REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**THIRD DIVISION**

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| R.A. OBEN HOLDINGS, INC. Petitioner, | C.T.A. CASE NO. 8723 |
| | Members: |
| -versus- | BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ. |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: JAN 06 2016 4:08 p.m. |

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# DECISION

***FABON-VICTORINO, J.:***

In this Petition for Review,[1] filed on October 31, 2013, petitioner R.A. Oben Holdings, Inc. seeks the cancellation and withdrawal of deficiency assessment on value-added tax (VAT) issued against it in the aggregate amount of Php1,944,118.40, inclusive of surcharges and interest for taxable year 2008.

## THE FACTS

Petitioner R.A. Oben Holdings, Inc. is a domestic corporation with office address at 2nd Floor, Carolina Building, 2406 Mother Ignacia St., Malate, Manila.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with the authority to decide disputed assessments, cancel and abate tax liabilities,

[1] Docket, pp. 6-12.

pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 15, 2009, petitioner filed its Annual Income Tax Return (ITR) for taxable year 2008[2].

On July 24, 2009, respondent, through Regional Director Arnel SD. Guballa, issued a Letter of Authority (LOA) No. 2007-00037795[3] authorizing Revenue Officer (RO) Ma. Dolores M. Ferry and Group Supervisor Arceli N. Puno, both of Revenue Region No. 33, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2008 and the List of Audit requirements that were served on petitioner on July 29, 2009.

On September 3, 2009, the Second Request for Presentation of Records[4] was served upon petitioner.

On November 26, 2009, RO Ma. Dolores M. Ferry recommended the reassignment of the investigation for continuance as she was transferred to another district[5].

On March 24, 2010, the Revenue District Officer (RDO) reassigned the investigation to RO Minda A. Cayago with directive to revalidate the LOA.

On April 15, 2010, petitioner filed an Amended Annual ITR for taxable year 2008[6].

On June 9, 2010, a *Subpoena Duces Tecum*[7] was issued to petitioner.

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[2] Exhibits "P-5" and "R-1".
[3] Exhibit "R-2".
[4] Exhibit "R-4".
[5] Exhibit "R-5".
[6] Exhibits "P-6" and "R-9".
[7] Exhibit "R-7".

On September 29, 2011, petitioner was issued a Notice of Informal Conference dated September 26, 2011.

On November 21, 2011, petitioner received a revised Notice of Informal Conference dated November 17, 2011[8].

On January 12, 2012, petitioner received a Preliminary Assessment Notice (PAN) dated January 5, 2012[9].

On February 2, 2012, petitioner received a Formal Letter of Demand (FLD) dated January 24, 2012[10], with Assessment Notice No. 33-08-VT-3119[11]; Assessment Notice No. 33-08-WE-3120[12] and Assessment Notice No. 33-08-MC-3121[13], for deficiencies on Value-Added Tax (VAT) in the amount of Php1,944,118.40, Expanded Withholding Tax (EWT) in the amount of Php307,613.77 and Compromise Penalty in the amount of Php18,000.00 for the year ending December 31, 2008.

On February 24, 2012, petitioner submitted its Formal Protest Letter together with supporting documents against the FAN[14].

On March 14, 2012, respondent issued a letter[15] acknowledging petitioner's payment of Php307,613.77 and Php18,000.00 on February 16, 2012, in full settlement of petitioner's deficiency EWT and compromise penalty, respectively. Consequently, the deficiency assessments on EWT and the compromise penalty were cancelled.

On October 4, 2013, petitioner received a copy of the Final Decision on Disputed Assessment (FDDA) dated September 25, 2013[16], signed by Simplicio A. Madulara, OIC-Regional Director of Revenue Region No. 6 pertaining to the remaining deficiency assessment on VAT in the amount

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[8] Exhibit "R-10".
[9] Exhibit "R-22".
[10] Exhibits "P-10" and "R-23".
[11] Exhibit "R-24".
[12] Exhibit "R-25".
[13] Exhibit "R-26".
[14] Exhibit "P-12".
[15] Exhibit "R-27".
[16] Exhibits "P-13" and "R-29".

of Php1,944,118.40 for taxable year 2008 based on the gross income found under Item No. 19A of its Annual ITR for 2008 filed on April 15, 2009.

On October 31, 2013, petitioner filed the instant Petition for Review assailing the said FDDA.

On December 13, 2013, respondent filed her Answer[17], basically interposing the following Special and Affirmative Defenses: 1) the VAT assessment is not yet barred by prescription since petitioner filed a false return and that pursuant to Section 222 of Republic Act (RA) No. 8424, as amended, and the case of *Aznar vs. Court of Tax Appeals, et. al.*, respondent has ten (10) years from the discovery of such falsity to assess or file a proceeding in court for collection of such tax without such assessment, and 2) that petitioner has the burden of proof to show that the subject assessment has no factual basis since presumptions are in favor of the correctness of the assessment.

After the pre-trial conference, a Pre-Trial Order[18] dated March 14, 2014 was issued based on the parties' Joint Stipulation of Facts and Issues[19].

To substantiate its claim, petitioner presented its lone witness **Angelina L. Esteves**, who by way of Judicial Affidavit[20] testified that she has been petitioner's Accounting Clerk since October 2008. As such, she files the Returns and pays the taxes due from petitioner to the BIR and ensures that petitioner complies with tax laws, rules and regulations. She is also the custodian of petitioner's financial documents including tax returns and financial statements.

On February 2, 2012, petitioner received from BIR Revenue Region No. 6 a FLD[21] and FAN[22] dated January 24, 2012 for VAT and EWT deficiencies for taxable year 2008. Per FLD, the BIR compared the rental income of

[17] Docket, pp. 32-38.
[18] Docket, pp. 101-107.
[19] Docket, pp. 82-88.
[20] Exhibits "P-16" and "P-16-A".
[21] Exhibit "P-10".
[22] Exhibit "P-11".

Php15,949,631.00 reflected in the ITR, and the rental income of Php8,063,782.63 in the VAT Returns and concluded that petitioner had unreported rental income in 2008 not subjected to 12% VAT amounting to Php7,885,848.37.

This finding according to the witness was based on petitioner's ITR that the BIR used in the investigation which was only tentative[23]. To rectify the mistake, petitioner adjusted the amount of rental income in its amended ITR[24] which reconciled with the amount of rental income declared in its VAT returns.

Further, the error in the amount of gross income or rental income of Php15,949,531.00 indicated in the Original ITR for taxable year 2008 was due to petitioner's accounting system program which automatically added the rental income from 2007 in the amount of Php7,902,175.00 to that of 2008, thus, a total rental income of Php15,949,530.00.

Petitioner filed a Protest Letter[25] dated February 23, 2012 to the FAN signed by Ana Ma. Teresa O. Reyes. Petitioner's receipt of the FDDA dated September 25, 2013[26] on October 4, 2013 prompted it to consult its external tax lawyer and file the instant Petition.

During cross-examination, the witness explained that she used a software program from Alas Group in the preparation of petitioner's ITR. When she printed petitioner's original ITR, the amount in the system was doubled. Consequently, the amount reflected in petitioner's tentative/Original ITR was incorrect. She gave the printed Original ITR to petitioner's external auditor.

Respondent, on the other hand, presented ROs Minda A. Cayago and Fernando R. Gonzales.

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[23] Exhibit "P-5".
[24] Exhibit "P-6".
[25] Exhibit "P-12".
[26] Exhibit "P-13".

In his Judicial Affidavit[27], **RO Fernando R. Gonzales** declared that he has been a Revenue Officer-Reviewer at the Assessment Division of Revenue Region No. 6 – Manila since October 1, 1999. As such, he reviewed petitioner's 2008 internal revenue tax docket together with the investigation report of RO Minda A. Cayago. Thereafter, he prepared BIR Form No. 0500 or the Audit Report on VAT, EWT and Compromise Penalty[28].

He also prepared the PAN with attached Details of Discrepancies[29] which he transmitted to the Administrative Division of Revenue Region No. 6 – Manila for mailing to petitioner at its registered address at 2F Carolina Bldg. 2106 Mother Ignacia St., Malate, Manila.

On January 24, 2012, the Billing Section issued to petitioner the FAN for deficiency VAT, EWT and Compromise Penalty in the amounts of Php1,944,118.40, Php307,613.77, Php18,000.00, respectively under Assessment Notice No. 33-08-VT-3119[30], 33-08-EWT-3120[31] and 33-08-MC-3121[32], as well as the FLD[33] signed by the Regional Director of Revenue Region No. 6 – Manila.

RO Gonzales added that he reviewed petitioner's 2008 Annual ITR, LOA, the list of audit requirements, the Second Request for Presentation of Documents, the ITS print out, worksheet, Memorandum by the RO assigned in the case, Final Request for Presentation of Records, Progress Report, Revalidation Notice and endorsement up to Reference Slip dated February 5, 2012. On January 5, 2012, he issued the PAN against petitioner but endorsed it to the BIR's Billing Section for mailing, hence, he did not know if it was sent to petitioner personally or via registered mail. He confirmed that petitioner filed a Protest Letter against the FAN dated February 15, 2012 questioning the deficiency VAT assessment and at the same time paid the deficiency EWT and the Compromise Penalty indicated in the PAN issued on January 5, 2012.

[27] Exhibits "R-30" and "R-30-A".
[28] Exhibits "R-19", "R-20" and "R-21".
[29] Exhibit "R-22".
[30] Exhibit "R-24".
[31] Exhibit "R-25".
[32] Exhibit "R-26".
[33] Exhibit "R-23".

By way of Judicial Affidavit[34], **RO Minda A. Cayago** testified that in 2009, she was a Revenue Officer of RDO No. 33, Revenue Region No. 6, BIR - Manila under the control and supervision of Group Supervisor Marvin C. Sevilla.

Petitioner's 2008 internal revenue tax docket was re-assigned to her for continuance of the investigation after RO Dolores M. Ferry was transferred to another RDO. RO Ferry turned over to her petitioner's Annual ITR dated April 15, 2009[35], LOA dated July 24, 2009[36], List of Audit Requirements per Tax Type[37], the Second Request for Presentation of Records[38] and the Memorandum dated November 26, 2009[39]. After the review, she prepared the Final Request for Presentation of Records[40]. For petitioner's failure to comply, she prepared a Memorandum[41] for issuance of *Subpoena Duces Tecum*[42].

In compliance to the *Subpoena Duces Tecum*, petitioner sent its Annual ITR for taxable year 2008 filed on April 15, 2010[43] together with other documents. After the audit investigation, she prepared a Notice of Informal Conference[44] which was followed by a Memorandum[45] showing discrepancies on the income, value added and withholding taxes as compared with the amounts reported in petitioner's financial statements. In view thereof, she recommended that the case be forwarded to the BIR's Assessment Division for issuance of a PAN.

Subsequently, she received a Memorandum from OIC-Chief, Assessment Division[46] directing her to assess petitioner based on the Original ITR and its financial statements prior to the issuance of the LOA and to submit an Amended Post Reporting Notice. In compliance with the said directive, she made a recomputation and prepared a

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[34] Exhibits "R-32" and "R-32-A".
[35] Exhibit "R-1".
[36] Exhibit "R-2".
[37] Exhibit "R-3".
[38] Exhibit "R-4".
[39] Exhibit "R-5".
[40] Exhibit "R-6".
[41] Exhibit "R-7"
[42] Exhibit "R-8".
[43] Exhibit "R-9".
[44] Exhibit "R-10".
[45] Exhibit "R-11".
[46] Exhibit "R-12".

Revised Notice of Informal Conference[47], BIR Form No. 0500 Series[48], and a Memorandum for the Assessment Division[49] indicating her compliance and reiterating the request for issuance of the PAN, then returned the tax docket to the Assessment Division.

Later, she received a Memorandum of Assignment No. RR06-033-PRO-0312-4473[50] for the reinvestigation of petitioner's VAT deficiency per its Protest Letter for taxable year 2008 and a Letter dated March 14, 2012[51] stating that it already paid its alleged deficiency EWT and Compromise Penalty. Despite opportunity granted, petitioner failed to submit additional documents for the re-evaluation of the assessment. For this reason, she prepared another Memorandum[52] recommending the return of the case to the Assessment Division. On September 25, 2013[53], OIC-Regional Director Simplicio A. Madulara issued the assailed FDDA on petitioner's remaining VAT deficiency.

The witness further testified that after she recommended the issuance of a Subpoena *Duces Tecum*, petitioner submitted its Annual ITR, Financial Statement, Official Receipts, Books of Account and other Schedules. Based on the submitted official receipts, petitioner's total cash collection amounted to Php22,128,000.00. She compared the said amount with that in the Annual ITR and VAT Returns, and made a computation for deficiency VAT. She also compared the cash receipt book with the official receipts which were returned to petitioner, thus, they were no longer available when the PAN was prepared.

She confirmed that petitioner filed an Amended Annual ITR for 2008 on April 15, 2010 on the alleged ground that its 2008 Original ITR was erroneous because the total revenue for 2007 was added to the 2008 total revenue. Petitioner however failed to prove it. She proceeded to assess petitioner on the basis of its Original 2008 Annual ITR and

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[47] Exhibit "R-13".
[48] Exhibits "R-14" to "R-16".
[49] Exhibit "R-17".
[50] Exhibit "R-31".
[51] Exhibit "R-27".
[52] Exhibit "R-28".
[53] Exhibit "R-29".

disregarded its 2008 Amended ITR for it was filed after the issuance of the LOA.

The case was submitted for decision on January 20, 2015[54] after respondent filed her Memorandum[55] on January 5, 2015 and that of petitioner[56], on January 12, 2015.

## THE ISSUES

The following issues are now before the Court for resolution, to wit: [57]

1. Whether Petitioner filed a False Return on 15 April 2009 for taxable year 2008;

2. Whether Petitioner is liable to pay the alleged Value-Added Tax deficiency in the amount of Php1,944,118.40 for the taxable year 2008;

3. Whether the FAN and FLD issued for taxable year 2008 against Petitioner representing alleged VAT deficiency has prescribed pursuant to Section 203 of the 1997 Tax Code;

4. Whether the Respondent failed to inform Petitioner about the facts and the law upon which the present assessment is made.

## THE COURT'S RULING

The timeliness of the filing of the Petition for Review must first be ascertained.

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[54] Docket, p. 403.
[55] Docket, pp.370-379.
[56] Docket, pp. 385-401.
[57] Issues, JSFI, docket, p. 84.

It is undisputed that on October 4, 2013, petitioner received respondent's FDDA dated September 25, 2013 for deficiency VAT assessment in the amount of Php1,944,118.40. Under Section 28 of the NIRC of 1997, as amended[58], petitioner had thirty (30) days from October 4, 2013 or until November 4, 2013, within which to appeal. Evidently, the instant Petition for Review was seasonably filed on October 31, 2013.

Anent the timeliness of the VAT deficiency assessment issued by respondent against petitioner, Section 203 of the NIRC of 1977, as amended[59], provides that respondent has

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[58] Section 228 of the NIRC of 1997, as amended, relevantly states, thus:

> "SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

[59] "SEC. 203. Period of limitation upon assessment and collection. — Except as provided in the succeeding section, internal revenue taxes shall be assessed **within three 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."

three (3) years to issue assessment for deficiency taxes against a taxpayer reckoned from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later.

In relation to the foregoing limitation on the part of respondent, Section 114(A) of the same Tax Code[60] provides that every person liable to pay VAT shall file a quarterly return of the amount of his gross sales or receipts within 25 days following the close of each taxable quarter prescribed for each taxpayer, provided that payment thereof shall be on a monthly basis.

In case however, of false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed and/or collected at any time within ten (10) years after the discovery of the falsity, fraud or omission. Section 222(a) of the NIRC of 1997, as amended, 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

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60 "SEC. 114. Return and Payment of Value-Added Tax. –

(A) In General. – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

xxx xxx xxx"

in the civil or criminal action for the collection thereof." (emphasis supplied)

Petitioner claims that the deficiency VAT assessment issued by respondent has prescribed as it was issued beyond the three (3)-year prescriptive period mandated in Section 203, in relation to Section 114(A) of the NIRC of 1997, as amended.

Respondent counters that petitioner filed a false return for it substantially underdeclared its true income for the year 2008. The falsity of return arose from the discrepancy between the declared income per original Annual ITR[61] in the amount of Php15,949,531.00 and the total income per Quarterly VAT Returns[62] in the amount of Php8,063,781.63 for taxable year 2008. In view thereof, the ten (10)-year period provided under Section 222(a) of the NIRC of 1997, as amended, applies.

Petitioner explains that the observed discrepancy arose from an error in the accounting system program that the company was using. Allegedly, the software program, known as Alas Group Software, automatically added the 2007 rental income of Php7,902,175.00 to actual gross income of petitioner for 2008, thus, a total rental income of Php15,949,530.00.[63]

But aside from this self-serving testimony, no other evidence was presented in support thereof. Petitioner neither showed how the error in the software program occurred or committed nor was it sufficiently explained how the accounting clerk Angelina L. Esteves wrongfully encoded the data. Further, after encoding, the print out was given to petitioner's external auditor who as such was supposed to review the same. Significantly, the result of the alleged program error was never rectified until the BIR audit. Admittedly, petitioner filed an Amended Annual ITR for 2008 on April 15, 2010 to allegedly correct the error in the figures indicated in the returns, however, as observed by RO Minda A. Cayago, the same was filed after the issuance of the LOA.

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[61] Exhibit "P-5".
[62] Exhibits "P-1" to "P-4".
[63] Judicial Affidavit, Exhibit "P-16".

The Court has consistently ruled that a return is considered a "false return" within the meaning of Section 222 of the NIRC of 1997, as amended, when it appears that there is a design to mislead or deceive on the part of the taxpayer, or at least when there is culpable negligence on the part of the taxpayer.[64]

In the early case of *Aznar vs. Court of Tax Appeals*[65], the Supreme Court expounded on what constitutes a false return warranting the application of the extraordinary prescriptive period of ten (10) years, thus:

> "**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 aggregates 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. 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.**
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> The ordinary period of prescription of 5 years within which to assess tax liabilities

[64] *Commissioner of Internal Revenue vs. Ayala Hotels, Inc.*, CA-G.R. SP No. 70025, April 19, 2004.
[65] G.R. No. L-20569, August 23, 1974.

> under Sec. 331 of the NIRC should be applicable to normal circumstances, but 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 return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.
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> **There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332 (a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made.**" (emphases supplied)

Evident from the foregoing that as long as there is a deviation from the truth, intentional or otherwise, the return filed is deemed false, and the ten (10)-year prescriptive period under Section 222 (a) of the NIRC of 1997, as amended, applies.

In the case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr., et al.,*[66] the Supreme Court ruled further that even if the return merely failed to reflect the true or actual amount without fraud on the part of the taxpayer, the prescriptive period to assess the correct taxes is ten years from the discovery of the falsity.

Evidence shows that respondent informed petitioner that the deficiency VAT assessment was issued on account of its filing of false returns and that the falsity was due to the discrepancy discovered between the declared income per original Annual ITR[67] in the amount of Php15,949,531.00

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[66] G.R. No. 147188, September 14, 2004.
[67] Exhibit "P-5", BIR Records, p. 26.

and the total income per Quarterly VAT Returns[68] in the amount of Php8,063,781.63 for taxable year 2008.

Section 248(B) of the NIRC of 1997, as amended, provides the standard on what constitutes *prima facie* evidence of a false or fraudulent return filed by a taxpayer, *viz:*

> "SEC. 248. *Civil Penalties.* -
>
> xxx xxx xxx
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided,* **That a substantial underdeclaration of taxable sales, receipts or income,** or a substantial overstatement of deductions, **as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further,* That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return,** and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, **shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income, or for overstatement of deductions, as mentioned herein**." *(Emphasis supplied)*

[68] Exhibits "P-1" to "P-4".

Hence, when there is failure on the part of the taxpayer to report sales/receipts/income exceeding thirty percent (30%) of that declared per return, there is substantial underdeclaration of sales/receipts/income which constitute *prima facie* evidence of a false return. In the instant case, the alleged difference in the amount of Php7,885,848.37[69] between petitioner's income per its Original Annual ITR and the total income per its Quarterly VAT Returns is equivalent to ninety-eight percent (98%) of that declared per VAT Return. In other words, *prima facie* evidence of false returns exists.

Even assuming *arguendo* that petitioner tried to rectify its alleged mistake in its ITR for taxable year 2008 by filing an Amended Annual ITR, the same cannot save the day for it. As a general rule, a taxpayer may modify, change, or amend any of its return, statement or declaration filed in any office authorized to receive the same under Section 6(A) of the NIRC of 1997, as amended, however, it should be done **before any notice for audit or investigation of the subject return, statement or declaration has been actually served upon the taxpayer**, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>
> (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and

[69] Exhibit "P-10".

demand from the Commissioner or from his duly authorized representative.

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided*, That **within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer**."

In the instant case, petitioner could no longer modify, change or amend its original Annual ITR for taxable year 2008 since a notice to audit or investigate under LOA No. 2007 000337795 was already served upon it on July 29, 2009. Moreover, there is still a difference between the income declared on the amended Annual ITR (Php8,047,355.00) *vis-à-vis* the total income per Quarterly VAT Returns (Php8,063,781.63). Thus, the amended Annual ITR for taxable year 2008 deserves scant consideration.

For failure to overcome respondent's finding of substantial underdeclaration of income in 2008, such finding must be sustained. Since petitioner's Quarterly VAT Returns for the four quarters of 2008 are false, as defined in the cited *Aznar* case, the ten (10)-year prescriptive period provided under Section 222(a) of the NIRC of 1997, as amended, applies.

In the case at hand, the ten-year period commenced from the issuance of the Notice of Informal Conference on September 25, 2011, when respondent discovered after investigation that petitioner was liable to pay deficiency VAT. Evidence shows that the FLD and Assessment Notice was issued within the prescribed period on January 24, 2012 and received by petitioner on February 2, 2012. Indubitably, the FLD is deemed valid with the force and effect of law.

As to petitioner's claim that respondent failed to inform it about the facts and the law upon which the deficiency VAT assessment was made, Section 228 of the NIRC of 1997, as amended, and as implemented by Section 3.1.4 of Revenue Regulations No. 12-99, provide as follows:

> "SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, **he shall first notify the taxpayer of his findings**: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made**; otherwise, the assessment shall be void. (emphases supplied)
>
> xxx xxx xxx"
>
> "Section 3.1.4. *Formal Letter of Demand and Assessment Notice*. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based**, otherwise, the formal letter of demand and assessment notice shall be void. xxx The same shall be sent to the taxpayer only by registered mail or by personal delivery. xxx" (emphasis supplied)

The record reveals that the PAN[70] and the FLD[71] contain not only the detailed computation of petitioner's tax deficiencies but also the bases of the alleged deficiencies.

Respondent clearly stated in the assessment notices that it was based on the discrepancy discovered between the declared income per original Annual ITR and the total income per Quarterly VAT Returns for taxable year 2008 and the difference of Php7,885,848.37 represents petitioner's undeclared income, in violation of Section 108 in relation to Sections 222 and 248(B) of the NIRC of 1997, as amended. Without such information, petitioner would not have been able to intelligently protest the subject assessment in its Letter Protest[72] dated February 23, 2012.

In has long been ruled that the requirement of the law to inform the taxpayer of the basis of the assessment does not necessarily mean that it be a full narration of the facts and laws on which the assessment is based. The purpose of the assessment is to enable the taxpayer to know the law and the facts on which the assessment is made, and to afford him his right to due process once it is served and received. Thus, as long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.

Finally, as to whether petitioner is liable to the deficiency VAT assessment, it must be emphasized that 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 as obtaining in the present case.

Further, 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 BIR is correct, and that in preparing the same, the BIR personnel

[70] Exhibit "R-22".
[71] Exhibit "P-10".
[72] Exhibit "P-12".

regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.[73]

Considering that petitioner failed to present evidence to overturn the presumption of correctness of respondent's assessment, the assessment as regards petitioner's deficiency VAT must be upheld.

**WHEREFORE**, the instant Petition for Review filed by petitioner R.A. Oben Holdings, Inc. on October 31, 2013, is hereby **DENIED**. Consequently, the Assessment Notice No. 33-08-VT-3119 for deficiency VAT issued by respondent Commissioner of Internal Revenue against petitioner R.A. Oben Holdings, Inc. is **UPHELD**. Accordingly, petitioner is **DIRECTED TO PAY** respondent basic deficiency VAT in the amount of Php946,301.81 and the fifty percent (50%) surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, in the amount of Php473,150.91, or the total amount of Php1,419,452.72.

In addition, petitioner is **DIRECTED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of Php946,301.81, computed from January 25, 2009 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of Php1,419,452.72 and on the 20% deficiency interest which have accrued as afore-stated (a), computed from February 24, 2012 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

[73] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

*We Concur:*

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

## ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice