REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ROBERT CHRISTOPHER M. CARMONA, doing business under the name SAGA CASTING AND PRODUCTIONS,
Respondent.

CTA EB NO. 1324
(CTA Case No. 8484)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

DEC 20 2017 4:18 p.m.

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DECISION

Fabon-Victorino, J.:

In this appeal via a Petition for Review filed on June 18, 2015, the Commissioner of Internal Revenue (CIR) seeks to reverse and set aside the Decision[1] dated January 20, 2015 and the Resolution[2] dated May 28, 2015, promulgated by the Court in Division in CTA Case No. 8484 entitled *Robert Christopher M. Carmona, doing business under the name Saga Casting and Productions v. Commissioner of Internal Revenue*. The dispositive portion of the assailed Decision and Resolution read as follows:

Assailed Decision of January 20, 2015:

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[1] *En Banc* Docket, pp. 19-27.
[2] *En Banc* Docket, pp. 28-30.

> WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, the Final Assessment Notice dated July 25, 2011 and the attached Assessment Notice Nos. F-041-LNTF-07-VT-060 and F-041-LNTF-07-IT-060 assessing and demanding from petitioner the payment of deficiency income tax and VAT in the total amount of ₱32,981,458.90 for taxable year 2007 are hereby CANCELLED and WITHDRAWN.
>
> SO ORDERED.

Assailed Resolution of May 28, 2015:

> WHEREFORE, premises considered, the "Motion for Reconsideration (Re: Decision promulgated 20 January 2015)" is hereby DENIED for lack of merit.
>
> SO ORDERED.

THE FACTS AND THE PROCEEDINGS

Petitioner is the Commissioner of Internal Revenue empowered to act upon protests against preliminary and final assessments, as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent Robert Christopher M. Carmona, on the other hand, is the sole proprietor of Saga Casting and Productions, an entity engaged in the business of managing corporate affairs and events. It is registered with the Department of Trade and Industry (DTI) with business address at Unit 305, No. 3 Brixton Street, Barangay Kapitolyo, Pasig City.

On July 1, 2009, petitioner issued a Letter Notice (LN) No. 041-RLF-07-00-00015 to validate the discrepancies in the reported sales of respondent with that of the purchases of his customers, as shown below:

Per Summary List of Purchases submitted by your customers	54,047,436.36
Sales per Tax Returns filed	14,491,232.25
Under-declaration on Sales	39,556,204.11
Percentage (%) of Discrepancy	73.19

Attached to the said LN were the Details of Taxpayer's Customer Records.

On September 25, 2009, petitioner issued Letter of Authority (LOA) No. 00047206 and a Notice of Informal Conference due to respondent's failure to respond to the LN. As a result of the said investigation, respondent received on June 3, 2010 a Preliminary Assessment Notice (PAN) dated March 29, 2010, with attached "Details of Discrepancies" and "Details of Taxpayer's Customer's Records" issued by petitioner.

On May 12, 2011, petitioner issued an Amended PAN, with attached "Details of Discrepancies" which reduced the subject assessment.

On August 11, 2011, respondent received a FAN dated July 25, 2011 for alleged deficiency taxes for the year 2007 as follows:

I.	Value-Added Tax	₱18,106,645.69
II.	Income Tax	14,874,813.21
Total amount due		**₱32,981,458.90**

On September 9, 2011, respondent filed his protest against the FAN, pursuant to Section 228 of the NIRC of 1997, as amended.

The 180-day period from November 8, 2011, the date when respondent submitted supporting documents for its protest, lapsed without any action from the CIR.

On May 7, 2012, respondent filed a Petition for Review before the Court in Division docketed as CTA Case No. 8484.

On June 13,2012, petitioner filed his Answer to the Petition for Review basically arguing that the deficiency Value-Added Tax (VAT) and deficiency Income Tax (IT) assessments in the respective amounts of ₱18,106,645.69 and ₱14,874,813.21 were issued in accordance with Sections 31, 32, 106 and 108 of the NIRC of 1997, as amended, Revenue Memorandum Order No. 32-2007 and Third-Party Matching-Bureau of Customs Data Program and suffers no infirmity. The said assessments arose from the findings that there was a discrepancy between respondent's reported sales and the purchases of his customers unveiled in the Reconciliation of Listing for Enforcement and Third-Party Matching — BOC Data Program.

Further, there was forum-shopping that could vitiate the present case. Moreover, the subject tax assessments enjoy the presumption of correctness due to respondent's failure to present proof of error in the assessment.

After trial on the merits, the Court in Division promulgated the assailed Decision of January 20, 2015, granting respondent's Petition for Review and ordering the cancellation of the FAN dated July 25, 2011 assessing respondent of deficiency Income Tax and VAT in the total amount of ₱32,981,458.90.

In the similarly assailed Resolution of May 28, 2015, the Court in Division denied petitioner's *Motion for Reconsideration* filed on February 2, 2015, for lack of merit.

Hence, this appeal filed on June 18, 2015 by petitioner CIR.

In compliance with the Court *En Banc* Resolution[3] dated July 30, 2015, respondent, on July 22, 2016, filed a *Compliance and Manifestation with Entry of Appearance*[4] stating that he would no longer file any comment.

[3] *En Banc* Docket, pp. 36-37.
[4] *En Banc* Docket, pp. 57-59.

In a Resolution[5] dated August 25, 2016, the *Petition for Review* was given due course and the parties were directed to file their respective memoranda.

In a Resolution[6] dated November 29, 2016, the instant *Petition for Review* was submitted for decision with petitioner's Manifestation filed on September 14, 2016[7], stating that he is adopting his arguments in the Petition for Review as his Memorandum, and respondent's Memorandum[8] posted on October 28, 2016.

THE ISSUE

The lone issue raised by petitioner is as follows:

> WHETHER OR NOT THE FIRST DIVISION ERRED WHEN IT CANCELLED THE FINAL ASSESSMENT NOTICE DATED 25 JULY 2011 AND THE ATTACHED ASSESSMENT NOTICE NOS. F-041-LNTF-07-VT-060 AND F-041-LNTF-07-IT-060 ASSESSING AND DEMANDING FROM RESPONDENT THE PAYMENT OF DEFICIENCY INCOME TAX AND VAT IN THE TOTAL AMOUNT OF P32,981,458.90 FOR TAXABLE YEAR 2007 ON THE GROUND OF PRESCRIPTION.

Petitioner's arguments:

Petitioner insists that the assessment for deficiency taxes in the total amount of ₱32,981,458.90 was timely issued against respondent contrary to the finding of the Court in Division in the assailed Decision of January 20, 2015. Petitioner claims that his right to assess respondent was yet to prescribe when the impugned FAN dated July 25, 2011 was issued on the ground that under Section 222(a) of the NIRC of 1997, as amended, the period to assess, in a

[5] *En Banc* Docket, pp. 61-63.
[6] *En Banc* Docket, pp. 87-88.
[7] *En Banc* Docket, pp. 64-66
[8] *En Banc* Docket, pp. 76-84.

case where a false or fraudulent return with intent to evade tax is filed, as obtaining in the present case, is at any time within ten (10) years after the discovery of falsity, fraud or omission.

Petitioner argues that in the instant case, a preliminary review disclosed that respondent failed to declare his correct sales in his Income and VAT Returns resulting to a total discrepancy of ₱68,747,335.27 or equivalent to 400.72% undeclared sales, as provided by third party sources, specifically, from the Reconciliation of Listing for Enforcement Relief (RELIEF), Tax Reconciliation System (TRS) and Third-Party Matching - Bureau of Customs (TPM-BOC) Data Program. The said discrepancy in respondent's returns manifest a substantial under-declaration which demonstrate the falsity or fraud in the income or VAT returns with an intent to evade the payment of tax. Thus, the ten (10)-year period to assess under Section 222 should be applied.

Petitioner further argues that respondent did not submit any documentary evidence to overcome his findings. Therefore, the presumption of regularity and correctness of the assessment applies. In fact, even an assessment based on estimate is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously.[9]

Respondent's arguments:

Respondent, on the other hand, moves for the denial of the present Petition for being manifestly frivolous and completely devoid of merit. First, petitioner's arguments are mere rehash of the arguments he interposed in the Motion for Reconsideration he filed before the Court in Division on February 2, 2015. Second, petitioner's allegation that his Income and VAT Returns for 2007 are false and fraudulent is based merely on erroneous presumption as it is not substantiated by documentary or testimonial evidence. Fraud, according to respondent, is never presumed. It is a question of fact and the circumstances constituting fraud

[9] Marcos II v. Court of Appeals, G.R. No. 120880, June 5, 1997.

must be alleged and proved,[10] both of which petitioner failed to do.

RULING OF THE COURT EN BANC

A revisit of the record shows that petitioner's arguments in the instant Petition for Review were indeed a mere rehash of the arguments in the Motion for Reconsideration he filed before the Court in Division, which have been determined and passed upon by the Court in Division in the assailed Resolution of May 28, 2015. Nevertheless, the Court *En Banc* will address anew each of petitioner's arguments to put to rest the issues raised by petitioner.

Of critical concern for review and determination of the Court *En Banc* is the prescriptive period within which to assess respondent's IT and VAT deficiencies given the obtaining circumstances of the present case.

Petitioner argues that he had ten (10) years to assess respondent's IT and VAT deficiencies pursuant to Section 222 of the NIRC of 1997, as amended, considering the discrepancy in the latter's returns manifesting substantial under-declaration and falsity or fraud in the IT and VAT returns with an intent to evade the payment of tax.

Respondent, on the other hand, maintains that the regular three-year period to assess prescribed under Section 203 of the same Tax Code should apply as petitioner's allegation of falsity and fraud in the IT and VAT returns it failed is merely based on erroneous presumption *sans* any substantiation.

Section 203 of the NIRC of 1997, as amended, provides the general rule on the prescriptive period on the right of petitioner to assess tax. It states that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return provided that in case where a return is filed beyond the period

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[10] Corporate Investment Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 300 (CTA Case No. 6549), September 12, 2008.

prescribed by law, the three (3)-year period shall be counted from the day the return was filed.

The exception to the general rule is found in Section 222 (a) of the same Code which provides that in 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.

Thus ordinarily, petitioner has a period of 3 years within which to assess internal revenue taxes counted from the last day prescribed by law within which to file the necessary return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond the 3-year prescriptive period shall not be valid. Hence, settled is the rule that the government must assess internal revenue taxes on time so as not to extend indefinitely 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 reasonable period of time.[11]

Corollary to the foregoing is Section 74 of the NIRC of 1997, as amended, which provides that every individual subject of income tax shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. The amount of estimated income shall be paid in four (4) installments. The first installment shall be paid at the time of the declaration and the second and third shall be paid on August 15 and November 15 of the current year, respectively. The fourth installment shall be paid on or before April 15 of the following calendar year when the final adjusted income tax return is due to be filed.

With respect to period within which to file VAT returns, Section 114(A) of the NIRC of 1997, as amended, provides that every person liable to pay the VAT shall file a quarterly return of the amount of his gross sales or receipts within

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[11] Commissioner of Internal Revenue v. FMF Development Corporation, G.R. No. 167765, June 30, 2008.

twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer, provided however, that VAT-registered persons shall pay the value-added tax on a monthly basis. A taxpayer must file the VAT return within twenty-five days following the close of each taxable quarter.

Given the foregoing, the following are the reckoning dates and due dates for filing of respondent's Income Tax and VAT Returns, to wit:

<u>Income Tax</u>

Actual date of filing of respondent's Income Tax Return for CY 2007	Due date of filing of respondent's Income Tax Return for CY 2007	Last day of the 3-year period to assess under Section 203 of the NIRC of 1997, as amended	Date of issuance of FAN	Respondent's receipt of FAN
April 11, 2008	April 15, 2008	April 15, 2011	July 25, 2011	August 11, 2011

<u>Value-Added Tax</u>

<table>
<tr><th>Actual date of filing of respondent's Quarterly VAT Return for CY 2007</th><th>Due date of filing of respondent's Quarterly VAT Return for CY 2007</th><th>Last day of the 3-year period to assess under Section 203 of the NIRC of 1997, as amended</th><th>Date of issuance of FAN</th><th>Respondent's receipt of FAN</th></tr>
<tr><td>1st quarter: April 24, 2007</td><td>1st quarter: April 25, 2007</td><td>1st quarter: April 25, 2010</td><td rowspan="4">July 25, 2011</td><td rowspan="4">August 11, 2011</td></tr>
<tr><td>2nd quarter: July 31, 2007</td><td>2nd quarter: July 25, 2007</td><td>2nd quarter: July 31, 2010</td></tr>
<tr><td>3rd quarter: October 22, 2007</td><td>3rd quarter: October 25, 2007</td><td>3rd quarter: October 25, 2010</td></tr>
<tr><td>4th quarter: January 31, 2008</td><td>4th quarter: January 25, 2008</td><td>4th quarter: January 31, 2011</td></tr>
</table>

Evident from the table that the FAN was issued only on July 25, 2011 and received by respondent on August 11, 2011, for all the pertinent quarters for the year 2007. Counting three years from the various dates that the quarterly VAT Returns and the Income Tax Returns were filed, respondent had only until January 31, 2011 and April 15, 2011, at the latest, within which to issue the FAN against petitioner for deficiency VAT and Income Tax, respectively. As such, petitioner's right to assess respondent within the three-year prescriptive period had prescribed.

However, petitioner argues that under the obtaining circumstances, the 10-year prescriptive period under Section 222 (a) of the NIRC of 1997, as amended, should apply. But to merit the application of the ten-year period, petitioner as the taxing authority, must clearly state and prove the basis for application of the longer period as well as the willful intention on the part of respondent to mislead him, which petitioner utterly failed to accomplish.

A perusal of the record of the case shows that there is nothing in the FAN which indicates that respondent filed a false VAT and Income Tax Returns for taxable year 2007 to warrant the application of the 10-year prescriptive period under Section 222 (a) of the NIRC of 1997, as amended. Even in his Answer and Memorandum filed before the Court in Division, petitioner never mentioned of the exceptions as to the period of limitation of assessment and collection of taxes under Section 222 (a) of the same code.

Also, not to be ignored is the fact that respondent did not execute a waiver authorizing the extension of the three-year period for petitioner to issue an assessment. Thus, petitioner's invocation of falsity or fraud in the IT and VAT returns filed by respondent is merely an afterthought to justify his belated issuance of the impugned assessment and the application of the 10-year prescriptive period to assess.

Respondent filed its VAT and Income Tax Returns for the subject taxes within the prescribed period as shown earlier. However, the FAN was issued only on July 25, 2011, which was months after the end of the 3-year prescriptive period to assess as provided by section 203 of the NIRC of 1997, as amended.

Further, no attending circumstances were cited that would prevent respondent from issuing an assessment within the period prescribed by law. There was no request for reinvestigation from respondent, neither was there a valid waiver executed by respondent. In fine, the assessment issued on July 25, 2011 is deemed to have been issued after the prescribed period, consequently, invalid.

Significantly, only in his Motion for Reconsideration of the assailed Decision that petitioner raised the issue of falsity or fraudulent returns. Neither in his previous pleadings nor in any of his issuances did he invoke the said justification for the application of the ten-year period to assess thereby depriving not only the respondent but also the Court of the opportunity to determine the merit of his defense.

In Republic of the Philippines v. Ablaza[12], the Supreme Court explained the essence of the statute of limitations of actions for the collection of taxes, to wit:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law.

The same guideline was echoed in the case of Commissioner of Internal Revenue v. FMF Development Corporation[13], in this wise:

> Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years

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[12] G.R. No. L-14519, July 26, 1960.
[13] G.R. No. 167765, June 30, 2008.

> 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. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely 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 reasonable period of time.

Since petitioner failed to demonstrate clearly that respondent filed a false return to warrant the application of the 10-year prescriptive period, the regular period of 3 years to assess, which already prescribed, must apply. The inadvertence or oversight, if not negligence on the part of taxing authority cannot prejudice the taxpayers, considering that the prescriptive period is precisely intended to free them from any harassment and ultimately give them peace of mind.

Lest it be forgotten, for the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the assessment of taxes. Thus, the exceptions to the law on prescription should perforce be strictly construed.[14]

Finally, the Court *En Banc* cannot subscribe to the petitioner's insistence that respondent was not able to overturn the presumption of the correctness of his assessment.

Time and again, it has been ruled that the prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious.[15] In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another

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[14] Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc., *et al.*, G.R. No. 104171, February 24, 1999.

[15] Commissioner of Internal Revenue v. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005.

presumption. Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[16]

Finding the ruling of the Court in Division, within the ambit of what law and jurisprudence provide, the same must be sustained and not be disturbed.

WHEREFORE, the *Petition for Review* filed on June 18, 2015 by the Commissioner of Internal Revenue, is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated January 20, 2015 and May 28, 2015, respectively, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
(With due respect, I join J. Liban's & J. Manahan's opinions)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[16] Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation and the Court of Tax Appeals, G.R. No. L-46644, September 11, 1987, citing Commissioner of Internal Revenue v. Alberto D. Benipayo, G.R. No. L-13656, January 31, 1962.

CIELITO N. MINDARO-GRULLA
Associate Justice

(With due respect, pls. see dissenting opinion)
MA. BELEN RINGPIS-LIBAN
Associate Justice

(With due respect, I join the dissenting opinion of Justice Liban and see my Separate Dissenting Opinion)
CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1324** *(CTA Case No. 8484)*
	Present:
-versus-	**Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.***
ROBERT CHRISTOPHER M. CARMONA, doing business under the name SAGA CASTING AND PRODUCTIONS *Respondent.*	**Promulgated:** DEC 20 2017 4:18 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Esperanza R. Fabon-Victorino, in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) and in affirming the assailed January 20, 2015 Decision and May 28, 2015 Resolution of the Court in Division.

Petitioner avers that since the correct sales of respondent did not appear in his income tax and VAT returns, resulting in a substantial under-declaration of sales; and considering that the discrepancy between the figures indicated in respondent's returns *vis-à-vis* the findings of the BIR from the TRS & RELIEF System is 400.72%, there is a *prima facie* evidence that the income tax and VAT returns filed by respondent are false, which warrants the application of the ten (10)-year prescriptive period to assess.

I agree with the ponencia that the ten (10)-year prescriptive period to assess is not applicable in this case. In ***Commissioner of Internal Revenue vs. Asalus Corporation***,[1] the application of the ten (10)-year prescriptive period to assess the taxpayer for deficiency taxes was applied therein on the basis of the following rationalization:

(1) Pursuant to ***Aznar vs. CTA***,[2] the mere filing of false returns by a taxpayer, **notwithstanding the absence of intent to defraud**, is sufficient to warrant the application of the ten (10) year prescriptive period under Section 222 of the National Internal Revenue Code (NIRC);

(2)Under Section 248(B) of the NIRC, there is ***prima facie* evidence of a false return** if there is substantial underdeclaration of taxable sales, receipt or income in an amount exceeding 30% of what is declared in the returns. When there is a showing that the taxpayer underdeclared its sales, receipt or income, there is a presumption that a false return was filed and the CIR is not required to present evidence to support the falsity of the return, unless the taxpayer overcomes the presumption against it;

(3)The **mere failure of the taxpayer to overcome the presumption of the "falsity of the returns" warrants the application of the ten (10)-year prescriptive period** to assess; and,

(4)Most importantly, there was **substantial compliance with the due process requirement of Section 228 of the NIRC**[3] **as the application of the extraordinary period of ten (10) years was <u>categorically stated</u> in the PAN which was cited in subsequent communications of the CIR to the taxpayer**. Thus, the taxpayer was able to file a protest

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[1] G.R. No. 221590, February 22, 2017.
[2] 157 Phil. 510 (1974).
[3] SECTION 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx xxx
xxx xxx
The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. xxx xxx

addressing the issue on prescription in its supplemental protest to the FAN.

Thus, in applying the ten-year prescriptive period to assess, the Supreme Court in ***Asalus***, ultimately declared as follows:

> "Considering the **existing circumstances**, the assessment was timely made because the applicable prescriptive period was the ten (10)-year prescriptive period under Section 222 of the NIRC. To reiterate, **there was a *prima facie* showing that the returns filed by Asalus were false, which it failed to controvert**. Also, **it was adequately informed that it was being assessed within the extraordinary prescriptive period.**" (Boldfacing and underscoring supplied)

In laying down the doctrine declared in *Asalus*, the existence of the following circumstances was highlighted: **one, there was *prima facie* showing that the returns filed by Asalus were false; and, two, Asalus was adequately informed that it was being assessed within the ten (10)-year prescriptive period**.

In the present case, records disclose that there is nothing in the PAN and FAN issued against respondent or in any subsequent communications from petitioner which stated or even suggested that the ten (10)-year prescriptive period to assess respondent for deficiency tax liability for the year 2007 was being applied.

Interestingly, **the issue on the existence of fraud / falsity in respondent's income tax and VAT returns to justify the applicability of the ten (10)-year period to assess was only raised by petitioner for the first time in the Motion for Reconsideration of the assailed Decision**. If petitioner truly had valid reason or legal ground to apply the ten (10)-year prescriptive period to assess respondent for deficiency taxes, then he should have **adequately informed respondent** of such fact at the earliest possible opportunity, or at the very least, at the time of the issuance of the PAN, consistent with the doctrine laid down in ***Asalus***. Due process demands no less.

Rules of fair play dictate that petitioner should be barred from raising the applicability of the ten (10)-year prescriptive period for the first time in the Motion for Reconsideration of the assailed Decision as to do so would deprive respondent the opportunity to present evidence in refutation thereof. On this point, the teachings of ***Henry L. Mon v. Court of Appeals, et al.***[4] is most enlightening:

> "Courts of justice have no jurisdiction or power to decide a question not in issue. **A judgment that goes outside the issues and purports to adjudicate something on which the court <u>did not hear the parties</u>, is not only irregular but also extra-judicial and invalid. The rule rests on the fundamental tenets of fair play.**" (Boldfacing and underscoring supplied)

The failure of petitioner to comply with the requirement laid down under Section 228 of the NIRC of informing respondent that the ten (10)-year prescriptive period was being applied (thereby depriving respondent of his right to contest its applicability) makes the FAN issued against respondent intrinsically void.

Anent petitioner's argument that the ten (10)-year prescriptive period is applicable for respondent's failure to rebut the *prima facie* showing that his returns were false as he underdeclared his sales by 400.72%, I submit that the mere purported existence of *prima facie* evidence of the falsity of tax returns is not sufficient to warrant the application of the ten (10)-year prescriptive period to assess.

To be sure, when *Asalus* was promulgated on February 22, 2017, it made reference to the doctrine laid down in *Aznar* which states that **"false return implies deviation from the truth, <u>whether intentional or not</u>"**. Thus, *Asalus* declared that:

> "Thus, a mere showing that the returns filed by the taxpayer were false, **notwithstanding the absence of intent to defraud**, is sufficient to warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC." (Boldfacing supplied)

Since there was a deviation from the truth on the part of the taxpayer in *Asalus*, **whether it was intentional or not**, the Supreme Court found the application of the ten-year prescriptive period warranted.

One (1) month after ***Asalus*** was promulgated, however, the same Division of the Supreme Court made a clarification in ***Commissioner of Internal Revenue vs. Philippine Daily Inquirer***,[5] declaring that mere entry of wrong information in tax returns due to mistake, carelessness, or ignorance, **without intent to evade tax**, does not constitute a false return, *viz.*:

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[4] G.R. No.118292, April14, 2004.
[5] G.R. No. 213943, March 22, 2017.

> "Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, **the filing of a false return can be intentional or due to honest mistake**. In *CIR v. B.F. Goodrich Phils., Inc.,* the Court stated that **the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return**. In this case, we do not find enough evidence to prove fraud or intentional falsity on the part of PDI." (Boldfacing supplied; citation omitted)

In light of the pronouncement in ***Philippine Daily Inquirer***, I submit that in applying the ten (10)-year prescriptive period to assess, it is not sufficient that the returns filed by the taxpayer be false but there must be sufficient evidence to prove that the taxpayer intended to evade tax.

As applied to the present controversy, while there may be evidence of substantial underdeclaration of sales, the *prima facie* presumption that arose therefrom is confined to the "falsity of the returns". The presumption, however, does not extend to the existence of an intent to evade tax. Otherwise stated, **notwithstanding the *prima facie* evidence of falsity, intent to evade tax is not presumed. It remains indispensable for petitioner to prove that the falsity was done with intent to evade tax.** Thus, to warrant the application of the ten (10)-year prescriptive period to assess, petitioner may not simply rely on the *prima facie* evidence that the returns were false. It is incumbent upon petitioner to establish that the filing of the false returns was intentional and not due to honest mistake.

Consistent with ***Philippine Daily Inquirer*, the ten (10)-year prescriptive period could not be applied in this case *sans* any showing that the false returns were filed by respondent with intent to evade tax.**

At any rate, whether the applicable prescriptive period to assess respondent of deficiency taxes is three (3) years or ten (10) years, such issue is inconsequential considering that the **FAN involved in the present controversy is void, as hereafter elucidated.**

In the assailed Resolution, the Court was emphatic in its finding that the Letter of Authority (LOA) dated September 25, 2009, authorizing the examination of petitioner's books of accounts, was served only on October 26, 2009 or on the thirty first (31st) day from its date of issue. Records show that the said LOA was **not revalidated** as required by RAMO No. 1-00, which mandates that an LOA must be served or presented to the taxpayer within thirty (30) days from its date of issue; otherwise, it becomes null and void.

Since the LOA has expired at the time it was presented to respondent, the assessment conducted by the Revenue Officers pursuant thereto was unauthorized. Very recently, in ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***,[6] the Supreme Court declared an assessment void for want of a valid LOA:

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID II IT-98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. **The assessment is void for being issued without valid authority**. Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 2008." (Boldfacing and underscoring supplied)

Not only that. A close perusal of the FAN and the Assessment Notices attached thereto issued against respondent reveals that both failed to demand payment of the taxes due within a specific period. While the FAN[7] specifically states that:

> "Xxx, you are hereby requested to pay your aforesaid tax liability through the duly authorized agent bank (AAB) in which you are enrolled within the time shown in the enclosed assessment notice. xxx"

the space for the due date in the enclosed Assessment Notices was conspicuously left blank.

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[8] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "An assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his

[6] G.R. No. 183408, July 12, 2017.
[7] Exhibit 13; Exhibit H.
[8] G.R. No. 128315, June 29, 1999.

> remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx xxx xxx.
>
> xxx xxx
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> xxx xxx xxx. **Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.**
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. **It did not state a demand or a period for payment.** Xxx xxx." (Boldfacing and underscoring supplied)

In ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.,***[9] the importance of a definite and actual demand to pay the tax assessment was reiterated by the Supreme Court in this wise:

> "Second, **there are no due dates in the Final Assessment Notice**. **This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.
>
> Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount**

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[9] G.R. No. 215957, November 9, 2016.

> **depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay**.
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantative requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (Boldfacing supplied)

As aforestated, the text of the FAN involved in the present case bears no due date for the payment of the alleged tax liability of respondent. Being fatally infirm and void, I submit that the same should accordingly be cancelled.

All told, I VOTE to DENY the Petition for Review filed by the Commissioner of Internal Revenue and AFFIRM the assailed January 20, 2015 Decision and May 28, 2015 Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ROBERT CHRISTOPHER M. CARMONA, doing business under the name SAGA CASTING AND PRODUCTIONS,
Respondent.

CTA EB NO. 1324
(CTA Case No. 8484)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN , *and*
MANAHAN, *JJ.*

Promulgated:
DEC 20 2017 4:18 p.m.

x---x

DISSENTING OPINION

RINGPIS-LIBAN, ***J.*:**

With due respect to my esteemed colleague, Associate Justice Fabon-Victorino, I register my dissent to the *ponencia* with respect to the finding that Petitioner failed to demonstrate clearly that Respondent filed a false return to warrant the application of the 10-year prescriptive period, and that the regular period of 3 years to assess, which already prescribed, must apply.

In this case, the Court in Division cancelled and withdrew the FAN and the attached Assessment Notices assessing and demanding from petitioner the payment of deficiency income tax and VAT in the total amount of ₱32,981,458.90 on the basis of prescription. Other issues raised by the parties were deemed moot and academic and were no longer discussed.

In the Assailed Resolution, the Court in Division also ruled that petitioner had no authority to assess respondent as the LOA dated September 25, 2009 was served only on October 26, 2009 or on the thirty-first (31st) day from its date of issue and, hence, null and void as it was not revalidated.

This is incorrect. A cursory examination of the calendar shows that, as petitioner alleged, the deadline for serving the LOA within a thirty-day period, October 25, 2009, fell on a Sunday. As such, petitioner had until the next working day, Monday, or on October 26, 2009 within which to serve the LOA. The LOA was therefore timely served in accordance with the legal manner of computation of time provided in the Revised Administrative Code[1], the Rules of Court[2], and existing jurisprudence[3].

Extraordinary Prescriptive Period of Ten Years is Applicable

The general rule is that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, or where the return is filed beyond the period, from the day the return was actually filed.[4] The exceptions to this rule are found in Section 222 of the NIRC[5] in the case of a false or fraudulent return with intent to evade tax or of failure to file a return. For those exceptions, the assessment may be made within ten (10) years from the discovery of the falsity, fraud or omission.

After a review of the records and applicable laws and recent jurisprudence, it is apparent that there has been a misappreciation of the presumption of the falsity of returns as applied to this case.

In *Commissioner of Internal Revenue v. Asalus Corporation*,[6] the Supreme Court had occasion to discuss what is sufficient for extraordinary prescription to apply, thus:

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[1] Section 31, Chapter 8.

[2] Section 1, Rule 22, Rules of Court. "Section 1. *How to compute time.* - x x x If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the Court sits, the time shall not run until the next working day."

[3] *SM Agri and General Machineries vs. NLRC*, G.R. No. 74806, January 9, 1989.

[4] Section 203 of the NIRC.

[5] Section 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 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. x x x. *Emphasis supplied.*

[6] G.R. No. 221590, February 22, 2017.

"In the oft-cited *Aznar v. CTA*,[7] the Court compared a false return to a fraudulent return in relation to the applicable prescriptive periods for assessments, to wit:

> Petitioner argues that Sec. 332 of the NIRC does not apply because the taxpayer did not file false and fraudulent returns with intent to' evade tax, while respondent Commissioner of Internal Revenue insists contrariwise, with respondent Court of Tax Appeals concluding that the very "substantial under declarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax."
>
> x x x x
>
> xxx We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. **Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely "falsity", "fraud" and "omission." That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.**

[7] 157 Phil. 510 (1974).

> The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but whenever the government is placed, at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.
>
> 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 should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made. (Emphasis supplied)

Thus, a mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC." *(Emphasis supplied)*

The non-declaration of several items in respondent's tax returns arose from the Reconciliation of Listing for Enforcement System (RELIEF), Tax Reconciliation System (TRS) and Third-Party matching - Bureau of Customs (TPM-BOC) Data program.[8] *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*[9] expounds on this, as follows:

"Reconciliation of Listing for Enforcement (RELIEF) System is an information technology tool used by the BIR to improve tax administration. The system was created -

> x x x to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary

[8] *Docket,* BIR Records, p. 94, Exhibit "24".
[9] G.R. No. 213943, March 22, 2017.

> Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.[10]
>
> In addition -
>
> [RELIEF] can detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources (i.e. Schedules of Sales and Domestic Purchases, and Schedule of Importations submitted by VAT taxpayers pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002).
>
> Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services). Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible.[11]"

Using the aforementioned, petitioner came up with its Details of Discrepancies[12], one of its annexes attached to the PAN, which shows that the correct sales of respondent did not appear in his income and VAT returns resulting in a substantial under-declaration of sales in his income and VAT returns. The Details of Discrepancies is reproduced below:

DETAILS OF DISCREPANCIES

DEFICIENCY INCOME TAX AND VAT

Under-declaration (P66,418,531.26 - Income Tax) (P68,747,335.27 - Value-Added Tax) - Verification disclosed that the following discrepancy resulted from the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching - BOC Data Program as declared in your tax returns, hence assessed in accordance with Section 31, 32, 106 and 108 of the 1997 NIRC, as amended and RMO No. 32-2007):

[10] *Id.*

[11] BIR Revenue Memorandum Order No. 30-2003, 18 September 2003.

[12] *Id.* at Note 12.

Sales

Income

Per Summary List of Purchases submitted by your customers	₱ 54,047,436.36
Gross Sales/Income payment per Alphalist of payors to one and the same payee	48,995,873.26
Total	₱ 103,043,309.62
Less Adjustment (Sales taken up in both RELIEF & TRS)	19,804,742.10
Total Sales per TRS & RELIEF (as adjusted)	83,238,567.52
Sales per ITR filed	16,820,036.26
Under-Declaration of Sales on Income Tax	**₱ 66,418,531.26**

Value-Added Tax

Total Sales per TRS & RELIEF (as adjusted)	₱ 83,238,567.52
Less Sales per VAT return filed	14,491,232,25
Under-Declaration of Sales per VAT	**₱ 68,747,335.27**

That is a discrepancy of 400.72% from the figures indicated in respondent's return as against the findings of the BIR from the TRS & RELIEF System.

Similar to what happened in the *Asalus* case, in this case, the Court in Division opined that petitioner failed to substantiate with clear and convincing evidence its claim that respondent filed a false return, noting in the Assailed Resolution that petitioner's evidence to prove the falsity in the returns was scant. Hence, its ruling that the assessment was subject to the three (3) year ordinary prescriptive period.

In *Asalus*, however, the Supreme Court took a different view and expounded on the ***how the presumption of the falsity of returns is applied***, thus:

> "Under Section 248(B) of the NIRC,[13] there is a *prima facie* evidence of a false return if there is a substantial

[13] In case of wilful 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 wilfully made, the penalty to be imposed shall be fifty (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 a failure to

underdeclaration of taxable sales, receipt or income. **The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration.** A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced.[14]

In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. **As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.**

Applied in this case, the audit investigation revealed that there were undeclared VATable sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, **supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.**

Hence, **the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. <u>Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC.</u>** To require the CIR to present additional evidence in spite of the presumption provided in Section 248(B) of the NIRC would render the said provision inutile."

Again, I call your attention to the 400.72% discrepancy in respondent's return which, given the discourse of the Supreme Court in *Asalus,* is *prima facie* evidence of a substantial under-declaration pointing to a falsity in the income and VAT returns filed by respondent. At this juncture, the burden of evidence

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report sales, receipts or income in an mount exceeding thirty percent (30%) of that declared per return, and a claim of deduction in an amount exceeding thirty (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.

[14] Black's Law Dictionary (9th Edition).

shifts to respondent to rebut the findings of petitioner. **Unless satisfactorily contradicted and overcome by other evidence presented by respondent, the assessment is presumed correct and made in good faith.**

Notwithstanding the pronouncement in *Asalus* that "the CIR need not present further evidence" if the presumption of falsity was not overcome, I note that petitioner has presented various documentary and testimonial evidence to support the applicability of the ten-year prescriptive period. The BIR Records of the case, Exhibit "24" of petitioner, contains the following to support his contention that the extraordinary prescriptive period applies:

a) Details of Taxpayer's Customer's Records with the name of taxpayers, TRS and RELIEF and the Summary of Discrepancy which was duly presented to the Court and identified by petitioner's witness Ms. Corazon de Jesus;

b) Summary of Certificate of Withholding Tax at Source (Form 2307) of the respondent for the year 2007; and

c) Details of Taxpayer's Customer's Records with a Discrepancy of Amount of Sales and Discrepancy Percent on Sales.

There are also other exhibits on record that likewise supports his contention, as follows:

a) Testimony of Ms. De Jesus, Exhibit "23", that the figures in the income and VAT assessments were taken from the LN, Exhibit "1", accompanied by the Details of Taxpayer's Customer's Records as well as the Computation Sheets Under Third Party Information Program - RELIEF/BOC & TRS, Exhibit "14", as declared in respondent's tax returns; and

b) Reply letters of respondent's customers, Exhibits "15" to "22", confirming the correctness of purchases from clients as stated in respondent's details of sales.

Considering the existing circumstances, the assessment was timely made because the applicable prescriptive period was the ten (10)-year prescriptive period under Section 222 of the NIRC. There was a *prima facie* showing that the returns filed by respondent were false, which it failed to controvert.

I therefore vote to **GRANT** the Petition for Review of the Commissioner of Internal Revenue and **REMAND** the case to the Court in Division for determination of respondent's tax liabilities for taxable year 2007.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1324** (CTA Case No. 8484)
	Members :
-versus-	**DEL ROSARIO**, *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
ROBERT CHRISTOPHER M. CARMONA, doing business under the name SAGA CASTING AND PRODUCTIONS, *Respondent.*	Promulgated: DEC 20 2017 4:18 p.m.

x- x

DISSENTING OPINION

MANAHAN, J.:

With due respect to the majority opinion, I respectfully submit my dissent on the application of the three-year period to assess in this case as there are certain elements that point to the rationality of applying the ten (10) year period to assess respondent of deficiency income tax and VAT for taxable year 2007, pursuant to Section 222 of the 1997 National Internal Revenue Code (NIRC).

Under Section 248 (B) of the 1997 NIRC, the substantial under declaration of sales constitutes a prima facie evidence of filing a false or fraudulent return and I quote thus:

> Section 248. Civil Penalties.
>
> (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 of a false or fraudulent return is willfully made, the penalty to be imposed shall be 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 of a false or fraudulent return.* xxx xxx xxx (italics ours)

The Supreme Court, in the recent case of CIR vs. *Asalus Corporation*[1], had the occasion to rule on the *prima facie* conclusion on the substantial under declaration of sales which would justify the application of the ten year prescriptive period, thus:

> "In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.
>
> Applied in this case, the audit investigation revealed that there were undeclared VAT able sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.
>
> Hence, the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the

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[1] G.R. No. 221590, February 22, 2017.

same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC. To require the CIR to present additional evidence in spite of the presumption provided in Section 248(B) of the NIRC would render the said provision inutile."

It is also clear that the revenue examiners already imposed a 50% surcharge in the Preliminary Assessment Notice (PAN)[2] and the Final Assessment Notice (FAN)[3] issued against the taxpayer again justifying the application of the ten-year period to assess. In fact, a close reading of the FAN would disclose that there is a statement that a 50% surcharge was imposed on top of the tax deficiencies subject of the assessment pursuant to Section 248 (B) of the 1997 NIRC. This would contravene the theory that the defense of fraud and falsity was a mere afterthought of the CIR because as early as the PAN stage, the 50% surcharge for fraudulent or false returns already formed part of the total liabilities assessed against the taxpayer.

I therefore express my dissent and vote that the case be remanded to the Court in Division for the proper determination of respondent's liabilities for taxable year 2007.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[2] PAN, Exhibit "C", page 520, Volume II, Original Docket.
[3] FAN, Exhibit "H", page 527, Volume II, Original Docket.