1965, then Acting Commissioner of the BIR, Benjamin M. Tabios informed petitioners that there was due from them the amount of ₱922,913.04 as deficiency income taxes for 1958 and 1959, giving them until May 7, 1965 to pay the amount.

On April 10, 1965, petitioner Emilio E. Lim, Sr. requested for a reinvestigation. The BIR expressed willingness to grant such request but on condition that within ten days from notice, Lim would accomplish a waiver of defense of prescription under the Statute of Limitations and that one half of the deficiency income tax would be deposited with the BIR and the other half secured by a surety bond. If within the ten-day period the BIR did not hear from petitioners, then it would be presumed that the request for reinvestigation had been abandoned.

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Petitioner Emilio E. Lim, Sr. refused to comply with the above conditions and reiterated his request for another investigation.

On January 31, 1967, the BIR Commissioner informed petitioners that their deficiency income tax liabilities for 1958 and 1959 had been assessed at ₱934,000.54 including interest and compromise penalty for late payment. Petitioners were given until March 7, 1967 to submit their objections with the admonition that if they failed to do so, it would be assumed that they were agreeable to the assessment and a formal demand would issue.

On March 15, 1967, petitioners wrote the BIR to protest the latest assessment and repeated their request for a reinvestigation.

On October 10, 1967, the BIR rendered a final decision holding that there was no cause for reversal of the assessment against the Lim couple. Petitioners were required to pay deficiency income taxes for 1958 and 1959 amounting to ₱1,237,190.55 inclusive of interest, surcharges and compromise penalty for late payment. The final notice and demand for payment was served on petitioners through their daughter-in-law on July 3, 1968.

Still, no payment was forthcoming from the delinquent taxpayers. Accordingly on September 1, 1969, the matter was referred by the BIR to the Manila Fiscal's Office for investigation and prosecution. On June 23, 1970, four (4) separate criminal informations were filed against petitioners in the then Court of First Instance of Manila, Branch VI for violation of Sections 45 and 51 in relation to Section 73 of the National Internal Revenue Code.[2] Trial ensued. On August 19, 1975, the trial court rendered two (2) joint decisions finding petitioners guilty as charged. The dispositive portions read:

In Criminal Cases Nos. 1789 and 1788:

"WHEREFORE, in view of the foregoing considerations, the Court finds the accused Emilio E. Lim, Sr. and Antonia Sun Lim guilty of a violation of Section 51 penalized under Section 73 of the National

[2] Commonwealth Act No. 466.

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Internal Revenue Code and each is hereby sentenced in each case to pay a fine of ₱2,000.00 and to pay the government pursuant to Presidential Decree No. 69 the amounts of ₱580,588.75 and ₱656,601.80 as deficiency income taxes for the years 1958 and 1959, respectively, and the costs of the proceedings."[3]

In Criminal Cases Nos. 1790 and 1791:

"WHEREFORE, in view of the foregoing considerations, the Court finds the accused Emilio S. Lim, Sr. and Antonia Sun Lim guilty of a violation of Section 45 in relation to Section 332 of the National Internal Revenue Code as amended, penalized under Section 73 of the same Code and hereby sentences each to pay a fine of ₱4,000.00 in each case and the costs of the proceedings."[4]

Petitioners appealed the foregoing decisions to the Court of Appeals.[5] In its judgment dated September 1, 1977, the Court of Appeals affirmed *in toto* the twin decisions of the lower court. Twenty-three days (23) later or on September 24, 1977, petitioner Emilio E. Lim, Sr. died.

On September 26, 1977, petitioners moved for a reconsideration of the decision dated September 1, 1977. On April 4, 1978, the Court of Appeals promulgated a resolution as follows:

"WHEREFORE, pursuant to Article 89 of the Revised Penal Code, by the death of appellant Emilio E. Lim, Sr. his criminal liability is totally extinguished; but his counsel is hereby required to inform the Court as to who are the heirs of the deceased following which the caption should be modified so as to reflect the civil aspect and substitution of the heirs, as defendants. In all other respects, the decision of this Court promulgated September 1, 1977, stands."[6]

Hence the present petition for review by *certiorari*.

In their Brief, petitioners contend that the Appellate Court erred in holding that the offenses charged in Criminal Case Nos.

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[3] *Rollo*, p. 228.

