REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LACSON & LACSON INSURANCE BROKERS, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8203

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

OCT 10 2014

1:30 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

This Petition for Review filed by Lacson & Lacson Insurance Brokers, Inc. seeks to reverse and set aside the decision of the Commissioner of Internal Revenue dated November 10, 2010, finding it liable for deficiency value-added tax (VAT) in the amount of ₱3,528,825.28 for taxable year 2006.

FACTS

Petitioner Lacson & Lacson Insurance Brokers, Inc. is a corporation duly organized and existing under Philippine laws, with business address at 15th Floor Burgundy Corporate Tower, 252 Sen. Gil Puyat Ave., Makati City.[1] Its primary purposes are (1) to act as insurance and/or reinsurance brokers for life and non-life companies insuring life, health, accidents, fire and allied lines, motor vehicles, casualty, surety bonds, marine cargo, marine hull, workmen's compensation,

[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 287; Exhibit "F".

comprehensive general liability, contractors all risks, and aviation insurance; and (2) to engage in the general business of insurance general agents and/or general managers.[2] It is registered as a VAT taxpayer.[3] Petitioner was likewise a licensed insurance broker and reinsurance broker from July 1, 2005 to June 30, 2007.[4]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner entered into several broker's agreements with different insurance companies.[5]

Petitioner filed its Quarterly VAT Returns for calendar year 2006 on April 24, 2006[6], July 20, 2006[7], October 19, 2006[8] and January 19, 2007 (with final amendment filed on January 31, 2007)[9]. Petitioner's total sales based on the said returns amounted to ₱21,625,725.68; however, based on the summary list of purchases submitted by its customers, petitioner's total sales amounted to ₱44,182,224.98 on the ground that some of its clients credited their input VAT against petitioner.[10]

On October 19, 2007, petitioner received Letter Notice (LN) No. 049-AS-06-00-00025 dated October 15, 2007, stating that computerized matching conducted by the BIR on the data provided by third party sources against its declarations per VAT returns disclosed that it has deficiency taxes for taxable year 2006.[11] Petitioner replied through a letter[12] dated October 30, 2007, which respondent received on October 31, 2007.

[2] Exhibit "AA".
[3] Exhibits "G" and "UU".
[4] Exhibits "H-1", "H-2", "I-1", and "I-2".
[5] Exhibits "Z", "LL", "MM", "NN", "OO", "PP", "QQ", "QQ-1", "RR", "SS", and "SS-1".
[6] Exhibit "N-1"; par. 18, Admitted Facts, JSFI, docket, p. 290.
[7] Exhibit "N-2"; par. 18, Admitted Facts, JSFI, docket, p. 290.
[8] Exhibit "N-3"; par. 18, Admitted Facts, JSFI, docket, p. 290.
[9] Par. 18, Admitted Facts, JSFI, docket, p. 290.
[10] Pars. 19, 20, and 21, Admitted Facts, JSFI, docket, p. 290.
[11] Exhibit "CCC"; par. 3, Admitted Facts, JSFI, docket, pp. 287 to 288.
[12] Exhibit "J".

Petitioner insisted in the said letter that it is an insurance broker and its main source of income are the commissions that it earned from insurance companies for insurance policies that it placed with various insurance companies for and on behalf of various clients.

On January 6, 2010, respondent issued a Preliminary Assessment Notice, assessing petitioner for deficiency VAT[13], *to wit*:

Sales per Letter Notice	₱44,182,224.98
Less: Sales per VAT Return	21,625,725.68
Undeclared Sales per VAT Return	22,556,499.30
Multiply by Gross Profit Rate	62%
Adjusted Gross Income	13,985,029.57
Multiply by VAT Rate	12%
Deficiency VAT	1,678,203.55
Add: 20% interest p.a. up to (01/25/2010)	1,011,519.95
50% Surcharge	839,101.78
TOTAL AMOUNT DUE	**₱3,528,825.28**

Subsequently, respondent issued the Final Assessment Notice (FAN) dated March 29, 2010, which petitioner received on April 21, 2010, finding petitioner liable for alleged deficiency VAT for taxable year 2006[14], computed as follows:

Sales per Letter Notice	₱44,182,224.98
Less: Sales per VAT Return	21,625,725.68
Undeclared Sales per VAT Return	22,556,499.30
Multiply by Gross Profit Rate	62%
Adjusted Gross Income	13,985,029.57
Multiply by VAT Rate	12%
Deficiency VAT	1,678,203.55
Add: 50% Surcharge	839,101.78
20% interest p.a. up to April 15, 2010	1,011,519.95
TOTAL AMOUNT DUE	**₱3,528,825.28**

Petitioner submitted its protest letter[15] dated May 17, 2010 and supplemental protest letter[16] dated July 5, 2010, which respondent received on May 19, 2010 and July 6, 2010, respectively.[17]

[13] Pars. 6 and 16, Admitted Facts, JSFI, docket, pp. 288 and 289.
[14] Exhibit "DDD"; pars. 8 and 16, Admitted Facts, JSFI, docket, pp. 288 and 289.
[15] Exhibit "K".
[16] Exhibit "L".
[17] Par. 17, Admitted Facts, JSFI, docket, pp. 289 to 290.

On September 1, 2010, petitioner received respondent's letter dated August 10, 2010, signed by Ms. Elisa F. Guilalas of Team C-LN Task Force, denying the aforesaid protest and supplemental protest for being unmeritorious.[18]

Petitioner through a letter dated November 4, 2010, which was received by respondent on November 9, 2010, informed the latter that it exerted earnest efforts to secure from forty (40) insurance companies the documents required by respondent, but the said companies refused to surrender their records. In the same letter, petitioner likewise sought from respondent the issuance of proper orders to compel the said insurance companies to provide the requested documents.[19]

On September 27, 2010, petitioner filed its administrative appeal to respondent dated September 23, 2010.[20] However, respondent denied petitioner's request for reinvestigation through a letter dated November 10, 2010.[21]

On December 21, 2010, petitioner appealed respondent's decision dated November 10, 2010 by filing this instant Petition for Review. Petitioner incorporated in the Petition for Review a prayer for the issuance of a temporary restraining order to enjoin and prohibit respondent or her duly authorized representative from collecting the disputed 2006 deficiency VAT assessment.

Respondent submitted her Comment/Opposition (On Petitioner's Motion for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order)[22] on January 28, 2011.

Respondent filed her Answer[23] through registered mail on February 14, 2011, which was received by the Court on February 24, 2011. Respondent interposed the following special and affirmative defenses:

[18] Exhibit "II"; pars. 12 and 16, Admitted Facts, JSFI, docket, pp. 288 and 289.
[19] Exhibit "S"; par. 14, Admitted Facts, JSFI, docket, p. 289.
[20] Exhibit "M"; par. 15, Admitted Facts, JSFI, docket, p. 289.
[21] Exhibit "BBB".
[22] Docket, pp. 143 to 146.
[23] Docket, pp. 194 to 198.

"14) Comparison of the purchases submitted by Petitioner's customer's as shown in the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching-BOC Data Program shows its sales in the amount of ₱44,182,224.98 while Petitioner's VAT returns shows a sale of only ₱21,625,725.68 resulting in a discrepancy in the amount of ₱22,556,499.30;

15) This discrepancy is treated as an undeclared sales subject to VAT pursuant to Section 31, 32, 106 and 108 of the 1997 Tax Code and Revenue Memorandum Order (RMO) No. 32-2007;

16) Petitioner allegation that it should not be held liable to the VAT as the controversy is merely a result of a mistake committed by some of its customers in crediting their input VAT against Petitioner's instead of against the insurance companies which are the rightful recipient of the premiums subject to VAT is without merit;

17) Pursuant to Section 113(D)(2) of the 1997 Tax Code, as amended, and Revenue Regulation (RR) No. 16-2005 an entity who issued VAT receipts/invoices on Non-VAT/VAT exempt transactions shall be liable to pay the VAT considering that the buyer will claim the input tax thereon;

18) In this case, Petitioner issued a VAT receipt to the premiums paid by its customers, thus, pursuant to the preceding paragraph, it is only right that Petitioner should be held liable for the output VAT as its customers already claimed the input tax on the transaction to the prejudice of the government;

19) Notably, RR No. 16-2005 requires that the words 'VAT-exempt sales' must be displayed prominently on a VAT receipt issued by a VAT registered person on a non-VAT transaction, yet, Petitioner failed to comply with this clear requirement of the law;

20) Clearly, Petitioner's failure to report the whole amount of its sales in its VAT returns despite the issuance of VAT receipts on the same qualifies the return as false, which implies a deviation from the truth or fact, whether intentional or not;

21) Verification likewise disclosed that the discrepancy in Petitioner's taxable sales qualify as a substantial underdeclaration of sales, which is a prima facie evidence of a false or fraudulent return under Section 248 (B) of the 1997 Tax Code, as amended, thus, the 10 year prescriptive

period to assess in accordance with Section 222 of the 1997 Tax Code, as amended, applies in this case;

22) Respondent repleads all her arguments in her Comment and Opposition to Petitioner's Motion for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order filed on 28 January 2011, as part of her answer in this case."

On March 7, 2011, the Court granted petitioner's motion for the suspension of the collection of the tax liability. As a result, respondent and her duly authorized representatives were enjoined from collecting the alleged deficiency VAT.[24]

The case was set for pre-trial conference on March 31, 2011.[25] Respondent's Pre-Trial Brief[26] and petitioner's Pre-Trial Brief[27] were both filed on March 28, 2011. The parties submitted their Joint Stipulation of Facts and Issues[28] on May 12, 2011; and the Court issued its Pre-Trial Order[29] on May 31, 2011.

Petitioner presented Elizabeth F. Bolfango, Salvador L. Lacson, Atty. Jose Mario C. Buñag, Felisa U. Arrojado, and Atty. Rosario S. Bernaldo as its witnesses.

On March 1, 2012, petitioner filed a Motion for Production, Copying and Inspection of Documents[30], which the Court denied in a Resolution[31] dated April 2, 2012. Petitioner filed a Motion for Reconsideration, which was again denied in the Resolution[32] dated June 4, 2012.

Respondent presented Elisa F. Guilalas as her sole witness.

During trial, both parties presented and formally offered their respective documentary evidence.

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[24] Resolution dated March 7, 2011, docket, pp. 213 to 217.
[25] Notice of Pre-Trial Conference and Resolution dated March 6, 2011, docket, pp. 200 and 219, respectively.
[26] Docket, pp. 224 to 228.
[27] Docket, pp. 229 to 244.
[28] Docket, pp. 287 to 293.
[29] Docket, pp. 297 to 305.
[30] Docket, pp. 594 to 603.
[31] Docket, pp. 621 to 622.
[32] Docket, pp. 653 to 658.

The case was submitted for decision on November 13, 2013, after petitioner filed its Memorandum[33] on November 11, 2013 and respondent filed a Manifestation (In Lieu of Submission of Memorandum)[34] through registered mail on October 24, 2013, which the Court received on November 4, 2013.[35]

ISSUES

The parties presented the following issues[36] to be resolved by the Court:

> "1. Whether or not this Honorable Court has jurisdiction over the present case.
>
> 2. Whether or not the right of the government to issue the challenged assessment has already prescribed.
>
> 3. Whether or not petitioner committed substantial underdeclaration of its taxable sales for the year 2006 as to warrant the non-application of the three (3) year rule on prescription.
>
> 4. Whether or not petitioner presented sufficient evidence in its Protest and Supplemental Protest to overcome the presumption laid down by Section 248 of the Tax Code.
>
> 5. Whether or not petitioner's clients committed gross negligence in claiming input VAT against petitioner instead of the insurance companies.
>
> 6. Whether or not petitioner merely holds in trust the premium payments for the insurance companies for and on behalf of its insured clients.

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[33] Docket, pp. 1597 to 1626.
[34] Docket, p. 1595.
[35] Resolution dated November 13, 2013, docket, p. 1628.
[36] Submitted Issues for Trial, JSFI, docket, pp. 291 to 292; Pre-Trial Order, docket, pp. 301 to 302.

7. Whether or not petitioner's erring clients' claim for input VAT should be disallowed in accordance with RMO No. 17-2009.

8. Whether or not the mistake of petitioner's clients in claiming input VAT should prejudice petitioner.

9. Whether or not petitioner has been deprived of its constitutional rights to substantive and procedural due process on account of the BIR's failure to comply with RMO No. 30-2003.

10. Whether or not petitioner can validly raise the BIR's alleged failure to comply with RMO No. 30-2003 on appeal.

11. Whether or not BIR Ruling No. DA-428-2003 is still valid and should be applied squarely in the present case.

12. Whether or not respondent failed to specifically deny several material averments contained in the petitioner's 'Petition for Review' as to warrant the application of Section 11, Rule 8 and Section 4, Rule 129 of the Rules of Court.

13. Whether or not petitioner is estopped from raising the immediately preceding issue before this Honorable Court.

14. Whether or not respondent failed to file with this Honorable Court and serve on the petitioner its Pre-Trial Brief within the period prescribed under the 'Notice of Pre-Trial Conference' issued by this Honorable Court on 25 February 2011 and Section 6, Rule 18 of the Rules of Court.

15. Whether or not petitioner is estopped from raising the immediately preceding issue before this Honorable Court.

16. Whether or not petitioner issued VAT receipts for non-VAT/exempt transactions.

17. Whether or not petitioner adhered to the requirements of Revenue Regulations No. 16-2005 in the issuance of a VAT receipt by a VAT-registered person for a non-VAT transaction.

18. Whether or not petitioner correctly declared the amount of sales, based on the official receipts it issued, in its VAT returns.

19. Whether or not petitioner is liable for deficiency VAT for the taxable year 2006 in the amount of Php3,528,825.28, inclusive of surcharge and interest until 15 April 2010."

The foregoing issues may be summarized into four main issues, *to wit*:

1. Whether or not the right of respondent to assess petitioner has already prescribed;

2. Whether or not the Court has jurisdiction over the case;

3. Whether or not petitioner committed substantial underdeclaration of its taxable sales for the year 2006 as to warrant the non-application of the three-year rule on prescription; and

4. Whether or not petitioner is liable for deficiency VAT for taxable year 2006 in the amount of ₱3,528,825.28.

DISCUSSION/RULING

The Court will determine first the timeliness of the filing of the instant Petition for Review.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 228. *Protesting Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

As stipulated by the parties, the Final Assessment Notice was received by petitioner on April 21, 2010[37]; and petitioner filed its protest letter against the same on May 19, 2010[38] or within the thirty-day period prescribed under Section 228 of the 1997 NIRC, as amended. On July 6, 2010, or within the sixty-day period prescribed under Section 228 of the 1997

[37] Par. 8, Admitted Facts, JSFI, docket, p. 288.
[38] Par. 17, Admitted Facts, JSFI, docket, pp. 289 to 290; Exhibit "K".

NIRC, as amended, to submit relevant supporting documents, petitioner filed its supplemental protest[39] attaching thereto various documents supporting its claim.

Respondent through Elisa F. Guilalas of Team C-LN Task Force, issued a letter on August 10, 2010, denying the said protest letter and supplemental protest, which petitioner received on September 1, 2010.[40]

Petitioner elevated its protest to the Commissioner on September 27, 2010[41], pursuant to Section 3.1.5 of Revenue Regulations No. 12-99, which provides, among others, the if the taxpayer elevates its protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

Petitioner through its counsel received respondent's letter dated November 10, 2010 on December 3, 2010, denying its administrative appeal.[42] Petitioner then filed the present Petition for Review on December 21, 2010. Clearly, the Petition for Review was timely filed.

The Court will now proceed to address the other issues.

Petitioner contends that Section 203 of the NIRC of 1997, as amended, mandates that all deficiency internal revenue taxes, including VAT, must be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of the filing thereof, whichever is later. This rule on the statute of limitations on the assessment and collection of taxes is intended, among others, to afford protection to law-abiding taxpayers from unreasonable investigation of government agencies; thus, it must always be liberally construed in favor of the taxpayer and in *strictissimi juris* against the government.

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[39] Par. 11, Admitted Facts, JSFI, docket, p. 288; Exhibit "L".
[40] Par. 12, Admitted Facts, JSFI, docket, p. 288; Exhibit "II".
[41] Exhibit "M".
[42] Exhibit "BBB".

Respondent counter-argues that since petitioner committed substantial underdeclaration, which is more than thirty percent (30%) of its taxable sales for 2006, the non-application of the three-year rule on prescription is warranted. Respondent likewise alleges that petitioner's failure to report the whole amount of its sales in its VAT returns despite the issuance of VAT receipts on the same qualifies the return as false, which implies a deviation from the truth or fact, whether intentional or not. Respondent asserts that such discrepancy in taxable sales is a substantial underdeclaration of sales, which is a *prima facie* evidence of a false or fraudulent return under Section 248(B) of the NIRC of 1997; thus, the ten-year prescriptive period to assess petitioner's VAT applies.

However, petitioner posits that it was not guilty of falsity or fraud to warrant the application of the ten-year prescriptive period under Section 222(a) of the NIRC of 1997, as amended. It further alleges that mere allegation of fraud or falsity on the part of the taxpayer does not *ipso facto* make the exception under the aforesaid provision applicable. This is consistent with the settled doctrine that the law on prescription of the government's right to assess must be liberally construed in favor of the taxpayer and strictly against the government. Petitioner insists that respondent was fully aware of petitioner's lack of intention to deceive or evade payment of taxes, which was reflected in the letter dated August 10, 2010 of the LN Task Force. The said letter recognized and admitted that the underdeclaration in petitioner's sales was not due to intentional falsity or fraud; instead it was merely due to the improper claim of input tax made by some of petitioner's clients.

Section 203 of the NIRC of 1997, as amended, provides as follows:

> "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 relation thereto, Section 114(A) of the NIRC of 1997, as amended, states:

> "SEC. 114. *Return and Payment of Value-added Tax.* –
>
> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis."

Based on the foregoing provisions, respondent had three years within which to assess petitioner for deficiency VAT. The three-year period commenced on the last day prescribed by law for filing of the return, *viz.*, twenty-five (25) days following the close of each taxable quarter. However, if the return was filed beyond the prescribed period, the three-year period shall be counted from the day the return was filed.

Records indicate that petitioner filed its Quarterly VAT Returns on the following dates:

VAT Returns	**Date of Filing**	**Last Day to Assess**
1st Quarter	April 24, 2006[43]	April 25, 2009
2nd Quarter	July 20, 2006[44]	July 25, 2009
3rd Quarter	October 19, 2006[45]	October 25, 2009
4th Quarter	January 31, 2007[46]	January 31, 2010

Considering that the Final Assessment Notice was dated March 29, 2010 and received by petitioner on April 21, 2010, the VAT assessment was issued beyond the three-year period prescribed by law.

Notwithstanding, respondent contends that since the discrepancy in petitioner's taxable sales qualifies as substantial underdeclaration of sales, which is a *prima facie* evidence of a false or fraudulent return under Section 248(B) of the NIRC of 1997, as amended, the ten-year prescriptive

[43] Exhibit "N-1".
[44] Exhibit "N-2".
[45] Exhibit "N-3".
[46] Par. 18, Admitted Facts, JSFI, docket, p. 290.

period to assess petitioner's VAT applies, pursuant to Section 222 of the NIRC of 1997, as amended.

At this juncture, the Court is now confronted with the factual issue of whether or not petitioner filed a false or fraudulent return.

Section 222 of the NIRC of 1997, as amended, provides the exceptions to Section 203 of the NIRC of 1997, as amended. In particular, as stated under paragraph (a) thereof, the three-year period of limitation in making assessment shall not apply in cases where it involves false or fraudulent return with intent to evade tax or of failure to file a return. Section 222(a) of the NIRC of 1997, as amended, 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 be judicially taken cognizance of in the civil or criminal action for the collection thereof."

The Supreme Court declared in the case of *Jose B. Aznar vs. Court of Tax Appeals and Collector of Internal Revenue*[47] that the afore-quoted provision should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return; which is strengthened immeasurably by the last portion of the provision that segregates the situations into three different classes, namely "falsity", "fraud" and "omission". That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

Pertinent thereto is Section 248(B) of the NIRC of 1997, as amended, which states:

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

"(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided,* That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further,* That **failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return**, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, **shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income** or for overstatement of deductions, as mentioned herein." *(Emphasis supplied)*

In essence, it is imperative to determine first whether or not petitioner, as an insurance broker, is liable for deficiency VAT for taxable year 2006, in order for this Court to settle the issue of whether there was substantial underdeclaration of petitioner's sales for taxable year 2006, and of whether the ten-year prescriptive period to assess petitioner applies.

In the Final Assessment Notice[48] dated March 29, 2010, respondent assessed petitioner for deficiency VAT in the amount of ₱3,528,825.28, inclusive of surcharge and interest, as shown hereunder:

Sales per Letter Notice	₱44,182,224.98
Less: Sales per VAT Return	21,625,725.68
Undeclared Sales per VAT Return	**22,556,499.30**
Multiply by Gross Profit Rate	62%
Adjusted Gross Income	13,985,029.57
Multiply by VAT Rate	12%
Deficiency VAT	1,678,203.55
Add: 50% Surcharge	839,101.78
20% interest p.a. up to April 15, 2010	1,011,519.95
TOTAL AMOUNT DUE	**₱3,528,825.28**

[48] Exhibit "DDD".

According to respondent, the ₱22,556,499.30 underdeclaration on sales resulted from the computerized matching conducted by the BIR on data provided by third party sources (purchases submitted by petitioner's customers) per the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching-BOC Data Program as against petitioner's declared sales per VAT returns.

Respondent asserts that petitioner shall be liable for the output VAT, having issued VAT official receipts for the premiums paid by its clients, pursuant to Section 113(D)(2) of the NIRC of 1997, as amended, and Revenue Regulations No. 16-2005.

On the other hand, petitioner contends that the alleged discrepancy was merely due to the mistake of some of petitioner's clients who improperly and erroneously credited their input VAT arising from premium payments on insurance against petitioner, instead of the insurance companies, for which petitioner only acted as a broker. Petitioner avers that, as an insurance broker, it derives income mainly from commissions for insurance policies that it places with various insurance companies upon remittance of premiums collected from its clients. These commissions are paid to petitioner by the insurance firms for which it acted as broker, and not by its clients. Furthermore, petitioner acts as mere conduit in so far as the premium payments of its insured are concerned. Thus, the discrepancy found by respondent cannot be considered as taxable sales or income by petitioner since it represents premium payments made by clients, which were received by petitioner as insurance broker, and are then remitted to the respective insurance companies.

Section 301 of the Insurance Code of the Philippines[49] defines an "insurance broker", in this manner:

> "SECTION 301. **Any person who for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself**, shall be an insurance broker within the intent of this Code, and shall thereby become liable to all the duties, requirements, liabilities and penalties

[49] Presidential Decree No. 612.

> to which an insurance broker is subject." *(Emphasis supplied)*

In relation thereto is Section 306 of the same Code, which provides:

> "SECTION 306. **The premium, or any portion thereof, which an insurance agent or insurance broker collects from an insured** and which is to be paid to an insurance company because of the assumption of liability through the issuance of policies or contracts of insurance, **shall be held by the agent or broker in a fiduciary capacity and shall not be misappropriated or converted to his own use or illegally withheld by the agent or broker.**" *(Emphasis supplied)*

From the foregoing, an insurance broker acts in between the insured, from whom premium payments are collected, and the insurance company, for whom the premium payments are remitted. It merely collects insurance premiums from the insured client for and in behalf of the insurance company and derives income mainly from commissions upon remittance of premiums to the latter.

Clearly, petitioner, as an insurance broker is subject to VAT on the commission income it earned and not on the premium payments collected from clients.

However, perusal of petitioner's documents reveals that it issued VAT official receipts[50] to its clients on the gross amount of premiums collected from which the latter claimed their input VAT as gleaned from the Details of Taxpayer's Customers' Records.[51] Hence, although petitioner, as an insurance broker, simply liaise between the clients and the insurance companies, it becomes rightfully liable to output tax on the gross premiums collected for issuing VAT official receipts for the said premiums and considering that the clients claimed the input tax based on the gross premiums reflected on the VAT official receipts issued to them.

It bears stressing that the VAT imposed on the sale of goods or properties and sale of services and use or lease of properties under Sections 106 and 108 of the NIRC of 1997, as

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[50] Exhibits "A-1" to "A-4247".

[51] BIR Records, pp. 10-17; Summarized by the Independent CPA in Annex E of her report (Exhibit "JJJ").

amended, is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. Thus, for the same transaction, the output VAT of the seller becomes the input VAT of the purchaser. The only means of communicating this shifting is the VAT-registered official receipt (in the case of sale/purchase of services and use or lease of properties) or sales invoice (in the case of sale/purchase of goods or properties) issued in accordance with Sections 113 and 237 of the NIRC of 1997, as amended.

In the case of *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue*[52], the Supreme Court explained how the output-input mechanism works under the VAT system, *to wit*:

> "The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is **invoice-based**, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports. For example, when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged. For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed."

To ensure proper payment of taxes, the invoicing requirements under the VAT law and regulations should be strictly complied with as these were designed to create an orderly VAT system without prejudice both to the taxpayers and the government.

In the case of *Aznar vs. Court of Tax Appeals and Collector of Internal Revenue*[53], a false return has been defined as a deviation from the truth or fact, whether intentional or not. In the present case, the substantial understatement in petitioner's VATable sales in 2006 makes petitioner's VAT

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[52] G.R. No. 178090, February 8, 2010.
[53] G.R. No. L-20569, August 23, 1974.

returns for the said year false and the ten-year prescriptive period provided under Section 222 of the NIRC of 1997, as amended, applies.

Based on the foregoing, the Court affirms respondent's decision and assessment making petitioner liable to pay basic deficiency VAT in the amount of ₱1,678,203.55 for taxable year 2006 resulting from substantial underdeclaration of sales.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assessment issued by respondent against petitioner covering deficiency VAT for taxable year 2006 is **UPHELD** and petitioner is **ORDERED TO PAY** the amount of ₱2,517,305.33, inclusive of fifty percent (50%) surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, computed as follows:

Assessed Basic Deficiency VAT	₱ 1,678,203.55
Add: 50% Surcharge	839,101.78
Total Amount Due	**₱2,517,305.33**

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

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱1,678,203.55 computed from January 25, 2007, 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 20% deficiency interest which has accrued as afore-stated in (a) and on the total amount of ₱2,517,305.33, computed from November 26, 2010 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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