Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1191** (CTA Case No. 8573)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
ASALUS CORPORATION, Respondent.	Promulgated: JUL 3 0 2015 3:00 p.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review[1] filed *via* registered mail on July 17, 2014, by petitioner Commissioner of Internal Revenue, praying that her Petition be given due course and the Decision[2] (Assailed Decision) and Resolution[3] (Assailed Resolution) dated April 2, 2014 and June 16, 2014, respectively, of the CTA Third Division be reconsidered and set aside and, a judgment be rendered ordering respondent Asalus Corporation to pay its 2007 deficiency value-added tax (VAT) assessment in the total amount of P106,761,025.17 plus accrued deficiency and delinquency interest pursuant to Sections 249(B) and (C) of the 1997 National Internal Revenue Code (NIRC), as amended.

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[1] *En Banc* Rollo, pp. 5-18.
[2] Annex "A" to the Petition for Review, Ibid, pp. 19-33.
[3] Annex "B" to the Petition for Review, Id., pp. 34-38.

Petitioner is the duly appointed Commissioner of Internal Revenue (petitioner CIR) mandated by law to enforce and implement the National Internal Revenue Code and related statutes including, among others, the power to cancel disputed assessments, who holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City, and may be served with legal processes thru Atty. Wilmer B. Dekit, with office at the Legal Division, BIR Revenue Region No. 8, 2/F BIR Regional Office, 313 Gil Puyat Avenue, Makati City.[4]

Respondent Asalus Corporation (respondent Asalus) is a domestic corporation established and existing under the laws of the Republic of the Philippines, with principal office at the 7th Floor, Feliza Building, VA Rufino Street, Legaspi Village, Makati City. It may be served with summons and other court processes at Gallardo Songco & Associates at Unit 300 Valero Plaza, 124 Valero St., Salcedo Village, Makati City.[5]

The factual antecedents of the case, as found by the CTA Third Division, are as follows:

> "Petitioner[6] is a domestic corporation, with principal office at the 7th Floor, Feliza Building, VA Rufino Street, Legaspi Village, Makati City.
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> Respondent[7], on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to decide disputed assessments and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
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> Petitioner states that on December 16, 2010, it received a Notice of Informal Conference from Revenue District Office (RDO) No. 47 — East Makati, inviting it to an informal conference, within fifteen (15) days from notice, to discuss the investigation report on its internal revenue tax for 2007 submitted by Revenue Officer (RO) Fidel M. Bañares II pursuant to the Letter of Authority No. 00001478.

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[4] Par. 3, The Parties, Petition for Review, Id., p. 6.
[5] Par. 4, The Parties, Petition for Review, Ibid.
[6] Respondent herein.
[7] Petitioner herein.

On December 30, 2010, petitioner filed its letter-reply dated December 29, 2010, disputing the basis of the VAT deficiency computation made by RO Bañares.

On January 10, 2011, a Preliminary Assessment Notice (PAN) was issued finding petitioner liable for deficiency taxes for taxable year 2007 in the amount of P413,378,058.11, inclusive of surcharge and interest. Petitioner was granted fifteen (15) days or until January 25, 2011 to refute the PAN.

On January 24, 2011, petitioner protested the PAN.

On April 4, 2011, petitioner received a letter from respondent dated March 29, 2011, directing it to submit additional documents and information in support its protest.

On April 12, 2011, petitioner received a letter of even date, denying its protest.

In a letter dated April 18, 2011 received by respondent on April 26, 2011, petitioner requested for reconsideration.

On August 26, 2011, petitioner received a Formal Assessment Notice (FAN) of even date, with attached Details of Discrepancies and Assessment Notices, finding petitioner liable for deficiency VAT for taxable year 2007 in the amount of P95,681,988.64, inclusive of surcharge and interest.

On September 7, 2011, petitioner protested the FAN. A supplemental protest was subsequently filed on November 4, 2011 stating that the subject tax deficiency had prescribed, pursuant to Section 203 of the National Internal Revenue Code (NIRC) of 1997.

In respondent's letter dated November 4, 2011, petitioner was notified that its protest would be forwarded to RDO No. 47-East Makati under 3rd Indorsement for further evaluation and appropriate action.

On June 18, 2012, petitioner received a letter from Revenue District Officer (RDO) Gerry O. Dumayas recommending the issuance of the FDDA.

On October 16, 2012, petitioner received the FDDA, finding it liable for deficiency VAT in the amount of P106,761,025.17 and a compromise penalty of P25,000.00, as follows:

I. VALUE-ADDED TAX		
VATable Sales per return		P 262,295,885.07
Add: Receipts not subjected to VAT (Schedule 1)		401,175,429.68
Adjusted gross receipts subject to VAT		663,471,314.75
Output Tax Due		79,616,557.77
Less: Input Tax Credits		
Input Tax carried over from previous period	P 286,007.00	
Input Tax Claimed during the period	24,735,276.60	25,021,283.60
VAT Due		54,595,274.17
Less: Payments per Return		6,454,222.61
Deficiency VAT		48,141,051.66
Add: Surcharge (25%)	P12,035,262.89	
Interest (1/26/08 to 11/26/12)	46,584,710.72	58,619,973.63
TOTAL AMOUNT STILL DUE		P106,761,025.17
II. COMPROMISE PENALTY		P25,000.00

In addition, the subject FDDA stated as follows:

> This is our final decision. If you are not agreeable, you may appeal this final decision with the Court of Tax Appeals (CTA) within thirty (30) days from date of receipts hereof, otherwise this decision shall become final, executory and demandable.

Hence, petitioner filed the instant Petition for Review on November 15, 2012.

In her Answer filed on January 17, 2013, respondent interposed the following special and affirmative defenses:

> 5. The assessments in question were made and issued in accordance with law, rules and regulations;
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> 6. In the case of **Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6166, April 5, 2002**, this Honorable Court already settled

that gross receipts of HMOs in computing the VAT shall be the payments for medical plans and application fees actually received from the members, **undiminished** by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners.

7. The assessment was issued within the prescriptive period allowed by law.

The assessment notices sent to the petitioner are still valid even if the three (3)-year period had already lapsed because the applicable period of limitation within which to assess the petitioner is ten (10) years on the ground that it filed false VAT returns for taxable year 2007. The Supreme Court has already ruled that in case of false return, as in the subject case, the ten (10)-year period is applicable. The Highest Magistrate opined in the case of **Aznar vs. Court of Tax Appeals and Collector of Internal Revenue, G.R. No. L-20569, August 23, 1974,** that Aznar's returns were false because the underdeclaration of income constituted deviation from the truth, thus, the application of the ten-year prescriptive period.

Thus, the intent to evade is immaterial in case of filing of false returns. As long as there is some deviation from the truth, whether it is due to mistake, ignorance or carelessness; falsity arises.

In the instant case, petitioner failed to declare in its VAT returns the taxable income amounting to P401,175,429.68. This falsity arising in petitioner's VAT returns provides ample basis for the application of the 10-year prescriptive period.

8. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).**

In its Reply dated January 28, 2013, petitioner mainly questioned the application of the ten (10)-year prescriptive period in the issuance of the subject assessment. According to petitioner neither the FAN nor the FLD was premised on petitioner's act of filing a 'false' or 'fraudulent return' or the 'failure to file a return'. Hence, Section 222 (A) of the NIRC, allowing the ten-year period to assess, was inapplicable.

On April 10, 2013, the parties filed their Joint Stipulation Facts and Issues which the Court approved on April 17, 2013.

During the initial presentation of evidence for petitioner on May 15, 2013, respondent's counsel manifested that he would not be presenting any evidence since only legal issues were involved in the present case.

Petitioner proceeded to present its lone witness **Orlando L. Siglos**, who by way of a Judicial Affidavit, testified that among his duties as the Assistant Vice-President (AVP) for Accounting of petitioner are the preparation of financial statements, overseeing the accounting personnel and accounting processes; and preparation of electronic filing of petitioner's tax returns. According to him, petitioner is enrolled with the BIR to use the Electronic Filing and Payment System (EFPS), which process he described to the Court. The monthly VAT return is filed through the EFPS on/or before the 20th day of the following month, while quarterly VAT return is filed on/or before the 25th day of the month following the end of every quarter.

He confirmed that petitioner is a Health Maintenance Organization (HMO) and admitted that not all the membership fees collected from members applying for healthcare services are reported in petitioner's VAT return. Only the service income recorded in their book is reported for VAT purposes and the amount intended or payable to medical practitioners or hospitals are not included.

Per Resolution dated July 30, 2013, petitioner rested its case.

> In compliance with the Court's directive, petitioner filed its Memorandum on August 30, 2013. Respondent did not file any."[8]

Thereafter, the case was submitted for decision per Resolution[9] dated September 20, 2013.

In a Decision promulgated on April 2, 2014, the Third Division of this Court granted respondent Asalus' Petition for Review, the *fallo* of which reads:

> "**WHEREFORE,** the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency VAT assessment for taxable year 2007 and the compromise penalty are hereby **CANCELLED** and **WITHDRAWN**, on ground of prescription.
>
> **SO ORDERED.**"

Unsatisfied, petitioner CIR filed, via registered mail, her Motion for Reconsideration[10] on April 22, 2014, which was denied for lack of merit in a Resolution[11] dated June 16, 2014.

By such reason, petitioner CIR filed her Petition for Review[12] before the CTA Court *En Banc* on July 17, 2014, with respondent Asalus' Comment/Opposition [Re: Petition for Review dated 17 July 2014][13], filed on September 22, 2014.

Giving due course to the Petition, the Court *En Banc* ordered both parties to submit their Memoranda within thirty (30) days from receipt of the Resolution[14] promulgated on October 21, 2014.

Thereafter, the case was submitted for Decision on February 5, 2015, taking into consideration respondent Asalus' Memorandum,[15] filed on November 28, 2014, sans petitioner CIR's Memorandum per Records Verification dated January 7, 2015.

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[8] April 2, 2014 Decision, Annex "A" to the Petition for Review, Ibid, pp. 20-25.
[9] Division Docket (Vol. II), p. 470.
[10] Annex "C" to the Petition for Review, *En Banc* Rollo, pp. 39-47.
[11] See footnote no. 3.
[12] See footnote no. 1.
[13] *En Banc* Rollo, pp. 52-65.
[14] Ibid, pp. 67-68.
[15] Id., pp. 69-88.

Hence, this Decision.

In the case at bench, petitioner CIR raised this sole issue for the resolution of this Court:

> "Whether or not the applicable prescriptive period of petitioner to assess respondent Asalus Corporation of the latter's deficiency VAT liabilities for taxable year 2007 is ten (10) years as provided for in Section 222 of the NIRC, as amended."

Petitioner CIR, likewise, raised the following assignment of errors allegedly committed by the Court in Division:

"(1) THE CTA THIRD DIVISION ERRED IN NOT HOLDING THAT RESPONDENT HAVING ADMITTED THAT NOT ALL THE MEMBERSHIP FEES COLLECTED FROM MEMBERS APPLYING HEALTHCARE SERVICES ARE REPORTED IN ITS VAT RETURN- THERE IS NO NEED FOR THE PETITIONER TO PRESENT FURTHER PROOF THAT RESPONDENT'S VAT RETURN IS FALSE.

(2) THE CTA THIRD DIVISION ERRED IN NOT HOLDING THAT APPLICABLE PERIOD FOR THE PETITIONER TO ASSESS IS TEN (10) YEARS BECAUSE THE QUARTERLY VAT RETURNS FOR THE YEAR 2007 FILED BY RESPONDENT ARE CONSIDERED FALSE RETURNS SINCE RESPONDENT FAILED TO DECLARE THERETO ALL THE MEMBERSHIP FEES COLLECTED FROM MEMBERS APPLYING FOR HEALTHCARE SERVICES.

(3) THE CTA THIRD DIVISION ERRED IN HOLDING THAT THE FAN AND FDDA FAILED TO INDICATE THAT RESPONDENT FILED A FALSE VAT RETURN FOR TAXABLE YEAR 2007.

(4) THE CTA THIRD DIVISION ERRED IN HOLDING THAT IN FALSE RETURN, IT MUST BE MADE WITH INTENT TO EVADE TAX."

After a careful and thorough evaluation and consideration of the records and arguments of both parties, as well as the jurisprudence on the matter, *We* find no merit in the instant Petition.

The arguments raised by petitioner CIR ultimately boil down to the issue on whether or not she was able to establish that respondent Asalus had filed false returns for taxable year 2007 to warrant the application of the ten (10)-year prescriptive period provided under Section 222(a) of the 1997 NIRC, as amended.

Section 203 of the 1997 NIRC, as amended, specifically provides that the Bureau of Internal Revenue has three (3) years to assess and collect an internal revenue tax, to wit:

> "SEC. 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three 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."

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. FMF Development Corporation*[16] explained the foregoing provision in this wise:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time."

Section 222, on the other hand, enumerates the exceptions to the three (3)-year prescriptive period on the assessment and collection of taxes, thus:

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[16] G.R. No. 167765, June 30, 2008.

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

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided, however,* That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree." (Emphasis supplied.)

In the case at bench, records reveal that there was nothing in petitioner CIR's Formal Assessment Notice[17] (FAN) and the Final

[17] Exhibit "I".

Decision on Disputed Assessment[18] (FDDA) that would indicate the non-application of the three (3)-year prescriptive period for purposes of assessment under Section 203 of the 1997 National Internal Revenue Code, as amended.

Moreover, nowhere can it be seen from said FAN and FDDA that respondent Asalus filed false returns, or fraudulent returns with intent to evade, or failed to file a return for taxable year 2007, to warrant the application of the ten (10) year prescriptive period under Section 222 of the same Code.

In addition, while petitioner CIR, in her Preliminary Assessment Notice[19] (PAN) dated January 10, 2011 and Answer[20] filed on January 17, 2013, may have invoked the applicability of the ten (10)-year prescriptive period, no evidence was presented by her to substantiate the same. In fact, records reveal that petitioner CIR opted not to present any witnesses or documentary evidence as shown in the transcript of stenographic notes taken during the hearing on May 15, 2013 as well as in the CTA Third Division's Resolution[21] promulgated on July 30, 2013. She missed another opportunity to prove her claim when she did not file her Memorandum before the Court in Division, per Records Verification[22] dated September 12, 2013.

It bears stressing that, like fraud, falsity also involves a question of fact, thus, should never lightly be presumed. To be sustained, the same must be supported by clear and convincing proof because it is a serious charge.[23]

It should, likewise, be noted that a preliminary assessment notice preparatory to the issuance of a formal or final assessment notice is not, legally speaking, an assessment even if it contains a computation of the tax liabilities of a taxpayer and a demand for payment of the computed tax liabilities was made in such preliminary assessment notice.[24]

Moreover, a protest against the PAN, unlike the protest against the FAN, is not indispensable. In fact, a PAN may or may not even be

[18] Exhibit "A".
[19] Exhibit "D".
[20] Division Docket (Vol. I), pp. 92-94.
[21] Division Docket (Vol. II), pp. 446-447.
[22] Ibid, p. 468.
[23] 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).
[24] Commissioner of Internal Revenue vs. Steelasia Manufacturing Corporation, CTA EB Nos. 631 and 632, December 22, 2011.

protested to by the taxpayer, and the fact of non-protest shall not in any way make the same final and unappealable.[25]

Thus, it is the final assessment notice that should be formally protested, otherwise, the same becomes final and executory.

Therefore, even if petitioner CIR may have alleged in her PAN the filing, by respondent Asalus, of false returns or fraudulent returns for taxable year 2007, said allegation cannot be taken into consideration since the same was not reiterated in the FAN[26], which was issued by petitioner CIR in reference to respondent Asalus' protest letters dated April 18, 2011 and June 15, 2011.

Further, the records are bereft of any showing that respondent Asalus has requested for a re-investigation or has executed a waiver of the statute of limitations which would have prevented petitioner CIR from issuing an assessment and collecting the tax due within the period prescribed by law.

Considering that petitioner CIR failed to substantiate her allegation by clear and convincing proof that respondent Asalus filed false returns for taxable year 2007, *We* hold that the three (3)-year period prescribed by law to issue an assessment was not extended. Thus, the CTA Third Division aptly ruled:

"VAT Return	Last Day to File Return	Actual Date of Filing	Last Day to Assess	Date of FAN[27]
First Quarter	April 25, 2007	April 25, 2007[28]	April 25, 2010	August 26, 2011
Second Quarter	July 25, 2007	July 25, 2007[29]	July 25, 2010	August 26, 2011
Third Quarter	October 25, 2007	Oct. 25, 2007[30]	Oct. 25, 2010	August 26, 2011
Fourth Quarter	January 25, 2008	Jan. 25, 2008[31]	Jan. 25, 2011	August 26, 2011

Evident from the table that the FAN was issued only on August 26, 2011 for all the pertinent quarters and since the taxable year was 2007, respondent[32] had only until January 25, 2011, at the latest, within which to issue the FAN against

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[25] Global Metal Tech Corporation vs. CIR, CTA Case No. 8329, September 23, 2014; Medtex Corporation vs. CIR, CTA Case No. 8508, September 1, 2014; Oakwood Management Services (Philippines), Inc. vs. CIR, CTA Case No. 7989, August 8, 2013.
[26] See footnote no. 15.
[27] Exhibit "I".
[28] Exhibits "M-1", "M-1-a", and "M-1-b".
[29] Exhibits "M-2", "M-2-a", and "M-2-b".
[30] Exhibits "M-3", "M-3-a", and "M-3-b".
[31] Exhibits "M-4", "M-4-a", and "M-4-b".
[32] Petitioner herein.

petitioner. In fine, respondent's right to assess petitioner[33] within the three-year prescriptive period had prescribed. x x x x."[34]

In light of these conclusions and observations, *We* need not discuss the other issues raised.

Finding no reversible error, the Court *En Banc* affirms the Assailed Decision dated April 2, 2014 and the Assailed Resolution dated June 16, 2014, both rendered by the CTA Third Division.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[33] Respondent herein.
[34] Assailed Decision dated April 2, 2014, Annex "A" to the Petition for Review, *En Banc* Rollo, p. 29.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1191 (CTA Case No. 8573)
	Present:
-versus-	**DEL ROSARIO,** *PJ* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and,* **RINGPIS-LIBAN,** *JJ.*
ASALUS CORPORATION, Respondent.	
	Promulgated: JUL 3 0 2015 3:00 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

In his *ponencia,* my esteemed and learned colleague, the Honorable Associate Justice Caesar A. Casanova, denied the instant Petition for Review filed by the Commissioner of Internal Revenue (CIR), and affirmed the assailed Decision dated April 2, 2014 and Resolution dated June 16, 2014 of the CTA Third Division in CTA Case No. 8573.

In *esse*, the *ponencia* declared that petitioner failed to substantiate by clear and convincing evidence that respondent filed false returns for taxable year 2007. Thus, while the prescriptive period for petitioner to assess respondent is limited to three (3) years, respondent issued her Final Assessment Notice only on August 26, 2011, which is beyond the three (3)-year period.

With utmost respect, after thorough scrutiny of the pertinent facts of the case, in relation to the applicable laws and jurisprudence, I am of the opinion that the ten (10)-year prescriptive period under Section 222 of the National Internal Revenue Code (NIRC) of 1997, as amended, applies in this case.

Records show that petitioner, as early as in the Preliminary Assessment Notice (PAN) dated January 10, 2011, has raised and informed respondent that the ten (10)-year prescriptive period is applicable, *viz*:

> "PERIOD OF PRESCRIPTION
>
> The running of the three-year statute of limitation as provided under Section 203 of the 1997 National Internal Revenue Code (NIRC) is not applicable with respect to your tax liability but rather to the **ten (10) year prescriptive period pursuant to Section 222 (A) of the tax code** which states that "In case of a false or fraudulent return with the intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax maybe filed without assessment, at any time within ten (10) years after discovery of the falsity, fraud or omission." (*Emphasis added*)

Despite knowledge that the assessment was made pursuant to Section 222 of the NIRC of 1997, as amended, respondent never assailed the applicability of the ten (10)-year prescriptive period in its protest/reply dated January 24, 2011.

Records likewise show that petitioner similarly informed respondent of the applicability of the ten (10)-year prescriptive period in the second PAN dated June 13, 2011.

The Final Assessment Notice (FAN) dated August 26, 2011 is clear in stating that the same was made "xxx **relative to [petitioner's] issued Preliminary Assessment Notice dated June 13, 2011 and Preliminary Assessment Notice dated January 10, 2011** xxx." Yet, despite reference to the two (2) PANs which categorically stated that the ten (10)-year prescriptive period is applicable, respondent's protest/reply to the FAN dated September 6, 2011 again failed to assail the applicability of the ten (10)-year prescriptive period.

To be sure, it was only in the Supplemental Protest dated November 3, 2011 that respondent questioned the applicability of the ten (10)-year prescriptive period.

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In the proceedings before the Court *a quo*, petitioner raised anew the ten (10)-year prescriptive period in her Answer filed on January 17, 2013, *viz:*

> "7. The assessment was issued within the prescriptive period allowed by law.
>
> The assessment notices sent to the petitioner are still valid even if the three (3)-year prescriptive period had already lapsed because the applicable period of limitation within which to assess the petitioner is ten (10) years on the ground that it filed false VAT returns for taxable year 2007. The Supreme Court has already ruled that in case of false return, as in the subject case, the ten (10)-year period is applicable. The Highest Magistrate opined in the case of ***Aznar vs. Court of Tax Appeals and Collector of Internal Revenue, G.R. No. L-20569, August 23, 1974,*** that Aznar's returns were false because the underdeclaration of income constituted deviation from the truth, thus, the application of the ten-year prescriptive period.
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> Thus the intent to evade is immaterial in case of filing of false returns. As long as there is some deviation from the truth, whether it is due to mistake, ignorance or carelessness; falsity arises.
>
> In the instant case, petitioner failed to declare in its VAT returns the taxable income amounting to P401,175,429.68. This falsity arising in petitioner's VAT returns provides ample basis for the application of the 10-year prescriptive period."

Considering that respondent was actually informed that the ten (10)-year prescriptive period is applicable, the burden to show otherwise is shifted to respondent.

In the case of ***Samar-I Electric Cooperative v. Commissioner of Internal Revenue (Samar-I)***, the petitioner-therein raised before the Honorable Supreme Court the alleged error committed by the CTA in upholding the validity of an assessment made within the ten (10)-year prescriptive period despite the absence of any indication that the returns involved were false, *viz*:

> "xxx Petitioner now comes to this Court raising the following assignment of errors:
>
> xxx xxx xxx
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> D. The Honorable CTA En Banc erred in holding that respondent can validly assess within the ten (10)-year prescriptive period even if the Notice of Informal Conference, PAN, and Final Letter of Demand (dated September 15, 2002), **mentioned**

> **not a word as to the falsity of the returns filed by petitioner**, but as an afterthought that was raised rather belatedly only in the Answer and during the trial." (*Emphasis added*)

In passing upon the issue, the Supreme Court ruled that the ten (10)-year prescriptive period is applicable considering that the CIR, as in this case, had fully informed petitioner-therein of the factual and legal bases of the deficiency tax assessment, thus:

> "Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> **Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with.** Respondent had fully informed petitioner in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in Enron. Petitioner's right to due process was thus not violated." (*Emphasis added*)

Moreover, the Court noted in *Samar-I* the substantial underdeclaration of taxes that constituted "falsity" in the returns which justified the applicability of the 10-year prescriptive period to assess, *viz:*

> "In the case at bar, it was petitioner's substantial underdeclaration of withholding taxes in the amount of P2,690,850.91 which constituted the "falsity" in the subject returns – giving respondent the benefit of the period under Section 222 of the NIRC of 1997 to assess the correct amount of tax "at any time within ten (10) years after the discovery of the falsity, fraud or omission."

In the present case, respondent similarly failed to report in its VAT returns all the fees it collected from its members applying for healthcare services. This resulted in a substantial underdeclaration of respondent's gross receipts subject to VAT by **152.95%**, which obviously partakes the nature of "falsity" in the subject returns. Needless to say, the underdeclaration of its gross VAT receipts by more than 30% constitutes *prima facie* evidence of false return pursuant to Section 248(B) of the NIRC, as amended.

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Interestingly, respondent's sole witness, Assistant Vice President for Accounting Orlando L. Siglos, even confirmed that respondent misdeclared its VATable sale, *viz*:

> "Atty. Dekkit
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> Q So, do you confirm that on those returns that you have filed for taxable year 2007, you did not include the membership fees that you received, before that question, do you confirm that Asalus Corporation is an HMO?
>
> Mr. Siglos
>
> A Yes, sir.
>
> Atty. Dekkit
>
> Q Being an HMO, it receives membership fees from its members to, applying for healthcare services?
>
> Mr. Siglos
>
> A That is correct, sir.
>
> xxx xxx xxx
>
> Atty. Dekkit
>
> Q Those amounts pertaining to medical practitioners and hospitals are **not included as part of those subject to VAT in your VAT returns**? Just answer yes or no.
>
> Mr. Siglos
>
> A **Yes**." (*Emphases added*)

The declaration of respondent's own witness that membership fees and amounts pertaining to medical practitioners and hospitals were deliberately deducted from the gross receipts is binding upon the respondent. Such declaration constitutes judicial admission that does not require further proof or evidence from petitioner. Since the presumption of falsity which arose from respondent's underdeclaration by more than 30% of its VATable sales, as provided under Sec. 248 (B), *supra*, as amended, has not been refuted by clear and convincing evidence, such presumption should accordingly be taken as a fact.

For all the foregoing, I VOTE to **GRANT** the Petition for Review filed by petitioner Commissioner of Internal Revenue; **REVERSE** and **SET ASIDE** the Decision dated April 2, 2014 and Resolution dated June 16,

OM

2014 of the CTA Third Division in CTA Case No. 8573; and ultimately **UPHOLD** the validity of Assessment Nos. VT-LA1478-07-11-0694 and MC-LA1478-07-11-0694.

ROMAN G. DEL ROSARIO
Presiding Justice