Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 249540**
	Present:
- versus -	CAGUIOA, *J.*, *Chairperson*, INTING, GAERLAN, DIMAAMPAO, and SINGH, *JJ.*
ARTURO E. VILLANUEVA, JR., Respondent.	Promulgated: February 28, 2024 MistDcBatt

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DECISION

CAGUIOA, *J.*:

Before the Court is the Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue (CIR), assailing the Decision[2] dated March 13, 2019 and Resolution[3] dated September 16, 2019 of the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 1771, which affirmed the Decision[4] dated August 18, 2017 and Resolution[5] dated January 10, 2018 of the Court of Tax Appeals First Division (CTA Division) in CTA Case No. 8935. The CTA Division cancelled the assessments for deficiency income tax and value-added tax (VAT) for taxable

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1 *Rollo*, pp. 10–37.

2 *Id.* at 39–52. Penned by Associate Ma. Belen M. Ringpis-Liban with Presiding Justice Roman G. Del Rosario (with Concurring Opinion) and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Catherine T. Manahan concurring.

3 *Id.* at 59–62.

4 *Id.* at 64–84. Penned by Associate Justice Cielito N. Mindaro-Grulla with the concurrence of Presiding Justice Roman G. Del Rosario (with Concurring Opinion) and Associate Justice Erlinda P. Uy.

5 *Id.* at 89–92.

year 2006 issued against respondent Arturo E. Villanueva Jr. (respondent) on the ground of prescription.[6]

Facts

The facts as summarized by the CTA EB are as follows:

> [Respondent] is engaged in the business of providing hauling services under the name Producers Connection Logistics, with registered address at No. 324 Younger St., Balut, Tondo, Manila.
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> . . . .
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> For taxable year 2006, [respondent] filed with the Bureau of Internal Revenue his Annual Income Tax Return (ITR) and Quarterly VAT Returns, among other tax returns, on the dates prescribed by law.
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> On July 11, 2008, [respondent] received Letter Notice No. 029-WE-I-00-00041 dated June 20, 2008. Meanwhile, on May 14, 2009, he received a follow-up letter (Tax Reconciliation System). Thereafter, on June 15, 2009, [respondent] received Letter of Authority No. 2001-00012853 dated June 8, 2009 and the First Request for Presentation of Records.
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> [Respondent] then received the 1st Call-up dated May 23, 2011 from Revenue District Office (RDO) No. 29 for the collection of deficiency income tax and VAT in the amounts of [PHP] 23,349,944.59 and [PHP] 7,374,006.51, respectively.
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> On June 21, 2011, [respondent] received a Final Notice Before Seizure (FNBS) dated June 6, 2011, issued by RDO No. 29 of Revenue Region No. 6-Manila.
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> On July 13, 2011, [respondent] sent a reply-letter to RDO No. 29, seeking clarification with regard to the 1st Call-up and FNBS, and requesting a clarification and re-investigation of his case.
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> On September 6, 2011, [respondent] received a letter dated August 31, 2011 from the Regional Director of Revenue Region No. 6-Manila.
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> [Respondent] received a Collection Notice dated October 29, 2012 from the BIR. [On November 14, 2012, respondent] then requested for the revocation of the Collection Notice . . . but the same was denied in a letter issued by [the CIR] through the Chief of Collection Division of Revenue Region No. 6-Manila.
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> On December 13, 2013, [respondent] sent a letter dated December 11, 2013 to the Regional Director of Revenue Region No. 6-Manila, requesting reconsideration of the denial of the request for revocation of the collection notices issued by [the CIR]. Then, on October 31, 2014, [respondent] received a letter dated October 14, 2014, issued by the Regional Director of Revenue Region No. 6-Manila, denying [respondent]'s request for reconsideration and reinvestigation.[7]

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6 *Id.* at 84.

7 *Id.* at 40-41, CTA EB Decision dated March 13, 2019.

> Accordingly, on November 25, 2014, [respondent] filed [a] Petition for Review [with the CTA Division; and the CIR filed an Answer thereto].
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> The case was set for pre-trial conference . . . [where both parties admitted] that the [Final Assessment Notices (FAN)] was issued only sometime in 2011 and that no Waiver of the Statute of Limitation has been issued by [respondent] for taxable year 2006. In view thereof, the [CTA Division] directed the parties to submit their respective Memoranda containing their positions on whether or not the right of [the CIR] to issue the FAN has prescribed, and if so, the propriety of dismissing the case. Accordingly, [both parties submitted their respective position papers] . . . However, in [its] position paper, [the CIR claimed] that the prescriptive period should be ten (10) years as the case involves a substantial under-declaration, amounting to falsity or fraud on [respondent]'s part.
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> The [CTA Division then] issued a Resolution on June 9, 2015, holding that the arguments raised by both parties involve evidentiary matters requiring a full-blown trial, and that [it] finds no valid ground to dismiss the case, to render a judgment based on the pleadings, or to render a summary judgment at that stage of the proceedings. Hence, trial ensued.
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> [After both parties had formally offered their evidence, the case was then submitted for decision.][8]

CTA Division Ruling

In its Decision dated August 18, 2017, the CTA Division found that the CIR was able to establish that the Preliminary Assessment Notice (PAN) and FAN with Formal Letter of Demand (FLD) were properly issued and served to respondent at his registered business address, through registered mail.[9]

However, the CTA Division ordered the cancellation of the deficiency income tax and VAT assessments for taxable year 2006 because the CIR was not able to clearly establish any substantial under-declaration and/or fraud on respondent's income tax and VAT returns. Hence, the CTA Division ruled that the three-year period within which to assess internal revenue taxes under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, had already lapsed when the FAN and FLD were issued on January 24, 2011.[10]

Aggrieved, the CIR moved for reconsideration but this was denied by the CTA Division in its Resolution dated January 10, 2018.[11] In denying the CIR's motion, the CTA Division reiterated its finding that there was no substantial under-declaration and/or fraud in the instant case, for which the 10-year prescriptive period applies.[12]

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8 *Id.* at 67-70, CTA Division Decision dated August 18, 2017.
9 *Id.* at 76–78.
10 *Id.* at 71–73.
11 *Supra* note 5.
12 *Rollo*, p. 91, CTA Division Resolution dated January 10, 2018.

CTA EB Ruling

In the assailed Decision, the CTA EB affirmed the CTA Division's findings.[13]

First, the CTA EB found that while the CIR was able to present the registry receipts of the PAN, FAN and FLD, they were not authenticated. Also, apart from the unauthenticated registry receipts, no other evidence was presented by the CIR to prove that the said assessment notices and FLD were actually received by respondent or his authorized representative.[14]

Second, the CTA EB ruled that the applicable prescriptive period in this case is three years and not 10 years because the CIR failed to establish that respondent's tax return was false or fraudulent.[15]

In the assailed Resolution, the CTA EB denied the CIR's Motion for Reconsideration.[16]

Hence, this Petition filed by the CIR.[17]

In its Petition, the CIR insists that it was able to prove receipt by respondent of the pertinent PAN and FAN/FLD despite the latter's unfounded claim of denial. According to the CIR, Registry Receipt No. 921958 dated December 28, 2010, and Registry Receipt No. 903220 dated January 24, 2011 proved that the PAN and FAN/FLD were duly issued and served to respondent at his registered business address, through registered mail.[18]

The CIR further claims that the assessment notices were issued and served to respondent well within the prescribed period to make an assessment. Citing the case of *Commissioner of Internal Revenue v. Asalus*[19] (*Asalus*), where the Court defined a false return under Section 222(a) of the 1997 NIRC as deviation from the truth, whether intentional or not, the CIR maintains that the 10-year prescriptive period applies in this case in view of respondent's failure to disclose in his 2006 ITR his gross income amounting to PHP 31,671,388.34.[20]

Finally, the CIR argues that the subject assessments are already final, executory, and demandable because respondent failed to file a valid protest within 30 days from receipt of the assessments.[21]

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13 *Supra* note 2.
14 *Id.* at 45–48, CTA EB Decision dated March 13, 2019.
15 *Id.* at 49–50.
16 *Supra* note 5.
17 *Supra* note 1.
18 *Rollo*, p. 18, Petition.
19 806 Phil. 397 (2017) [Per J. Mendoza, Second Division].
20 *Rollo*, pp. 18–24, Petition.
21 *Id.* at 25–27.

The filing of a Comment on the Petition was deemed waived after respondent failed to file the same within the period directed by the Court.[22]

Issues

Culled from the Petition, the following are the issues for the Court's resolution:

i. Whether the PAN and FAN were validly served upon respondent; and

ii. Whether the Bureau of Internal Revenue's (BIR) right to assess respondent for deficiency taxes for taxable year 2006 has already prescribed.

The Court's Ruling

The Petition lacks merit.

Preliminarily, the Court emphasizes the settled rule that findings of fact and conclusions of law by the CTA are accorded with the highest respect and will not lightly be set aside.[23] As a matter of principle, the Court will not set aside the ruling of the CTA, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject unless there has been an abuse or improvident exercise of authority.[24] Findings and conclusions of the CTA can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA—these are not present in this case.

The CIR failed to prove that the assessment notices were properly served and received by respondent

Section 228 of the 1997 NIRC, as implemented by Revenue Regulation No. 12-99,[25] outlines the due process requirements for the issuance of deficiency tax assessments. In the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[26] (*Avon*), the Court summarized these requirements as follows:

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22 *Id.* at 110, Unsigned Resolution dated March 3, 2021.

23 *Commissioner of Internal Revenue v. Team [Philippines] Operations Corp.*, 731 Phil. 141, 152 (2014) [Per J. Perez, Second Division].

24 *Commissioner of Internal Revenue v. Cebu Toyo Corporation,* 491 Phil. 625, 640 (2005) [Per J. Quisumbing, First Division].

25 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer' Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, Revenue Regulations No. 12-99, September 6, 1999.

26 841 Phil. 114 (2018) [Per J. Leonen, Third Division].

> ...Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
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> . . . .
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> On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.[27]

Essentially, to comply with the requirements of due process, the CIR is required to inform the taxpayer of the factual and legal bases of the deficiency tax assessment and provide him or her the opportunity to protest such assessment, present his or her case, and adduce supporting evidence.[28] *Avon* further underscored that the CIR must give due consideration to the taxpayer's evidence and explanation; otherwise, the right to be heard is rendered meaningless.[29] Certainly, as "between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process."[30]

Section 3 of Revenue Regulation No. 12-99 authorizes the CIR to serve the assessment notices to the taxpayer either personally or *via* registered

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27 *Id.* at 145–146.

28 *See Commissioner of Internal Revenue v. Unioil Corp.*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division] at 13. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

29 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc, supra* note 26, at 153.

30 *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, 799 Phil. 391, 409–410 (2016) [Per J. Leonen, Second Division].

mail.[31] Relatedly, under Section 3(v), Rule 131 of the Rules of Court, a presumption arises that a letter duly directed and mailed was received in the regular course of mail. This presumption is however disputable and a direct denial that the mail matter was received shifts the burden to the party favored by the presumption to prove actual receipt by the addressee.[32]

As applied to issuance of deficiency tax assessments, the Court, in *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*[33] (*Barcelon*), ruled that if the taxpayer denies ever having received an assessment notice from the BIR, it becomes incumbent upon the latter to prove *that such notice was, in fact, received by the addressee.*[34] To discharge this burden, it is essential for the BIR to present independent evidence, such as the registry receipt issued by the Bureau of Posts, or the registry return card *which would have been signed by the taxpayer or the latter's authorized representative*, showing that the assessment notice was released, mailed, or sent to the taxpayer.[35] If such document cannot be located, the BIR may submit a certification issued by the Bureau of Posts and other pertinent document which is executed with the latter's intervention.[36] Thus, in *Barcelon*, the Court found the BIR record book showing the name of the taxpayer, the kind of tax assessed, the registry receipt number, and the date of mailing of the assessment as incompetent evidence to prove actual receipt by the taxpayer.[37]

In the more recent case of *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[38] (*T Shuttle*) where the taxpayer also denied receipt of the PAN and FAN, the Court, reiterating the doctrine in *Barcelon*, clarified that mere presentation of registry receipts, absent any authentication or identification that the signature appearing therein is the taxpayer's or his or her authorized representative's, is insufficient to prove actual receipt by the taxpayer.

> As ruled by the CTA *En Banc*, *the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN.* It held that the witnesses for *the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.*[39] (Emphasis supplied)

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31 *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, 879 Phil 409, 422 (2020) [Per J. Inting, Second Division].
32 *Aguirre v. Nieto*, 860 Phil. 642, 649–650 (2019) [Per J. Carandang, First Division].
33 529 Phil. 785 (2006) [Per J. Chico-Nazario, First Division].
34 *Id.* at 796.
35 *Id.* at 793.
36 *Id.* at 793–794.
37 *Id.* at 798.
38 *Supra* note 31.
39 *Id.* at 422–423.

Applying the foregoing to the present case, the CTA EB was correct in ruling that the CIR failed to discharge its burden in this case.

While the CIR presented a copy of the registry receipt of the FAN/FLD,[40] it failed to identify or authenticate whether the signature appearing therein belongs to respondent or his authorized representative. In addition, apart from the registry receipt, no other independent and competent evidence was presented by the CIR to prove respondent's actual receipt of the assessment notices. Indeed, as ruled in *T Shuttle*, mere presentation by the CIR of the registry receipts does not automatically prove actual receipt by the taxpayer. It must be clearly shown that the assessment notices were properly served to and received by only the taxpayer or his or her duly authorized representative. This exacting standard guarantees the due process mandate that the taxpayer be informed of the basis of the assessment.

The CIR failed to establish false or fraudulent return; thus, the ordinary three-year prescriptive period applies to this case

Even assuming that the assessment notices were duly served and received by respondent, still the Petition should be denied on the ground of prescription.

The CIR maintains that the 10-year prescriptive period for assessment under Section 222(a) of the 1997 NIRC applies to this case because respondent's ITR for 2006 failed to disclose a gross income for the said year amounting to PHP31,164,900.67. According to the CIR, this under-declaration of income of more than 30% constitutes fraud. In any event, respondent's under declaration of income in his ITR also falls within the ambit of a false return.[41]

The CIR seeks jurisprudential support in the case of *Asalus*. In *Asalus*, the Court, referring to the earlier case of *Aznar v. CTA*,[42] ruled that "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."[43] *Asalus* further held that under Section 248(B) of the 1997 NIRC, substantial under-declaration of sales, receipts or income is a *prima facie* evidence of a false return; thus, it is incumbent upon the taxpayer to present a contrary proof to overcome the presumption.[44]

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40 CTA *rollo*, CTA No. 8935, p. 117. Exhibit "R-10."
41 *Rollo*, p. 20.
42 157 Phil. 510 (1974) [Per J. Esguerra, First Division].
43 *Commissioner of Internal Revenue v. Asalus Corporation, supra* note 19, at 408.
44 *Id.* at 408–409.

In the assailed Decision, the CTA EB held that respondent's ITR cannot be considered false or fraudulent because the CIR, in the first place, failed to establish that respondent actually has substantial under-declared sales.[45]

The Court finds no reason to disturb the CTA EB's ruling.

In general, the CIR's power to assess and collect taxes is limited by the ordinary three-year prescriptive period provided under Section 203 of the 1997 NIRC, to wit:

> SECTION 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.

Section 222(a) of the same code, on the other hand, provides an exception to this ordinary three-year period. Said provision grants the CIR a period of 10 years within which to assess and collect taxes, *viz.*:

> 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 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.

Parsed from this provision, the extraordinary 10-year prescriptive period applies only to the following cases: (1) when a taxpayer files a false return with intent to evade tax; (2) when the taxpayer files a fraudulent return with intent to evade tax; and (3) when a taxpayer fails to file a return. While the phrase *intent to evade tax* follows the phrase *fraudulent return*, it also qualifies and refers to a false return. To be sure, Section 222(a) does not separate the words *false* and *fraudulent* by a comma, indicating that they should be read together as a single unit. Under the doctrine of *noscitur a sociis*, the construction of a particular word or phrase, which is in itself ambiguous, or is equally susceptible of various meanings, may be made clear and specific by considering the company of words in which it is found or with which it is associated. In other words, the obscurity or doubt of the word or phrase may

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[45] *Rollo*, pp. 49–50, CTA EB Decision dated March 13, 2019.

be reviewed by reference to associated words.[46] Given that the clause *with intent to evade tax* is in the company of the words *false or fraudulent return*, there is no gainsaying that the qualifying phrase *with intent to evade tax* pertains to the entire category of *false or fraudulent return*.

Furthermore, it is absurd to construe the phrase *with intent to evade tax* as only qualifying the term *fraudulent return* because a fraudulent return, by the term itself, already presupposes the existence of intent to avoid tax. To use *with intent to evade tax* as the modifier of *fraudulent return* is defining a term with its own definition.

In *CIR v. Estate of Toda, Jr.*,[47] tax evasion was defined as a scheme of not paying taxes legally due through means outside of those sanctioned by law. It connotes the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due, with an accompanying state of mind described as being evil, in bad faith, willful, or deliberate and not accidental.[48] On the other hand, fraud, in its general sense, refers to "the deliberate intention to cause damage or prejudice. It is voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission."[49] Therefore, to construe that the phrase *with intent to evade tax* as only qualifying the term *fraudulent return* would render the qualifying phrase superfluous and irrelevant inasmuch as tax evasion and fraud are relatively synonymous. It is a cardinal rule in statutory construction that no word, clause, sentence, provision, or part of a statute shall be considered surplusage or superfluous, meaningless, void, and insignificant. For this purpose, a construction which renders every word operative is preferred over that which makes some words idle and nugatory.[50] *Ut magis valeat quam pereat*, that is, the Court chooses the interpretation that gives effect to the whole of the statute—its every word.[51]

Proceeding from the foregoing, mere falsity of a return does not merit the application of the 10-year prescriptive period. To fall within the purview of Section 222(a) of the 1997 NIRC, the filing of a false return must be animated by fraud or an intent to evade the payment of the correct amount of tax. Hence, in cases of false returns, the BIR can only invoke the 10-year prescriptive period where there is clear and convincing evidence of fraud or intent to evade tax on the part of the taxpayer.

This interpretation of Section 222(a) is consistent with the purpose of the statute of limitations on assessment and collection of taxes.

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46 *Government Service Insurance System v. Commission on Audit*, 674 Phil. 578, 600–601 (2011) [Per J. Leonardo-De Castro, *En Banc*].

47 481 Phil. 626 (2004) [Per CJ. Davide, Jr., First Division].

48 *Id.* at 639.

49 *Pilipinas Shell Petroleum Corp. v. Commissioner of Customs*, 801 Phil. 806, 842 (2016) [Per J. Perez, Third Division].

50 *SM Land, Inc. v. Bases Conversion and Development Authority, et al.*, 741 Phil. 269, 299 (2014) [Per J. Velasco, Jr., Third Division].

51 *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, 616 Phil. 387, 402 (2009) [Per J. Corona, Special First Division].

In *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*,[52] the Court, citing previous jurisprudence, underscored that the statute of limitations on assessment and collection of taxes was incorporated in our Tax Code for the benefit and protection of taxpayers against unreasonable and protracted investigations, *viz.*:

> It bears stressing that, in a number of cases, this Court has explained that the *statute of limitations on the collection of taxes primarily benefits the taxpayer.* In these cases, the Court exemplified the detrimental effects that the delay in the assessment and collection of taxes inflicts upon the taxpayers. Thus, in *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*, this Court echoed Justice Montemayor's disquisition in his dissenting opinion in *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*, regarding the potential loss to the taxpayer if the assessment and collection of taxes are not promptly made, thus:
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> > *Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his* [*or her*] *return, he* [*or she*] *may know the amount of the assessment he* [*or she*] *is required to pay, whether or not such assessment is well founded and reasonable so that he* [*or she*] *may either pay the amount of the assessment or contest its validity in court* . . . It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his [or her] papers and books to support his [or her] claim and contest that of the Government, and what is more, the tax is in the meantime accumulating interest which the taxpayer eventually has to pay.
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> Likewise, in *Republic of the Philippines v. Ablaza*, this Court elucidated that the prescriptive period for the filing of actions for collection of taxes is justified *by the need to protect law-abiding citizens from possible harassment.* Also, in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, it was held that *the statute of limitations on the assessment and collection of taxes is principally intended to afford protection to the taxpayer against unreasonable investigations as the indefinite extension of the period for assessment deprives the taxpayer of the assurance that he* [*or she*] *will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.* Thus, in *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, this Court ruled that the legal provisions on prescription should be liberally construed to protect taxpayers and that, as a corollary, *the*

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[52] 748 Phil. 760 (2014) [Per J. Peralta, Third Division].

> *exceptions to the rule on prescription should be strictly construed.*[53] (Emphasis supplied; citations omitted)

In *Republic of the Philippines v. GMCC United Development Corporation, et al.*,[54] the Court explained anew the rationale for the prescriptive period for assessment and collection of internal revenue taxes:

> 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 a 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 recommend[s] the approval of the law.[55] (Emphasis supplied; citations omitted)

Indeed, understanding fraud or intent to evade tax to be the animating element of a "false return" protects taxpayers from tax agents senselessly (or worse, maliciously) invoking the 10-year prescriptive period based on simple errors or discrepancies in the tax return, which could have been easily detected by the BIR within the ordinary period of prescription given its bountiful resources and machineries. Restricting the application of the 10-year prescriptive period, as the law plainly indicates, compels the BIR to promptly and thoroughly examine the records of the taxpayer, verify the correctness of their returns, assess and collect deficiency internal revenue taxes. To allow the invocation of the 10-year period, without any restriction, runs counter to this impetus and leads only to situations of unscrupulous tax examiners continuing to shag innocent, peaceful, and law-abiding taxpayers.

The Court is not unaware of the cases of *Aznar* and *Asalus* cited by the CIR and other similar cases[56] where the Court defined a false return, under the 10-year prescriptive period, as referring to mere deviation from the truth, whether intentional or not. The mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, was found by the Court as sufficient to warrant the application of the extraordinary prescriptive period under Section 222 of the 1997 NIRC.[57] Further, as noted

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53 *Id.* at 769–771.

54 802 Phil. 432 (2016) [Per J. Leonen, Second Division].

55 *Id.* at 447.

56 *See Samar-I Electric Cooperative. v. Commissioner of Internal Revenue*, 749 Phil. 772, 782 (2014) [Per J. Villarama, Jr., Third Division] and *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, *supra* note 30, at 414–145.

57 *Commissioner of Internal Revenue v. Asalus Corp.*, *supra* note 19.

by the CIR, under Section 248(B) of the 1997 NIRC,[58] there is a presumption of falsity of return when there is a substantial under-declaration of taxable assets, receipt or income of more than 30%.

Notwithstanding the foregoing, the Court sustains the ruling of the CTA that the 10-year prescriptive period does not apply in this case.

In stark contrast to the cases cited by the CIR, there is a catena of cases where the Court clarified that for the 10-year prescriptive period to apply, the filing of a false return must be intentional.[59] The Court ruled that mere understatement of tax liability or a wrong information due to mistake, carelessness, or ignorance, without proof of fraud or intent to evade tax, do not constitute a false return.[60]

In fact, in the most recent case of *Mcdonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*,[61] the Court, sitting *En Banc*, put an end to the seemingly conflicting jurisprudence on the definition of a false return necessary for the 10-year extraordinary prescriptive period of assessment to apply. The Court *En Banc* expressly abandoned the definition of false return in *Aznar* and ruled that, with respect to the application of the 10-year prescriptive period, it must be understood that only intentional errors in the return may justify the application of the extraordinary 10-year period.[62] The Court clarified that understatement or overstatement of income, sales or receipts by itself does not amount to a falsehood for purposes of extending the assessment period.[63]

Moreover, mindful of the due process requirements in the assessment and collection of taxes, the Court *En Banc* set forth the following conditions for a valid extension of assessment period in case of a false return:

> *F. Summary: Conditions for a Valid Extension of Assessment Period in Cases of False Return*
>
> *i. Requisites under Section 222(a) of the 1997 Tax Code*

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58 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 (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 under-declaration 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 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 under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

59 *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, 807 Phil. 912, 935–937 (2017) [Per J. Carpio, Second Division].

60 *See CIR v. B.F. Goodrich Phils., Inc.* 363 Phil. 169, 179 (1999) [Per J. Panganiban, Third Division] and *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc., id.* at 937.

61 G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*].

62 *Id.* at 32. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

63 *Id.* at 33. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

- *General Rule – Proof of False Or Fraudulent Return*

Pursuant to Section 222(a) of the 1997 Tax Code, the extraordinary 10-year assessment period may apply in case the taxpayer: (1) filed a false return, (2) filed a fraudulent return, or (3) failed to file a return.

. . . .

It must be stressed, however, that a false return within the meaning of Section 222(a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a *false return* when:

(1) the return contains an error or misstatement, and
(2) such error or misstatement was *deliberate or willful.*

Consequently, the Court's ruling in *Aznar* which applied the extraordinary 10-year assessment period under Section 222(a) to false return in general, *i.e.* regardless of whether the deviation is intentional or not, is abandoned.

It shall be the CIR's burden to establish the existence of the above-enumerated statutory requisites with clear and convincing evidence.

- *Exception – Prima Facie Evidence of a False Return or Fraudulent Return (30% Threshold)*

The CIR may be relieved from the above-mentioned burden of proof when there is a *prima facie evidence of falsity or fraud,* as defined under Section 248(B) of the 1997 Tax Code.

(1) The CIR ascertains that there is a misstatement/misdeclaration in the return, in particular,

(a) an *understatement/underdeclaration* of sales, receipts, or income, or

(b) an *overstatement/overdeclaration* of expenses or other deductions, and

(2) the misstatement is *substantial,* such that it exceeds the corresponding amount declared in the return by 30%.

[Thirty percent] threshold satisfied[.] There is *prima facie* evidence of falsity or fraud and the burden of proof shifts to the taxpayer. If the taxpayer fails to overcome the presumption, the *prima facie* evidence shall be sufficient to justify the application of the 10-year period.

Taxpayer refutes presumption[.] If the taxpayer is successful in overturning the presumption (*e.g.*, demonstrating that the misstatement as ascertained by the CIR had been inadvertent or attributable to a mistake), the CIR cannot rely on the presumption in proving the taxpayer's intent to evade.

ii. Due Process Requirements

(1) **First Due Process Requirement.** The *assessment notice* issued to the taxpayer must clearly state the following:

(a) that extraordinary prescriptive period (not the basic three-year period) is being applied, and

(b) the bases of allegations of falsity or fraud, *e.g.*, if the CIR seeks to rely on the *presumption of falsity or fraud* particularly, the formal notice to the taxpayer *must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold.*

(2) **Second Due Process Requirement.** The tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied.[64] (Emphasis in the original)

Simply put, based on the afore-quoted guidelines, for the 10-year prescriptive period to apply, the following must concur: (1) the CIR has established a *prima facie* case of a false or fraudulent return or otherwise proved intent to evade on the part of the taxpayer; and (2) the CIR complied with the requirements of due process.

In this case, none of the foregoing conditions were established. Thus, the extension of the prescriptive period to 10 years is not proper in this case.

Foremost, the CIR failed to observe the requirements of due process requirements.

As discussed, the CIR fell short of proving that respondent actually received the assessment notices, which would have informed the latter of the factual and legal bases of his deficiency taxes and the application of the extraordinary 10-year prescriptive period. Consequently, respondent would have been able to refute or protest the subject assessments had the latter actually received the assessment notices.

Moreover, upon a cursory reading of the PAN and FAN/FLD, apart from the computation of respondent's deficiency taxes for 2006 and references to provisions of the 1997 NIRC, nothing therein stated or even suggested that the CIR is applying the 10-year prescriptive period. No explanation was indicated in the said assessment notices for the application of the extraordinary prescriptive period. Annex "A" of the the PAN and FAN, which supposedly provided for the factual and legal bases for the assessments, simply read as follows:

Details of Discrepancies

1. Deficiency Income Tax

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[64] *Id.* at 34–36.

> The deficiency income tax was based on the Undeclared Sales per Letter Notice that was added to the taxable income pursuant to Sections 6(B) and 32 of the NIRC.
>
> **2. Deficiency Value-Added Tax (VAT)**
>
> The deficiency value added tax arose from the recognition of Undeclared Sales pursuant to Title IV of the NIRC.[65]

Also, the CIR appears to have misled respondent on the applicable prescriptive period in this case. The CTA Division noted that during the hearing, the CIR's counsel agreed that the applicable prescriptive period of assessment in this case is three years. However, in its position paper and memorandum subsequently submitted with the CTA Division, the CIR claimed that the prescriptive period should be 10 years as the case involves a substantial under declaration, amounting to falsity or fraud.[66]

Secondly, the CIR failed to establish a *prima facie* case of a false or fraudulent return or prove that respondent was animated with intent to evade taxes.

Apart from bare allegations that respondent failed to indicate in his Final/Amended ITR for taxable year 2006 a gross income amounting to PHP 31,164,900.67, the CIR failed to substantiate, much less, prove the source and bases for said amount. Likewise, no evidence was presented by the CIR establishing that respondent's alleged failure to report PHP 31,164,900.67 income was intentional or animated with fraudulent intent to evade the payment of correct taxes.

On the contrary, the CTA Division found that respondent was able to establish that there was no substantial under-declaration of income or fraud in his 2006 ITR.

The CTA Division aptly found:

> In the present case, [respondent] was able to establish through evidence that he did not willfully or fraudulently conceal his interest income with intent to evade taxes, as he in fact declared correct income in his Annual ITR. Records show, and as pointed out by [respondent], on the "Tentative" Annual ITR filed on April 7, 2007, he declared total sales in the amount of [PHP] 31,164,900.67. While Item No. 29 of the Tentative Annual ITR was left blank or without any amount, Item No. 53 contains the amount of [PHP] 31,164,900.67 as Net Sales/Receipts/Revenues/Fees.
>
> In his Final/ Amended Annual ITR for taxable year 2006, there was no amount stated in Item Nos. 29 and 53. *However, a scrutiny of said ITR would reveal that the Net Income, Taxable Income, and Tax Due declared were in accordance with the financial statements submitted by [respondent's] company, showing the amount of [PHP] 31,164,900.67 as Gross Income. Hence, while the Total Sales was without any amount, there*

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65 CTA *rollo*, p. 95, Annex A of Exhibit R-5, Preliminary Assessment Notice dated October 15, 2015.
66 *Rollo*, p. 81, CTA First Division Decision dated August 18, 2017.

> *can be no under-declaration of sales because the amounts for Net Income, Taxable Income and Tax Due were properly indicated in [respondent]'s ITR. Clearly, [the CIR] failed to demonstrate that [respondent] had filed a fraudulent return with the intent to evade tax.*
>
> Since there is no substantial under-declaration and/or fraud to speak of, Section 203 of the NIRC of 1997, as amended, will apply and the prescriptive period of three years will govern.[67]

The CTA EB affirmed in *toto* the foregoing findings and underscored further that:

> [The CIR] failed to establish that [r]espondent has undeclared sales amounting to [PHP] 31,671,388.34. In fact, [r]espondent declared total sales of [PHP] 31,671,388.34 in his [Annual ITR]. Consequently, [r]espondent's tax return cannot be construed as false or fraudulent.[68]

The subject assessments are void for being issued beyond the prescriptive period

Following the foregoing discussion, the CIR's right to assess and collect from respondent deficiency taxes for 2006 is subject to the ordinary three-year prescriptive period under Section 203 of the 1997 NIRC. The three-year period is reckoned from the last day prescribed by law for the filing of the return, or in a case where a return is filed beyond such period, from the day the return was actually filed.

Here, the CTA found that for taxable year 2006, the CIR had until June 12, 2010 within which to assess respondent for deficiency income taxes. For VAT, the CIR had the following dates within which to assess respondent for the same taxable year: (a) 1st Quarter — April 26, 2009; (b) 2nd Quarter — July 26, 2009; (c) 3rd Quarter — October 26, 2009; and (d) 4th Quarter — January 26, 2010. However, as the CIR admitted, the FAN/FLD assessing respondent of deficiency income tax and VAT for taxable year 2006 was only sent to respondent, *via* registered mail, on January 24, 2011, which is clearly beyond the allowable period for assessment and collection of taxes. Verily, the subject assessments are void for being barred by prescription.

All told, the Court finds that the CTA did not err in cancelling and withdrawing the subject assessments against respondent, requiring the latter to pay deficiency income tax and VAT, inclusive of surcharges and interests in the aggregate amount of PHP 30,723,951.10 for taxable year 2006. Said assessments are null and void for two reasons: (1) the CIR failed to comply with the requirements of due process in the issuance of assessments; and (2) the subject assessments were issued beyond the three-year prescriptive period for assessment and collection of taxes.

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67 *Id.* at 82–83.

68 *Id.* at 48, CTA EB Decision dated March 13, 2019.

ACCORDINGLY, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision dated March 13, 2019 and Resolution dated September 16, 2019 of the Court of Tax Appeals *En Banc* in CTA EB No. 1771 are hereby **AFFIRMED.**

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

HENRI JEAN PAUL B. INTING
Associate Justice

See Separate Concurring Opinion

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice

THIRD DIVISION

G.R. No. 249540 — COMMISSIONER OF INTERNAL REVENUE, Petitioner, **v. ARTURO E. VILLANUEVA, JR.,** Respondent.

Promulgated:

February 28, 2024

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SEPARATE CONCURRING OPINION

DIMAAMPAO, *J.*:

I concur with the denial of the petition and the cancellation of the assessments issued against respondent for taxable year 2006.

I write only to reiterate my position in *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*,[1] wherein I opposed the wholesale abandonment of the doctrine in *Aznar v. Court of Tax Appeals*,[2] which held that Section 222 (a) (formerly, Section 332 [a]) of the National Internal Revenue Code (Tax Code) contemplates both intentional and unintentional false returns.

At the outset, I recognize that I was the lone dissent on this issue in *McDonald's Philippines Realty Corp.*, and I offer no true resistance against the now standing interpretation of Section 222 (a) by the *Banc*. In the same vein, I do not oppose the application of this doctrine to the present case.

However, I must respectfully maintain my stance that the literal wording of Section 222 (a), the plain meaning of false returns, and its use in various provisions of the Tax Code, support the interpretation that Section 222 (a) may contemplate unintentional false returns. Nevertheless, I must stress again that I am not advancing the position that *all* errors, even innocent or honest mistakes, should trigger the extraordinary ten-year period. Rather, it depends on the resulting effects and whether the degree of falsehood caused actual prejudice to the government and prevented it from uncovering the falsity with reasonable efforts. As I stated in my Concurring and Dissenting Opinion in *McDonald's Philippines Realty Corp.*, falsity may arise even without intent to evade taxes, such as if it was based on a wrong presumption or mistaken notion on the part of the taxpayer. In these instances, I believe that the government should not be precluded from seeking the payment of the correct amount of taxes even after the lapse of the ordinary three-year prescriptive period. But the government bears the burden of proving falsity as an established fact.

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1 G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*].

2 157 Phil. 510-536 (1974) [Per J. Esguerra, First Division].

Still, should this interpretation be applied to the present case, I would arrive at the same conclusion as the *ponencia* as the petitioner was unable to prove that the degree of purported falsity prevented it from assessing respondent the correct amount of taxes within the three-year prescriptive period.

For these reasons, I likewise vote to **DENY** the petition.

JAPAR B. DIMAAMPAO
Associate Justice