REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 1524
(CTA Case No. 8703)

-versus-

HOYA GLASS DISK PHILIPPINES, INC.
Respondent.

x-------------------------------------x

HOYA GLASS DISK PHILIPPINES, INC.
Petitioner,

CTA *EB* NO. 1529
(CTA Case No. 8703)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 16 2017 4:17 p.m.

x- x

DECISION

MANAHAN, J.:

This case involves the following petitions: (1) Petition for Review[1] filed on October 21, 2016 by the Commissioner of Internal Revenue; and (2) Petition for Review[2] filed by Hoya Glass Disk Philippines, Inc. through registered mail on October 27, 2016, and received by this Court on November 2,

[1] *Rollo*, CTA EB No. 1524, pp. 6-19.
[2] *Rollo*, CTA EB No. 1529, Vol. 1, pp. 53-75.

2016. Both petitions seek the reversal, fully or partially, of the First Division's Decision[3] and Resolution[4], dated April 25, 2016 and September 21, 2016, respectively, which reduced the assessment for penalties of late payment of Final Withholding Tax (FWT) on cash dividends from Php74,744,012.40 to Php38,446,028.73.[5]

The Facts

The Commissioner of Internal Revenue (CIR) is the public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue (BIR) – the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and with the enforcement of all forfeitures, penalties and fines connected with such taxes, fees and charges.[6]

Hoya Glass Disk Philippines, Inc. (Hoya) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is duly registered with the BIR and with the Philippine Economic Zone Authority (PEZA).[7]

During the special meeting of the Board of Directors of Hoya on December 22, 2006, the Board of Directors declared a cash dividend in the amount of US$24,541,472.00 in favor of the stockholders of record as of March 31, 2006, payable on or before January 31, 2007.[8]

Hoya paid the cash dividends to its stockholders on February 2, 2007.[9]

Hoya filed its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) or FWT Return on March 10, 2007. It likewise paid the FWT on March 10, 2007, but was only confirmed on March 12, 2007.[10]

On January 28, 2013, Hoya received a Preliminary Assessment Notice (PAN) dated January 9, 2013, assessing

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[3] *Rollo*, CTA EB No. 1524, pp. 20-48.
[4] *Rollo*, CTA EB No. 1524, pp. 53-60.
[5] *Rollo*, CTA EB No. 1524, p. 47.
[6] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 21.
[7] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 21.
[8] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 21.
[9] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 22.
[10] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 22.

Hoya for penalties in connection with the supposed late payment of the FWT on cash dividends in the following amounts: (a) 50% surcharge amounting to Php72,595,967.34; and (b) 20% interest from February 11, 2007 to March 10, 2007 amounting to Php2,148,045.06.[11] Hoya filed its reply to the PAN on February 12, 2013.[12]

On February 27, 2013, Hoya received the Assessment Notice with attached Formal Letter of Demand (FLD) and Details of Discrepancies reiterating the assessment in the PAN.[13] Hoya filed its Protest on March 22, 2013, which was within thirty (30) days from its receipt of the Assessment Notice.[14] On May 21, 2013, Hoya submitted relevant documents in support of its protest.[15]

On August 2, 2013, Hoya received a Preliminary Collection Letter dated July 23, 2013, prompting Hoya to file its Petition for Review[16] with the Court in Division on August 30, 2013.[17]

While the case was already pending before the Court in Division, Hoya received a Final Notice Before Seizure on October 1, 2013.[18] Hoya filed a Motion to Suspend Collection of Tax on October 21, 2013[19], which was subsequently granted in a Resolution dated December 6, 2013.[20]

Meanwhile, the CIR filed an Answer on November 26, 2013.[21] After pre-trial and trial, the Court in Division issued its Decision, which ruled as follows:

> 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 [Hoya] 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

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[11] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 22.
[12] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 22.
[13] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 22.
[14] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 23.
[15] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 23.
[16] Docket, CTA Case No. 8703, Vol. 1, pp. 14-25.
[17] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 23.
[18] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 24.
[19] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 24.
[20] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 38.
[21] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 24.

Four Hundred Forty Six Thousand Twenty Eight Pesos and Seventy Three Centavos (₱ 38,446,028.73).

SO ORDERED.[22]

The Court in Division denied[23] the parties' respective Motions for Partial Reconsideration. Thus, the instant petitions were filed by the CIR and Hoya, docketed as CTA EB No. 1524 and 1529, respectively. The petitions were subsequently consolidated,[24] and the parties given ten (10) days to file their respective comments.[25]

On January 11, 2017, CIR filed his Manifestation[26] that he is adopting the Comment (Re: Motion for Partial Reconsideration Dated 13 May 2016)[27] dated June 23, 2016, as his Comment. On the other hand, Hoya filed its Comment[28] on January 13, 2017.

On March 8, 2017, the Court *En Banc* considered the petitions as submitted for decision.[29]

Issues

The CIR submits the following issue:

> Whether Hoya is liable to pay the total amount of Php74,744,012.40 representing penalties for late payment of FWT on dividends.[30]

Hoya, on the other hand, submits the following issue:

> Whether the CIR's authority to assess Hoya for deficiency FWT on dividends is already barred by prescription.[31]

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[22] *Rollo*, CTA EB No. 1524, Decision dated April 25, 2016, p. 47.
[23] *Rollo*, CTA EB No. 1524, Resolution dated September 21, 2016, p. 60.
[24] *Rollo*, CTA EB No. 1524, p. 64.
[25] *Rollo*, CTA EB No. 1524, Resolution dated December 16, 2016, pp. 66-67.
[26] *Rollo*, CTA EB No. 1524, pp. 68-71.
[27] Docket, CTA Case No. 8703, Vol. 2, pp. 914-919.
[28] *Rollo*, CTA EB No. 1524, pp. 73-86.
[29] *Rollo*, CTA EB No. 1524, pp.88-89.
[30] *Rollo*, CTA EB No. 1524. p. 9.
[31] *Rollo*, CTA EB No. 1529, Vol. 1, p. 60. *am*

CIR's Arguments[32]

CIR asserts that Hoya is liable to pay the Php74,744,012.40 representing penalties for late payment of FWT on dividends. CIR argues that the 50% surcharge is proper since there was a willful neglect to file the return within the period prescribed by law.

CIR further asserts that Hoya willfully filed a false return when it indicated that the FWT return was for the month of February 2007 instead of January 2007 for it to evade the payment of surcharge and interest; that such false entry in the FWT return is sufficient to justify the application of the ten-year prescriptive period under Section 222(A) of the 1997 National Internal Revenue Code, as amended (NIRC), and following the definition of a false return as merely a deviation from the truth whether intentional or not, as explained in the Supreme Court case of *Aznar v. Court of Tax Appeals*.

HOYA's Arguments[33]

Hoya argues that the assessment is already barred by prescription having been issued almost three years after the expiration of the three-year prescriptive period; and, that it did not file a false return with intent to evade tax which would justify the application of the ten-year prescriptive period.

Ruling of the Court *En Banc*

The Court *En Banc* finds merit in Hoya's petition for review.

The Court *En Banc* has jurisdiction over the present petition.

The Court in Division issued the assailed Resolution dated September 21, 2016, denying the parties' respective motions for partial reconsideration. Pursuant to Rule 4,

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[32] *Rollo*, CTA EB No. 1524, Petition for Review, pp. 9-14; docket, CTA Case No. 8703, Vol. 2, Comment (Re: Motion for Partial Reconsideration dated 13 May 2016), pp. 914-916.
[33] *Rollo*, CTA EB No. 1529, Vol. 1, Petition for Review, pp. 60-68; *rollo*, CTA EB No. 1524, Comment on the Commissioner of Internal Revenue's Petition for Review dated October 14, 2016, pp. 77-82. *em*

Section 2(a)(1)[34], in relation to Rule 8, Section 3(b)[35] of the Revised Rules of the Court of Tax Appeals (RRCTA), the parties had fifteen (15) days from date of receipt of the resolution within which to file their respective petitions for review.

The CIR received the Resolution on September 23, 2016, and thus had until October 8, 2016 within which to file his Petition for Review. On October 6, 2016, the CIR filed a Motion for Extension of Time to File Petition for Review[36] praying for an additional fifteen (15) days or until October 23, 2016 to file his petition. The Court *En Banc* granted the extension on October 10, 2016.[37] Thus, CIR timely filed his Petition for Review on October 21, 2016.

Hoya received the Resolution on September 27, 2016 and had until October 12, 2016 to file its Petition for Review. On October 7, 2010, Hoya filed its Petition for Time[38] praying for an additional period of fifteen (15) days or until October 27, 2016 within which to file its petition. The extension was granted on October 12, 2016.[39] Thus, Hoya timely filed its Petition for Review on October 27, 2016.

Considering the foregoing, the Court *En Banc* has jurisdiction over the instant petitions.

The assessment of penalties for late payment of FWT on dividends has

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[34] Rule 4 Jurisdiction of the Court
Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue,
xxx xxx xxx

[35] Rule 8 Procedure in Civil Cases
Sec. 3. Who may appeal; period to file petition.
xxx xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[36] *Rollo*, CTA EB No. 1524, pp. 1-4.

[37] *Rollo*, CTA EB No. 1524, p. 5.

[38] *Rollo*, CTA EB No. 1529, pp. 1-6.

[39] *Rollo*, CTA EB No. 1529, p. 52.

prescribed and should be cancelled.

At the core of this case is whether Hoya's late declaration and payment of its FWT on dividends is sufficient to constitute the said tax return as a false return which would necessitate the application of the ten-year prescriptive period under Section 222(A) of the NIRC. This codal provision states:

> 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 foregoing constitutes an exception to the general three (3)-year prescriptive period to assess taxes under Section 203[40] of the NIRC.

In the instant case, it is undisputed that Hoya filed its FWT return and paid FWT amounting to Php145,205,453.93 on March 10, 2007. It is also undisputed that the PAN and FLD with assessment notice were received by Hoya on January 28, 2013 and February 27, 2013, respectively. Clearly, more than three (3) years have elapsed from the filing of the return on March 10, 2007 to the issuance of the PAN and FLD on January 28, 2013 and February 27, 2013, respectively.

The Court will now determine whether any falsity or fraud with intent to evade the FWT or penalties exists in the filing of Hoya's FWT return.

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[40] Sec. 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) 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.

Withholding of final taxes is required in Section 57(A) of the NIRC, which provides:

> Sec. 57. Withholding of Tax at Source. –
>
> (A) Withholding of Final Tax on Certain Incomes. – Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), <u>24(B)(2)</u>, 24(C), 24(D)(1); <u>25(A)(2)</u>, 25(A)(3), <u>25(B)</u>, 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), <u>28(B)(5)(b)</u>, 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by the payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code. (Underscoring supplied)

In relation to this, dividends under Sections 24(B)(2), 25(A)(2), 25(B), and 28(B)(5)(b) of the NIRC, are specifically identified as being subject to withholding of final tax.

To implement the aforesaid provisions on withholding, Section 2.57.4 of Revenue Regulations No. (RR) 2-98[41] as amended, provides:

> Section 2.57.4. Time of Withholding. – The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations <u>arises at the time an income payment is paid or payable</u>, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable. (Underscoring supplied)

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[41] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes. *[handwritten initials]*

In the instant case, Hoya declared a cash dividend in favor of the stockholders to be payable on or before January 31, 2007. Pursuant to Section 2.57.4 of RR 2-98, the FWT return and FWT due should have been filed and paid on or before February 10, 2007.

However, Hoya actually paid the dividends on February 2, 2007. In light of this payment, Hoya filed its FWT return, and paid the tax on March 10, 2007, declaring therein the dividends payment as a February transaction instead of January. The said filing and payment was made through the BIR eFiling and Payment System (eFPS) and the payment was confirmed on March 12, 2007.

The Court in Division found this as sufficient reason to classify the March 10, 2007 return as a false return and applied the ten-year period under Section 222(A) of the NIRC, as aforequoted. Thus, the Court in Division upheld the assessment.

The Court *En Banc* disagrees.

Tax assessment and tax collection are governed by a legal time capsule called statute of limitations (SOL) or period of prescription. The SOL is generally defined as an enactment which limits or restricts the time within which an action may be brought.[42] Its purpose is "to suppress fraudulent and stale claims from springing up at great distances of time and surprising the parties or their representatives when the facts have become obscure from the lapse of time or the defective memory or death or removal of witnesses."[43] The purpose and rationale behind the SOL has been well-expounded in *Commissioner of Internal Revenue v. B.F. Goodrich*[44] wherein the Supreme Court held:

> For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, **the law on prescription, being a remedial measure, should be**

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[42] Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. IV, p. 36 (2002).
[43] Antonio, Jr. v. Morales, G.R. No. 165552, January 23, 2007 citing Sinaon v. Sorongon, G.R. No. L-59879, May 13, 1985.
[44] G.R. No. 104171, February 24, 1999, recently cited in Commissioner of Internal Revenue v. Standard Chartered Bank, G.R. No. 192173, July 29, 2015.

> **liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.** (*Emphasis supplied)*

Likewise worth reiterating is the pronouncement of the Supreme Court on the purpose of the SOL in the case of *Republic v. Ablaza*[45] which in part, states:

> **The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens.** Without such a legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law. (*Emphasis supplied*)

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 a reasonable period of time.[46]

The Court is not unaware of the recent Supreme Court decision in *Commissioner of Internal Revenue v. Asalus Corporation*[47], which again reiterated that a "mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient

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[45] G.R. No. L-14519, July 26, 1960 also cited in Bank of the Philippine Islands v. Commissioner of Internal Revenue, G.R. No. 139736, October 17, 2005.
[46] Commissioner of Internal Revenue v. FMF Development Corp., G.R. No. 167765, June 30, 2008 citing Philippine Journalists, Inc. v. CIR, G.R. No. 162852, December 16, 2004.
[47] G.R. No. 221590, February 22, 2017.

to warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC." This reiterates the declaration in *Aznar v. Court of Tax Appeals (Aznar)*[48], that a false return "merely implies deviation from the truth, whether intentional or not", while a fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due."

However, in the later case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer*[49], the Supreme Court stated that the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return.

With due respect, the applicability of the ten-year period does not apply to every "false" return. The definition of a "false" return should be revisited, and that a "false return" be considered as such if it has been filed with intent to evade tax (or the surcharge and penalty, in this case).

This is especially important considering that taxes are self-assessed, which system is aptly described by the Supreme Court as:

> Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.
>
> The self-assessing and voluntarily paying taxpayer, however may later find that he or she has erroneously paid taxes.[50]

Furthermore, it bears repeating that the application of *Aznar* should not be one of unbridled discretion.[51] Thus, it is important to keep in mind that even in *Aznar*, the Supreme Court provided a qualification regarding the application of the ten-year prescriptive period, *to wit*:

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[48] G.R. No. L-20569, August 23, 1974.
[49] G.R. No. 213943, March 22, 2017.
[50] SMI-ED Phils. Technology, Inc. v. Commissioner of Internal Revenue, G.R. No. 175410, November 12, 2014.
[51] Ayala Hotels, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6002, January 10, 2002.

> The ordinary period of prescription of 5 years [now, three years] within which to assess tax liabilities under Sec. 331 [now Sec. 203] of the NIRC should be applicable in normal circumstances, but <u>whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent returns intended to evade payment of tax or failure to file returns, the period of ten years ...from the time of the discovery of the falsity, fraud or omission ...should be the one enforced</u>.[52] (Underscoring supplied)

Upon finding that a tax has been erroneously paid, the taxpayer is allowed to file a claim for refund. On the reverse side, should the taxpayer find that there is an error in its return, the taxpayer may file an amended return, or should the BIR be the one to detect the error, then an assessment shall be issued.

The very meaning of a deficiency assessment is that there was an error or omission on the part of the taxpayer in the preparation of its return or the payment of its tax. But each and every error does not and should not result to the operation of the ten-year prescriptive period. Otherwise, on the strength of the *Aznar* definition of "false returns", BIR examiners conducting regular tax audits, who, logically as a matter of course, would always come up with tax findings of either under-declaration of income or over-declaration of deductions, or both, could mercilessly and arbitrarily raise the argument of "false return" giving rise to the ten-year prescriptive period. The result would be a lackadaisical implementation of the statutory principle that the SOL is a remedial measure and should be strictly construed against the taxing authority and liberally in favor of the taxpayer.

Thus, in the instant case, the Court agrees with the Division that Hoya's "act of considering the cash dividends as income payments for the month of February (instead of January) and paying the withholding tax due only on March 10, 2007 (instead of February 10, 2007) was a mistake.[53] However, this Court does not consider such mistake a falsity which would trigger the operation of the ten-year prescriptive period.

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[52] Supra, Note 44.
[53] *Rollo*, EB No. 1524, Decision dated April 25, 2016, p. 45. *em*

First, there was no design to mislead or deceive on the part of Hoya, since the mistake in filing arose from Hoya's mistake in applying RR 2-98 with respect to the period when to withhold the FWT. It is notable that Hoya's filing of the FWT return and the payment of the FWT due on March was timely made on March 10, 2007, except that there was a mistake in considering the January dividends as a February transaction.

Second, there was no intentional non-disclosure or omission so as to put the BIR at a disadvantage in the investigation since the BIR was not prevented from issuing the deficiency assessment within the general three (3)-year prescriptive period. A careful examination of the BIR Records reveals that a Letter of Authority[54] was issued on March 11, 2008 covering the fiscal period April 1, 2006 to March 31, 2007, which was subsequently revalidated on February 20, 2009 due to the complexity of the case which needs deeper study and/or examination.[55] This implies that as of 2009, the BIR has already been examining Hoya and has found enough information to state that the issues are complex. Yet at this stage or thereafter, the BIR did not request a waiver of the SOL for the supposedly deeper study required by the complexity of the case.

Further, the BIR alleges that it was only on July 8, 2010 (at which date, any assessment for FWT is already prescribed) that they discovered the deficiency penalties and interest due on Hoya's FWT.[56] Yet, the Court notes that the fact of Hoya's payment of FWT on dividends can easily be determined from Hoya's FWT returns and Audited Financial Statements. The extraordinary amount of Hoya's FWT payment for March 2007 as compared to those of the previous months should have alerted the BIR examiners of the transaction. Thus, there was no complexity in this issue which required deeper study or misled or prevented the BIR from issuing the FWT assessment within the regular three (3)-year prescriptive period. In fact, after the alleged discovery of the deficient penalties and interest, the BIR issued a letter dated July 14, 2010[57], or a mere 6 days after the alleged discovery thereof, informing Hoya of the assessment.

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[54] BIR Records, p. 1.
[55] BIR Records, Revalidation Notice, p. 9.
[56] Docket, CTA Case No. 8703, Vol. 1, Exhibit "P-1" Preliminary Assessment Notice, Details of Discrepancy, p. 190.
[57] BIR Records, p. 495.

Also glaring is the BIR's delay in issuing the PAN. Again, as discussed earlier, the BIR allegedly discovered the deficiency interest and penalties on July 8, 2010; issued a letter informing Hoya of the deficiency assessment on July 14, 2010; and yet, the BIR issued the PAN only on January 9, 2013, after two and a half years. From the foregoing, it cannot be said that Hoya's mistake in the declaration of its FWT payment on dividends caused such delay in the BIR's issuance of its assessment so as to justify the ten-year period.

Finally, there was no fraudulent intent or willful intent to evade the payment of the correct amount of tax, or the penalties and interest. While the BIR alleges that Hoya intentionally declared its dividend transaction on March 2007 instead of February 2007 to avoid the payment of surcharge and interest, the same is bereft of any evidence as found by the Court in Division.[58]

Based on the foregoing, the Court finds that the assessment for penalties and interest on the March 10, 2007 FWT payment has prescribed, having been issued beyond the three-year prescriptive period.

WHEREFORE, premises considered, the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1524 is hereby **DENIED**. Hoya Glass Disk Philippines, Inc.'s Petition for Review is **GRANTED**. The Decision dated April 25, 2016 and Resolution dated September 21, 2016 are hereby **REVERSED**. Accordingly, the Formal Letter of Demand dated February 19, 2013 is **CANCELLED** on the ground of prescription. The Final Notice Before Seizure received on October 1, 2013 is likewise **CANCELLED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[58] *Rollo*, EB No. 1524, Decision dated April 25, 2016, pp. 46-47; Resolution dated September 21, 2016, pp. 58-59.

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(Inhibited)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

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RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

AUG 16 2017 4:17 p.m.

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1524

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[1] *Rollo*, CTA EB No. 1524, pp. 6-19.

and in granting the Petition for Review[2] filed by Hoya Glass Disk Philippines, Inc. (Hoya) in CTA EB No. 1529 thereby reversing the Court in Division's Decision dated April 25, 2016 and Resolution dated September 21, 2016.

The assailed Decision and Resolution of the Court in Division to which I concurred were rendered on the basis of the Supreme Court's pronouncement in ***Jose B. Aznar vs. Court of Tax Appeals and Collector of Internal Revenue***[3] as reiterated in ***Samar-I Electric Cooperative vs. Commissioner of Internal Revenue***[4] that mere deviation from the truth, whether intentional or not, will render a return false and as such, the ten-year prescriptive period to assess taxes under Section 222(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, shall apply.

The Court in Division found Hoya's Monthly Remittance Return of Final Income Taxes Withheld filed on March 10, 2007 as false since said return reported that the tax withheld pertains to cash dividends for the month of February when in truth it relates to the cash dividends that were payable on or before January 31, 2007 which should have been reported in the February 2007 Monthly Remittance Return of Final Income Taxes Withheld. **Since there was a deviation from the truth on the part of Hoya, whether it was intentional or not, the Court in Division found that the application of the ten-year prescriptive period was warranted.**

In the more recent pronouncement of the Supreme Court in ***Commissioner of Internal Revenue vs. Philippine Daily Inquirer***[5] which was promulgated a few months after the assailed Resolution was rendered, and which is cited and eloquently discussed in the *ponencia* of my esteemed and learned colleague, the Honorable Associate Justice Catherine T. Manahan, the Supreme Court clarified that entry of wrong information in tax returns due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return, *viz.*:

> "Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, **the filing of a false return can be intentional or due to honest mistake**. In *CIR v. B.F. Goodrich Phils., Inc.,* the Court stated that **the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return**. In this case, we do

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[2]*Rollo*, CTA EB No. 1529, Vol. 1, pp. 53-75.
[3]G.R. No. L-20569, August 23, 1974.
[4]G.R. No. 193100, December 10, 2014.
[5]G.R. No. 213943, March 22, 2017.

> not find enough evidence to prove fraud or intentional falsity on the part of PDI." (Boldfacing supplied; citation omitted)

I submit that unless and until modified by the Supreme Court *En Banc*, the more recent pronouncement in *Philippine Daily Inquirer* should be applied in determining whether the ten-year prescriptive period shall be applied in cases involving false returns. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiceable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[6]

In ***Visayas Geothermal Company vs. Commissioner of Internal Revenue***,[7] I have expressed, by way of *obiter*, my position that the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended should apply in cases of false returns filed without intent to evade tax but due only to plain oversight, negligence or mistake, *viz.*:

> "By way of obiter, however, I wish to state my humble view that in cases of false returns with no intent to evade tax, **but due only to plain oversight, negligence or mistake**, the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended, should apply.
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> In this regard, I respectfully submit that the doctrine laid down in the *Aznar case* must be revisited in order to come up with a proper interpretation and application of the said provision, specifically, on the applicability of the ten-year prescriptive period in cases where the taxpayer's return is found to be false. It must be stressed that a careful application of Section 222 of the NIRC of 1997, as amended, is important to safeguard the rights of the taxpayers against the limitless taxing power of the government.
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> Section 222 of the NIRC of 1997, as amended, originated from Section 332 (a) of the NIRC of 1939,

[6] Development Bank of the Philippines v. NLRC, March 1, 1995, 242 SCRA 59; Albert v. Court of First Instance of Manila (Branch VI), L-26364, May 29, 1968, 23 SCRA 948 cited in the Concurring Opinion of Sandoval-Gutierrez, J., Raul L. Lambino v. The Commission on Elections, G.R. No. 174153, October 25, 2006.

[7] CTA Case No. 8425, Concurring Opinion in the Resolution dated March 16, 2015.

which was lifted from Section 276 (a) of the Internal Revenue Code of 1939 of the United States of America. When Presidential Decree No. 1158 was enacted into law, Section 332 (a) of the NIRC of 1939 was adopted as Section 223 (a) of the NIRC of 1977, as follows:

> 'Sec. 223. Exceptions as to period of limitation of assessment and collection of taxes. — (a) In the case of 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 begun without assessment, at any time within the ten 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 the civil or criminal action for the collection thereof.'

With the enactment of Republic Act No. 8424, otherwise known as National Internal Revenue Code of 1997, Section 222 (a) restated Section 223 (a) of the NIRC of 1977, as follows:

> 'Sec. 222. Exceptions as to period of limitation of assessment and collection of taxes. — (a) In the case of 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 the ten 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.'

After a careful reading of the afore-cited Section 222 of the NIRC of 1997, as amended, I am of the opinion that the phrase 'with intent to evade tax' does not only apply to cases of fraudulent returns, but also to cases of false returns. This is evident by the fact that **no comma** was placed between the words '*[i]n the case of false*' and the words '*or fraudulent return with intent to evade tax*'. This clearly shows that the phrase '*with intent to evade tax*' modifies not only the words '*fraudulent return*' but also the word '*false*'.

Moreover, American jurisprudence on the matter, although merely persuasive as sizeable portion of the

Philippine Tax Code is lifted from the United States Internal Revenue Code, is instructive:

1) **It is not sufficient that the return filed be false if, in fact, there exists no intent to evade any tax**. Thus, the mere fact that the inadequacy of the taxpayer's bookkeeping system causes a false return to be filed does not prevent the running of the statute where no concealment of any kind has been attempted and falsity has not knowingly been indulged in to evade the tax; and,

2) It has been held [that] where the taxpayer made no disclosure of a transaction on which he made a profit, his return was false with intent to evade the tax and that such tax could be assessed after the expiration of the usual period of limitation.

Indubitably, the filing of a false return must be coupled with intent to evade tax in order for the usual period of limitation not to apply. Applying this to Section 222 of the NIRC of 1997, as amended, a false return must have been made with intent to evade tax in order for the ten (10)-year prescriptive period to apply.

The application of the ten-year prescriptive period to assess even to situations involving false tax returns, <u>without intent to evade tax</u> on the part of the taxpayer, would render lifeless the three-year prescriptive period to assess under Section 203 of the NIRC of 1997, as amended, for practically all deficiency tax assessments involve entries in the return that are necessarily false. It will result in an absurd situation wherein the ten-year prescriptive period will be the usual period of limitation instead of the three-year prescriptive period. Such application will run counter to the Supreme Court's categorical pronouncement in **Republic of the Philippines v. Ablaza**, *viz.*:

> 'The law on prescription being a remedial measure should be **interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer** within the contemplation of the Commission which recommend[ed] the approval of the law.' (Emphasis supplied)" (Citations omitted)

I reiterated my aforestated view in the consolidated cases of ***McDonald's Philippines Realty Corporation vs. Commissioner of Internal Revenue and Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corporation***[8] as well as in **Commissioner of Internal Revenue vs. Newspaper Paraphernalia, Inc.**[9]

As extensively discussed in the *ponencia*, Hoya's mistake in reporting the dividends payable on or before January 31, 2007 in its March Monthly Remittance Return of Final Income Taxes Withheld instead of reporting the same in its February Monthly Remittance Return of Final Income Taxes Withheld did not *ipso facto* make the March Monthly Remittance Return of Final Income Taxes Withheld false that would warrant the application of the ten-year prescriptive period to assess. There is no evidence to prove that Hoya intended to file a false Monthly Remittance Return of Final Income Taxes Withheld on March 10, 2007. In the absence of evidence showing that Hoya intentionally filed a false return, the three-year prescriptive period applies. Since the Formal Letter of Demand dated February 19, 2013, assessing Hoya for deficiency final withholding tax on cash dividends which were payable on or before January 31, 2007 and which were subjected to final withholding tax in its Monthly Remittance Return of Final Income Taxes Withheld filed on March 10, 2007, was issued beyond the three-year prescriptive period to assess, the same is void and must perforce be cancelled.

All told, after re-assessment of the case and taking into consideration the pronouncement of the Supreme Court in *Philippine Daily Inquirer*, I reconsider the concurrence I have previously given in the assailed Decision and Resolution. I join the *ponencia* in cancelling the Formal Letter of Demand dated February 19, 2013 on the ground of prescription as well as the Final Notice Before Seizure received by Hoya on October 1, 2013.

I VOTE to (i) GRANT the Petition for Review filed by Hoya Glass Disk Philippines, Inc. in CTA EB No. 1529; and, (ii) DENY the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1524.

ROMAN G. DEL ROSARIO
Presiding Justice

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[8] CTA EB Nos. 1283 & 1284, February 9, 2017.
[9] CTA EB No. 1425, April 21, 2017.