REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MACINTEL, INC.,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9252

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

JUL 0 6 2018 1:34 pm

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court is petitioner Macintel, Inc.'s *Motion for Reconsideration*[1] filed on May 4, 2018. Petitioner's *Motion* seeks reconsideration of the Decision of this Court promulgated on April 17, 2018,[2] (the "assailed Decision") in which Macintel, Inc.'s Petition for Review was dismissed for lack of jurisdiction. The dispositive portion of the assailed Decision reads:

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[1] Docket, pp. 259-266.
[2] *Id.*, pp. 230-258.

"**WHEREFORE**, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED."

In praying for the reconsideration of the assailed Decision, petitioner avers that: (1) this Court erred in ruling that the 10-year prescriptive period applies to the petitioner under Section 222(a) of the National Internal Revenue Code of 1997, as amended (1997 NIRC);[3] (2) this Court erred in ruling that petitioner is liable to pay the 50% surcharge on the alleged basic deficiency income tax and VAT for taxable year 2009;[4] (3) this Court erred in ruling that it has no jurisdiction on the Petition for Review.[5]

On the other hand, the Commissioner of Internal Revenue failed to file his Comment on petitioner's *Motion* despite notice, as per the Records Verification report issued by the Judicial Records Division of this Court dated June 20, 2018.[6] Considering the failure of Commissioner of Internal Revenue to file his Comment on the *Motion* as required, this Court deemed petitioner's *Motion* as submitted for resolution.

After careful evaluation of the arguments raised by petitioner vis-à-vis the records of the case, this Court resolves to deny petitioner's *Motion* for lack of merit. Petitioner utterly failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of this Court's findings.

This Court maintains its ruling that it has no jurisdiction over the petitioner's Petition for Review given that the same was filed out of time. As such, the Final Decision on Disputed Assessment already became final and executory. As this Court succinctly explained in the assailed Decision, to wit:

"x x x Evidence shows that a Final Decision on Disputed Assessment (FDDA) was issued on August 19, 2014 which denied petitioner's protest dated December 27, 2012 and

[3] *Id.*, p. 259.
[4] *Id.*, p. 260.
[5] *Id.*
[6] *Id.*, p. 269.

> called for the payment of petitioner's deficiency income tax and value-added tax (VAT) for taxable year 2009 in the aggregate amount of ₱77,419,559.76, inclusive of surcharges, interests, and penalties. The said FDDA was received by petitioner on August 20, 2014. Petitioner never contradicted this. It merely alleged in its Petition for Review as follows:
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>> '9. On December 27, 2012, Petitioner filed its Protest to the said Assessment Notices with the Regional Director of Revenue Region No. 8 in Makati City, stated therein the reconsideration of the alleged deficiency taxes.
>>
>> 10. To its astonishment, on January 6, 2016, Petitioner received a Warrant of Distraint and/or Levy (WDL) No. 2016-01-0002, dated January 5, 2016, stating that there is due from the Petitioner the sum of Seventy Seven Million Four Hundred Nineteen Thousand Five Hundred Fifty Nine Pesos and Seventy Six Centavos (Php77,419,559.76) as alleged deficiency income tax and value-added tax plus all increments incident to delinquency.'
>
> Considering that petitioner received the FDDA on August 20, 2014, it has thirty (30) days from said date or until September 19, 2014 within which to either file an appeal before this Court or to file a request for reconsideration before the Commissioner himself. Apparently, petitioner failed to do any of these as it filed its Petition for Review only on February 5, 2016. Clearly, the FDDA already became final and executory. As such, this Court has no jurisdiction to take cognizance of the present case." *(Citations omitted)*

Notably, petitioner did not contradict the foregoing findings. While petitioner alleged in its *Motion* that this Court erred in ruling that it has no jurisdiction to take cognizance of the present Petition for Review, yet it failed to substantiate such allegation.

This Court also stands by its position that the finding of undeclared sales, receipts and income in the total amount exceeding 30% of that declared in petitioner's tax returns constitutes substantial underdeclaration of taxable sales, receipts or income pursuant to Section 249(B) of the 1997 NIRC and thus, creates a *prima facie* presumption of falsity of petitioner's returns. Accordingly, petitioner's failure to overcome the presumption of falsity against it warranted the application of the ten (10) year prescriptive period under Section 222 of the 1997 NIRC.

It bears stressing that it is the law itself, as triggered by the finding of substantial underdeclaration of sales, receipt and income, that created the *prima facie* presumption of falsity of petitioner's returns. Such a presumption, if uncontroverted or unrebutted, would be sufficient to establish the proposition it supports or to establish a fact.[7] In this regard, there is no merit in petitioner's assertion that respondent failed to present any evidence that petitioner had filed a false return with intent to evade tax. Quite the contrary, it is incumbent upon the petitioner to present adequate evidence to overcome the presumption against it and to prove that it had filed accurate returns. To require the respondent to present further evidence to prove the falsity of the returns in spite of the presumption already created against it in accordance with Section 248(B) of the 1997 NIRC would render the said provision inutile.

Incidentally, there is nothing in the case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer*,[8] as cited by petitioner, which supports the view, or even remotely suggests, that the "*prima facie* presumption of filing of false return does NOT necessarily imply that Petitioner filed a false return with intent to evade tax that would justify the application of the 10-year prescriptive period within which respondent may assess deficiency tax."[9] What the Supreme Court actually stated in *PDI* is as follows:

> "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. *ge*

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[7] *Salonga v. Cruz Paño*, G.R. No. L-59524, February 18, 1985, 134 SCRA 438; *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, G.R. No. 169982, November 23, 2007, 538 SCRA 534; *Wa-acon v. People*, G.R. No. 164575, December 6, 2006, 510 SCRA 429.
[8] G.R. No. 213943, March 22, 2017 ("*PDI*").
[9] Docket, p. 260.

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

As clearly held in *PDI*, the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return. But these are not the facts here. What is clear in the present case is the finding of undeclared sales, receipts and income in the total amount exceeding 30% of that declared in petitioner's tax returns. Hence, the doctrine in the case of *Commissioner of Internal Revenue v. Asalus Corporation,*[10] as amply elucidated in the assailed Decision, is what is squarely applicable in the present case.

Finally, given the finding of substantial underdeclaration of taxable sales, receipts and income, *i.e.*, in the total amount exceeding 30% of that declared in petitioner's tax returns, and the uncontroverted *prima facie* presumption of falsity of petitioner's returns, the imposition of 50% surcharge is in order.

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

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[10] G.R. No. 221590, February 22, 2017.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice