REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HOYA GLASS DISK PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8703

Members:

DEL ROSARIO, *P.J.,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 21 2016 ; 1:40 pm

x - x

RESOLUTION

MINDARO-GRULLA, *J.*:

For this Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration of the *Decision* dated April 15, 2016**, filed on May 13, 2016, with respondent's **Comment (Re: Motion for Partial Reconsideration Dated 13 May 2016**, filed on June 23, 2016; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision Promulgated April 25, 2016)**, filed on May 13, 2016, with petitioner's **Comment on respondent Commissioner of Internal Revenue's *Motion for Partial Reconsideration* dated April 12, 2016**, filed on June 9, 2016.

Both parties move for reconsideration of the assailed Decision[1] dated April 25, 2016, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notice dated February 19, 2013 assessing petitioner in the amount of ₱74,744,012.40 for penalties for late payment of Final Withholding Tax on Dividends is hereby **REDUCED to Thirty Eight Million Four Hundred Forty Six Thousand Twenty Eight Pesos and Seventy Three Centavos (₱38,446,028.73.)**
>
> **SO ORDERED.**[2]

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner argues that respondent's right to assess had already prescribed because petitioner's Final Withholding Tax (FWT) Return was not false and was not filed with intent to evade the payment of any tax.

Petitioner claims that there is no false entry in the FWT Return and that all the material entries therein are true and correct. It also contends that a mistake in a return should not automatically consider the return a "false return" unless coupled with intent to evade taxes, which should be proven by clear and convincing evidence. Petitioner avers that the correct and reasonable interpretation of Section 222(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, must be that a slight mistake in a tax return should not automatically be considered a false return to warrant the application of the ten (10)-year prescriptive period. It must be proven that there is intent to evade the payment of taxes for the ten (10)-year prescriptive period to apply. Here, respondent failed to do so.

Respondent opposes petitioner's motion and alleges that petitioner judicially admitted a false entry in the FWT Return when it acknowledged in its Motion for Reconsideration that an honest mistake was made when what was indicated is "for the Month of

[1] Docket, vol. II, pp. 844-872.
[2] Docket, vol. II, pp. 871.

February 2007" instead of "for the Month of January 2007". Respondent further maintains that petitioner evaded the payment of surcharge and interest through the filing of a false FWT Return when it indicated the transaction for the month of February instead of reflecting it for the month of January. Thus, pursuant to Section 222(a) of the NIRC of 1997, as amended, the ten (10)-year prescriptive period applies. Lastly, respondent contends that even assuming a "false return" was not intentional, it is already irrelevant considering that a "false return" merely implies deviation from the truth whether intentional or not.

Petitioner's Motion for Partial Reconsideration is bereft of merit.

The ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997[3], as amended, applies in this case. As found in the assailed Decision, petitioner's FWT Return filed on March 10, 2007 was considered "false" as it contains deviation from the truth.

The records of the case reveal that petitioner's Monthly Remittance Return of Final Income Taxes Withheld[4] filed on March 10, 2007 reflected therein the final income tax withheld amounting to ₱145,208,453.93 "For the Month of February 2007". The said income payments arose from the cash dividend payable on or before January 31, 2007. The deviation from the truth came into play when the FWT Return for February 2007 reported a transaction which should have been reported in the FWT Return for the Month of January 2007. Thus, the FWT Return is considered a false return, to wit:

> "Section 2.57.4 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 12.01, obligates payor to deduct and withhold the tax at the time an income payment is paid or payable, whichever comes first. In this case, petitioner declared a cash dividend in favor of the stockholders to be payable on or before January 31, 2007.

---

[3] 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. (Emphasis supplied)

[4] Exhibit P-13, docket, vol. I, pp. 608-609.

> Concomitantly, the filing of the return and the payment of final withholding taxes should been made within ten (10) days after the end of each month or until February 10, 2007 and not on March 10, 2007.
>
> It cannot be denied the act of considering the cash dividends as income payments for the month of February and paying the withholding tax due only in March 10, 2007 was a mistake. Thus, the Monthly Remittance Return of Final Income Taxes Withheld filed on March 10, 2007 pertaining to cash dividend payable on or before January 31, 2007, was a false return on the ground that it reflected therein that the final income tax withheld relates "For the Month of February 2007", when it should have been properly relating to petitioner's payable of final income tax withheld "for the Month of January 2007".
>
> Evidently, there was a deviation from the truth and whether intentional or not the Monthly Remittance Return of Final Income Taxes Withheld filed on March 10, 2007 was a false return subject to the 10 year prescriptive period."[5]

A mere deviation from the truth is equated to "falsity", whether intentional or not. In the recent case of *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*[6], the Supreme Court reiterates the ruling in the case of *Jose B. Aznar vs. Court of Tax Appeals and Collector of Internal Revenue*[7], that as long as there is a deviation from the truth, whether intentional or not, the return is considered a false one, and the (ten) 10-year prescriptive period under Section 222(a) of the NIRC of 1997, as amended, applies.

In view of this, there is no cogent reason to reverse the Court's findings and conclusions.

Respondent's Motion for Partial Reconsideration

[5] Assailed Decision, docket, vol. II, p. 869.
[6] G.R. No. 193100, December 10, 2014.
[7] G.R. No. L-20569, August 23, 1974.

Respondent seeks reconsideration of the assailed Decision insofar as the Court reduced the penalties assessed against petitioner for the late payment of FWT on dividends, i.e., from ₱74,744,012.40 to ₱38,446,028.73. He argues that the imposition of fifty percent (50%) surcharge is proper in this case since there was willful neglect to file the return within the period prescribed by law or by rules and regulations, and/or false return. Respondent alleges that good faith is not sufficient to avoid payment of surcharge and interest for late payment, as the intention of the law is to ensure timely payment of taxes due the government.

Moreover, respondent asserts that petitioner willfully filed a false return since there was deviation from the truth. Respondent claims that petitioner should have filed and paid on February 10, 2007 the FWT arising from the cash dividends, instead of paying it on March 10, 2007.

Lastly, respondent argues that the imposition of surcharge is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charges are not penal but compensatory in nature.

On the other hand, petitioner claims that respondent's Motion for Reconsideration is a mere rehash of respondent's arguments which this Court already considered and found to be without merit in the assailed Decision. It argues that respondent's motion should be denied for lack of merit considering that respondent failed to prove any willful neglect on the part of petitioner in filing its FWT Return and that petitioner did not file a false return.

The Court finds no merit in respondent's Motion for Partial Reconsideration.

"Surcharge and interest are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment. The surcharge is imposed to hasten tax payments and to *punish* for evasion or neglect of duty, while interest is imposed to *compensate* the State 'for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands.' A surcharge regardless of how it is computed is already a deterrent. <u>While it is true that imposing a higher amount may be a</u>

more effective deterrent, it cannot be done in violation of law and in such a way as to make it confiscatory."[8]

Pursuant to Section 248(A) and (B) of the NIRC of 1997[9], as amended, there shall be imposed, in addition to the tax required to be paid, a penalty of twenty-five percent (25%) of the amount due in case of failure to file any return and pay the tax due thereon as required under the provisions of the NIRC of 1997 or rules and regulations on the date prescribed, while the penalty of fifty percent (50%) of the deficiency tax in case of willful neglect to file the return within the period prescribed or in case a false or fraudulent return is willfully made.

In this case, petitioner failed to file the Monthly Remittance Return of Final Income Taxes Withheld and pay the tax due thereon on the date prescribed. However, there was no evidence presented to prove that said false return was willfully made or there was willful

---

[8] *National Power Corporation vs. City of Cabanatuan, represented by its City Mayor, Hon. Honorato Perez*, G.R. No. 177332, October 1, 2014.

[9] SECTION 248. *Civil Penalties.* —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(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.

neglect to file the said return within the prescribed period. Thus, the 25% surcharge applies, to wit:

Final Withholding Tax Remitted on March 10, 2007		₱ 145,191,934.68
Penalties for Late Payment of Final Withholding Tax		
	25% Surcharge (₱145,191,934.68 x 25%)	₱ 36,297,983.67
	Interest from 02-11-07 to 03-10-07	2,148,045.06
Total Penalties for Late Payment of Final Withholding Tax		**₱ 38,446,028.73**

Moreover, in the case of *Commissioner of Internal Revenue vs. Japan Air Lines, Inc. and The Court of Tax Appeals*[10], the Supreme Court emphasized the importance of proving fraud to justify the imposition of the fifty percent (50%) surcharge since willful neglect to file the tax return is not presumed, *viz*:

> "Nowhere in the records of the case can be found that JAL deliberately failed to file its income tax returns for the years covered by the assessment. There was not even an attempt by petitioner to prove the same or justify the imposition of the 50% surcharge. **All that petitioner did was to cite the provision of law upon which the surcharge was based without explaining why it was applicable to respondent's case**. Such cannot be countenanced for mere allegations are definitely not acceptable. The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed (CIR vs. Air India, *supra*). **The fraud contemplated by law is actual and constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right.** Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrongdoing with the sole object of evading the tax (Aznar v. Court of Tax Appeals, G.R. No. L-20569, August 23, 1974, 58 SCRA 519). This was not proven to be so in the case of JAL as it believed in good faith that it

---
[10] G.R. No. 60714, October 4, 1991.

need not file the tax return for it had no taxable income then. **The element of fraud is lacking. At most, only negligence may be imputed to JAL for not ascertaining the dispensability of filing the tax returns. As such, JAL may be subjected only to the 25% surcharge prescribed by the aforequoted law.**"

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on April 25, 2016.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration of the *Decision* dated April 15, 2016**, and respondent's **Motion for Partial Reconsideration (Re: Decision Promulgated April 25, 2016)** are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

I maintain my Concurring and Dissenting Opinion.
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice