Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

LACSON & LACSON INSURANCE BROKERS, INC., Petitioner,	**CTA EB CASE NO. 1272** (CTA Case No. 8203)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA RINGPIS-LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 04 2016 3:20 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] dated October 10, 2014, rendered by the Second Division of

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] Division docket, Vol. 4, pp. 1632-1651.

this Court in CTA Case No. 8203, and its Resolution[3] dated January 30, 2015. The Second Division of this Court upheld the assessment for deficiency VAT for taxable year 2006, and ordered the payment of deficiency and delinquency interest.

Petitioner assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated October 10, 2014:

*"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assessments issued by respondent against petitioner covering deficiency VAT for taxable year 2006 is UPHELD and petitioner is ORDERED TO PAY in the amount of [Php] 2,517,305.33, inclusive of fifty percent (50%) surcharge imposed under Section 248 (B) of the 1997 National Internal Revenue Code, as amended, [("1997 NIRC")], computed as follows:*

Assessed Basic Deficiency VAT	*[Php]*	*1,678,203.55*
Add: 50% Surcharge		*839,101.78*
Total Amount Due	*[Php]*	*2,517,305.33*

*In addition, petitioner is hereby **ORDERED TO PAY**:*

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of [Php] 1,678,203.55 computed from January 25, 2007 until full payment thereof pursuant to Section 249(B) of the [1997 NIRC]; and

b) Delinquency interest at the rate of 20% per annum on the 20% deficiency interest which have accrued as afore-stated in (a) and the total amount of [Php] 2,517,305.33, computed from November 26, 2010 until full payment thereof pursuant to Section 249(C) of the [1997 NIRC].

SO ORDERED."

Resolution dated January 30, 2015:

[3] Division docket, Vol. 4, pp. 1683-1689.

*"**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.*

***SO ORDERED**."*

The pertinent facts as narrated by this Court's Division in its Decision are as follows:

"Petitioner Lacson & Lacson Insurance Brokers, Inc. is a corporation duly organized and existing under Philippine laws, with business address at 15th Floor Burgundy Corporate Tower, 252 Sen. Gil Puyat Ave., Makati City. Its primary purposes are (1) to act as insurance and/ or reinsurance brokers for life and non-life companies insuring life, health, accidents, fire and allied lines, motor vehicles, casualty, surety bonds, marine cargo, marine hull, workmen's compensation, comprehensive general liability, contractors all risks, and aviation insurance; and (2) to engage in the general business of insurance general agents and/ or general managers. It is registered as a VAT taxpayer. Petitioner was likewise a licensed insurance broker and reinsurance broker from July 1, 2005 to June 30, 2007.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner entered into several broker's agreements with different insurance companies.

Petitioner filed its Quarterly VAT Returns for calendar year 2006 on April 24, 2006, July 20, 2006, October 19, 2006 and January 19, 2007 (with final amendment filed on January 31, 2007). Petitioner's total sales based on the said returns amounted to P21,625,725.68; however, based on the summary list of purchases submitted by its customers, petitioner's total sales amounted to P44, 182,224.98 on the ground that some of its clients credited their input VAT against petitioner.

On October 19, 2007, petitioner received Letter Notice (LN) No. 049-AS-06-00-00025 dated October 15, 2007, stating that computerized matching conducted by the BIR on the data provided by third party sources against its declarations per VAT returns disclosed that it *has deficiency taxes for taxable year 2006. Petitioner replied through a letter dated October 30, 2007, which respondent received on October 31, 2007.Petitioner insisted in the said letter that it is an insurance broker and its main source of income are the commissions that it earned from insurance companies for insurance policies that it placed with various insurance companies for and on behalf of various clients.*

On January 6, 2010, respondent issued a Preliminary Assessment Notice, assessing petitioner for deficiency VAT, xxx:

xxx xxx xxx.

Subsequently, respondent issued the Final Assessment Notice (FAN) dated March 29, 2010, which petitioner received on April 21, 20 10, finding petitioner liable for alleged deficiency VAT for taxable year 2006, xxx:

xxx xxx xxx.

Petitioner submitted its protest letter dated May 17, 2010 and supplemental protest letter dated July 5 , 2010, which respondent received on May 19, 2010 and July 6 , 2010, respectively.

On September 1, 2010, petitioner received respondent's letter dated August 10, 2010, signed by Ms. Elisa F. Guilalas of Team C-LN Task Force, denying the aforesaid protest and supplemental protest for being unmeritorious.

Petitioner through a letter dated November 4, 2010, which was received by respondent on November 9, 2010, informed the latter that it exerted earnest efforts to secure from forty (40) insurance companies the documents required by respondent, but the said companies refused to surrender their records. In the same letter, petitioner likewise sought from respondent the issuance of proper orders to compel the said Insurance companies to provide the requested documents.

On September 27, 2010, petitioner filed its administrative appeal to respondent dated September 23, 2010. However, respondent denied petitioner's request for reinvestigation through a letter dated November 10, 2010.

On December 21, 2010, petitioner appealed respondent's decision dated November 10, 2010 by filing this instant Petition for Review. Petitioner incorporated in the Petition for Review a prayer for the issuance of a temporary restraining order to enjoin and prohibit *respondent or her duly authorized representative from collecting the disputed 2006 deficiency VAT assessment.*

Respondent submitted her Comment/Opposition (On Petitioner's Motion for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order) on January 28, 2011.

Respondent filed her Answer through registered mail on February 14, 2011, which was received by the Court on February 24, 2011. Respondent interposed the following special and affirmative defenses:

xxx xxx xxx.

On March 7, 2011, the Court granted petitioner's motion for the suspension of the collection of the tax liability. As a result, respondent and her duly authorized representatives were enjoined from collecting the alleged deficiency VAT.

The case was set for pre-trial conference on March 31, 2011. Respondent's Pre-Trial Brief and petitioner's PreTrial Brief were both filed on March 28, 2011. The parties submitted their Joint Stipulation of Facts and Issues on May 12, 2011; and the Court issued its Pre-Trial Order on May 31, 2011.

Petitioner presented Elizabeth F. Bolfango, Salvador L. Lacson, Atty. Jose Mario C. Buiiag, Felisa U. Arrojado, and Atty. Rosario S. Bernaldo as its witnesses.

On March 1, 2012, petitioner filed a Motion for Production, Copying and Inspection of Documents, which the Court denied in a Resolution dated April 2, 2012. Petitioner filed a Motion for Reconsideration, which was again denied in the Resolution dated June 4, 2012.

Respondent presented Elisa F. Guilalas as sole witness.

During trial, both parties presented and formally offered their respective documentary evidence.

The case was submitted for decision on November 13, 2013, after petitioner filed its Memorandum on November 11, 2013 and respondent filed a Manifestation (In Lieu of Submission of Memorandum) through registered mail on October 24, 2013, which the Court received on November 4 , 2013."[4]

[4] Division docket, Vol. 4, pp. 1632-1651.

On October 10, 2014, this Court's Division denied the petition, upheld the assessment for deficiency VAT for taxable year 2006. This Court's Division finds that petitioner's documents reveals that it issued VAT official receipts to its clients on the gross amount of premiums collected from which the latter claimed their input VAT as gleaned from the Details of Taxpayer's Customers' Records. Hence, although petitioner, as an insurance broker, simply liaise between the clients and the insurance companies, it becomes rightfully liable to output tax on the gross premiums collected for issuing VAT official receipts for the said premiums and considering that the clients claimed the input tax based on the gross premiums reflected on the VAT official receipts issued to them.

Petitioner filed a Motion for Reconsideration. Said motion was denied for lack of merit. Hence, the present petition was filed.

Petitioner claims that this Court's Second Division gravely erred in holding that:

> **"A. MERE FALSITY IN THE RETURNS FILED BY PETITIONER SUFFICES TO WARRANT THE APPLICATION OF TEN (10) YEAR PRESCRIPTIVE PERIOD OF ASSESSMENT UNDER SECTION 222 OF THE NIRC, AS AMENDED;**
>
> **B. THE RETURNS FILED BY PETITIONER WERE ACTUALLY FALSE;**
>
> **C. IN NOT APPLYING THE RULING IN WINTERNITZ ASSOCIATES INSURANCE BROKERS CORP., V. CIR (CTA CASE NO. 7971) IN DECIDING THE INSTANT CASE; AND**
>
> **D. IN HOLDING THAT PETITIONER IS LIABLE FOR 50% SURCHARGE UNDER SECTION 248 (B) OF THE NIRC, AS AMENDED, DESPITE**

THE ADMITTED ABSENCE OF FRAUD ON THE PART OF PETITIONER."[5]

Petitioner rehashed its argument previously raised before the Court's Division. Petitioner asserts that mere falsity of the return does not warrant the application of the 10-year prescriptive period. Petitioner argued that the 3-year prescriptive period should be applied and only when the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities that the exceptional 10-year prescriptive period be applied.

Petitioner likewise insists that the returns were not inherently false by themselves, and what was actually false was the erroneous claiming of input tax by some of petitioner's client based on the receipt issued for the premium payments.

Moreover, petitioner insists on the application of the Winternitz case which ruled that it is the insurance company that is liable for the VAT on premium payments and that the 50% surcharge is not applicable as mere mistake or falsity in the returns is not enough. Petitioner argued that to justify the imposition of surcharge proof of actual fraud or filing of a false return with the intent to evade taxes is required.

We resolve.

The output-input mechanism under the Value Added Tax (VAT) system and the VAT method of taxation thereon is invoice based. Thus, the Supreme Court in the case of Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue[6], explained the importance of an invoice on how the output-input mechanism works under the VAT system, to wit:

> *"The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is*

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[5] En banc Docket p. 12.
[6] G .R. No. 178090, February 8, 2010.

> *invoice-based, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports. For example, when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged. For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed."*

In this case, following findings of facts[7] of the Second Division of this Court are undisputed,

1. Petitioner issued VAT official receipts to its clients on the gross amount of premiums collected;

2. Petitioner failed to report the said gross amount in its VAT returns, which resulted to substantial underdeclaration on sales in the amount of P22,556,499.30, which is more than thirty percent (30%) of its taxable sales for 2006;

3. The said underdeclaration arose from respondent's finding that petitioner's gross sales amounted to P44,182,224.98, which was arrived at using the computerized matching conducted by the BIR on data provided by third party sources (purchases submitted by petitioner's customers) per the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Marching-HOC Data Program; and

4. The latter figure was then compared with the amount of P21,625,725.68 reported per VAT returns resulting in an undeclared sales collection of P22,556,499.30.

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[7] Division Resolution dated January 30, 2015, p4.

In defense, petitioner argued that the returns are not false by themselves as the mistake was merely brought about by the alleged erroneous claim of input VAT by some of petitioner's clients or the erroneous issuance of its own original receipt on premium payments.

However, records disclosed that petitioner failed to present documentary evidence to refute the existence of the said underdeclared gross receipt/sales. Specifically, petitioner failed to present documentary evidence that the substantial underdeclaration on sales in the amount of P22,556,499.30 which was arrived at using the computerized matching conducted by the BIR on data provided by third party sources (purchases submitted by petitioner's customers) per the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Marching-HOC Data Program, are false and incorrect. Also there is no documentary evidence to prove and identify the alleged wrongfully issued own original receipt on insurance premium of other insurance company. Thus, between the mere testimony of the alleged erroneous claim of input VAT by some of petitioner's clients or the alleged erroneous issuance of its own original receipt on the insurance premium of other insurance company and the VAT official receipt presented before this Court's Division, the VAT official receipt should be given more evidentiary weight.

Succinctly, petitioner failed to identify the alleged wrongfully issued original receipts on insurance premium of the insurance company. Among petitioner's primary purposes is to act as insurance and/or reinsurance brokers for life and non-life companies, and to engage in the general business of insurance general agents and/or general managers. Concomitantly, we cannot just rely on testimony that petitioner wrongfully issued original receipts on insurance premium of the insurance company in the absence of documentary evidence to prove otherwise. Thus, we find that the Court's Division aptly ruled as follows:

> "xxx, perusal of petitioner's documents reveals that it issued VAT official receipts to its clients on the gross amount of premiums collected from which the latter claimed their input VAT as gleaned from the Details of Taxpayer's Customers' Records. Hence, although petitioner, as an insurance broker, simply liaise between the clients

> and the insurance companies, it becomes rightfully liable to output tax on the gross premiums collected for issuing VAT official receipts for the said premiums and considering that the clients claimed the input tax based on the gross premiums reflected on the VAT official receipts issued to them. It bears stressing that the VAT imposed on the sale of goods or properties and sale of services and use or lease of properties under Sections 106 and 108 of the NIRC of 1997, as amended, is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. Thus, for the same transaction, the output VAT of the seller becomes the input VAT of the purchaser. The only means of communicating this shifting is the VAT-registered official receipt (in the case of sale/purchase of services and use or lease of properties) or sales invoice (in the case of sale/purchase of goods or properties) issued in accordance with Sections 113 and 237 of the NIRC of 1997, as amended"[8]

Suffice it to say, the issuance of invoice are designed to have an orderly VAT system, thus, the invoicing requirements under the VAT law and regulations should be strictly complied with to ensure proper payment of taxes.

To reiterate, petitioner failed to report the gross amount of VAT official receipt in its VAT returns, which resulted to substantial underdeclaration on sales in the amount of P22,556,499.30, which is more than thirty percent (30%) of its taxable sales for 2006. The said underdeclaration arose from respondent's finding that petitioner's gross sales amounted to P44,182,224.98, which was arrived at using the computerized matching conducted by the BIR on data provided by third party sources (purchases submitted by petitioner's customers) per the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Marching-HOC Data Program. These findings of fact clearly show that petitioner filed a false return and the application of the 10-year prescriptive period.

In the case of Samar-I Electric Cooperative vs. Commissioner of Internal Revenue[9], the Supreme Court had the occasion to clarify the application of the 10-year prescriptive period in cases of (1) false return, (2) c

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[8] Supra. Note 2, Decision Dated October 10, 2014, p. 17-18.
[9] G.R. No. 193100, December 10, 2014.

fraudulent return with intent to evade tax, and (3) failure to file a return, to wit:

> *"xxx [T]he proper and reasonable interpretation of said provision (Section 222 of NIRC) 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.*
>
> *The ordinary period of prescription of 5 years (now 3 years) within which to assess tax liabilities under Sec. 331 (now Section 203) 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 (now Section 222), from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced. 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 (now Section 222) 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."*

Evidently, we find no merit on petitioner's arguments and affirm the application of the 10-year prescriptive period and 50% surcharge. This Court's Division correctly ruled as follows:

> *"Records support the fact that there is falsity in the*

VAT returns; thus, prescription is ten (10) years counted from discovery of the falsity.

There is falsity in the VAT returns; thus, prescription is ten (1 0) years counted from discovery of the falsity. There is falsity in the 2006 VAT returns filed by petitioner by reason of its failure to report the whole amount. of its sales in its VAT returns despite the issuance of VAT official receipts on the same. This fact is not based on mere allegation but is amply substantiated by the records in this case. As discussed in the assailed Decision of this Court, viz:

> *"However, perusal of petitioner's documents reveals that it issued VAT official receipts so to its clients on the gross amount of premiums collected from which the latter claimed their input VAT as gleaned from the Details of Taxpayer's Customers' Records. Hence, although petitioner, as an insurance broker, simply liaise between the clients and the insurance companies, it becomes rightfully liable to output tax on the gross premiums collected for issuing VAT official receipts for the said premiums and considering that the clients claimed the input tax based on the gross premiums reflected on the VAT official receipts issued to them.*
>
> *It bears stressing that the VAT imposed on the sale of goods or properties and sale of services and use or lease of properties under Sections 106 and 108 of the NIRC of 1997, as amended, is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. Thus, for the same transaction, the output VAT of the seller becomes the input VAT of the purchaser. The only means of communicating this shifting is the VAT-registered official receipt (in the case of sale/ purchase of services and use or lease of properties) or sales invoice (in the case of sale/purchase of goods or properties) issued in accordance with Sections 113 and 237 of the NIRC of 1997, as amended."*

Petitioner issued VAT official receipts to its clients on the gross amount of premiums collected but failed to report the said gross amount in its VAT returns, which resulted to substantial underdeclaration on sales in the amount of P22,556,499.30, which is more than thirty percent (30%) of its taxable sales for 2006. The said underdeclaration arose from respondent's finding that *petitioner's gross sales amounted to P44,182,224.98, which was arrived at using the computerized matching conducted by the BIR on data provided by third party sources (purchases submitted by petitioner's customers) per the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Marching-HOC Data Program. The latter figure was then compared with the amount of P21,625,725.68 reported per VAT returns resulting in an undeclared sales collection of P22,556,499.30.*

The Court is not persuaded with petitioner's argument that the 10-year prescriptive period should not be applied since the government was not placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities. In the case of Aznar, a false return has been defined as a deviation from the truth or fact, whether intentional or not. In this case, records reveal that sales collection of P22,556,499.30 was not reflected in petitioner's VAT returns, showing that there is deviation from the truth.

The pronouncement in the case of Holiday Inns (Phils) Inc. vs. Commissioner of Internal Revenue by the Court of Appeals fortifies the precept that a false return merely implies a deviation from the correct tax, viz:

> *"This Court agrees with the CTA that the ten-year period of limitation should apply. The falsity of the VAT return filed by HIPI is established by the fact that in its 1995 Annual Income Tax Return, HIPI's declared gross income from sale of services representing management fees was higher than the taxable sales reported in its VAT returns by P269,967.02. This was not denied by HIPI albeit it claimed good faith in not declaring the said amount. That notwithstanding, this Court is not inclined to sustain HIPI's defense of good faith, otherwise, any taxpayer filing a false return can easily escape liability. While there may be truth to HIPI's claim that it had no malicious intent to evade payment of the tax, this does not preclude a finding of a false return. This is because while a fraudulent return implies a malicious and deliberate intent to evade the payment of the tax, a false I return merely implies a deviation from the correct amount of the tax. That the 50% surcharge was not imposed does not mean that the return filed by HIPI was correct. In fact, the 30% threshold on substantial underdeclaration under Section 248(R) of the Tax Code is but a mere prima facie presumption of the filing of a false or fraudulent return. Thus, the fact that HIPI underdeclared 5% only of its total sales*

does not mean that it did not file a false return. To sustain HIPI's interpretation would certainly be absurd." (Emphasis Supplied)

*Moreover, petitioner failed to present evidence to refute the existence of the said undeclared **gross receipts/sales** and merely argued that the returns are not false by themselves as the mistake was merely brought about by the alleged erroneous claim or input VAT by some of petitioner's clients. To reiterate, although petitioner, as an insurance broker, may have simply liaised between the clients and the insurance companies, it becomes rightfully liable to output tax on the gross premiums collected for issuing VAT official receipts for the said premiums and considering that the clients claimed the input tax based on the gross premiums reflected on the VAT official receipts issued to them. Furthermore, '[a]s a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor or the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case or liability on the part or 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 Bureau or Internal Revenue (BIR) is correct, and that in preparing the same, the BIR personnel regularly performed their duties.'*

In view of the above-stated computation of respondent which resulted in undeclared gross receipts in the amount or P22,556,499.30, and considering further petitioner's failure to present evidence to refute the existence or the said undeclared gross receipts, the Court therefore agrees with respondent's findings that there was an understatement of petitioner's VAT sales collections in 2006 and such understatement makes petitioner's VAT returns for the said year false. Thus, the ten-year prescriptive period provided under Section 222 of the 1997 NIRC, as amended, applies.

In light of the foregoing, the Court stands by its affirmation of respondent's decision and assessment against petitioner for deficiency VAT in the amount of PI,678,203.55 for taxable year 2006 resulting from substantial underdeclaration of sales.

Anent the imposition of the 50% surcharge under Section 248 (B) of the 1997 NIRC, the Court finds the same to be in order. Section 248 (B) is clear on the imposition of penalty of 50% of the tax or of the deficiency *in case a false return is willfully made. In this instance, false returns were willfully made, this is evident from petitioner's own admission that its VAT returns only reflected its income, which consists only of commissions. Verily, petitioner did not report in its VAT returns the gross amount of premiums reflected in the VAT official receipts it issued to its clients."*[10]

In fine, we find no cogent reason to reverse the Second Division's findings.

WHEREFORE premises considered, the petition is **DENIED** for lack of merit. The Decision of the Second Division of this Court in CTA Case No. 8203, promulgated on October 10, 2014 and its Resolution, promulgated on January 30, 2015, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

(INHIBITED)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(WITH DISSENTING OPINION)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ON OFFICIAL LEAVE
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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[10] Supra. Note3.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

LACSON & LACSON INSURANCE BROKERS, INC.,
Petitioner,

-versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1272
(CTA Case No. 8203)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Ringpis-Liban, JJ.

Promulgated:

OCT 04 2016 3:20 p.m.

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DISSENTING OPINION

BAUTISTA, J:

With all due respect to my esteemed colleagues, I must dissent on the Decision of the majority of the Court.

Petitioner argues that mere falsity of returns does not warrant the automatic application of *Section 222 of the 1997 NIRC,* absent the showing that the falsity was intentional or was of such nature that the government was prevented from investigating or making the assessment within the ordinary period of three (3) years; and that assuming that mere falsity of returns alone suffices to warrant the applicability of *Section 222,* the mistake was brought about by the erroneous claim of input tax made by some of its clients based on the receipts that it issued for premium payments actually due to, and received by the concerned insurance companies; that respondent categorically admitted that the challenged deficiency VAT assessment arose merely from mistakes; and that the *prima facie* presumption is rendered totally irrelevant and inapplicable by respondent's own recognition and admission that there is, in fact, no actual fraud or intent to deceive or evade to pay taxes on the part of petitioner.

The assessment is devoid of factual and legal basis, and therefore null and void.

Petitioner's total sales in the returns amounted to Php21,625.725.68. However, the Reconciliation of Listing for Enforcement ("RELIEF") and Third Party Matching - BOC Data Program, which was based on the summary list of purchases submitted by petitioner's customers, resulted to a total sales *per* audit amounting to Php44,182,224.98[1] on the ground that some of petitioner's insured clients credited their input VAT against petitioner.[2]

Hence, petitioner was assessed for deficiency VAT based on the alleged underdeclared amount of Php22,556,449.30 (Php44,182,224.98 less Php21,625.725.68).

The applicable provision is *Section 108(A) of the 1997 NIRC,* which imposes VAT on sales of services based on the "*gross receipts,*" to wit:

> SECTION 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied: xxx

[1] *Records, Vol. 3, Exhibit* "DDD," pp. 1243-1246.
[2] *Id., Vol. 4, Decision,* p. 1633.

xxx xxx xxx

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including xxx

The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.[3]

Accordingly, the basis for the imposition of the VAT rate is the "*gross receipts*," which includes the contract price, compensation, service fee, rental or royalty, materials supplied and deposits/advanced payments received for services performed or to be performed.

During the trial, it was established that petitioner is an insurance broker and that it derives income mainly from commissions upon remittance of premiums to insurance companies. The Court in Division recognized this when it held that:

From the foregoing, an insurance broker acts in between the insured, from whom premium payments are collected, and the insurance company, for whom the premium payments are remitted. It merely collects insurance premiums from the insured client for and in behalf of the insurance company and derives income mainly from commissions upon remittance of premiums to the latter.

Clearly, petitioner, as an insurance broker is subject to VAT on the commission income it earned and not on the premium payments collected from clients.[4]

In explaining the discrepancy between the amount of sales in the VAT returns and the audited amount, petitioner attributed the same to premiums it collected from insured clients that were

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[3] Underscoring ours.
[4] *Records, Vol. 4, Decision,* p. 1648.

ultimately remitted to various insurance companies, the latter then issued ORs to petitioner and not to the insured clients.

Court-appointed Independent Certified Public Accountant ("ICPA") Atty. Rosario S. Bernaldo ("Atty. Bernaldo") explained petitioner's accounting process in her ICPA Report[5] as follows:

> II. <u>[Petitioner's] Accounting Process</u>
>
> In order to fully appreciate the financial reporting and tax reporting method of [petitioner], we walked [through] its accounting process for 2006. We established the following:
>
> A. Recording of transaction starts upon issuance of billing invoices for the insurance premiums to the insured clients and the entry is generally as follows:

Premiums Receivable	xx	
Premiums Payable		xx
Commission Income		xx

> B. Upon collection, [petitioner] issues VAT official receipts (OR) to VAT-registered clients or non-VAT OR for non-VAT registered clients and the entry is as follows:

Cash	xx	
Premiums [P]ayable	xx	
Premiums Receivable		xx

> C. Upon remittance of insurance premium collected to the insurance company, the entry is as follows:

Premiums Payable	xx	
Income tax withheld *(creditable withholding tax)*	xx	
Cash		xx
VAT Payable		xx

> Based on the foregoing, [petitioner] recognizes its output VAT on commission upon remittance of the insurance premium collected to the insurance company. [Petitioner] has 90 days to remit its collection to the insurance company. Accordingly, VAT on commission income is recognized upon remittance to match with the insurance company's recognition of its input VAT.

[5] *Id., Vol. 3, Exhibit "JJJ," ICPA Report,* p. 1378.

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Petitioner received commissions for being an insurance broker, hence, said commissions were received in exchange for brokerage services, subject to VAT and were correctly reflected in the returns as income. As to premiums received by petitioner from insured clients, the insurance services for which premiums were paid were rendered by the insurance companies themselves. Therefore, petitioner should not be the one liable for VAT on said premiums.

In fact, ICPA Atty. Bernaldo testified through her Judicial Affidavit[6] that based on the examination of petitioner's documents, the insured clients should not have claimed their input VAT against petitioner. Pertinent portions of Atty. Bernaldo's Judicial Affidavit are quoted hereunder, *viz:*

> Q: What were your findings and observations with respect to the claim of input VAT by various insured clients on the whole amount of premium payments made by the various insured clients against [] petitioner?
>
> A: An Examination of the BIR's *Details of Taxpayer's Customers' Records* shows that there were insured clients who erroneously claimed their input VAT against [petitioner]. Of the total *"Gross Purchases of Purchaser" per* BIR's *Details of Taxpayer's Customers' Records* amounting to Php32,234,275.19, Php20,690,472.52 pertains to the insured clients.
>
> Based on our understanding of [petitioner]'s accounting system and examination of supporting documents, we believe that the insured clients should not have claimed their input VAT against [petitioner], as insurance broker, but should have been claimed against the insurance companies.
>
> Based on our samples, billed and collected premiums from insured clients were not considered and taken as [petitioner]'s sales/income but were actually payable to the insurance companies and to which the said premium payments were subsequently remitted. In the sampling that we made, the insurance companies issued VAT official receipts to [petitioner] on the total amount remitted. [Petitioner]'s sales/income is limited to the commissions earned from rendering of services to insurance companies and which it declares for VAT purposes upon remittance of the premiums to the respective insurance companies.

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[6] *Records, Vol. 3, Exhibit "HHH," Judicial Affidavit of Atty. Rosario S. Bernaldo,* pp. 1275-1284.

This testimony was not challenged by respondent during the trial, neither did she (now "he") present any evidence that would controvert this statement. No less than respondent's witness Revenue Officer Elisa F. Guilalas ("RO Guilalas") testified that petitioner erroneously issued its OR when selling insurance policies. Pertinent portions of RO Guilalas' testimony[7] are quoted as follows:

> Q: So of course you will admit that the assessment was basically due to error on the part of the clients of the petitioner for claiming Input VAT against the petitioner and not against the insurance company?
>
> A: No, [petitioner] is using the VAT invoice when selling [] insurance to other company [*sic*]. If a broker sells an insurance to a company[,] the broker should issue the VAT invoice of a certain insurance, not [its] OR. According to Revenue Regulation[s No.] 16[-]05, the taxpayer who issue[s] a VAT invoice is liable to VAT and the buyer, the taxpayer who received the VAT invoice, is also powered to claim the Input VAT. In your case, [petitioner] erroneously issued [its] OR [] when selling insurance policies.
>
> If you are a broker you should issue an OR of a certain insurance company to identify the premium received by the insurance company. In this case, you're telling [*sic*] that [petitioner] received only commission[s] for a certain period [for selling] insurance to other company [*sic*]. For example, you sell PNB insurance to [a] certain company and you sold it [for] one hundred thousand (100,000) premium, [petitioner] should not issue [its] OR [] but the PNB insurance [OR] to identify the premium received or sold by [] PNB insurance. And to identify clearly the income or commission received by [petitioner], it should issue [its] OR for [its] commission received for that particular insurance. There [was] a mistake in issuing the OR claiming that [it has] a BIR ruling approved by the [*sic*] but this is not [an] approved invoicing requirement.
>
> xxx xxx xxx
>
> Justice Castaneda Q: That means that you assessed [petitioner] on the basis of the premiums which they invoiced?

[7] *Transcript of Stenographic Notes ("TSN") Folder, July 22. 2013 Hearing*, p. 9.

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A: Yes, they wrongly used their invoice, they should issue [the] invoice [*sic*] [of the insurance] company, [they can] only issue invoice [*sic*] in claiming [their] commission. In that case, you cannot identify clearly their total commission.

As a service, [they] should issue invoice for [their] services or commission only[,] not the premium. That is why [] the buyer can claim the whole [] input eh, oh, the one who issued [the] invoice [*sic*] should pay back. Under RR [No.] 16[-]05, VAT invoice issued should be liable to pay back.

Justice Castaneda Q: So that is the basis of your assessment?

A: Yes, yes, yes.

It is clear that the only basis of the assessment is the fact that petitioner issued ORs, which were then used by some of its clients to claim input VAT; despite the phrase "For VAT reporting please indicate the name of the above insurance company as the source of your output VAT," prominently and clearly printed in all the ORs of petitioner, and the oral reminder it gives to its insured clients that input VAT should be claimed against the insurance company.[8]

Despite having the knowledge that petitioner wrongly issued its own OR on premium payments, the BIR still insisted on assessing petitioner. The BIR could have gotten the needed information if it only granted petitioner's request to issue orders to compel the insurance companies to provide the needed documents. *Section 5 of the 1997 NIRC*, equips respondent with the necessary powers to obtain the information she (now "he") needs.

Section 5 of the 1997 NIRC, reads as follows:

SEC. 5 *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons* - <u>In ascertaining the correctness of any return</u>, or in making a return when none has been made, <u>or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized</u>:

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[8] *Id., TSN taken during the hearing on July 22. 2013*, p. 14.

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(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the *Bangko Sentral ng Pilipinas* and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and

(E) xxx[9]

Records show that petitioner sought the intervention of the BIR through its letter dated November 4, 2010[10], requesting the latter to issue the proper orders to the insurance companies for whom petitioner acts as broker in order to get the documents that are being required by RO Guilalas, the RO in charge of its case. This could have been the opportunity for respondent to look into the insurance companies with which petitioner had brokerage agreements covering the taxable year. Instead, the BIR opted to deny such request.

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[9] Underscoring ours.
[10] *Records, Vol. 3, Exhibit "S,"* pp. 1091-1096.

In addition, petitioner relied in good faith on *BIR Ruling No. DA-428-2003*[11] dated November 28, 2003, wherein the BIR, through then Commissioner Buñag, ruled that the LN arose out of the Summary List of Purchases submitted by one of the entities who bought insurance through it; that it is common practice in the insurance industry for brokers to simply liaise between its clients and the insurance companies and to bill and collect the insurance premiums.[12] *BIR Ruling No. DA-428-2003* cited *VAT Ruling No. 030-97* stating that "the OR issued by the broker on the premium[] payment by the assured cannot be used to support the assured's input tax. This is because the broker is subject to output tax only on the commission[s] received and not on the premium payment. It is the insurance company that is liable for the VAT on premium income and therefore such insurance company should issue the VAT receipt which can be the basis for a VAT input credit." *BIR Ruling No. DA-428-2003* cancelled the LN in that case for being erroneous. The existence of said BIR Ruling is uncontroverted by respondent, who did not deny its existence, neither did she (now "he") present any new BIR Ruling that would revoke said ruling.

Further, petitioner offered in evidence the letter[13] dated March 10, 2005, from then Commissioner Buñag, which is quoted hereunder:

> xxx In support, the ruling cited Ruling No. 030-97 which does state that the [OR] of the insurance company is what supports a claim for an input tax. It was cited, however, primarily to show that the broker simply mediates in the transaction and that the transaction is between the assured and the insurance company and thus the payor to Astrazeneca is the assured, and not you, the insurance broker.
>
> You advise us now that <u>what happens in practice is that you issue your own receipt to your clients, the assureds and the insurance company issues its receipt to you in bulk, that is, for all the payments from different clients. The insurance company does not issue another receipt to your particular client.</u>
>
> In reply, <u>please be advised that while Ruling No. 030-97 does state that the [OR] of the insurance company supports the claim for input tax, the rule and the existing practices must be aligned with each other provided the law is complied with</u>

[11] *Id., Exhibit "T,"* pp. 1097-1098.
[12] *Id.*
[13] *Records, Vol. 3, Exhibit "W,"* pp. 1101-1102.

> and the payment of the input tax is established satisfactorily. It is an established fact that payments are coursed through you by your clients to whom you issue your receipt. Such payments are remitted to the insurance company which issues you a receipt for all the payments you remit for various clients. Presumably, you are duly authorized by your clients as well as the insurance company to render this service, which is apparently done for the convenience of the client and the insurance company. We believe that your receipt, coupled with the authorization by the insurance company for you to receive the premium payments of your clients for remittance to it, is sufficient compliance with the requirements of the law and establishes the payment of the input tax satisfactorily. After all, payment to the agent is payment to the principal. It is suggested that the authorization from the insurance company indicate its TIN and VAT registration number. Likewise, your receipt to your client should indicate the insurance company to which the payment will be remitted, plus the latter's TIN and VAT registration number.[14]

Furthermore, there is no law that supports the assessment made by the BIR. *Section 113(D)(2)*[15] *of the 1997 NIRC* and *Section 4. 113-4*[16], *Revenue Regulations ("RR") No. 16-2005,* are not applicable to the instant Petition for Review because petitioner is a VAT-registered taxpayer, and the transaction involved is not VAT-exempt. Neither is petitioner claiming that the transaction is VAT exempt. It is basic in statutory construction that when the statute is clear and free from

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[14] Underscoring ours.

[15] Sec. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

xxx xxx xxx

(*D) Consequences of Issuing Erroneous VAT Invoice or VAT Official Receipt.* - xxxxxx; (2) If a VAT-registered person issues a VAT invoice or VAT-official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the terms 'VAT-exempt sale', the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply.

[16] Section 4. 113-4. *Consequences of Issuing Erroneous Vat Invoice or VAT Official Receipt.*

A) *Issuance of a VAT Invoice or VAT Receipt by a non-VAT person.* - If a person who is not VAT-registered issues an invoice or receipt showing his TIN, followed by the word "VAT", the erroneous issuance shall result to the following:

1)The non-VAT person shall be liable to:

i) The percentage taxes applicable to his transactions;

ii) VAT due on the transactions under Sec. 106 or 108 of the Tax Code, without the benefit of any input tax credit; and

iii) A 50% surcharge under Sec. 248(B) of the Tax Code;

2)VAT shall be recognized as an input tax credit to the purchaser under Sec. 110 of the Tax Code, provided the requisite information required under Subsection 4.113(B) of these Regulations is shown on the invoice or receipt.

B) *Issuance of a VAT Invoice or VAT Receipt on an Exempt Transaction by a VAT-registered Person* - If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the words "VAT-exempt sale", the transaction shall become taxable and the issuer shall be liable to pay VAT thereon. The purchaser shall be entitled to claim an input tax credit on his purchase.

ambiguity, it must be given its literal meaning and applied without attempted interpretation.[17]

Based on the foregoing discussion, the undersigned finds the assessment without factual basis since the income it wishes to subject to deficiency VAT are premium payments that were remitted to the insurance companies and for which no service was rendered by petitioner. To reiterate, petitioner had nothing more to declare other than the income it earned from its commissions as an insurance broker for the various insurance companies.

Moreover, the assessment has no legal basis since it is contrary to *Section 108(A) of the 1997 NIRC, BIR Ruling No. DA-428-2003* and *VAT Ruling No. 030-97*. Hence, void.

Indeed, tax assessments done by examiners are presumed correct and made in good faith. In the absence of proof of any irregularity in the performance of official duties, an assessment will not be disturbed. But this a disputable presumption, and in order to determine that there was indeed good faith, it must be made in accordance with existing laws, rules and regulations.

The Supreme Court, in the case of *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[18], citing *Commissioner of Internal Revenue v. Metro Star Superama*, held that, "in balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure."

[17] *Milagros E. Amores v. House of Representatives Electoral Tribunal and Emmanuel Joel J. Villanueva*, G.R. No. 189600, June 29, 2010, 622 SCRA 593.
[18] G.R. No. 197515, July 2, 2014.

In the case at bar, it would be the height of injustice to require petitioner to pay VAT for the premiums that it ultimately remitted to the insurance companies.

Accordingly, I vote to **GRANT** the Petition for Review.

LOVELL R. BAUTISTA
Associate Justice