[4] *Rollo*, p. 233.

[5] CA-G.R. Nos. 18814-18817-CR.

[6] *Rollo*, p. 163.

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1790 and 1791 prescribed in ten (10) years, instead of five (5) years; that the prescriptive period in Criminal Cases Nos. 1788 and 1789 commenced to run only from July 3, 1968, the date of the final assessment; that Section 316 of the Tax Code as amended by Presidential Decree No. 69 was applicable to the case at bar; and that the civil obligation of petitioner Emilio E. Lim, Sr. arising from the crimes charged was not extinguished by his death.[7]

Preliminarily, it must be made clear that what we are dealing here are *criminal prosecutions* for filing fraudulent income tax returns and for refusing to pay deficiency taxes. The governing penal provision of the National Internal Revenue Code[8] is Section 73 in conjunction with Section 354. The dispute centers on the interpretation of Section 354 because in an effort to exculpate themselves, petitioners have raised the defense of prescription. On the five-year prescriptive period, both parties are in agreement. They differ however in the manner of computation, specifically as to when the period should commence. Thus:

"Section 73. Penalty for failure to file return or to pay tax. — Anyone liable to pay the tax, to make a return or to supply information required under this Code, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than six months, or both.

"Any individual or any officer of any corporation, or general co-partnership x x x, required by law to make, render, sign or verify any return or to supply any information, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this Code to be made, shall be punished by a fine of not exceeding four thousand pesos or by imprisonment for not exceeding one year, or both."

"Section 354. Prescription for violations of any provisions of this Code. — All violations of any provision of this Code shall prescribe after five years.

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[7] Brief of the Petitioners, pp. 1-2, in relation to the Motion for Correction, *Rollo*, p. 346.

[8] Commonwealth Act No. 466.

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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." (Italics supplied)

Indubitably, petitioners had filed false and fraudulent income tax returns for the years 1958 and 1959 by nondisclosure of sales in the aggregate amount of ₱2,197,742.92, thereby depriving the Government in the amount of ₱1,237,190.55, representing deficiency income taxes inclusive of interest, surcharges and compromise penalty for late payment. Considering that this occurred in the late 1950's, the defraudation was on a massive scale.

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:

"(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.*" (Italics supplied)

Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it

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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 alloted 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.

With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of *discovery* of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.[9]

On behalf of the Government, the Solicitor General counters that the crime of filing false returns can be considered "discovered" only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment and therefore required the petitioners to pay ₱1,237,190.55 in deficiency taxes that the tax infractions were discovered.

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 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

[9] Brief for the Petitioners, pp. 22 and 133.

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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.

But according to the Lim spouses, that argument had precisely been raised, considered and found without merit in the case of *People vs. Ching Lak*[10] which had perfunctorily dismissed the Government's position in this wise:

"Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, *suffice it to state that the theory is not supported by any provision of law and we need not elucidate thereon.*" (Italics supplied).

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.

In the case of *People vs. Tierra*,[11] the same argument came up before the Court but its conclusions on the issue of prescription did not bring us any closer to a categorical ruling. It opined:

"Evidence was adduced to show, and the trial court so found, that the falsity of the returns filed by the appellant and his failure to preserve his books of accounts for at least five years from the date of the last entry in each book were all discovered only on December 16, 1950. Since the informations were filed on December 12, 1955, the trial court correctly ruled that the actions were all within the five-year period of limitation.

"Appellant argues, however, that since the informations make no allegation that the offenses were not known at the time of the

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[10] No. L-10609, May 23, 1958.

[11] Nos. L-17177-80, December 28, 1964, 12 SCRA 667, 671.

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commission as to bring them within the exception to the statute of limitations, then the informations were necessarily defective for that reason, and this fatal defect cannot be cured by the introduction of evidence. Prescription is a matter of defense and the information does not need to anticipate and meet it. The defendant could, at most, object to the introduction of evidence to defeat his claim of prescription; but he did not. *Anyway, the law says that prescription begins to run from x x x 'the institution of judicial proceedings for its x x x punishment.'*[12] (Italics supplied)

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.[13]

The petition, however, is impressed with merit insofar as it assails the inclusion in the judgment of the payment of deficiency taxes in Criminal Cases Nos. 1788-1789. The trial court had absolutely no jurisdiction in sentencing the Lim couple to indemnify the Government for the taxes unpaid. The lower court erred in applying Presidential Decree No. 69, particularly Section 316 thereof, which provides that "judgment in the criminal case shall not only impose the penalty but shall order payment of the taxes subject of the criminal case," because that decree took effect only on January 1, 1973 whereas the criminal cases subject of this appeal were instituted on June 23, 1970. Save in the two specific instances, Presidential Decree No. 69 has no retroactive application.

In the case of *People vs. Tierra,*[14] we reiterated the ruling in *People vs. Arnault,*[15] that there is no legal sanction for the

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[12] See above Section 354 cited.

[13] *People vs. Ross*, 156 N.E 303, 304 cited in Black's *Law Dictionary*, Fourth Edition, p. 1077; Mertens, *The Law on Federal Taxation*, vol. 10, p. 144.

[14] *Supra.*

[15] 92 Phil. 252 (1952).

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imposition of payment of the civil indemnity to the Government in a criminal proceeding for violation of income tax laws. Thus:

"x x x While Section 73 of the National Internal Revenue Code provides for the imposition of the penalty for refusal or neglect to pay income tax or to make a return thereof, by imprisonment or fine, or both, it fails to provide for the collection of said tax in criminal proceedings. As well contended by counsel for appellant, Chapters I and II of Title IX of the National Internal Revenue Code provides only for civil remedies for the collection of the income tax, and under Section 316, the civil remedy is either by distraint of goods, chattels, etc., or by judicial action. It is a commonly accepted principle of law that the method prescribed by statute for the collection of taxes is generally exclusive, and unless a contrary intent be gathered from the statute, it should be followed strictly. (3 Cooley, Law on Taxation, Section 1326, pp. 621-623)."

Under the cited *Tierra* and *Arnault cases*, it is clear that criminal conviction for a violation of any penal provision in the Tax Code does not amount at the same time to a decision for the payment of the unpaid taxes inasmuch as there is no specific provision in the Tax Code to that effect.[16]

Considering that under Section 316 of the Tax Code prior to its amendment the trial court could not order the payment of the unpaid taxes as part of the sentence, the question of whether or not the supervening death of petitioner Emilio E. Lim, Sr. has extinguished his tax liability need not concern us. However, with regard to the pecuniary penalty of fine imposed on the deceased Lim, this is necessarily extinguished by his death in accordance with Section 89 of the Revised Penal Code.

In resume, we therefore rule:

1. Criminal Cases Nos. 1788-1789 and 1790-1791, having been instituted by the Government on June 23, 1970, are not time-barred pursuant to Section 354 of the National Internal Revenue Code;

2. The then Court of First Instance of Manila, Branch 6 is devoid of jurisdiction to direct the collection and payment of

[16] See also *People vs. Patanao*, No. L-22356, July 21, 1967, 20 SCRA 712.

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the unpaid deficiency taxes in Criminal Case Nos. 1788-1789 because prior to the amendment introduced by Presidential Decree No. 69, such imposition was not sanctioned under Section 316;

3. The fine imposed in the four (4) aforementioned criminal cases is hereby affirmed in the case of petitioner Antonia Sun Lim in accordance with the provision of Section 73 of the Tax Code. The fine is deemed extinguished in the case of the deceased petitioner Emilio E. Lim, Sr. pursuant to Section 89 of the Revised Penal Code.

WHEREFORE, conformably with the abovestated ruling, the decision of the Court of Appeals under review is deemed MODIFIED. No costs.

SO ORDERED.

Bidin and *Cortés, JJ.*, concur.

Gutierrez, Jr., J., please see concurring opinion.

Feliciano, J., on leave.

CONCURRING OPINION

GUTIERREZ, JR., *J.*:

I concur in the results.

I feel that certain issues need further clarification. I, therefore, reserve my definitive vote on these issues. For instance, to say that no violation of the Income Tax Law has been committed until after receipt of the letter assessment overlooks the fact that the assessment is only evidence of a prior violation. It is not the refusal to comply with the latter that creates the violation. It is the failure to pay taxes in the years that they were due. Again, to make discovery of the fraud and institution of judicial proceedings conjunctive seems to me illogical because the judicial proceedings always come after discovery. The date of discovery becomes meaningless under our decision. Perhaps, the law needs amendment to make it clearer.