Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

HOYA GLASS DISK PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8703

Members:
DEL ROSARIO, P.J.,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
APR 25 2016 2:00 p.m.

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review[1] filed on August 30, 2013 by Hoya Glass Disk Philippines, Inc. against Commissioner of Internal Revenue, pursuant Section 7 (a) (1) Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[2], as well as Rule 4 Section 3(a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[3].

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[1] Docket, pp. 14-22.

[2] Sec. 7. Jurisdiction. – the CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

xxx xxx xxx.

[3] Rule 4. Section 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

Petitioner seeks the withdrawal and cancellation of the Formal Letter of Demand and Assessment Notice (FLD/AN) dated February 19, 2013, assessing it for penalties for late payment of final withholding tax (FWT) on dividends in the amount of ₱74,744,012.40.

Petitioner Hoya Glass Disk Philippines, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at 111 East Main Avenue, Laguna Technopark, Special Export Processing Zone, Biñan, Laguna.[4] It is duly registered with the Bureau of Internal Revenue (BIR)[5] and with the Philippine Economic Zone Authority (PEZA)[6].

On the other hand, respondent is a public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue – the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and with the enforcement of all forfeitures, penalties and fines connected with such taxes, fees and charges. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

During the special meeting of the Board of Directors of petitioner on December 22, 2006, the Board of Directors declared a cash dividend in the amount of US$24,541,472.00 in favor of the stockholders of record as of March 31, 2006, payable on or before January 31, 2007.[7]

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Rule 8. Section 4. Where to appeal; mode of appeal. –

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

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[4] Exhibits "P-15" and "P-16", Docket pp. 591-604.
[5] Exhibit "P-17", Docket, p. 605.
[6] Exhibit "P-18", Docket, p. 611.
[7] Par. 2, Stipulated Facts, Joint Stipulation, Docket, p. 544; Exhibit "P-11", Docket, p. 559.

Petitioner paid the cash dividends to its stockholders on February 2, 2007.[8]

Petitioner filed its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) or FWT Return[9] on March 10, 2007. It likewise paid the FWT amounting to ₱145,208,453.93 on March 10, 2007, but was only confirmed on March 12, 2007.[10]

On January 28, 2013, petitioner received a Preliminary Assessment Notice[11] (PAN) dated January 9, 2013, assessing petitioner for penalties in connection with the supposed late payment of the FWT on the cash dividend payments made to its stockholders on February 2, 2007 in the following amounts: (a) 50% surcharge amounting to ₱72,595,967.34; and [b] 20% interest from February 11, 2007 to March 10, 2007 amounting to ₱2,148,045.06.

Petitioner filed its reply to the PAN, through a letter dated February 11, 2013[12], on February 12, 2013. It asserted that respondent's right to assess it for the supposed penalties in connection with the FWT had already prescribed, considering that respondent only had three (3) years from the date of the filing of the FWT Return on March 10, 2007, or until March 10, 2010, within which to assess petitioner.

On February 27, 2013, petitioner received the Assessment Notice with the attached Formal Letter of Demand and Details of Discrepancies[13], reiterating the assessment indicated in the PAN, to wit:

I. Penalties for Late Payment of Final Withholding Tax on Dividends

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[8] Note 18, Retained Earnings, Petitioner's Audited Financial Statements as of March 31, 2007 and 2006, Exhibit "P-12", Docket, p. 587.
[9] Exhibit "P-13", Docket, pp. 608-609.
[10] Exhibit "P-14", Docket, p. 610.
[11] Exhibit "P-1", Docket, pp. 188-192.
[12] Exhibit "P-2", Docket, pp. 193-196.
[13] Exhibit "P-3", Docket, pp. 197-201.

Final Withholding Tax Remitted on March 10, 2007		₱ 145,191,934.68
Penalties for Late Payment of Final Withholding Tax		
	50% Surcharge	₱ 72,595,967.34
	Interest from 02-11-07 to 03-10-07	2,148,045.06
Total Penalties for Late Payment of Final Withholding Tax		**₱74,744,012.40**

Pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner filed its Protest[14] to the Assessment Notice on March 22, 2013 or within thirty (30) days from its receipt of the Assessment Notice on February 27, 2013.

