REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MARINA SQUARE PROPERTIES, INC.	**CTA CASE NO. 10349**
Petitioner,	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	NOV 12 2024 3:30 p.m.

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RESOLUTION

FERRER-FLORES, J.:

Submitted before this Court is respondent's **Motion for Reconsideration (re: Decision dated 11 April 2024)** (*Motion*) filed on May 3, 2024, with petitioner's **Comment (Re: Motion for Reconsideration dated May 2, 2024)** (*Comment*) filed on May 27, 2024.

On April 11, 2024, the Court promulgated a Decision cancelling the assessment on deficiency income tax, expanded withholding tax (EWT), withholding tax on compensation (WTC), value-added tax (VAT), and documentary stamp tax (DST) against petitioner, for violating the latter's right to due process of law by failing to state the facts and law upon which said assessments were based, the dispositive portion of which states as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency income tax, expanded withholding tax, withholding tax on compensation, value-added tax and documentary stamp tax assessments, including the imposed surcharge, interests, and compromise penalties, in the aggregate amount of **₱801,308,250.45**, for taxable year 2014, are **CANCELLED and WITHDRAWN**.

> Moreover, the Formal Letter of Demand dated October 26, 2017 and the Final Decision on Disputed Assessment dated July 30, 2020 issued by the Bureau of Internal Revenue against petitioner are **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED.**

In his *Motion*, respondent assails the above Decision by insisting that the deficiency assessments were issued within the prescriptive period provided by law and that he did not violate petitioner's right to due process.

Respondent contends that while, admittedly, Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for a three (3)-year prescriptive period in conducting assessments, the present case however falls within the extraordinary 10-year prescriptive period under Section 222 of the NIRC of 1997, as amended, specifically, for filing a false return. Respondent expounds that, as per its income tax return (ITR), petitioner declared a taxable income-loss of (₱1,778,726.00); however, upon investigation, the Bureau of Internal Revenue (BIR) found a taxable income of ₱948,846,305.38 – which is way beyond the 30% substantial underdeclaration that constitutes a *prima facie* evidence of a false return under Section 248(B) of the NIRC of 1997, as amended.

Moreover, respondent also asserts that the Preliminary Assessment Notice (PAN) dated July 11, 2017, Formal Letter of Demand and Assessment Notices (FLD/FAN) dated October 26, 2017, and Final Decision on Disputed Assessment (FDDA) issued against petitioner are all compliant with the basic requisites mandated by Section 228 of the NIRC of 1997, as amended. Respondent cites the case of *Commissioner of Internal Revenue v. Hon Raul M. Gonzalez, et al.,*[1] wherein the Supreme Court substantially defined a notice of assessment as a declaration of deficiency taxes issued to a taxpayer and the formal letter of demand calling for the payment of the deficiency tax shall state the fact, law, rules and regulations or jurisprudence on which the assessment is based. As such, based thereon, respondent maintains that he has complied with all of the requirements for a validly issued assessment as defined by law and jurisprudence as shown in the assessment notices served upon petitioner. Respondent further emphasizes that there is a presumption in favor of the correctness of tax assessments.

Lastly, respondent begs to differ with the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq. ("Avon" case* hereafter for brevity),[2] which was heavily relied on by the Court in arriving at its conclusion in the assailed Decision. Respondent argues that there is no

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[1] G.R. No. 177279, October 13, 2010.
[2] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

"protest" to consider at the PAN stage of the assessment – which he is obliged to resolve – considering that what the law refers to is the protest that shall be filed within 30 days from receipt of the FLD/FAN. As such, respondent insists that petitioner's contentions were all properly addressed and that petitioner's failure to refute his findings led to the issuance of the assessment notices and the FDDA.

On the other hand, in its *Comment*, petitioner points out that the extraordinary 10-year prescriptive period under Section 222(a) of the NIRC of 1997, as amended, is not applicable to this case. Petitioner contends that it is already established that falsity and/or fraud with respect to any tax return cannot be presumed. Petitioner further asserts that only intentional errors in the return may justify the application of the extraordinary 10-year prescription.

Petitioner likewise posits that respondent's deficiency tax assessments violated its right to due process since from the face of the FLD and FDDA alone, it is immediately apparent that petitioner was not truly given an opportunity to be heard. Petitioner argues that the filing of its reply to the PAN and administrative protest was just a futile step towards the inevitable issuance of the FLD and FDDA as respondent merely brushed aside the substantive arguments raised therein and the accompanying documents it submitted in support thereof, and issued the FLD and FDDA without citing the facts and explaining the reasons upon which he is rejecting petitioner's arguments.

After due consideration, the Court finds respondent's *Motion* bereft of merit.

Notably, the arguments presented by respondent in his Motion are essentially rehashes of what have already been considered, weighed, and resolved by the Court in the Decision.

Again, the general rule is that the BIR has only three years counted from the date of actual filing of the return or from the last day prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax. Section 203 of the NIRC of 1997, as amended, provides as follows:

> **SEC. 203.** *Period of Limitation upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be

> begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (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.

However, the exceptions provided under Section 222(a) of the NIRC of 1997, as amended, affords respondent a prescriptive period of 10 years after the discovery of falsity, fraud or omission, to wit:

> **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)*

In relation thereto, Section 248(B) of the NIRC of 1997, as amended, further provides as follows:

> **SEC. 248.** *Civil Penalties.* –
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> x x x
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> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or **in case a false or fraudulent return is willfully made**, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: ***Provided,* 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**. *(Emphases supplied)*

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From the foregoing provisions, the extraordinary prescriptive period of 10 years may be applied if there is a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions exceeding 30% of that declared per return, since the same constitutes *prima facie* evidence of a false or fraudulent return.

However, in the case of *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*,[3] the Supreme Court held that the Commissioner of Internal Revenue's failure to establish that the misstatement in the return was willful or intentional cannot justify the application of the 10-year period, to wit:

> The CIR relied wholly on the presumption of falsity or fraud in justifying its application of the extraordinary 10-year period. **Aside from its repeated assertion that the underdeclaration was substantial in amount, the CIR does not point to any other circumstance or evidence that could establish that MPRC's failure to report the subject interest income in its VAT returns was willful or intentional.** That a misstatement has been sizeable cannot, on its own, be regarded as sufficient proof of an intention to evade tax.
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> **The Court underscores that only intentional and deliberate errors may render the return false for purposes of invoking the extraordinary period under Section 222(a).** Certainly, a return may contain errors. However, if the CIR fails to establish that the misstatement was willful on the part of the taxpayer, plain errors — such as that committed by MPRC but expressly recognized by the tax court as not arising from a deliberate attempt to evade tax — cannot justify the application of the 10-year period. *(Emphases supplied)*

Since respondent failed to offer any evidence to prove that petitioner's VAT, EWT, and WTC returns for taxable year 2014 were false or fraudulent, the extraordinary 10-year period under Section 222(a) of the NIRC of 1997, as amended, cannot be applied. Moreover, respondent also did not inquire into whether the misstatements in the tax return had been deliberate and intentional; instead, respondent merely relied on the presumption that arose from a substantial underdeclaration. To stress, the Court has refrained from sustaining findings of fraud upon circumstances which, at most, create only suspicion. The mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.[4] Hence, the ordinary prescriptive period of three years shall still apply.

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[3] G.R. No. 247737, August 8, 2023.
[4] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 04, 2021.

With regard to respondent's assertion that he did not violate petitioner's right to due process in issuing the PAN, FLD/FAN, and FDDA, the Court holds otherwise.

It must be emphasized that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy.[5] Incidentally, since the Supreme Court has already clearly declared in the *Avon* case that when respondent rejects the taxpayer's explanations, he must give the particular facts upon which his conclusion is based, and those facts must appear in the record, to wit:

> Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, **the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest**. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, 'The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple.' *(Emphasis supplied)*

Having declared as such, the Court is guided by the pronouncement made therein since there is only one Supreme Court from whose decisions all other courts should take their bearings.[6]

Also worth mentioning is that even assuming that the memorandum report that was formally offered by respondent cited the facts and the law that explained the basis of the assessment, the Court finds that the said Memorandum was only addressed to the OIC-Assistant Commissioner, and not to petitioner.

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[5] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July, 15, 2003.

[6] *Ibid.*

Again, administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.[7]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his *Motion for Reconsideration*, the Court finds no compelling reason to reverse or modify the Decision promulgated on April 11, 2024.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (re: Decision dated 11 April 2024)** is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

We Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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7 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, et seq., G.R. Nos. 201398-99 and 201418-19, October 3, 2018.