REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

NAGASE PHILIPPINES CORPORATION,
Respondent.

CTA EB NO. 1048
(CTA Case No. 7784)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:

JUN 22 2015 3:40 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is petitioner's "Motion for Reconsideration" of the Decision promulgated on January 29, 2015 denying the present petition for lack of merit. Petitioner prays that the Court *En Banc* reconsider and set aside the Decision and a new one be rendered ordering respondent to pay deficiency income tax in the amount of P36,433,548.87 plus accrued interest and delinquency interest pursuant to Sections 249 (B) and (C) of the NIRC of 1997.

On March 17, 2015, the Court *En Banc* issued a Resolution ordering respondent to file its Comment within ten (10) days from notice.

On April 20, 2015, Nagase Philippines Corporation (Nagase) filed its "Comment/Opposition".

The Commissioner of Internal Revenue (CIR) argues that the Court *En Banc* erred in holding that her right to make an assessment had prescribed; that the Court *En Banc* erred in not holding that Nagase filed a false return; that in a false return, intent to evade the tax is not an element; that a re-investigation was conducted after the issuance of a Preliminary Assessment Notice (PAN), hence, it effectively suspended the running of the prescriptive period for the issuance of the Final Assessment Notice (FAN).

On the other hand, Nagase argues that the Court's Decision was already final and executory when petitioner filed her "Motion for Reconsideration" and the grounds and discussion in the Motion for Reconsideration is an almost word-for-word replication of petitioner's Petition for Review dated August 22, 2013, which has been thoroughly considered and dispensed by the Court *En Banc* in its Decision.

After careful evaluation of petitioner's arguments, this Court finds no merit in the instant Motion for Reconsideration.

The Court *En Banc* agrees with Nagase that the contentions raised by petitioner are a mere rehash of her previous arguments which have been duly considered in the assailed Decision.

Petitioner insists that Nagase's request for re-investigation and the granting of the same effectively suspended the running of the prescriptive period for the issuance of the FAN, hence its right to make an assessment has not prescribed. However, as found by the Court *En Banc,* the CIR failed to present any evidence to prove that Nagase requested for a reinvestigation. Hence, the running of the prescriptive period was not tolled.

In the Assailed Decision,[1] the Court *En Banc* unanimously ruled in this wise:

> "An assessment that was given beyond the statute of limitations can never become final and executory, hence, the assessments would not be binding on the taxpayer[2] ***except*** if there is a valid waiver for the extension of the assessment and collection of the taxes due.
>
> In this case, there is nothing on record to show that Nagase executed a waiver or that Nagase requested for a reinvestigation.

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[1] *Rollo*, pp. 100- 111.

[2] *Commissioner of Internal Revenue vs. Ayala Securities Corporation*, 70 SCRA 204.

The Supreme Court had consistently ruled in a number of cases that a request for reconsideration and reinvestigation by the taxpayer, without a valid waiver of the prescriptive periods for the assessment and collection of tax, as required by the Tax Code and implementing rules, will not suspend the running thereof.[3]

The CIR argues that her right to assess Nagase for deficiency income tax for the year 2003 has not prescribed pursuant to Section 222 of the NIRC.

As correctly ruled by the Court in Division:

"Section 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 be judicially taken cognizance of in the civil or criminal action for the collection thereof." (Underscoring Ours.)

As provided above, in cases when a false or fraudulent return is filed with the intent of evading the tax or when no return was filed at all, the CIR can assess or begin a court proceeding for the collection without an assessment within ten years. In these cases, the ten-year period for prescription begins, or is counted from the date of discovery of the falsity, fraud or omission.

Fraud is a question of fact which must be alleged and proved. It must be proved to exist by clear and convincing evidence – mere preponderance of evidence is not even adequate to prove fraud.

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[3] *Bank of the Philippines Islands vs. Commissioner of Internal Revenue,* G.R. NO. 139736, October 17, 2005; citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* G.R. No. 162852, 16 December 2004, 447 SCRA 214; *Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 115712,* 25 February 1999, 303 SCRA 614; *Collector of Internal Revenue v. Pineda,* 112 Phil 321 (1961).

> As stated, not every mistake or deviation from the truth necessarily brings a particular return under the coverage of Section 222 of the NIRC. The fraud contemplated by Section 222 is actual and not constructive, and must amount to intentional wrong-doing with the sole object of avoiding taxation, not merely error.
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> Fraud must be proven by clear and convincing evidence, and not by mere conjectures and speculations. Beyond the allegation of fraud in its "Details of Discrepancies" and presentation of internal Memoranda prepared by Revenue Officer Dionisio Lumagui mentioning the same, not much else was asserted or presented to bolster the serious allegation. Neither was this allegation tackled in Revenue Officer Lumagui's Judicial Affidavit, or subsequent testimony. It is a settled rule that an assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. Furthermore, fraud is a serious charge and to be sustained, it must be supported by clear and convincing proof. Thus, due to respondent's failure to prove fraud on the part of petitioner, the assessment issued against it beyond the three year period allowed by law, is **void**."
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> xxx xxx xxx
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> Considering that the FAN and Details of Discrepancies were issued beyond the three year period from the time Nagase filed its 2003 ITR, the assessment for Taxable Year 2003 dated September 12, 2007 is null and void and should therefore be cancelled."

In fine, *We* see no cogent reason to deviate from our previous ruling that due to petitioner's failure to prove fraud on the part of Nagase, the assessment issued against Nagase beyond the three year period, is therefore, void.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[4], the Supreme Court emphasized that "in all motions for reconsideration, the burden is upon the movants, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court." Petitioner, however, did not satisfy this burden.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED**.

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[4] *Marcos vs. Manglapuz,* G.R. No. 88211, October 27, 1989.

SO ORDERED.

Ma. Belen S-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO – MANALASTAS
Associate Justice