REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

## *Third Division*

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| **NEWSPAPER PARAPHERNALIA, INC.,** *Petitioner,* | **CTA CASE NO. 8599** Members: |
| *- versus -* | **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** and **RINGPIS-LIBAN,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | **Promulgated:** JAN 22 2016 2:15 p.m. |

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# *RESOLUTION*

*BAUTISTA, J:*

This resolves respondent's "Motion for Reconsideration" filed by registered mail on November 11, 2015; with petitioner's "Comment/Opposition (To Respondent's Motion for Reconsideration dated 11 November 2015)" ("Comment") filed by registered mail on December 4, 2015.

On October 19, 2015, the Court promulgated a Decision[1], the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED.** Accordingly, Final Assessment Notice with Demand Nos. F-049-LNTF-07-IT-050 and F-049-LNTF-07-VT-050, all dated June 6, 2011, assessing petitioner with deficiency income tax and value-added tax amounting to Php238,132.85 and Php601,859.39, respectively, [are] hereby **CANCELLED** and **WITHDRAWN** on account of prescription.

[1] *Records, CTA Case No. 8599,* pp. 585-610.
[2] *Id.,* p.609.

**SO ORDERED.**

In her Motion for Reconsideration, respondent alleges that the ten (10)-year prescriptive period applies because the returns filed by petitioner were false; that the declarations made therein were substantially deficient in amount and did not disclose the truth regarding the correct amount of income subject to tax compared to the amount remitted to the BIR; and prays for the Court to reconsider the Decision dated October 19, 2015 and to render a new one ordering petitioner to pay the deficiency income tax ("IT") and value-added tax ("VAT") for taxable year 2007.

On the other hand, petitioner counter-argues that respondent based its allegation (that petitioner filed a false return) on mere assumptions without presenting any proof, whatsoever, to substantiate its claim; that allegations of fraud or falsity must be established by clear and convincing evidence by the person alleging the same; that this is the first time respondent raised this argument; and that respondent did not impose the 50% surcharge for false or fraudulent return in the Final Assessment Notice ("FAN") indicating that there was no finding of falsity or fraud during the examination of petitioner's tax returns.

The Court finds no cogent reason to reverse or set aside the impugned Decision.

It is worthy to note that this is the first time respondent has raised the argument that petitioner filed a false return. A false return implies deviation from the truth, whether intentional or not.[3] There was no mention of respondent's findings that petitioner filed a false return in her Answer, nor was it mentioned by her lone witness in her Judicial Affidavit. Moreover, it was never mentioned in the preliminary assessment notice or in the FAN, as well as in the details of discrepancy attached thereto. Due process dictates that the taxpayer must be informed of the facts and the law upon which the assessment is made.[4] Furthermore, respondent did not present any evidence to substantiate its claim that petitioner filed a false return, neither did it impose the penalty of fifty percent (50%) of the

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[3] *Aznar v. CTA and CIR,* G.R. No. L-20569 August 23, 1974, 58 SCRA 519.
[4] *CIR v. Metro Star Superama, Inc.,* G.R. No. 185371, December 28, 2010, 637 SCRA 633.

tax or of the deficiency tax, pursuant to *Section 248(B)*[5] *of the 1997 National Internal Revenue Code ("NIRC")*. These circumstances, taken together, can only lead the Court to conclude that the argument raised by respondent in her Motion for Reconsideration is a mere afterthought, and thus, deserves scant consideration.

Our tax laws provide for a period within which the government can exercise its right to assess taxpayers for any deficiency tax. Under *Section 203*[6] *of the 1997 NIRC*, internal revenue taxes must be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes, primarily to safeguard the interests of taxpayers from unreasonable investigation.[7] Accordingly, the government must assess internal revenue taxes on time so as not to indefinitely extend the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.[8]

Thus, for failing to convince the Court that petitioner filed a false tax return, the Court finds the application of the exceptions

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[5] Section 248. *Civil Penalties*. - xxx (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return:*Provided, further*, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (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.
[6] 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. xxx.
[7] *Commissioner of Internal Revenue v. FMF Development Corporation*, G.R. No. 167765, June 30, 2008, 556 SCRA 698.
[8] *Id.*

provided for under *Section 222*[9] *of the 1997 NIRC,* unavailing in the instant case.

**WHEREFORE,** based from the foregoing, the "Motion for Reconsideration" is hereby **DENIED** for lack of merit. Accordingly, the Decision dated October 19, 2015 is hereby **AFFIRMED** and **UPHELD.**

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

[9] 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. xxx.