On May 21, 2013, petitioner submitted relevant documents in support of its Protest, through a letter dated May 21, 2013.[15]

On August 2, 2013, petitioner received a Preliminary Collection Letter [16] dated July 23, 2013 from the BIR Revenue District Office (RDO) No. 57, requesting payment of the alleged internal revenue tax liability amounting to ₱72,744,012.40.

On August 8, 2013, petitioner filed with respondent a reply letter[17] dated August 7, 2013, requesting BIR RDO No. 57 to withdraw the Collection Letter within five (5) days from receipt of the reply, otherwise, petitioner will be constrained to consider the Collection Letter as the denial of the Protest; and on the basis of the denial, elevate the matter to the Court of Tax Appeals.

Thereafter, on August 30, 2013, petitioner filed the instant Petition for Review[18] before this Court to seek the withdrawal and cancellation of the assailed Assessment Notice.

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[14] Exhibit "P-4", Docket, pp. 202-205.
[15] Exhibit "P-5", Docket, pp. 206-209.
[16] Exhibit "P-6", Docket, p. 300.
[17] Exhibit "P-7", Docket, pp. 301-311.
[18] Docket, pp. 14-22.

On October 1, 2013, while the case was already pending in this Court, petitioner received a Final Notice Before Seizure[19] dated August 23, 2013 from the BIR RDO No. 57. As a consequence, petitioner filed a Motion to Suspend Collection of Tax[20] before this Court on October 21, 2013.

On November 8, 2013, during the hearing on petitioner's Motion to Suspend Collection of Tax, petitioner presented Mr. Marvin T. Sambilad as its witness; while respondent opposed the subject motion and argued that petitioner failed to justify the issuance of an order suspending the collection of the assessed tax.[21] Thereafter, petitioner filed its Reply[22] on November 11, 2013.

Meanwhile, within the extended time granted by the Court,[23] respondent filed her Answer[24] on November 26, 2013, interposing the following special and affirmative defenses:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
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> 5. Petitioner Hoya Glass Disk Philippines, Inc., is liable to pay the amount of Seventy Four Million Seven Hundred Forty Four Thousand Twelve Pesos and 40/100 (₱74,744,012.40) representing penalties for late payment of Final Withholding Tax on Dividends. On January 8, 2007 Petitioner declared a cash dividend in the amount of US$24,541,472.00 in favor of its stockholders of record, which was payable on or before January 31, 2007. Filing of the return and payment of final withholding taxes shall be made within ten (10) days after the end of each month. Section 2.57.4 of Revenue Regulation No. 2-98 in relation to

[19] Exhibit "P-8", docket, p. 312.
[20] Docket, pp. 172-177.
[21] Resolution dated November 8, 2013, Docket, pp. 327-328.
[22] Docket, pp. 329-333.
[23] Order dated October 3, 2013, Docket p. 171; Resolution dated November 7, 2013, Docket, p. 321.
[24] Docket, pp. 347-361.

Section 4(1) of Revenue Regulation No. 6-2001 provides:

> **Section 2.57.4. Time of Withholding.** - The obligation of the payor to deduct and withhold the tax under section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first. The term 'payable' refers to the date the obligation become due, demandable or legally enforceable.
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> **Section 4. time for Filing of Withholding Tax and Value-Added Tax Returns and the Payment of Taxes Due Thereon. -**
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> xxx xxx xxx
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> **'Section 2.58. - RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.**
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> xxx xxx xxx
>
> (2) WHEN TO FILE
>
> (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments shall be made within (10)

days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above.'

6. Petitioner should have filed and paid its Final Withholding Tax on Dividends on February 10, 2007. Records revealed that petitioner filed and paid the said tax due only on March 10, 2007 which was included in the payment of the regular income. Such fact was discovered only on June 24, 2010 which was actually the subject of the Notice of Informal Conference.

7. Respondent's right to assess has not yet prescribed. Section 222 of the National Internal Revenue Code of 1997 provides:

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 collection thereof.

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8. It is clear in the provisions of Revenue Regulation No. 1-2001 that cash dividends declared on January 8, 2007 should be declared as income payments subject to final withholding tax for the month of January. Instead, petitioner included the same with income payment for the month of February and paid the withholding tax due on March, 10, 2007. Thus, it was found:

> *'Since the computed penalties was material in amount if it was filed on February 10, 2007, HDGP then, included the final tax on dividend with the regular income payments subject to final tax for the month of February 2007 which was filed March 10, 2007.'*

Hence, the same is a deviation from the truth and considered a false return, such that the dividend payments made were not declared, filed and paid on the period prescribed by law. Thus, Section 222 (a) of the National Internal Revenue Code as to the ten (10) year prescriptive period applies.

9. In the case of Commissioner of Internal Revenue vs Tulio the Supreme Court held that Section 222 specifies three (3) instances when the running of the three-year prescriptive period **does not apply**. These are: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax or, (3) failure to file a return. Therefore, the period within which to assess tax is ten (10) years

from discovery of the fraud, falsification or omission.

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Section 223 (**now Section 222**) of the National Internal Revenue Code provides:

> '***Section 223. 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 had become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
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> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof **may be collected by distraint or levy or by a proceeding in court within three (3) years following the assessment of the tax**.

Section 223 specifies three **(3) instances when the running of the three-year prescriptive period does not apply. These are:**

> **(1) filing a false return, (2) filing a fraudulent return with intent to evade tax or (3) failure to file a return. The period within which to assess tax is ten years from discovery of the fraud, falsification or omission.**
>
> Here, respondent failed to file his tax returns for 1986 and 1987. On September 14, 1989, petitioner found respondents omission. Hence, the running of the ten-year prescriptive period within which to assess and collect the taxes due from respondent commenced on that date until September 14, 1999. (emphasis supplied)
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10. In the case of Aznar vs Commissioner of Internal Revenue, the Supreme Court explained the difference between 'false return' and 'fraudulent return'. The first merely implies deviation from the truth whether intentional or not while the second implies intentional or deceitful entry with intent to evade the taxes due.

> '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.'

11. Fraud in its general sense, 'is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another.' While a tax return is false when it merely does not reflect the truth and done with or without intent. As explained by the Supreme Court in the case of Commissioner of Internal Revenue vs Estate of Benigno Toda, Jr. (G.R. No. 147188 September 14, 2004):

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> And even assuming *arguendo* that there was no fraud, **we find that the income tax return filed by CIC for the year 1989 was false. It did not reflect the true or actual amount gained from the sale** of the Cibeles property. Obviously, such was done with intent to evade or reduce tax liability. (emphasis supplied) xxx.

12. Further, in the case of Republic vs Marcos II, the Supreme Court ruled:

'This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.

The same is illustrated in Section 51(b) of the NIRC which reads:

(b) Assessment and payment of deficiency tax - xxx

In case a **person fails to make and file a return or** list at the time prescribed by law, **or makes willfully or otherwise, false or fraudulent return** or list xxx. (Emphasis supplied)

Likewise, in *Aznar v. this Court of Tax Appeals*, this Court observed:

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. 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'.** (Emphasis Supplied)
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13. Based on the foregoing, respondent has ten (10) years from June 24, 2010 or until June 24, 2020 within which to assess and collect taxes due from petitioner. Clearly, the assessment made by respondent is well within the prescriptive period.

14. Petitioner's tax liability was due to penalties for late payment of final withholding tax on dividends. A fifty-percent (50%) surcharge and twenty-percent (20%) interest were imposed pursuant to Sections 248 (B) and 249 (B) of the National Internal Revenue Code of 1997, as amended, to wit:

> **SEC. 248. Civil Penalties.** - (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
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> (1) Failure to file any return and pay the tax due thereon as required

under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(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 (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.

SEC. 249. Interest. -

(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. - In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

(D) Interest on Extended Payment. - If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid.

15. Imposition of fifty percent (50%) surcharge is proper in this case where there is willful neglect to file the return within the period prescribed by law or by rules and regulations, and/or false return. Petitioner's contention that it is not liable for the assessed amount as the late remittance was due to an honest mistake, is misplaced. Petitioner's awareness of the time of declaration of dividend as well as the time of Withholding, filing and payment manifests willful neglect to file the return within the period prescribed by law. Good faith is not sufficient to avoid payment of surcharge and interest for the

late payment, as the intention of the law is to ensure timely payment of taxes due the government.

> 'Tax laws imposing penalties for delinquencies, so we have long held, are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. If penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.
>
> We have likewise explained that it is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government, x x x'

16. Based on the Formal Letter of Demand dated February 19, 2013, petitioner's deficiency tax for the fiscal year ending March 31, 2007 is computed as follows:

Penalties for Late Payment of Final withholding Tax on Dividends

Final Withholding Tax Remitted on March 10, 2007	₱ 145,191,934.68
Penalties for Late Payment of Final Withholding Tax	

50% Surcharge	₱ 72,595,967.34
Interest from February 11, 2007 to March 10, 2007	2,148,045.06
Penalties for Late Payment of Final Withholding Tax on Dividends	**₱ 74,744,012.40**

17. Petitioner admitted the validity of the assessments when it applied for Abatement or Cancellation of Tax Penalties and/or Interest. Such act of the petitioner is tantamount to its recognition and admission of the validity of the assessment and consequently acknowledgment of its tax liability.

18. Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by the Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessment. As a logical consequence of this presumption, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong, but that he is right. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment.

19. Taxes are the lifeblood of the government, for without taxes, the government can neither exist not endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizen obliges it to promote public interest and common good.

> The theory behind the exercise of the power to tax emanates from necessity, without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people. Hence, should be collected promptly, without unnecessary hindrance or delay. In line with this principle, the National Internal Revenue Code of 1997 (NIRC) expressly provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the code. An exception to this rule obtains only when in the opinion of the Court of Tax Appeals (CTA) the collection thereof may jeopardize the interest of the government and/or the taxpayer."

Meanwhile, in the Resolution[25] dated December 6, 2013, the Court granted petitioner's Motion to Suspend Collection of Taxes.

The Pre-Trial Conference was scheduled on February 7, 2014.[26]

Respondent's Pre-Trial Brief[27] was filed on January 28, 2014; while petitioner's Pre-Trial Brief [28] was filed on February 4, 2014.

The parties filed their Joint Stipulation[29]on February 21, 2014. This was approved by the Court in the Resolution[30] dated March 4, 2014, which likewise terminated the Pre-Trial. Thereafter, the Pre-Trial Order[31] was promulgated on March 14, 2014.

[25] Docket, pp. 367-369.
[26] Docket, p. 363.
[27] Docket, pp. 484-492.
[28] Docket, pp. 513-519.
[29] Docket, pp. 544-549.
[30] Docket, p. 617.
[31] Docket, pp. 619-626.

During trial, petitioner presented as its witness, Mr. Marvin T. Sambilad, its Accounting Assistant Supervisor.[32]

Petitioner filed its Formal Offer of Evidence[33] on April 8, 2014. In the Resolution[34] dated May 12, 2014, the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-10", "P-10-1", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-18", "P-19", and "P-19-1". The Court, however, denied the admission of Exhibit "P-17" for failure of the exhibit to correspond to the document formally offered.

On May 30, 2014, petitioner filed a Motion for Partial Reconsideration re: Resolution dated May 12, 2014[35], praying for the admission of its Exhibit "P-17". This was granted by the Court in the Resolution[36] dated July 24, 2014.

On the other hand, respondent presented Revenue Officer May M. Centeno-Gimeno as her sole witness.[37]

Respondent filed her Formal Offer of Documentary Evidence[38] on December 1, 2014. The Court admitted respondent's Exhibits "R-13", "R-14", "R-15", "R-16", "R-16-A", "R-17", "R-18", "R-18-A", "R-19", "R-20", and "R-20-A" in the Resolution[39] dated January 23, 2015.

The Memorandum for Petitioner[40] was filed on March 3, 2015. On the other hand, the Memorandum (For Respondent)[41] was filed on April 30, 2015. Consequently, in the Resolution[42] dated May 11, 2015, the instant Petition for Review was declared submitted for decision.

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[32] Minutes of the Hearing dated March 25, 2014, Docket, pp. 627-629.
[33] Docket, pp. 633-641.
[34] Docket, pp. 733-734.
[35] Docket, pp. 735-737.
[36] Docket, pp. 752-753.
[37] Minutes of the Hearing dated September 30, 2014, Docket, pp. 754-755.
[38] Docket, pp. 766-772.
[39] Docket, pp. 784-785.
[40] Docket, pp. 797-811.
[41] Docket, pp. 822-835.
[42] Docket, p. 838.

The parties submitted the following issues[43] for this Court's resolution:

1. Whether or not Petitioner is liable to pay the amount of PhP74,744,012.40 representing penalties for the supposed late payment of FWT on dividends; and

2. Whether or not Respondent's period to assess Petitioner has prescribed, having been done beyond the three-year prescriptive period under Section 203 of the National Internal Revenue Code of 1997 (the "**Tax Code**"), as amended.

Petitioner argues that respondent's right to assess it for penalties for the alleged late payment of FWT on its cash dividend payments to its stockholders on February 2, 2007 has prescribed.[44] It also contends that assuming, without conceding, that respondent's right to assess petitioner is not yet barred by prescription, the BIR's imposition of a fifty percent (50%) surcharge is erroneous.[45]

On the other hand, respondent points out that the cash dividends in this case should have been declared as income payments subject to withholding tax for the month of January and that petitioner should have filed its Final Withholding Tax on Dividends on February 10, 2007. She states that records reveal that petitioner only filed and paid the said tax due on March 10, 2007. Respondent asserts that petitioner filed a false return and so the ten (10)-year prescriptive period under Section 222(a) of the National Internal Revenue Code of 1997, as amended, should be applied in this case.

We resolve.

[43] Issues to be Tried and Resolved, Joint Stipulation, Docket, p. 545.
[44] Petitioner's Memorandum, Docket, p. 804.
[45] Petitioner's Memorandum, Docket, p. 808.

Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later, thus:

> "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 (3)-year period shall be counted from the day the return was filed**. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphasis supplied)*

Pursuant to Section 4(1) of Revenue Regulations (RR) No. 6-2001, the filing of the return and the payment of final withholding taxes shall be made within ten (10) days after the end of each month, to wit:

> "SECTION 4. *Time for Filing of Withholding Tax and Value-Added Tax Returns and the Payment of Taxes Due Thereon.* - The time for filing of the various tax returns as indicated below and the payment of the taxes due thereon shall be revised in accordance with the appropriate amendments to the existing regulations, as presented below.
>
> (1) Sections 2.58(A)(2) and 2.81 of Revenue Regulations No. 2-98, as amended, are hereby further amended to read as follows:

'SECTION 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

(A) Monthly return and payment of taxes

xxx xxx xxx

(2) WHEN TO FILE -

(a) **For both large and non-large taxpayers, the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) **shall be filed and payments should be made, within ten (10) days after the end of each month**, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above." *(Emphasis supplied)*

Records indicate that petitioner declared a cash dividend in the amount of US$24,541,472.00 in favor of the stockholders of record as of March 31, 2006, payable on or before January 31, 2007. [46] Petitioner paid the cash dividends to its stockholders on February 2, 2007. [47] Thereafter, petitioner filed its FWT Return[48] and paid the FWT amounting to ₱145,208,453.93[49] on March 10, 2007.

[46] Par. 2, Stipulated Facts, Joint Stipulation, Docket, p. 544; Exhibit "P-11", Docket, p. 559.
[47] Exhibit "P-12", Docket, pp. 560-588.
[48] Exhibit "P-13", Docket, pp. 608-609.
[49] Exhibit "P-14", Docket, p. 610.

Section 2.57.4 of RR No. 2-98, as amended by RR No. 12-01, provides for the obligation of the payor to deduct and withhold the tax, to wit:

> "SECTION 2.57.4. *Time of withholding*. - The **obligation of the payor to deduct and withhold the tax** under Section 2.57 of these Regulations **arises at the time an income payment is paid or payable, or the income payment is accrued or recorded** as an expense or asset, whichever is applicable, in the payor's books, **whichever comes first**. The **term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable**.
>
> Provided, however, that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes." *(Emphasis supplied)*

Based on the foregoing provision, petitioner should have withheld the final tax for the cash dividends on January 31, 2007, the date when the cash dividends became payable and not on February 2, 2007, when the cash dividends were paid to its stockholders. Thus, respondent was correct in pointing out that the cash dividends in this case should have been declared as income payments subject to withholding tax for the month of January. Petitioner should have filed its FWT return and paid its Final Withholding Tax on Dividends on February 10, 2007.

The Court agrees with respondent's argument that Section 222(a) of the NIRC of 1997, as amended, should apply in this case. Section 222(a) is quoted hereunder for ready reference:

> "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." *(Emphasis supplied)*

The above provision enumerates three instances when the running of the three-year prescriptive period does not apply: (1) filing a false return; (2) filing a fraudulent return with intent to evade tax; and (3) failure to file a return. In all these instances, the period within which to assess deficiency taxes is ten (10) years from discovery of the fraud, falsification or omission.

The Supreme Court held in the case of *Jose B. Aznar vs. Court of Tax Appeals and Collector of Internal Revenue*[50] that the above-mentioned provision 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; which is strengthened immeasurably by the last portion of the provision that 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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[50] G.R. No. L-20569, August 23, 1974.

It bears stressing that, like fraud, falsity also involves a question of fact, thus, should never lightly be presumed. To be sustained, the same must be supported by clear and convincing proof because it is a serious charge.[51]

Section 2.57.4 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 12.01[52], obligates payor to deduct and withhold the tax at the time an income payment is paid or payable, whichever comes first. In this case, petitioner declared a cash dividend in favor of the stockholders to be payable on or before January 31, 2007.[53]

Concomitantly, the filing of the return and the payment of final withholding taxes should been made within ten (10) days after the end of each month or until February 10, 2007 and not on March 10, 2007.

It cannot be denied the act of considering the cash dividends as income payments for the month of February and paying the withholding tax due only in March 10, 2007 was a mistake. Thus, the Monthly Remittance Return of Final Income Taxes Withheld filed on March 10, 2007 pertaining to cash dividend payable on or before January 31, 2007, was a false return on the ground that it reflected therein that the final income tax withheld relates "For the Month of February 2007", when it should have been properly relating to petitioner's payable of final income tax withheld "for the Month of January 2007".

Evidently, there was a deviation from the truth and whether intentional or not the Monthly Remittance Return of Final Income Taxes Withheld filed on March 10, 2007 was a false return subject to the 10 year prescriptive period.

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[51] *Commissioner of Internal Revenue vs. Asalus Corporation*, CTA EB No. 1191, July 30, 2015.
[52] "SECTION 2.57.4. *Time of withholding*. – The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.
[53] Par. 2, Stipulated Facts, Joint Stipulation, docket, p. 544; Exhibit "P-11", Docket, p. 559.

With regard to penalties, pursuant to Section 248 (A) and (B) of the National Internal Revenue Code (NIRC)[54], as amended, twenty-five percent (25%) of the amount due is the penalty for failure to file any return and pay the tax due thereon as required under the provisions of the NIRC or rules and regulations on the date prescribed while fifty percent (50%) of the amount due is the penalty in case of willful neglect to file the return within the period prescribed or in case a false or fraudulent return is willfully made.

Records disclosed that petitioner failed to file the Monthly Remittance Return of Final Income Taxes Withheld and pay the tax due thereon on the date prescribed. However, no evidence was presented that said false return was wilfully made or there was willful neglect to file the said return within the prescribed period. In as much as

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[54] **SEC. 248. Civil Penalties.** -

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(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 (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 respondent failed to substantiate her allegation by clear and convincing proof that petitioner wilfully filed a false or wilfully neglect to file the said return within the prescribed period, the 25% surcharge instead of the 50% surcharge shall apply, to wit:

Final Withholding Tax Remitted on March 10, 2007		₱ 145,191,934.68
Penalties for Late Payment of Final Withholding Tax		
	25% Surcharge (₱ 145,191,934.68 x 25%)	₱ 36,297,983.67
	Interest from 02-11-07 to 03-10-07	2,148,045.06
Total Penalties for Late Payment of Final Withholding Tax		**₱38,446,028.73**

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notice dated February 19, 2013 assessing petitioner in the amount of ₱74,744,012.40 for penalties for late payment of Final Withholding Tax on Dividends is hereby **REDUCED to Thirty Eight Milllion Four Hundred Forty Six Thousand Twenty Eight Pesos and Seventy Three Centavos (P38,446,028.73.)**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice
See concurring & dissenting opinion

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Section 13 Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

HOYA GLASS DISK PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8703**
	Members:
- versus -	Del Rosario, P.J., Uy, and Mindaro-Grulla, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 25 2016 2:00 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in partially granting the Petition for Review and in reducing the penalties assessed against petitioner. The point of my dissent relates to the *ponencia's* affirmation of the deficiency interest of P2,148,045.06 for late payment of Final Withholding Tax on Dividends.

With due respect, I submit that the deficiency interest for late payment of Final Withholding Tax on Dividends cannot be imposed against petitioner. In this regard, I quote below the recent position I have taken in the consolidated cases of *Commissioner of Internal Revenue vs. Philippine Tobacco Flue-Curing & Redrying Corporation*[1] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[2] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax

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[1] CTA EB Nos. 1218 and 1220, April 11, 2016.
[2] G.R. Nos. 106949-50, December 1, 1995.

liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:

> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>
> xxx xxx xxx
>
> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented."** (Emphasis supplied)

If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: ***first*, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II.** Thus:

> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on*

[3] G.R. No. 146486, March 4, 2005.

> *"Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth *a tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.,* Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge." (Emphases supplied)

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; **PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code."** Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:

> 'Section 249.Interest-
>
> (B) Deficiency Interest. – Any deficiency in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.' (Emphasis supplied)

Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.'

Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.

Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as

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> all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended.
>
> Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the **same** Chapter I of Title X of the NIRC of 1997, as amended."

In sum, deficiency interest may be imposed only on tax specifically covered and defined by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; **conversely, deficiency interest may not properly be imposed for late payment of FWT assessed against petitioner**.

Also apt is my discussion in my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[4] which I quote below:

> Settled is the rule that laws imposing tax is construed strictly against the government and liberally in favor of the taxpayer. **Unless clearly imposed by pertinent provision of law, deficiency interest as an additional tax burden should not simply be presumed. Thus, the obligation to pay deficiency interest may not be applied to taxes other than income tax, donor's tax and estate tax, irrespective of whether an assessment is issued or not. After all, the deficiency tax assessed is still subject to the delinquency interest rate of 20% per annum until fully paid. Truth be told, the delinquency interest rate of 20% is way more than the legal interest of 12% per annum**.

All told, I vote to PARTIALLY GRANT the Petition for Review and to AFFIRM the assessment of respondent against petitioner WITH MODIFICATION relating to the assessed deficiency interest which should appropriately be cancelled and set aside. Accordingly, petitioner should be ORDERED to pay only the 25% Surcharge of P36,297,983.67 as penalty for late payment of Final Withholding Tax on Dividends.

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] CTA EB No. 1035, February 9, 2016.