REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LACSON & LACSON INSURANCE BROKERS, INC.	**CTA CASE NO. 8203**
Petitioner,	Members:
	CASTAÑEDA, JR., *Chairperson*
-versus-	**CASANOVA,** and
	COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	**Promulgated:**
Respondent.	JAN 30 2015 2:10 PM

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RESOLUTION

COTANGCO-MANALASTAS, J.:

The Court is confronted with a *Motion for Reconsideration* filed by petitioner, by counsel, on October 28, 2014. Petitioner prays of this Court that the *Decision* of this Court enunciated on October 10, 2014 be reversed and set aside and a new one be rendered: [1] declaring the deficiency value-added tax (VAT) assessment issued by the Bureau of Internal Revenue (BIR) against petitioner to taxable year 2006, in the amount of P3,528,825.28, illegal and invalid for having been issued beyond the three-year prescriptive; and [2] permanently restraining the respondent from collecting from the petitioner the abovementioned disputed 2006 deficiency VAT assessment.

The subject *Motion* is hinged on the following grounds:

I. That this Court erred in finding that mere falsity in the returns filed by petitioner suffices to warrant the application of the ten (10) years prescriptive period of assessment under Section 222 of the 1997 National Internal Revenue Code (NIRC), as amended;

II. That this Court erred in finding that the returns filed by petitioner were false;

III. That this Court erred in not applying the ruling in Winternitz Associates Insurance Brokers Corp., vs. CIR (CTA Case No. 7971)(*"Winternitz" case*) in deciding the instant case.;

IV. That this Court erred in holding that petitioner is liable for 50% surcharge under Section 248(B) of the 1997 NIRC, as amended, despite the absence of fraud on the part of petitioner.

In support of the first ground, petitioner asserts that: mere falsity of the return does not warrant the application of Section 222 of the 1997 NIRC; there is nothing in the case of *Aznar vs. Court of Tax Appeals*[1] which supports the conclusion that mere falsity of a return automatically calls into operation the 10-year prescriptive period; the *Aznar* case actually qualified the applicability of extraordinary period of prescription highlighting that it is only when the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities that the exceptional 10-year period should be applied; that, unless it is established that the falsity of the return was intentional or was of such nature that the government was prevented from making the assessment within the 3-year period, the extraordinary 10-year prescriptive period should not be made applicable. Petitioner points out, that: there was no showing that the alleged falsity in its return was intentional and was of such nature that respondent was placed at a disadvantage or was prevented from making the assessment within the ordinary 3-year prescriptive period; and that respondent did not even make any such allegation.

Anent the second ground, petitioner argues that even assuming that mere falsity of returns is sufficient to warrant the application of Section 222 of the NIRC, the finding in the assailed *Decision* that petitioner's returns were false is factually incorrect. Petitioner contends that: the returns were not false by themselves as the mistake was merely brought about by the claim of input tax made by some of petitioner's clients, which this Court attributed to petitioner's alleged

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

wrongful issuance of VAT receipts for premium payments due to insurance companies; what was false and what brought about the deficiency VAT assessment against petitioner, was the claiming of input tax by some of petitioner's clients based on the receipts issued by the latter for premium payments actually due to, and received by, the concerned insurance companies; the falsity does not exist at all in the returns filed by petitioner as the same accurately reflected the correct and true income of the latter, which only consists of commissions, if any, such falsity may be found either in the claiming of input tax by some of petitioner's clients, or at most on the receipts issued by petitioner.

As regards the third ground, petitioner reiterates its stand as to the applicability of the 2011 ruling in the case of *Winternitz* where it was ruled that only commissions received Winternitz for services rendered to the insurance company are subject to VAT.

Finally, petitioner claims that this Court committed a grave error in affirming the imposition of fifty percent (50%) surcharge against petitioner by respondent under Section 248(B) of the 1997 NIRC, as amended, based solely on the alleged substantial understatement of petitioner's VATable sales in 2006. Petitioner narrates that the Supreme Court ruled in the case of *Aznar* that for purposes of imposing surcharge under Section 248(B) of the law, mere falsity of the return sans fraud or intent to evade tax is not enough; there must be evidence of willful filing of a false and fraudulent return with the sole object of avoiding tax; and that no evidence was introduced to establish fraudulent or willful intent on the part of petitioner to evade taxes.

In a Resolution issued on November 3, 2014, respondent was ordered to comment on petitioner's *Motion for Reconsideration* within ten (10) days from notice.

An *Opposition/Comment (to the Motion for Reconsideration)* was filed by respondent, through registered mail, on November 11, 2014. Respondent alleges that: petitioner's *Motion for Reconsideration* should be treated as a mere scrap of paper as the same lacked the required notice of hearing; and even if the application of the rule is relaxed, petitioner's *Motion* contains a reiteration or rehash of arguments already submitted to and pronounced without merit by this Court.

Hence, the subject *Motion* is now deemed submitted for resolution.

Records support the fact that there is falsity in the VAT returns; thus, prescription is ten (10) years counted from discovery of the falsity.

There is falsity in the 2006 VAT returns filed by petitioner by reason of its failure to report the whole amount of its sales in its VAT returns despite the issuance of VAT official receipts on the same. This fact is not based on mere allegation but is amply substantiated by the records in this case. As discussed in the assailed *Decision* of this Court, *viz:*

> "However, perusal of petitioner's documents reveals that it issued VAT official receipts so 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. 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 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."

Petitioner issued VAT official receipts[2] to its clients on the gross amount of premiums collected but failed to report the said gross amount in its VAT returns[3], which resulted to substantial underdeclaration on sales in the amount of

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[2] Exhibits "A-1" to "A-4247".
[3] Exhibits "N-1", "N-2", and "N-3".

P22,556,499.30[4], which is more than thirty percent (30%) of its taxable sales for 2006. The said underdeclaration arose from respondent's finding that petitioner's gross sales amounted to P44,182,224.98, which was arrived at using 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 Marching-BOC Data Program.[5] The latter figure was then compared with the amount of P21,625,725.68 reported per VAT returns[6] resulting in an undeclared sales collection of P22,556,499.30.

The Court is not persuaded with petitioner's argument that the 10-year prescriptive period should not be applied since the government was not placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities. In the case of *Aznar*[7], a false return has been defined as a deviation from the truth or fact, whether intentional or not. In this case, records reveal that sales collection of P22,556,499.30 was not reflected in petitioner's VAT returns, showing that there is deviation from the truth.

The pronouncement in the case of *Holiday Inns (Phils) Inc. vs. Commissioner of Internal Revenue*[8] by the Court of Appeals fortifies the precept that a false return merely implies a deviation from the correct tax, *viz*:

> "This Court agrees with the CTA that the ten-year period of limitation should apply. The falsity of the VAT return filed by HIPI is established by the fact that in its 1995 Annual Income Tax Return, HIPI's declared gross income from sale of services representing management fees was higher than the taxable sales reported in its VAT returns by P269,967.02. This was not denied by HIPI albeit it claimed good faith in not declaring the said amount. That notwithstanding, this Court is not inclined to sustain HIPI's defense of good faith, otherwise, any taxpayer filing a false return can easily escape liability. While there may be truth to HIPI's claim that it had no malicious intent to evade payment of the tax, this does not preclude a finding of a false return. This is because while a fraudulent return implies a malicious and deliberate intent to evade the payment of the tax, a false return merely implies a deviation from the correct amount of

[4] Exhibit "6" to "6-a"; Exhibit "DDD".
[5] Annex "A" of Exhibit "DDD"; BIR Records pp. 66-66g, Details of Withholding Agents/Payors and Payees /Income Recipients Records; and BIR Records p. 67., LN No. 049-WE-N-06-00-00030.
[6] *Supra*, Note 3.
[7] *Supra*, Note 1.
[8] C.A.-G.R. SP No. 78828, September 9, 2004.

> the tax. That the 50% surcharge was not imposed does not mean that the return filed by HIPI was correct. In fact, the 30% threshold on substantial underdeclaration under Section 248(B) of the Tax Code is but a mere prima facie presumption of the filing of a false or fraudulent return. Thus, the fact that HIPI underdeclared 5% only of its total sales does not mean that it did not file a false return. To sustain HIPI's interpretation would certainly be absurd." (Emphasis Supplied)

Moreover, petitioner failed to present evidence to refute the existence of the said undeclared **gross receipts/sales** and merely argued that the returns are not false by themselves as the mistake was merely brought about by the alleged erroneous claim of input VAT by some of petitioner's clients. To reiterate, although petitioner, as an insurance broker, may have simply liaised 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. Furthermore, '[a]s a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the Bureau of Internal Revenue (BIR) is correct, and that in preparing the same, the BIR personnel regularly performed their duties.'[9]

In view of the above-stated computation of respondent which resulted in undeclared gross receipts in the amount of P22,556,499.30, and considering further petitioner's failure to present evidence to refute the existence of the said undeclared gross receipts, the Court therefore agrees with respondent's findings that there was an understatement of petitioner's VAT sales collections in 2006 and such understatement makes petitioner's VAT returns for the said year false. Thus, the ten-year prescriptive period provided under Section 222 of the 1997 NIRC, as amended, applies.

[9] G.R. No. 136975. March 31, 2005

In light of the foregoing, the Court stands by its affirmation of respondent's decision and assessment against petitioner for deficiency VAT in the amount of P1,678,203.55 for taxable year 2006 resulting from substantial underdeclaration of sales.

Anent the imposition of the 50% surcharge under Section 248 (B) of the 1997 NIRC, the Court finds the same to be in order. Section 248 (B) is clear on the imposition of penalty of 50% of the tax or of the deficiency in case a false return is willfully made. In this instance, false returns were willfully made, this is evident from petitioner's own admission that its VAT returns only reflected its income, which consists only of **commissions**. Verily, petitioner did not report in its VAT returns the **gross** amount of premiums reflected in the VAT official receipts it issued to its clients.

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

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice