REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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NEXT MOBILE, INC., Petitioner,	**CTA EB No. 1059** (CTA Case No. 7970)
- versus -	Present: **DEL ROSARIO,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 02 2015 10:52 a.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (Of the Decision dated 16 March 2015)"** filed on April 20, 2015, with respondent's **"COMMENT TO PETITIONER'S MOTION FOR RECONSIDERATION (Of The Decision dated 16 March 2015)"** filed on July 6, 2015, seeking reconsideration of this Court's Decision dated March 16, 2015, the dispositive portion of which reads:

"**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED."

In the Motion, petitioner raises two (2) grounds in support thereof, to wit:

1) petitioner did not file false returns that would entail the application of the ten (10)-year prescriptive period in issuing assessments; and

2) petitioner's failure to substantiate its unutilized input value-added tax (VAT) during trial should not deprive it from crediting the same against the alleged deficiency VAT payable.

As regards the first ground, petitioner argues as follows:

a) the ruling in the case of *Aznar vs. Court of Tax Appeals* (hereinafter referred to as the "*Aznar* case")[1] is inapplicable to the case of petitioner considering the different factual milieu involved;

b) a strict application of the ruling in the *Aznar* case would consider even a centavo deviation from the truth a "false return" that would warrant the application of the ten (10) year prescriptive period;

c) a strict application of the ruling in the *Aznar* case would defeat the purpose of prescriptive periods;

d) there is no hard and fast rule as to the amount of deviation constituting a false return, hence, decisions of the Court of Tax Appeals, a specialized court dedicated exclusively to the study and resolution of tax issues, are accorded the highest respect and are generally conclusive;

e) intent to evade taxes is necessary to constitute falsity of returns;

f) the alleged under-declaration of vatable gross receipts per VAT returns does not even constitute a *prima facie* evidence of false returns;

g) a mere computation of the alleged under-declared vatable gross receipts of petitioner does not make the deficiency VAT

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

assessment valid; and

h) the allegation that petitioner's VAT returns are false is a mere afterthought, which respondent did not raise in the administrative level.

As for the second ground, petitioner contends that:

a) the existence of unutilized input VAT had already been admitted by respondent;

b) the VAT returns and the information contained therein are presumed correct in the absence of evidence to the contrary;

c) petitioner has no obligation to preserve the documents supporting its unutilized input VAT beyond the period prescribed by Sections 235 and 203 of the Tax Code; and

d) petitioner's failure to keep records was due to reasons beyond its control.

On the other hand, respondent, in her Comment, avers that the understatement of petitioner's vatable gross receipts for taxable year 2005 makes the VAT returns for said taxable year false; that the 30% threshold under Section 248(B) of the National Internal Revenue Code (NIRC) does not apply in this case as the same requires the element of willfulness to file a false return; that the basis of the falsity of the return is the substantial underdeclared gross receipts in the amount of ₱15,903,910.69 after reconciling the actual VAT returns filed and the financial statements for the taxable year; and that the assessments are *prima facie* presumed correct and made in good faith, the burden of proof then to rebut the presumption of correctness of the assessment lies on the petitioner.

THE COURT *EN BANC*'S RULING

The instant Motion for Reconsideration lacks merit. The arguments raised therein are substantially a mere reiteration of its previous arguments in its Memorandum which were already addressed by this Court in the assailed Decision.

The* Aznar *case is applicable to the instant case.

In the *Aznar* case, the Supreme Court, in interpreting Sec.

332(a) of the old NIRC, which is now Section 222(a) of the NIRC of 1997,[2] said:

> "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 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 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

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[2] 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."

> 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." *(Emphasis supplied.)*

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 the ten (10) year prescriptive period under Section 222(a) of the NIRC of 1997 applies.

It is a well-settled rule that once a case has been decided one way, then another case, involving exactly the same point at issue, should be decided in the same manner.[3]

In the *Aznar* case, the issue that was resolved is *"whether or not the right of the Commissioner of Internal Revenue to assess deficiency income taxes of the late Matias H. Aznar for the years 1946, 1947, and 1948 had already prescribed at the time the assessment was made on November 28, 1952."* Upon the other hand, in this case, We have a similar issue, which essentially calls for the application of the ruling in the *Aznar* case, to wit:

> *"5. Whether Next Mobile filed false VAT returns for taxable year 2005 that will warrant the application of the 10-year prescriptive period."*[4]

Thus, considering that the parties in this case are similarly situated as in the *Aznar* case, We see no reason not to apply the ruling therein.

Only Decisions of the Supreme Court constitute binding precedents.

Again, petitioner insists for Us to give weight to the decisions of the Court of Appeals (CA) and of this Court to decide this case.

To repeat, in *Commissioner of Internal Revenue vs. San Roque*

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[3] *Pines City Educational Center, et al. vs. National Labor Relations Commission, et al.*, G.R. No. 96779, November 10, 1993.

[4] Division Docket (CTA Case No. 7970), p. 291.

Power Corporation,[5] the Supreme Court, in no uncertain terms, has declared that this Court's decisions do not constitute as precedents, to wit:

> "Suffice it to state that CTA decisions do not constitute as precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system."[6] *(Underscoring supplied.)*

Moreover, in *Systra Phils., Inc. vs. Commissioner of Internal Revenue*,[7] the High Court said:

> "...**a decision of the CA is an action *in personam* binds only the parties in that case. A third party in an action *in personam* cannot claim any right arising from a decision therein.** Finally and most importantly, while a ruling of the CA on any question of law is not conclusive on this Court, **all rulings of this Court on questions of law are conclusive and binding on all court** including the CA. **All courts must take their bearings from the decisions of this Court.**" *(Emphasis supplied)*

Considering that only decisions of the Supreme Court can be cited as binding precedents, petitioner's reliance on the Decisions of this Court and of the CA, is clearly misguided, if not misplaced.

We cannot subscribe to petitioner's allegation that there is no hard and fast rule as to the amount of deviation constituting a false return. The *Aznar* case is clear as to what constitutes a "false return": *"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."* Such being the case, We need not search further as to what does the term "false return" cover, since a simple deviation from the truth, whether intentional or not, already constitutes the same.

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[5] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[6] *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[7] G.R. No. 176290, September 21, 2007.

Any deviation from the truth renders the return filed as a false return, regardless of the percentage of underdeclaration of gross sales, receipts, or income.

Petitioner again points out that the alleged underdeclaration of vatable gross receipts per VAT returns does not even constitute a prima facie evidence of false returns. According to petitioner, to constitute a false return, there must at least be a showing by mere *prima facie* evidence that there was a substantial understatement of taxable sales, receipts or income, or overstatement of deductions, pursuant to Section 248(B) of the Tax Code.

We disagree.

Section 248(B) of the NIRC of 1997 reads as follows:

> "SEC. 248. *Civil Penalties.* –
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> xxx xxx xxx
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> (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,* **<u>That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner</u>** pursuant to the rules and regulations to be promulgated by the Secretary of Finance, **<u>shall constitute *prima facie* evidence of a false or fraudulent return</u>**: *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 (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 and underscoring supplied*)

It is not hard to discern that the foregoing provision merely speaks about, and governs, the imposition of the fifty percent (50%) surcharge in case a false or fraudulent return is wilfully made. The above-quoted Section 249(B) does not, in any way, say that the 30% thresholds must likewise be observed in determining whether a return is "false" under Section 222(a) of the NIRC of 1997, which provides as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
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> (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." *(Emphases supplied)*

It bears repeating that for as long as there is a deviation from the truth, without need of considering the percentage of underdeclaration or overstatement, a taxpayer can still be considered as having filed a false return, following the doctrine laid down in the *Aznar* case.

The falsity of the VAT returns and the applicability of the 10-year period to assess may be raised as issues before the Court in Division.

Petitioner avers that the falsity of the VAT returns and the applicability of the 10-year period to assess were never brought as issues in the administrative level, and thus, petitioner was not properly apprised by respondent of the facts that constituted the latter's belief of the falsity of the returns. According to petitioner, it could have, in turn, rebutted respondent's belief at the administrative level.

We disagree with petitioner.

Petitioner is not prevented from presenting its own evidence, before the Court in Division, to rebut any finding of the Bureau of Internal Revenue (BIR).

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[8] the Supreme Court said:

> "More importantly, **the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level**. Cases filed in the Court of Tax Appeals are litigated *de novo*.[9] Thus, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting. . .to the Court of Tax Appeals [**all evidence**] . . . required for the successful prosecution of [its] administrative claim.'"[10] *(Emphases and underscoring supplied)*

Furthermore, it is not only respondent, who presented the falsity of the VAT returns and the applicability of the 10-year period to assess as issues to be resolved by the Court in Division, but also petitioner itself, through their Joint Stipulation of Facts and Issues filed on December 9, 2009, to wit:

> "Petitioner **NEXT MOBILE, INC.** ('Next Mobile') and Respondent **COMMISSIONER OF INTERNAL REVENUE** (hereafter, 'Respondent Commissioner'), by their respective counsels, respectfully submit the following joint stipulation of facts and issues for the consideration of this Honorable Court:
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> **II**
> **STIPULATED ISSUES**
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> xxx xxx xxx
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> 5. Whether Next Mobile filed false VAT returns for

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[8] G.R. No. 180290, September 29, 2014.

[9] Citing *CIR v. Manila Mining Corporation*, 505 Phil. 650. 664 (2005) [Per J. Carpio Morales, Third Division]; *C.F. Sharp & Company, Inc. v. Commissioner of Customs*, 130 Phil. 777, 782 (1968) [Per J. J.P. Bengzon, En Banc]

[10] Citing *Atlas Consolidated Mining and Development Corporation v. CIR*, 547 Phil. 332 (2007) [Per J. Corona, First Division], and *Dizon v. Court of Tax Appeals*, 576 Phil. 110, 128 (2008) [Per J. Nachura, Third Division].

> taxable year 2005 that will warrant the application of the 10-year prescriptive period."[11] *(Underscoring supplied)*

Thus, We find no reason for the Court in Division not to resolve the said issue.

Furthermore, the proscription of raising new issues on appeal is not an absolute rule.

In *Commissioner of Internal Revenue vs. Eastern Telecommunications Phils., Inc.*,[12] the Supreme Court held:

> "The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. xxx
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> xxx xxx xxx
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> Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance.
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> The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government.' xxx." *(Underscoring supplied)*

Needless to state, the collection of the subject deficiency VAT is of public importance.

An assessment based on estimates is* prima facie *valid and lawful.

[11] Division Docket (CTA Case No. 7970), pp. 289 and 291.
[12] G.R. No. 163835, July 7, 2010.

Petitioner reiterates its argument that a mere computation of the alleged under-declared vatable gross receipts of petitioner does not make the deficiency VAT assessment valid.

In *Marcos II vs. Court of Appeals, et al.*,[13] the Supreme Court held:

> "It is not the Department of Justice which is the government agency tasked to determine the amount of taxes due upon the subject estate, but the Bureau of Internal Revenue, whose determinations and assessments are presumed correct and made in good faith. **The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. <u>Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously.</u> The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.** xxx." *(Emphasis and underscoring supplied)*

The fact that the deficiency assessment was based only on the discrepancies between the Financial Statements and VAT returns filed by petitioner, does not necessarily make it void. To the mind of the Court, it was not unreasonable for the BIR to use such comparison in making a determination of the deficiency assessment, considering that it is undisputed that both of the said documents emanated from petitioner. Thus, it cannot be said that the discrepancies were arrived at arbitrarily or capriciously.

The amount of petitioner's unutilized input VAT is not relevant to the issue regarding the validity of the subject assessment.

Petitioner insists that its failure to substantiate its unutilized input VAT during trial should not deprive it from crediting the same

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[13] G.R. No. 120880, June 5, 1997.

against the alleged deficiency VAT payable. According to petitioner, the existence of unutilized input VAT had already been admitted by respondent, and the VAT returns and the information contained therein are presumed correct in the absence of evidence to the contrary.

Again, We do not agree.

As already pointed out in the assailed Decision, petitioner failed to present any VAT invoice or official receipt to support the claimed excess and unutilized input VAT, which is a requirement under Section 110(A)(1) of the NIRC of 1997. Without any documentary evidence to support its allegations, a claim pertaining to the existence of unutilized input VAT will not prosper.

Moreover, it is irrelevant in the instant case, that petitioner indeed has sufficient unutilized input VAT and that the amount of input VAT stated in the VAT returns are true. This is because the presence of unutilized input VAT does not change the fact that petitioner had undeclared vatable sales/collections in the amount of ₱15,903,910.69.

Petitioner cannot be excused in not preserving its accounting records.

Petitioner maintains that it has no obligation to preserve the documents supporting its unutilized input VAT beyond the period prescribed by Sections 235 and 203 of the Tax Code, and that its failure to keep records was due to reasons beyond its control.

We are not convinced.

Section 235 of the NIRC of 1997 provides as follows, to wit:

> "SEC. 235. *Preservation of Books of Accounts and Other Accounting Records.* — All the books of accounts, including the subsidiary books and other accounting records of corporations, partnerships, or persons, shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment. **The said books and records shall be**

subject to examination and inspection by internal revenue officers: xxx." *(Emphasis supplied)*

Based on the foregoing, while a taxpayer is required only to preserve its accounting records *"until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment"*, it is equally true that *"(t)he said books and records shall be subject to examination and inspection by internal revenue officers."*

As noted in the assailed Decision, petitioner was aware that it was being investigated as early as 2007 for taxable year 2005, as evidenced by Letter of Authority No. 2007-00000548[14] dated September 18, 2007, as well as the First Request for Presentation of Records[15] dated September 20, 2007, the Second Request for Presentation of Records[16] dated September 28, 2007, and the Final Notice[17] dated October 9, 2007. Such being the case, prudence dictates that petitioner should have preserved its accounting records while said investigation or administrative case was pending, instead of presenting the argument that petitioner was not required to keep the said accounting records.

Moreover, petitioner's contention that its failure to keep its records was due to "reasons beyond its control" had not been justifiably explained. The fact that petitioner is arguing that it has no obligation to preserve the documents (hard copies) supporting its unutilized input VAT beyond the period prescribed by Sections 235 and 203 of the Tax Code cannot be considered as "reasons beyond its control". Petitioner has only itself to blame, if it could not prove its case anymore.

WHEREFORE, all the foregoing considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[14] Exhibit "1", BIR Records, p. 1.
[15] Exhibit "2", *Ibid,* p. 2.
[16] Exhibit "3", *Ibid,* p. 3.
[17] Exhibit "4", *Ibid,* p. 4.

WE CONCUR:

(I maintain my concurring opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice