REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

UNITED CHURCH OF CHRIST IN THE PHILIPPINES,
Respondent.

CTA *EB* NO. 2346
(CTA Case No. 9134)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 1 5 2022 4:35pm

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) assailing the Decision[2] dated January 15, 2019 and Resolution[3] dated July 29, 2020, which cancelled and withdrew Audit Results/ Assessment Notice bearing Assessment No. 014-088-IT-2010-109-14 and the Letter of Demand dated October 15, 2014, issued against United Church of Christ in the Philippines (UCCP). The assessment was for deficiency income tax for taxable year 2010 in the amount of Php7,118,236.53, inclusive of surcharge, interest and compromise penalty.

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[1] EB Docket, pp. 6-15.
[2] EB Docket, pp. 23-40.
[3] EB Docket, pp. 41-45.

FACTS

The CTA Special 3rd Division narrated the antecedents, as follows:

> Petitioner [herein respondent UCCP] is an entity organized and existing under the laws of the Republic of the Philippines as a non-stock, non-profit, religious organization, with principal office at 877 EDSA, West Triangle, Quezon City.
>
> Respondent [herein petitioner], on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), empowered to decide disputed assessments and to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner owned and operated Bethany Hospital located at Real Street, Tacloban City. It was a 150-bed tertiary hospital which rendered medical, dental, and hospital services as its mission arm under its healing ministry.
>
> On April 14, 2011, Bethany Hospital filed its IT Return for TY 2010 with BIR Revenue Region No. 14 and amended it on September 12, 2011.
>
> On December 4, 2012, Bethany Hospital received Letter of Authority (LOA) No. LOA-088-2012-00000074 dated November 5, 2012, authorizing Revenue Officer (RO) Yoko Carolyn Watanebe, under Group Supervisor Elisa Rapatan of Revenue District Office No. 088-Taclobal City, Eastern Samar, to examine its books of accounts and other accounting records for all internal revenue taxes for TY 2010.
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> On June 19, 2014, Bethany Hospital received a Notice of Informal Conference (NIC) with attached Summary Report, to discuss the result of the tax investigation conducted against it pursuant to LOA No. LOA-088-2012-00000074, which revealed a total deficiency IT of P28,895,861.35, inclusive of interests, penalties and surcharges. Exchange of communications followed.
>
> On September 19, 2014, Bethany Hospital received a Preliminary Assessment Notice (PAN) dated September 16, 2014, finding it liable for deficiency IT of P7,028,448.73, inclusive of increments for TY 2010.
>
> On November 7, 2014, Bethany Hospital received the Letter of Demand (FLD) with attached Audit Results/ Assessment Notice No. 014-088-IT-2010-109-14 (FAN) dated

> October 15, 2014, requiring it to pay deficiency IT for TY 2010 in the amount of P7,118,236.53, inclusive of surcharges, interest, and compromise penalty for late payment.
>
> Petitioner filed a letter protest against the FAN with supporting documents on December 8, 2014. A Supplemental Protest ensued on February 5, 2015.[4]

Alleging inaction on the part of the CIR, UCCP filed a Petition for Review before the Court of Tax Appeals (CTA) Division on September 2, 2015. After trial, the CTA Special 3rd Division, rendered the assailed Decision which disposed of the case as follows:

> **WHEREFORE**, the Petition for Review filed by United Church of Christ in the Philippines is hereby **GRANTED**. Accordingly, the Audit Results/Assessment Notice bearing Assessment No. 014-088-IT-2010-109-14 and the Letter of Demand Dated October 15, 2014 are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**.[5]

The CIR's Motion for Reconsideration of the above Decision was denied in the Resolution[6] dated July 29, 2020.

The CTA Special 3rd Division found that the CIR failed to demonstrate clearly that UCCP filed a fraudulent or false return warranting the application of the 10-year prescriptive period. Thus, the assessments are void for having been issued beyond the regular three-year prescriptive period to assess.

On November 3, 2020, the CIR filed the subject Petition for Review. Upon notice,[7] UCCP filed its Comment to Petition for Review[8] on December 21, 2020.

The case was also referred to mediation,[9] however, on March 4, 2021, the PMC-CTA submitted a "Back to Court"[10] report stating that respondent refused mediation.

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[4] EB Docket, Division Decision dated January 15, 2019, pp. 23-25.
[5] EB Docket, Division Decision dated January 15, 2019, p. 39.
[6] EB Docket, pp. 41-45.
[7] EB Docket, Resolution dated November 24, 2020, pp. 47-48.
[8] EB Docket, pp. 49-55.
[9] EB Docket, Resolution dated January 12, 2021, pp. 57-58.
[10] EB Docket, p. 59.

Thus, the case was submitted for decision on March 16, 2021.[11]

ISSUES

The CIR states the following ground for his Petition for Review:

> PETITIONER'S RIGHT TO ASSESS RESPONDENT FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2010 HAS NOT YET PRESCRIBED. THE THREE-YEAR LIMITATION WITHIN WHICH TO MAKE THE ASSESSMENT FINDS NO APPLICATION TO THE INSTANT CASE.

CIR's arguments

The CIR argues that the ten (10)-year period to assess under Section 222(a) of the 1997 National Internal Revenue Code (NIRC), as amended, should be applied in the instant case since UCCP's Bethany Hospital filed a fraudulent return with the intention to evade tax.

The CIR states that UCCP made it appear in its 2010 ITR that Bethany Hospital is a tax-exempt institution by indicating on its return the phrase "TENTATIVE EXEMPT ORGANIZATION", when Bethany Hospital is not a tax-exempt institution but one subject to 10% preferential tax rate. According to the CIR, UCCP's intention to evade payment of tax due is apparent from the details of its return which indicates the amount of "Php0.00".

Even assuming that the subject return was not fraudulent, the CIR argues that the return is false since there was a deviation from the truth when Bethany Hospital was declared as an exempt entity in its ITRs when it was not, as clearly shown in its Certificate of Registration. Thus, Section 222(a) of the 1997 NIRC, as amended, still applies.

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[11] EB Docket, Resolution, pp. 62-63.

The CIR also states that since the inception of Bethany Hospital, it had managed to evade payment of its income tax by falsely claiming to be exempt from tax.

UCCP's arguments

UCCP states that the fact that the assessment was done beyond the three-year period is not disputed. However, the assertion that the return was false or fraudulent was not proven. The CIR's lone witness did not mention the same, nor state under oath that there was deliberate intent on UCCP's part to file a false or fraudulent return. Also, the assessment notices did not contain any imposition of the 50% surcharge applicable to false or fraudulent returns.

UCCP also states that the stamping of "Tentative Exempt Organization" does not in itself prove intention to evade taxes. Bethany Hospital relied on the fact that since it is being run by UCCP, a religious organization, it also enjoys some degree of exemption from taxes. Further, the application for another TIN by Bethany Hospital does not indicate an intention to defraud or make a false return, rather, it is an indication of its readiness to comply with revenue regulations. UCCP also avers that the stamping of "Tentative Exempt Organization" could be considered an error, an honest mistake, or a misappreciation of fact, which should not result in the operation of the 10-year prescriptive period.

UCCP also argues that the CIR is estopped from raising the issue on fraudulent or false return considering that there was never a finding, during the assessment process, that UCCP filed a false or fraudulent return. Further, UCCP states that if it had been informed at the early stated that of its alleged false or fraudulent return due to the word "Tentative Exemp Organization", it would have presented a letter from the BIR, addressed to Bethany Hospital, inviting the same to attend the briefing on the exemption privileges and tax treatment of tax-exempt organizations. Thus, it is clear that the BIR recognized Bethany Hospital as an exempt organization.

RULING OF THE COURT

The Petition for Review is denied.

The prescriptive period for assessment is provided in Section 203 of the 1997 NIRC, as amended, which provides:

> Sec. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

In the instant case, UCCP filed its Bethany Hospital income tax return (ITR) for taxable year 2010 on April 14, 2011.[12] UCCP later filed an Amended ITR on September 12, 2011.[13]

Counting the 3-year prescriptive period from September 12, 2011, the CIR had until September 12, 2014 to assess deficiency income taxes for taxable year 2010. Unfortunately, the subject Formal Letter of Demand and assessment notice (FLD/FAN)[14] were issued only on October 15, 2014 and received by UCCP on November 7, 2014. Clearly, the assessment was issued beyond the 3-year prescriptive period.

The CIR now argues that the ten (10)-year prescriptive period should apply pursuant to Section 222(a) of the 1997 NIRC, as amended, which provides:

> Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall

[12] Docket, Vol. I, Exhibits "P-4" and "P-4-1", pp. 32-33.
[13] Docket, Vol. I, Exhibits "P-5" and "P-5-1", pp. 34-35.
[14] Docket, Vol. I, Exhibits "P-1" and "P-2", pp. 29-30; also, BIR Records, pp. 327-328.

> be judicially taken cognizance of in the civil or criminal action for the collection thereof.

To avail of the extraordinary period of assessment in Section 222(a) of the 1997 NIRC, as amended, the CIR should show that the facts upon which the fraud is based is communicated to the taxpayer.[15] Fraud is never presumed, it must be proved by clear and convincing evidence.[16] Fraud is never imputed and the courts never sustain the findings of fraud upon circumstances which, at most, create only suspicion.[17] Therefore, it is indispensable for the CIR to include the basis of the allegations of fraud in the assessment notice.[18]

In the instant case, the CTA 3rd Division made the following findings:

> Perusal of the records shows that there is nothing in the FAN or the FLD that even suggests or hints a finding of fraud and/or falsity in the return filed by petitioner [UCCP] for TY 2010. Petitioner [UCCP] was not even imposed the 50% surcharge for such infraction pursuant to Section 248(B) of the NIRC of 1997, as amended. Instead, only a penalty equivalent to 25% of the amount due was imposed as surcharge provided under Section 248(A) of the same Code.
>
> Equally noteworthy is the fact that the investigating RO, Yoko Carolyn C. Watanabe did not advance any information regarding the application of the ten-year prescriptive period to assess. There was nothing in her testimony about petitioner [UCCP]'s filing of a fraudulent or false return to justify the application of the 10-year period to assess. In other words, respondent [CIR] failed to prove by clear and convincing evidence that petitioner [UCCP] committed fraud in filing its IT Return for TY 2010.[19]

Indeed, scrutiny of the records shows that nothing in the FLD/FAN would give notice to UCCP/Bethany Hospital that it is being assessed under the ten-year prescriptive period due to

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[15] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.
[16] *Spouses Nilo Ramos and Eliadora Ramos v. Raul Obispo and Far East Bank and Trust Company*, G.R. No. 193804, February 27, 2013.
[17] *Commissioner of Internal Revenue v. Melchor Javier, et al.*, G.R. No. 78953, July 31, 1991.
[18] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.
[19] EB Docket, Division Decision dated January 15, 2019, pp. 36-37.

findings of fraud or falsity. Thus, we affirm these findings by the CTA 3rd Division.

As to the CIR's argument that the subject return was obviously false since there was a deviation from the truth when Bethany Hospital was declared as an exempt entity in its income tax returns when it is not an exempt entity.

We disagree.

In the case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer,*[20] the Supreme Court declared that mere entry of wrong information in tax returns due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return, to wit:

> Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake. In *CIR v. B.F. Goodrich Phils., Inc.,* the Court stated that the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return.

Thus, it is not sufficient that the return filed by the taxpayer is false but there must also be sufficient evidence to prove that the taxpayer intended to evade tax. This is especially important considering that taxes are self-assessed, which system is aptly described by the Supreme Court as:

> Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.
>
> The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes.[21]

Furthermore, it bears repeating that the application of the ruling in *Aznar v. CTA,*[22] should not be one of unbridled

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[20] G.R. No. 213943, March 22, 2017.
[21] *SMI-ED Phils. Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.
[22] G.R. No. L-20569, August 23, 1974.

discretion.[23] It is important to keep in mind that even in *Aznar,* the Supreme Court provided a qualification regarding the application of the ten-year prescriptive period, *to wit*:

> The ordinary period of prescription of 5 years [now, three years] within which to assess tax liabilities under Sec. 331 [now Sec. 203] of the NIRC should be applicable in normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent returns intended to evade payment of tax or failure to file returns, the period of ten years ... from the time of the discovery of the falsity, fraud or omission ... should be the one enforced.[24]

Taking these cases together, a taxpayer is allowed to file a claim for refund upon finding that a tax has been erroneously paid. On the reverse side, should the taxpayer find that there is an error in its return and/or deficient taxes paid, the taxpayer may file an amended return, or should the BIR be the one to detect the error, then an assessment shall be issued.

The very meaning of a deficiency assessment is that there was an error or omission on the part of the taxpayer in the preparation of its return or the payment of its tax. But each and every error does not and should not result to the operation of the ten-year period prescriptive period. Otherwise, on the strength of the *Aznar* definition of "false returns", BIR examiners conducting regular tax audits, who, logically as a matter of course, would always come up with tax findings of either under-declaration of income or over-declaration of deductions, or both, could mercilessly and arbitrarily raise the argument of "false return" giving rise to the ten-year prescriptive period. The result would be a lackadaisical implementation of the statutory principle that the statute of limitations is a remedial measure and should be strictly construed against the taxing authority and liberally in favor of the taxpayer.

In the instant case, there is no evidence that the BIR was put at a disadvantage during the audit investigation that it was prevented from assessing the deficiency taxes within the three-year prescriptive period. Neither is there any evidence

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[23] *Ayala Hotels, Inc. v. Commissioner of Internal Revenue,* CTA Case No. 6002, January 10, 2002.
[24] *Aznar v. Court of Tax* Appeals, G.R. No. L-20569, August 23, 1974.

that UCCP or Bethany Hospital intended to evade tax. As held by the CTA 3rd Division, UCCP was able to establish that it never had any intention to evade the payment of taxes through the testimony of its witness, Minerva M. Cua, who testified as follows:

> Question 42: The tax code provides for exceptions to the period of limitation one of which is when there is a false or fraudulent return with intent to evade tax is filed, what can you say about that?
>
> Answer : We did not file any false or fraudulent return, sir. And we never had any intention to evade the payment of taxes.
>
> Question 43: What is your basis for saying that?
>
> Answer : First, sir, the fact that we amended the return for 2010 by increasing the gross income from Php20,708,278.00 to Php95,203,562.00 shows that we were stating a truthful and corrective statement on the return. We did not have any intention to hide information that would lead to a false or fraudulent return.
>
> As regards to the classification as a tax exempt transaction, we honestly relied on the fact that the hospital is not a separate entity but is owned and operated by UCCP which is a tax exempt religious organization. Besides, we have been filing returns as an exempt entity years before 2010 and BIR has not called our attention on the matter if there was really an error in the classification.
>
> xxx.[25]

Taking these circumstances together, the Court finds no reason to reverse the CTA 3rd Division's Decision and Resolution. There is no sufficient justification to apply the ten-year prescriptive period, thus, the subject assessment having been issued beyond the ordinary three-year prescriptive period, the same has prescribed.

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[25] Division Docket, Judicial Affidavit, pp. 196-197.

WHEREFORE, the Petition for Review is **DENIED**. The Decision dated January 15, 2019 and Resolution dated July 29, 2020 in CTA Case No. 9134 are **AFFIRMED**.

The CIR, his representatives, agents, or any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject deficiency taxes.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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