REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

R.A. OBEN HOLDINGS, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8723

Members:

BAUTISTA, *Chairperson*;
FABON-VICTORINO, and
RINGPIS LIBAN, JJ.

Promulgated:

APR 07 2016
2:23 p.m.

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RESOLUTION

FABON-VICTORINO, J.:

This resolves petitioner's Motion for Reconsideration filed on January 27, 2016, with respondent's Comment/Opposition (To Petitioner's Motion for Reconsideration) thereto filed on March 7, 2016

The dispositive part of the assailed Decision promulgated on January 6, 2016 reads as follows:

> **WHEREFORE**, the instant Petition for Review filed by petitioner R.A. Oben Holdings, Inc. on October 31, 2013, is hereby **DENIED**. Consequently, the Assessment Notice No. 33-08-VT-3119 for deficiency VAT assessment issued by respondent Commissioner of Internal Revenue against petitioner R.A. Oben Holdings, Inc. is **UPHELD**. Accordingly, petitioner is **DIRECTED TO PAY** respondent basic

deficiency VAT in the amount of Php946,301.81 and the fifty percent (50%) surcharge imposed under Section 248(B) of the NIRC of 1997 in the amount of Php473,150.91, or the total amount of Php1,419,452.72.

In addition, petitioner is **DIRECTED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of Php946,301.81, computed from January 25, 2009 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of Php1,419,452.72 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 24, 2012 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

In challenging the Court's Decision, respondent raises the following grounds:

I. The Honorable Court could have misconstrued the material records of the case in holding that petitioner's VAT returns for the four quarters of taxable year 2008 are "False Returns".

II. The Honorable Court could have overlooked the existing jurisprudence in holding that the testimony of petitioner's lone witness, Angelina L. Esteves, was self-serving and that no other evidence was presented in support of the petition.

III. The Honorable Court could have misappreciated the evidence on record in holding that the presumption of correctness of the present assessment was not refuted by petitioner's evidence.

IV. The Court of Tax Appeals has erred in upholding the fifty percent (50%) surcharge.

In rejecting the petitioner's submission, respondent argues that petitioner failed to overcome her finding that it substantially underdeclared its income for 2008. There is no denying that petitioner timely filed a Protest. However, it failed to reconcile the amount stated in its Annual Income Tax Return (ITR) filed on April 15, 2009 with the amount of income appearing in its 2008 Quarterly VAT Returns. Petitioner attributed the discrepancy to the alleged error in the computer software. Thus, having filed false VAT returns, the VAT assessment she issued against petitioner was not yet barred by prescription as provided under Section 222 of Republic Act (RA) No. 8424, as amended, and was in accordance with the ruling in the case of Aznar v. Court of Tax Appeals, et al.[1], that in case of false returns, she has ten (10) years from the discovery of falsity to assess.

Further, aside from relying on the testimony of its lone witness to substantiate its claim that there was an error in the computer accounting program it used during the relevant period and that its only source of income was the lease of business premises, petitioner failed to present further evidence to support such claim. In other words, petitioner failed to overturn the required quantum of evidence to support its Petition and overthrow the presumption of correctness and regularity in the issuance of the assailed assessments considering that it has the burden of proving otherwise.

Petitioner's Motion for Reconsideration should be denied for lack of merit.

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[1] G.R.No. L-20569, August 23, 1974.

Contrary to petitioner's argument, the evidence clearly established that its 2008 Quarterly VAT returns was False. In the assailed Decision of January 6, 2016, the Court thoroughly discussed that petitioner's income declaration in its Quarterly VAT Returns was different from the income declared per its original Annual ITR for 2008. Significantly, petitioner failed to explain to the satisfaction of the Court this unmistakable discrepancy. Thus, the inescapable conclusion that petitioner underdeclared its income for 2008.

The falsity in petitioner's 2008 Quarterly VAT Returns is evident from record. Based on petitioner's Original 2008 Quarterly VAT Returns[2], its total income for 2008 amounted only to P8,063,781.63, while its total income as reported in its Original Annual ITR for 2008[3] was P15,949,531.00. Obviously, the alleged effort to rectify the discrepancy by filing an Amended Annual ITR for 2008 was just an afterthought as it was done only after a notice to audit was issued against it. It certainly could not save the day for petitioner since Section 6(A) of the National Internal Revenue Code of 1997, as amended, only allows a taxpayer to amend its return filed with the BIR before an LOA or notice for investigation of the subject return is actually served upon the taxpayer.

Evidence shows that petitioner filed the Amended Annual ITR for 2008 after respondent issued LOA No. 2007 000337795 for its investigation. Further, even if the Court considers petitioner's Amended Annual ITR, there is still a variance between its declared total income in its 2008 Quarterly VAT Returns and in its Amended Annual ITR for 2008. The following portion of the assailed Decision is hereby quoted for better comprehension:

> "Evidence shows that respondent informed petitioner that the deficiency VAT assessment was issued on account of its filing of false returns and that the falsity was due to the discrepancy discovered between the declared income per/original Annual ITR in the amount of Php15,949,531.00 and the

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[2] Exhibits "P-1" to "P-4".
[3] Exhibit "P-5".

total income per Quarterly VAT Returns in the amount of Php8,063,781.63 for taxable year 2008.

xxx xxx xxx

xxx. In the instant case, the alleged difference in the amount of Php7,885,848.37 between petitioner's income per its Original Annual ITR and the total income per its Quarterly VAT Returns is equivalent to ninety-eight percent (98%) of that declared per VAT Return. In other words, prima facie evidence of false returns exists.

xxx xxx xxx

In the instant case, petitioner could no longer modify, change or amend its original Annual ITR for taxable year 2008 since a notice to audit or investigate under LOA No. 2007 000337795 was already served upon it on July 29, 2009. Moreover, there is still a difference between the income declared on the amended Annual ITR (Php8,047,355.00) *vis-a-vis* the total income per Quarterly VAT Returns (Php8,063,781.63). Thus, the amended Annual ITR for taxable year 2008 deserves scant consideration.

For failure to overcome respondent's finding of substantial underdeclaration of income in 2008, such finding must be sustained. Since petitioner's Quarterly VAT Returns for the four quarters of 2008 are false, as defined in the cited *Aznar* case, the ten (10)-year prescriptive period provided under Section 222(a) of the NIRC of 1997, as amended, applies."

As to the insufficiency of the evidence presented, the Court had amply explained in the assailed Decision that the self-serving declaration of its lone witness Angelina L. Esteves, without anything further, failed to convince the

Court of the alleged error in its accounting software program. Any Tom, Dick and Harry may claim the same defense but without any other evidence to substantiate the same, the said testimony is simply too weak to overturn a finding based on petitioner's own documents. Note that the witness herself failed to testify how and when the error occurred and discovered. Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[4]

Under the circumstances, petitioner had the burden of proof to show that the assessment was erroneously issued in order to relieve itself from it.[5] Further, cases filed before this Court are litigated *de novo*, hence, party-litigants shall prove every minute aspect of their cases.[6]

With the filing of false returns, the ten(10)-year prescriptive period under Section 222(A) of the NIRC of 1997, as amended, applies.

Also contrary to petitioner's claim, the Court did not base its ruling only on the presumption of correctness of the assessment but on the strong and clear pieces of evidence which the parties presented during the trial. To repeat, petitioner's pieces of evidence were not sufficient to tilt the scale of justice in its favor.

Finally, with the finding that petitioner filed False Returns, the Court did not err in upholding the fifty percent (50%) surcharge imposed by respondent against it pursuant to Section 248(B) of the NIRC of 1997, as amended, which provides that in case a false return is willfully made, the penalty to be imposed shall be 50% of the tax or the deficiency tax.

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[4] LNS International Manpower Services v. Armando C. Padua, Jr., G.R. No. 179792, March 5, 2010.

[5] Commissioner of Internal Revenue v. Construction Resources of Asia, Inc., G.R. No. L-68230, November 25, 1986 citing Collector of Internal Revenue v. Bohol Land Trans. Co., (107 Phil. 965, 974); Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, 98 Phil., 290; 52 Off. Gaz., [2] 791.

[6] Dizon v. Court of Tax Appeals, G.R. No. 140944, April 30, 2008.

WHEREFORE, the Motion for Reconsideration filed by petitioner R.A. Oben Holdings, Inc. on January 27, 2016, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice