REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

ARCHIPELAGO MOTORS CORPORATION,
Petitioner,

CTA EB No. 1258
(CTA Case No.8321)

Present:

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 14 2016 11:50 a.m.

x - x

DECISION

UY, J.:

This is a Petition for Review filed on January 27, 2015 by Archipelago Motor Corporation against the Commissioner of Internal Revenue, praying for the annulment and setting aside of the Decision dated August 1, 2014 and the Resolution dated December 2, 2014, both rendered by the Third Division of this Court (Court in Division), the dispositive portions of which respectively read as follows:

Decision dated August 1, 2014:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Resolution dated December 2, 2014:

"**WHEREFORE**, premises considered, petitioner's 'Motion for Reconsideration (of the Decision dated August 1, 2014)' is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner Archipelago Motor Corporation is a domestic corporation duly registered and existing under the laws of the Republic of the Philippines, with business address at 2724 Faraday corner Aragon Streets, San Isidro, Makati City.

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), a government institution established by law to assess and collect national internal revenue taxes, with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 18, 2003, petitioner received Audit Notice No. OCN 9AN000006765 dated May 16, 2003, authorizing the examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2001.

Petitioner received respondent's First, Second, and Final Notices dated June 11, 2003, July 17, 2003, and July 30, 2003, respectively, requiring it to submit its books of accounts and other accounting records for examination of all internal revenue taxes for taxable year 2001.

However, due to petitioner's failure to present its books of accounts and other accounting records despite the said notices, a Memorandum was issued recommending the referral of the case to the Legal Division of Revenue Region No. 8, Revenue District Office (RDO) No. 48 of Makati City for the issuance of *Subpoena Duces Tecum*. Subsequently, a *Subpoena Duces Tecum* was issued by Acting Regional Director Anselmo G. Adriano on October 30, 2003, requiring petitioner to submit its books of accounts and other accounting records for examination of all internal revenue taxes for taxable year 2001.

Considering petitioner's failure to again submit the required books of accounts and other accounting records for taxable year 2001, respondent, through Acting Regional Director Adriano, filed a criminal complaint dated December 10, 2003 before the Prosecutor of Makati City for violation of Sections 5(C) and 266 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Thereafter, a Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC dated August 16, 2004 was executed by petitioner.

On April 28, 2005, petitioner received the Post Reporting Notice dated April 28, 2005, informing petitioner that it was found liable for deficiency taxes for taxable year 2001 and giving it an opportunity to refute the same in the interest of due process.

Respondent issued the Preliminary Assessment Notice (PAN) dated June 29, 2005, finding petitioner liable for the following deficiency taxes:

TAX	AMOUNT
Income Tax	₱1,201,716.04
Value-added Tax (VAT)	₱4,276,229.63
Withholding Tax on Compensation (WTC)- Basic Tax Due	₱ 22,830.70
WTC- Increments for late payment/filing for February and March	₱ 15,076.15
Expanded Withholding Tax (EWT)-Under-withholding of income payments	₱ 42,131.62
EWT-Non-remittance for the months of January and February	₱ 90,849.28
EWT-Increments for late payment/filing for the month of March	₱ 4,543.05

On July 28, 2005, respondent issued the Formal Assessment Notice (FAN) with Details of Discrepancies dated July 22, 2005. Petitioner then requested the reconsideration of the said FAN on August 11, 2005.

Respondent later issued the amended Assessment Notice with Details of Discrepancies dated August 29, 2006, stating that petitioner was amenable with the findings relative to petitioner's deficiency withholding tax on compensation for non-withholding and increments for late filing/payments for the months of February and March, as well as the deficiency expanded withholding tax for non-remittance for the months of January and February and increment for late filing for the month of March. Respondent also acknowledged the payment of the said assessment, and thus cancelled the same. However, respondent upheld the assessment relative to petitioner's deficiency income tax, VAT, and EWT for under-withholding of income payments.

Petitioner protested the amended Assessment Notice on September 22, 2006.

Respondent issued the Final Decision on Disputed Assessment (FDDA) dated March 5, 2009 for taxable year 2001. In the Details of Discrepancies, the income tax assessment against petitioner was cancelled in view of the submission of supporting documents on its claimed interest expense as well as the payment of withholding tax on payment of Rent and Contractors and the payment of deficiency income tax arising from non-submission of supporting documents on its claimed creditable withholding tax. Respondent likewise cancelled the assessment for EWT due to petitioner's payment of the same. However, since petitioner failed to present supporting documents as regards the assessed deficiency VAT, the assessment for the said tax was upheld.

Petitioner filed its request for reconsideration of the FDDA on April 7, 2009, averring that the FAN, as amended, was invalid on the ground of prescription and for lack of factual basis.

In the Decision dated July 1, 2011, respondent denied petitioner's protest.

Aggrieved by respondent's Decision, petitioner filed a Petition for Review on August 17, 2011. The case was docketed as CTA Case No. 8321.

Respondent filed her Answer on October 3, 2011, interposing the following defenses:

1. Petitioner's judicial appeal to the CTA has already prescribed. As such, the subject deficiency value added tax of petitioner for taxable year 2001 has already become final, executory and demandable, pursuant to Section 228 of the 1997 Tax Code. Consequently, the Court has no jurisdiction to act on the instant petition;

2. Petitioner was validly assessed deficiency VAT for taxable year 2001 because during the administrative investigation of its tax case by the BIR, petitioner failed to substantiate or submit supporting evidence against the BIR findings, more

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specifically shown and discussed under the Details of Discrepancies attached to the Formal Assessment Notice, (FAN) dated July 22, 2005, the Preliminary Assessment Notice (PAN) dated June 29, 2005, and the Final Decision on Disputed Assessment dated March 5, 2009, as well as Decision dated July, 2011 of the respondent CIR;

3. Petitioner validly executed on August 16, 2004 a Waiver of the Defense of Prescription of the Statute of Limitations under the NIRC, extending the period of limitations until December 31, 2005. Thus, the running of the statute of limitations was suspended under Section 222 (b) of the 1997 Tax Code because both the Commissioner and taxpayer agreed in writing to its assessment after such time. Additionally, the running of the statute of limitations was also suspended, under Section 223 of the same Code, when petitioner requested for reinvestigation of its deficiency internal revenue taxes for taxable year 2001 which was granted by the respondent CIR;

4. The Waiver executed by petitioner on August 16, 2004, was validly signed and accepted by the respondent CIR through the authorized BIR Official named RDO Ner Alfredo B. Plana, pursuant to Revenue Delegation Authority Order No. 05-01 dated August 2, 2001;

5. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the disputed Preliminary Assessment Notice (PAN) dated June 29, 2005 and Formal Assessment Notice (FAN) dated July 22, 2005 were issued to petitioner;

6. The failure and refusal of petitioner to produce the required records despite repeated notice by the BIR is an indication of fraud. Hence, the assessed deficiency VAT of petitioner for taxable year 2001 was made within the ten (10) year prescriptive period under section 222 (a) of the 1997 Tax Code;

7. The assessment issued against petitioner for deficiency VAT for taxable year 2001 was made in accordance with law and regulations; and

8. All presumptions are in favor of the correctness of tax assessment issued by the respondent CIR.

The case was set for pre-trial conference on November 4, 2011. On November 29, 2011, the parties filed, through registered mail, their Joint Stipulation of Facts and Issues which was approved in the Resolution dated December 13, 2011. On January 5, 2012, the Court issued its Pre-Trial Order which, among others, declared the pre-trial terminated.

For its part, petitioner presented witness, Graciana Atender, who identified the waiver of defense of prescription marked as Exhibit "A"[1]. On December 14, 2012, petitioner filed its Formal Offer of Evidence consisting of its lone exhibit, Exhibit "A"[2]. The same was however denied admission in this Court's Resolution dated January 25, 2013, for petitioner's failure to present its original for comparison.

On the other hand, respondent presented witness Eleanor F. Rodrigo[3]. On August 16, 2013, respondent posted his Formal Offer of Evidence comprising of Exhibits "1" to "21-A"[4]. Said Exhibits were admitted as part of respondent's documentary evidence in the Court in Division's Resolution dated September 18, 2013[5].

Petitioner submitted its Memorandum on October 24, 2013; while respondent submitted her Manifestation and Motion on October 17, 2013, adopting all the special and affirmative defenses raised in her Answer dated September 30, 2011, including the purposes of her documentary evidence admitted by the Court, as her Memorandum. Hence, in the Resolution dated November 6, 2013, the case was submitted for decision[6].

On August 1, 2014, the Court in Division rendered the assailed Decision, denying petitioner's Petition for Review, for lack of merit.

Petitioner filed its *Motion for Reconsideration (of the Decision dated August 1, 2014)* on August 22, 2014,[7] which was denied by the Court in Division in the assailed Resolution, also for lack of merit.

On January 5, 2015, petitioner filed, before the Court *En Banc*, its *Motion for Extension of Time to File Petition For Review*,[8] praying

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[1] Minutes of Hearing, March 22, 2012, Division Docket (CTA Case No. 8321), p. 89
[2] Division Docket (CTA Case No. 8321), pp. 124-126
[3] Minutes of Hearing, July 18, 2013, Division Docket (CTA Case No. 8321), p. 173
[4] Division Docket (CTA Case No. 8321), pp. 196-208
[5] Division Docket (CTA Case No. 8321), pp. 215-216.
[6] Division Docket (CTA Case No. 8321), p. 235
[7] Division Docket (CTA Case No. 8321), pp. 253 to 258.
[8] EB Docket, pp. 1 to 3.

that it be given a period of fifteen (15) days from January 5, 2015 or until January 20, 2015 within which to file a Petition for Review. Thus, the Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from January 5, 2015 or until January 20, 2015 in the Resolution dated January 8, 2015.[9]

Thereafter, on January 20, 2015, petitioner filed a *Second Motion for Extension of Time to File Petition For Review,*[10] praying that it be given an additional fifteen (15) days to file its Petition for Review or until February 4, 2015. This Motion was likewise granted by the Court *En Banc* in the Resolution dated February 4, 2015.[11]

On January 27, 2015, petitioner filed a *Manifestation with Motion to Admit Attached Petition for Review.*[12]

Subsequently, on February 11, 2015, petitioner filed a *Manifestation with Motion to Extend The Period To Return The BIR Records,*[13] praying that the Court *En Banc* allow the return of petitioner's BIR records of its 2001 VAT assessment within ninety (90) days from the filing hereof, or until May 12, 2015.

The Court *En Banc*, in the Resolution on March 24, 2015,[14] took note of the filing of the Petition for Review, and ordered respondent to file her comment to the Petition for Review, while petitioner was ordered to submit the original or certified true copy of the Secretary's Certificate or Board Resolution showing authority of Atty. Norguel Yazer M. Eleazar to act as counsel of petitioner and authority of Mr. Eduardo H. Zara to sign the Verification and Certification of Non-Forum Shopping within five (5) days from receipt of the resolution. With regard to the matter involved in petitioner's *Manifestation with Motion to Extend the Period to Return the BIR Records*, the Court *En Banc* did not resolve the said motion considering that the matter involved is similar to the pending incident before the Court in Division, and it will not affect the appeal, in order to avoid repetitious resolution of the same incident.

Petitioner filed its *Compliance* on April 15, 2015,[15] submitting

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[9] EB Docket, p. 4.
[10] EB Docket, pp. 5 to 6.
[11] EB Docket, pp. 48 to 49.
[12] EB Docket, pp. 7 to 22.
[13] EB Docket, pp. 50 to 54.
[14] EB Docket, p. 56 to 58.
[15] EB Docket, pp. 59 to 60.

before the Court *En Banc* the Board Resolution of the Directors of petitioner dated January 5, 2010, showing the engagement of the Atty. Norguel Yazer M. Eleazar as petitioner's counsel of record and authority of Mr. Eduardo H. Zara to sign the Verification and Certification of Non-Forum Shopping.

On April 21, 2015, respondent filed a *Motion for Extension of Time to File Comment*,[16] praying for an extension of fifteen (15) days from April 20, 2015 or until May 5, 2015, within which to file its Comment. The Court *En Banc* granted the said Motion.[17] Nevertheless however, respondent failed to file its Comment.[18]

Hence, the Court *En Banc* issued the Resolution dated September 2, 2015, giving due course to the instant Petition for Review and ordering the parties to submit their memorandums, within thirty (30) days from receipt thereof.

On November 12, 2015, this case was considered submitted for decision[19] after petitioner filed its Memorandum on October 16, 2015;[20] while respondent filed a *Manifestation & Motion*[21] on October 20, 2015, stating that she is adopting the factual findings and legal conclusions of the Court in Division under the assailed Decision and Resolution, which denied petitioner's Petition for Review in CTA Case No. 8321, assessing it a deficiency VAT in the amount of ₱7,004,881.40 (inclusive of increments), for taxable year 2001, together with all the documentary and testimonial evidences of respondent presented and found in the records of the case as part of her Memorandum in this case.

Hence, this Decision.

THE ISSUE

The issues for resolution of the Court *En Banc* are as follows:

I.

Whether or not "(t)he Court of Tax Appeals Third Division erred in ruling that Respondent's right to assess petitioner

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[16] EB Docket, pp. 64 to 65.
[17] EB Docket, pp. 67 to 68.
[18] Records Verification Report dated August 10, 2015, EB Docket, p. 69.
[19] Resolution dated November 12, 2015, EB Docket, pp. 90 to 91.
[20] EB Docket, pp. 73 to 85.
[21] EB Docket, p. 86.

for deficiency VAT for taxable year 2001 has xxx prescribed."[22]

II.

Whether or not "(t)he Court of Tax Appeals Third Division erred in ruling that the Waiver of Defense of Prescription is valid."[23]

Petitioner's arguments:

Petitioner argues that it did not file a false and fraudulent return on which the subject assessment is based. Thus, the Court in Division erred in ruling that the ten-year period to assess is applicable to the instant case.

Furthermore, petitioner asserts that the waiver of defense of prescription is legally infirm, and thus, it cannot be the basis of a valid assessment. Petitioner points out that it was signed by a Revenue District Officer in patent violation of the requirements under RMO No. 20-90, which specifically authorizes solely the Commissioner of Internal Revenue to accept waivers of the defense of prescription on cases involving more than ₱1,000,000.00. In addition, petitioner also alleges that the date of acceptance by the Bureau of Internal Revenue was not indicated and such omission is a gross contravention of RMO No. 20-90.

Respondent's arguments:

In respondent's Manifestation & Motion filed on October 20, 2015, respondent manifested that he is adopting the ruling of the Court in Division in the assailed Decision and assailed Resolution dated February 4, 2015. Thus, respondent prays that the instant Petition for Review be dismissed for palpable lack of merit.

THE COURT *EN BANC*'S RULING

The issues raised in the instant petition, devolve upon the period of limitation upon assessment and collection of internal revenue taxes and the exceptions thereon.

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[22] EB Docket, pp. 14 to 15.
[23] EB Docket, p. 15.

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Relative thereto, We look into the provisions of Sections 203 and 222 of the National Internal Revenue Code (NIRC) of 1997. Said Sections read 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-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."

Based on the foregoing provision, as a general rule, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return as provided under Section 203 of the NIRC of 1997. It also provides that in case a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

Said Section also provides, however, exceptions to the said three (3) year period of limitation of assessment and collection of taxes as provided under Section 222 of the NIRC of 1997, the pertinent portions of which read as follows :

> "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.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to

> its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx."

Clearly, Section 222 (a) provides that 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.

Additionally, Section 222 (b) provides that if before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon, embodied in a Waiver of Defense of Prescription.

In applying the provision under Section 222 (a), reference must be made to the case of *Aznar vs. Court of Tax Appeals,*[24] where the Supreme Court had occasion to discuss the difference between a "false return" and "fraudulent return", which would entail the application of the extraordinary prescriptive period of ten (10) years, to wit:

> "xxx. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) 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 ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law 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 is strengthened immeasurably by the last portion of the provision which segregates the situations into three

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

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.** *(Emphasis and underscoring supplied).*

Based on the foregoing, it is clear that as long as there is a **deviation from the truth**, whether intentional or not, the return filed is to be considered a false one; and that a fraudulent return implies intentional or deceitful entry with intent to evade the taxes due. In either case, the ten (10) year prescriptive period under Section 222 (a) of the NIRC of 1997 applies.

In this case, the Court in Division found that there was falsity in petitioner's VAT Return for 2001.

We agree.

Respondent found that petitioner has unsupported excess input VAT carried over from the previous quarter in the amount of ₱1,630,285.82 and unsupported input VAT in the amount of ₱882,308.86. This, however, was not disproved by petitioner in the Court *a quo*.

Needless to state, in appeals to this Court, the determination of the Commissioner of Internal Revenue is presumed correct and it behooves the taxpayers to rebut such presumption.[25] In this case, petitioner miserably failed to rebut the said presumption. It did not present any evidence to show error on the part of respondent in coming up with the above-stated findings and consequently, the subject VAT assessment. In fact, despite the opportunity given by the Court in Division, petitioner offered in evidence only the *Waiver of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue Code* as Exhibit "A",[26] which the Court in Division even denied for failure of petitioner to present its original for comparison, pursuant to the Resolution dated January 25, 2013.[27]

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[25] *Tan Guan vs. Court of Tax Appeals, et al.*, G.R. No. L-23676, April 27, 1967; *Perez vs. Court of Tax Appeals, et al.*, L-10507, May 30, 1958; *Collector of Internal Revenue vs. Bohol Land Transportation Co.*, L-13099 and L-13462, April 29, 1960.
[26] Division Docket (CTA Case No. 8321), pp. 124 to 126.
[27] Division Docket (CTA Case No. 8321), p. 131.

Consequently, the inevitable conclusion is that petitioner's VAT return is indeed false, and the ten (10) year prescriptive period within which the BIR can issue an assessment under Section 222(a) of the NIRC of 1997 applies.

As regards the second issue regarding the validity of the Waiver of the Defense of Prescription, We find no need to address the same in light of the foregoing ruling that it is the ten (10) year prescriptive period which prevails in the instant case.

Nevertheless, even granting that the 10-year prescriptive period will not apply in this case, We still find the subject Waiver not defective.

We agree with the Court in Division that a Revenue District Officer is authorized to sign and accept waivers for cases pending investigation/verification/reinvestigation in the Revenue District Offices. This is pursuant to the relevant provisions of both RMO No. 20-90 and RDAO No. 05-01, to wit:

RMO No. 20-90:

"3. The following revenue officials are authorized to sign the waiver.

xxx xxx xxx

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of the amount.

xxx xxx xxx." *(Emphasis supplied)*

RDAO No. 05-01:

"The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

xxx xxx xxx

C. For Regional cases

Designated Revenue Official

1. **Revenue District Officer**	**Cases pending investigation/ verification/ reinvestigation in the Revenue District Offices**

xxx xxx xxx." *(Emphases supplied)*

As correctly found by the Court in Division, records reveal that the investigation of the subject deficiency tax was pending in Revenue District Office No. 48, Revenue Region 8 – Makati City.[28] Correspondingly, the Revenue District Officer, Ner Alfredo B. Plana, who signed the subject waiver, is authorized to sign and accept the same on behalf of the BIR.

We likewise concur with the Court in Division's findings that, contrary to the allegation of petitioner, the date of acceptance by the BIR is indicated in the said Waiver, *i.e.*, August 16, 2004.[29]

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated August 1, 2014 and Resolution dated December 2, 2014, both rendered by the Court in Division in CTA Case No. 8321 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

[28] Refer to Exhibit "4", BIR Records, p. 41.
[29] Exhibit "6", BIR Records, p. 234.

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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

ARCHIPELAGO MOTORS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondents.

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(CTA Case No. 8321)

Present:
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CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 14 2016 11:50 a.m.

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CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the conclusions reached by the *ponencia* which denied the petition filed by Archipelago Motors Corporation. Considering, however, that the instant case squarely deals with the statutory provision on prescriptive period to assess a taxpayer, I deem it an opportune time to re-state my *obiter dictum* in my Concurring Opinion in *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*,[1] on the application of the ten (10) year prescriptive period to assess in case of **false returns**, *viz.*:

> In *Aznar vs. Court of Tax Appeals*, the Supreme Court held that to be considered **false returns, mere deviation from the truth, whether intentional or not, is sufficient,** *viz.*:

[1] Resolution, CTA Case No. 8425, March 16, 2015.

> **'We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) 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 ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law 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 is strengthened immeasurably by the last portion of the provision which 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. <u>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</u>.'**

Pursuant to the *Aznar Case*, the ten (10) year prescriptive period to assess would apply for all false returns, whether done intentionally or not. In other words, as long as the returns indicate any false entry, the BIR can assess the taxpayer within ten (10) years from the discovery of the said falsification.

Unless and until modified by the Supreme Court *En Banc*, the pronouncement of the Supreme Court in the *Aznar case* stands. It need not be emphasized that in our judicial hierarchy, the Supreme Court reigns supreme. All courts, tribunals and administrative bodies exercising quasi-judicial functions are obliged to conform to its pronouncements. It has the last word on what the law is; it is the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts should take their bearings.

By way of obiter, however, I wish to state my humble view that in cases of false returns with no intent to evade tax, **<u>but due only to plain oversight, negligence or mistake</u>**, the three (3) year prescriptive period under Section 203 of the NIRC of 1997, as amended, should apply.

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.

Section 222 of the NIRC of 1997, as amended, originated from Section 332(a) of the NIRC of 1939, which was lifted from Section 276(a) of the Internal Revenue Code of 1939 of the United States of America. When Presidential Degree 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 civil or criminal action for the collection thereof.' 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**

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> **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.'
>
> (Emphases supplied; Citations omitted)

All told, I vote to DENY the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice