Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER INTERNAL REVENUE, Petitioner,	**CTA EB No. 1191** (CTA Case No. 8573)
	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
- versus -	
ASALUS CORPORATION, Respondent.	Promulgated: NOV 06 2015 3:20 p.m.

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RESOLUTION

CASANOVA, J.:

This resolves petitioner's Motion for Reconsideration[1] filed, through registered mail, on August 24, 2015, with respondent's Comment/Opposition [Re: Petitioner's *Motion for Reconsideration* dated 24 August 2015], filed on September 28, 2015, praying that the Decision[2] (Assailed Decision) dated July 30, 2015, be reconsidered and set aside, and another one be rendered adopting the Dissenting Opinion of Presiding Justice Roman G. Del Rosario that the applicable period to assess is ten (10) years; and, ordering respondent to pay deficiency value-added tax (VAT) in the total amount of P106,761,025.17 plus accrued deficiency and delinquency interest, pursuant to Sections 249(B) and (C) of the National Internal Revenue Code of 1997, as amended.

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[1] *En Banc* Rollo, pp. 117-121.
[2] *En Banc* Rollo, pp. 94-107.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE,** premises considered, the present Petition for Review is hereby **DENIED**, and accordingly, **DISMISSED** for lack of merit.
>
> **SO ORDERED.**"

In the subject Motion, petitioner raised this sole ground for reconsideration of this Court:

> **"1. The respondent's own witness judicial admission that membership fees and amounts pertaining to medical practitioners and hospitals were deliberately not reported in its VAT returns, makes the returns filed by respondent false, thus, warrants the application of the ten (10)-year period to assess."** (sic)

Petitioner avers that the foregoing admission of respondent's own witness, Mr. Orlando L. Siglos, clearly established falsity of respondent's 2007 VAT returns as the same did not reflect the true or actual amount of gross receipts that should have been reported by respondent, pursuant to Revenue Regulations No. 16-2005.

Moreover, petitioner would like the Court *En Banc* to adopt the Dissenting Opinion of Presiding Justice Roman G. Del Rosario in which the latter ratiocinated that the substantial underdeclaration of respondent's gross receipt subject to VAT already partakes the nature of "falsity" in the subject returns, following the ruling in *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*[3] *(Samar-I Case)*. By such reason, the 10-year prescriptive period should, accordingly, be applied in the instant case.

On the other hand, respondent, citing the cases of *Commissioner of Internal Revenue vs. Obayashi Philippines Corporation*[4] and *Telesat, Inc. vs. Commissioner of Internal Revenue*[5], argues that mere falsity of a return does not merit the application of the 10-year prescriptive period. The element of fraud must be clearly established.

[3] G.R. No. 193100, December 10, 2014.
[4] CTA EB Case No. 42 (CTA Case No. 6222), June 10, 2005.
[5] CTA Case No. 6812, January 2, 2006.

Respondent also argues that petitioner failed to present any evidence to prove that the difference in the amounts reported in the returns as against the related monies actually collected constitutes a "substantial under-declaration of sales" to merit the presumption that the returns filed were indeed false.

We find no valid reason to grant petitioner's Motion.

Perusal of the arguments raised by petitioner in her Motion for Reconsideration reveals that the same are practically mere reiterations of her previous arguments which have been fully addressed and discussed at length by the Court *En Banc* in the Assailed Decision. As such, *We* see no reason to further discuss the same.

As regards petitioner's proposition to adopt the Dissenting Opinion of Presiding Justice Del Rosario in resolving the instant Motion, suffice it to restate that, like fraud, falsity also involves a question of fact; thus, should never lightly to be presumed. To be sustained, the same must be supported by clear and convincing proof because it is a serious charge.[6]

It, likewise, bears noting that in *Samar-I Case,* the Commissioner of Internal Revenue was able to present a witness who testified during trial that Samar-I Electric Cooperative did not file an accurate return, while in this case, petitioner failed to present any evidence, documentary or otherwise, to prove her allegation of fraud or falsity in the preparation of respondent's returns. Such failure on the part of petitioner took the instant case out of the ambit of *Samar-I Case.*

Hence, the CTA *En Banc* finds no cogent justification to disturb the findings and conclusions spelled out in its July 30, 2015 Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[6] Commissioner of Internal Revenue vs. Mitsubishi Corporation-Manila Branch, CTA EB Case No. 640, September 16, 2011, citing the case of Commissioner of Internal Revenue vs. Avon Products Manufacturing Corporation, et al., CA-G.R. SP No. 28740, September 13, 1993 (CTA Case No. 4594).

WE CONCUR:

(I maintain my dissenting opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice