EN BANC

G.R. No. 247737 — MCDONALD'S PHILIPPINES REALTY CORPORATION, *petitioner*, ***versus*** **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

Promulgated:

August 8, 2023

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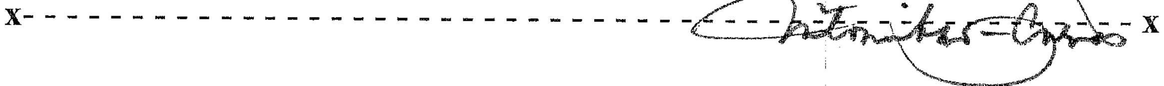

CONCURRING OPINION

CAGUIOA, *J.*:

I fully concur with the *ponencia*'s abandonment of the Court's ruling in *Aznar v. Court of Tax Appeals*[1] (*Aznar*) which applied the extraordinary 10-year prescriptive period under Section 222(a) of the National Internal Revenue Code of 1997[2] (1997 NIRC) to false returns in general.

I submit this Concurring Opinion only to highlight that the filing of false returns *without intent to evade tax* does not warrant the application of the 10-year prescriptive period under Section 222(a) of the 1997 NIRC.

For context, the crux of the controversy in this case pertains to whether petitioner McDonald's Philippines Realty Corporation (MPRC) should be subject to the ordinary three-year prescriptive period or the extraordinary 10-year prescriptive period for assessment. MPRC asserts that the three-year period is applicable to its situation because it did not file a false return with intent to evade tax. Respondent Commissioner of Internal Revenue (CIR) insists otherwise and maintains that the issuance of the subject assessment was not yet barred by prescription as the 10-year prescriptive period should be applied due to MPRC's submission of a false return. On this note, the Court of Tax Appeals *En Banc* (CTA EB) agreed with the CIR and concluded that MPRC committed falsity in its 2007 Quarterly Value-Added Tax (VAT) returns as it did not declare substantial receipts from its interest income. This deviation from the truth, according to the CTA EB, warrants the application of the 10-year prescriptive period for assessment.

The CIR's power to assess and collect taxes is provided under Section 2 of the 1997 NIRC, which reads:

> SECTION 2. *Powers and Duties of the Bureau of Internal Revenue.* — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue

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[1] 157 Phil. 510 (1974).

[2] Republic Act No. 8424, December 11, 1997.

taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

This power to assess and collect taxes is, however, limited by Section 203 of the 1997 NIRC:

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.

As an exception to the ordinary three-year prescriptive period for assessment and collection of taxes, Section 222 of the 1997 NIRC provides:

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. (Emphasis supplied)

Like the *ponencia*, I find that the extraordinary 10-year period to assess does **not** apply in the present case — which is a situation of a return being false but without any intent to evade the tax.

A review of relevant jurisprudence on the definition of a "false return" is in order.

In 1974, the Court strictly defined in *Aznar* what constitutes a false return as a "deviation from the truth, whether intentional or not" such that "it becomes easy for revenue officers to claim that there was falsity in the return filed by the taxpayer that would allow the assessment of tax within ten (10) years from the date of discovery."[3]

However, as will be discussed below, subsequent decisions after *Aznar* suggest that the Court had relaxed the strict application of what constitutes a false return.

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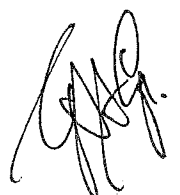
[3] Mamalateo and Mamalateo-Jusay, *Tax Rights and Remedies* (2016), p. 777.



Almost 25 years after *Aznar*, the Court promulgated the case of *CIR v. B.F. Goodrich Phils., Inc.*[4] (*B.F. Goodrich Phils.*), where the CIR argued that there was "falsity" when the taxpayer sold a property for a price lesser than its declared fair market value thereby justifying the application of the extraordinary prescriptive period to assess. In refusing to apply the 10-year period, the Court held that mere falsity in the return is insufficient to take the questioned assessment out of the ambit of the ordinary prescriptive period to assess. The CIR must prove that the return was filed fraudulently or that the taxpayer intended to evade the payment of correct taxes to justify the application of the 10-year period, to wit:

> Petitioner insists that private respondent committed "falsity" when it sold the property for a price lesser than its declared fair market value. **This fact alone did not constitute a false return which contains wrong information due to mistake, carelessness or ignorance.** It is possible that real property may be sold for less than adequate consideration for a *bona fide* business purpose; in such event, the sale remains an "arm's length" transaction. In the present case, the private respondent was compelled to sell the property even at a price less than its market value, because it would have lost all ownership rights over it upon the expiration of the parity amendment. In other words, private respondent was attempting to minimize its losses. At the same time, it was able to lease the property for 25 years, renewable for another 25. This can be regarded as another consideration on the price.
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> Furthermore, **the fact that private respondent sold its real property for a price less than its declared fair market value did not by itself justify a finding of false return**. Indeed, private respondent declared the sale in its 1974 return submitted to the BIR. Within the five-year prescriptive period, the BIR could have issued the questioned assessment, because the declared fair market value of said property was of public record. This it did not do, however, during all those five years. **Moreover, the BIR failed to prove that respondent's 1974 return had been filed fraudulently. Equally significant was its failure to prove respondent's intent to evade the payment of the correct amount of tax.**
>
> **Ineludibly, the BIR failed to show that private respondent's 1974 return was filed fraudulently with intent to evade the payment of the correct amount of tax.** Moreover, even though a donor's tax, which is defined as "a tax on the privilege of transmitting one's property or property rights to another or others without adequate and full valuable consideration," is different from capital gains tax, a tax on the gain from the sale of the taxpayer's property forming part of capital assets, the tax return filed by private respondent to report its income for the year 1974 was sufficient compliance with the legal requirement to file a return. In other words, the fact that the sale transaction may have partly resulted in a donation does not change the fact that private respondent already reported its income for 1974 by filing an income tax return.
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> **Since the BIR failed to demonstrate clearly that private respondent had filed a fraudulent return with the intent to evade tax, or that it had failed to file a return at all, the period for assessments has**

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[4] 363 Phil. 169 (1999).

> **obviously prescribed.** Such instances of negligence or oversight on the part of the BIR cannot prejudice taxpayers, considering that the prescriptive period was precisely intended to give them peace of mind.[5] (Emphasis supplied, italics and citations omitted)

In the 2004 case of *CIR v. Estate of Toda, Jr.*[6] (*Estate of Toda, Jr.*), the Court interpreted Section 269 of the 1986 NIRC (now Section 222 of the 1997 NIRC) differently from *Aznar* — that the phrase "intent to evade tax" qualified the term "false return" and not "fraudulent return," to wit:

> *Has the period of assessment prescribed?*
>
> No. Section 269 of the NIRC of 1986 (now Section 222 of the Tax Reform Act of 1997) read:
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> *Sec. 269. 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 after the collection of such tax may be begun without assessment, at any time within ten 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 collection thereof.
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> **Put differently, in cases of (1) fraudulent returns; <u>(2) false returns with intent to evade tax</u>; and (3) failure to file a return, the period within which to assess tax is ten years from discovery of the fraud, falsification or omission, as the case may be.**[7] (Emphasis and underscoring supplied, italics in the original)

Then in the 2016 case of *Republic of the Phils. v. GMCC United Development Corp., et al.*[8] (*GMCC United Development Corp.*), the Court also refused to apply the 10-year period to assess:

> In arguing for the application of the 10-year prescriptive period, petitioner claims that the tax return in this case is fraudulent and thus, the three-year prescriptive period is not applicable.
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> Petitioner fails to convince that respondents filed a fraudulent tax return. **The respondents may have erred in reporting their tax liability when they recorded the assailed transactions in the wrong year, but such error stemmed from the wrong application of the law and is not an indication of their intent to evade payment. If there were really an intent to evade payment, respondents would not have reported and subsequently paid the income tax, albeit in the wrong year.**[9] (Emphasis supplied, citation omitted)

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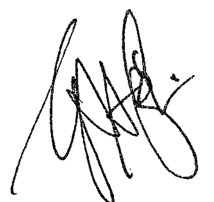
[5] *Id.* at 179–180.
[6] 481 Phil. 626 (2004).
[7] *Id.* at 642–643.
[8] 802 Phil. 432 (2016).
[9] *Id.* at 448.



Still further, in the 2017 case of *CIR v. Philippine Daily Inquirer, Inc.*[10] (*Philippine Daily Inquirer*), the Court, applying the case of *B.F. Goodrich Phils.*, categorically declared:

> In *Commissioner of Internal Revenue v. Javier*, this Court ruled that fraud is never imputed. The Court stated that it will not sustain findings of fraud upon circumstances which, at most, create only suspicion. The Court added that the **mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion**. The Court explained:
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> > The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to fraud with intent to evade the tax contemplated by law. It must amount to intentional wrong-doing with the sole object of avoiding the tax.
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> In *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, the Court differentiated between false and fraudulent returns. Quoting *Aznar v. Court of Tax Appeals*, the Court explained in *Samar-I* the acts or omissions that may constitute falsity, thus:
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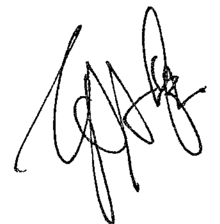
> > Petitioner argues that Sec. 332 of the NIRC does not apply because the taxpayer did not file false and fraudulent returns with intent to evade tax, while respondent Commissioner of Internal Revenue insists contrariwise, with respondent Court of Tax Appeals concluding that the very "substantial under[ ]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."
> >
> > To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. 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 situation 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 implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

[10] 807 Phil. 912 (2017).



> 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) [of the] NIRC, from the time of discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.
>
> **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.**
>
> **Since the case does not fall under the exceptions, Section 203 of the NIRC should apply.**[11] (Emphasis supplied, citations omitted)

While the Court in *Philippine Daily Inquirer* cited *Aznar* in differentiating between a false and a fraudulent return, it nonetheless recognized and applied the ruling in *B.F. Goodrich Phils.* that "the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return." The Court concluded that since there was no evidence to prove fraud or intentional falsity on the part of the taxpayer, then the three-year, and not the 10-year, prescriptive period applies.

Clearly, in contrast to *Aznar*, the cases of *B.F. Goodrich Phils.*, *Estate of Toda, Jr.*, and *GMCC United Development Corp.* held that mere falsity of a return will not warrant the application of the 10-year prescriptive period for an assessment. It must be established that the filing of a false return was done intentionally or with intent to evade the payment of tax.

Thus, as I see it, the Court's strict definition of false return in *Aznar* (rendered in 1974) was effectively **abandoned** by the Court as early as 1999 in its ruling in *B.F. Goodrich Phils.*, which categorically declared that the main issue it was resolving therein was the prescription provision of Section 332 of the 1939 Tax Code[12] (now Section 222 of the 1997 NIRC). As the Court notably held:

> For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such

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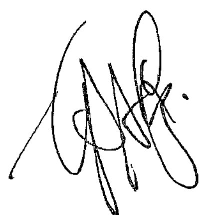
[11] *Id.* at 935–937.

[12] Commonwealth Act No. 466, June 15, 1939.



> protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.[13] (Citation omitted)

That *B.F. Goodrich Phils.* had really abandoned the strict interpretation in *Aznar* is thereafter seen in the promulgation of the case of *Philippine Daily Inquirer* in 2017. The Court cannot ignore its ruling in *Philippine Daily Inquirer* as an authoritative example, because, as in this case, the main issue resolved therein was the prescription provision on the assessment and collection of taxes. Thus, *Philippine Daily Inquirer* affirms the position of the *ponencia* that the strict interpretation in *Aznar* had already been abandoned by *B.F. Goodrich Phils.*

In his Concurring and Dissenting Opinion, Associate Justice Japar B. Dimaampao (Justice Dimaampao) takes a different view urging the Court to revert to the decision in *Aznar*. For Justice Dimaampao, there is no need to abandon *Aznar* because it is more in keeping with the literal wording of Section 222(a) of the 1997 NIRC and the spirit of the law.[14]

I disagree. The Court should not disturb the prevailing current jurisprudence and, through the current *ponencia*, it should now finally and definitively hold that the narrow interpretation in *Aznar* where a "false return" was simplistically understood to mean any "deviation from the truth, whether intentional or not," has been abandoned.

Again, for easier reference, the provision in question reads as follows:

> 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. (Emphasis supplied)

While the above provision shows that the phrase "with intent to evade tax" follows the phrase "fraudulent return," it is absurd to interpret that only a "fraudulent return" is qualified by the phrase "with intent to evade tax" because "fraudulent return" already embraces the intent to avoid tax. In other words, to use "with intent to evade tax" as the modifier of "fraudulent return" is defining a term with its own definition. Borrowing the words of the Court in *Philippine Daily Inquirer* quoting from *Samar-I Electric Cooperative v. CIR*,[15] 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 "literal wording" of the law, therefore, as properly applied — and contrary to

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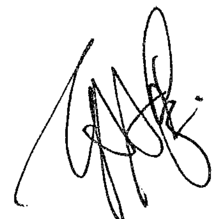
[13] *CIR v. B.F. Goodrich Phils., Inc.*, *supra* note 4, at 178.

[14] Dimaampao, *J.*, Concurring and Dissenting Opinion, pp. 7–11.

[15] 749 Phil. 772 (2014).



the position of Justice Dimaampao — is that the phrase "with intent to evade tax" modifies only — as it can only modify — the term "false return."

To continue following *Aznar* is to continue to destroy any significant difference between the three-year and 10-year periods because any error or omission by the taxpayer in his or her return, even if by simple mistake or ignorance will be considered as an assessment under the extraordinary 10-year period.

More importantly, this broad interpretation of what constitutes a false return only widens the door to corruption and abuse of power by tax authorities. In the context of regular tax audits, where findings of under-declared income or over-declared deductions are common, any mistake, no matter if in good faith, will result in triggering the 10-year prescriptive period.

Justice Dimaampao further submits that it would be absurd to presume that the legislative intent behind Section 222(a) of the 1997 NIRC allows for the extraordinary period only when no return is filed and not when a return is filed with errors or inaccuracies. It was suggested that both scenarios equally hinder the taxing authority's collection efforts, and restricting the provision to false returns filed with intent to evade tax limits the government's ability to recover taxes.[16]

With due respect, this is wrong. The distinction between situations in which no return is filed and situations in which false returns are filed without the intent to evade tax is justified by practical and legal considerations. It is important to consider that the prescriptive period for assessment and collection exists to strike a balance between allowing the government to effectively assess and collect taxes ***while also ensuring fairness and protection for taxpayers***. When no return is filed, the taxing authority faces significant challenges in assessing and collecting taxes. The absence of a return deprives the government of any basis for determining the taxpayer's liability, making it difficult to initiate the assessment or collection process. To address this, the law provides for the extraordinary 10-year prescriptive period.

On the other hand, false returns present a different scenario. While errors or inaccuracies in a return may create difficulties for the taxing authority, it is essential to note that the government still has access to the filed returns. The three-year period prescribed for assessing and collecting taxes in such cases strikes a balance between giving the government enough time to identify and address false returns while safeguarding the rights of taxpayers. Furthermore, the three-year period does not preclude the government from assessing and collecting taxes based on false returns. Within this timeframe, the government retains the authority and resources to assess and collect taxes.

[16] Dimaampao, *J.*, Concurring and Dissenting Opinion, pp. 10–11.

Justice Dimaampao raises the question regarding the qualification of false returns with the phrase "with intent to evade tax" and its potential differentiation from fraudulent returns. He submits that if false returns can be filed with the intent to evade tax, yet not be classified as fraudulent, it may render the word "fraudulent" superfluous.[17] The problem with this formulation is that the premise is false. When a false return is determined by the tax authorities as having an "intent to evade tax," then that false return is a fraudulent return and the 10-year period is triggered.

To repeat, to limit the application of the phrase "with intent to evade tax" solely to fraudulent returns would be redundantly repetitious and overlooks the balancing act provided by Section 222(a), as heretofore already explained.

Indeed, **the subsequent cases after *Aznar* provide <u>a more sound and logical approach in the construction and application of</u> Section 222 of the 1997 NIRC.**

Intent to evade tax or tax evasion refers to 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 which is described as being evil, in bad faith, willful, or deliberate and not accidental.[18] 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."[19] Therefore, to construe that the phrase "with intent to evade tax" as only qualifying the term "fraudulent return," as *Aznar* provided, 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.[20] *Ut magis valeat quam pereat.* I submit that the Court should choose the interpretation that gives effect to the whole of the statute and its every word.[21]

In fact, a reading of Section 222 of the 1997 NIRC reveals that the phrase "with intent to evade tax" qualifies a "false return." 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

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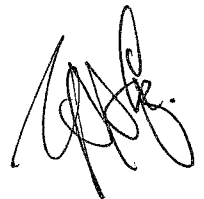
[17] *Id.* at 7–8.

[18] *CIR v. Estate of Toda, Jr.*, *supra* note 6, at 639.

[19] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, 801 Phil. 806, 842 (2016); citation omitted.

[20] *SM Land, Inc. v. Bases Conversion and Dev't. Authority, et al.*, 741 Phil. 269, 299 (2014); *Allied Banking Corporation v. CA*, 348 Phil. 382 (1998).

[21] *Phil. Health Care Providers, Inc. v. CIR*, 616 Phil. 387, 402 (2009).



found or with which it is associated. In other words, the obscurity or doubt of the word or phrase may be reviewed by reference to associated words.[22] Given that the clause "with intent to evade tax" is in the company of the words "false or fraudulent return," it becomes clear that the qualifying phrase "with intent to evade tax" pertains to the entire category of "false or fraudulent return." This interpretation is supported by the fact that the provision does not separate the words "false" and "fraudulent" by a comma, indicating that they should be read together as a single unit.

Thus, Section 222 of the 1997 NIRC reveals that the phrase "with intent to evade tax" qualifies as well a "false return." This interpretation is consistent with the purpose of the provision, which is to provide exceptions to the general rule on the assessment and collection of taxes on false or fraudulent returns with the intent to evade tax. In other words, not every erroneous return would warrant the application of the 10-year period to assess. It bears to stress that since the 1939 Tax Code up to the 1997 NIRC, the Legislature has remained consistent with the phraseology of the exceptions as to the period of limitation of assessment and collection of taxes. The precursor provision of Section 222 of the 1997 NIRC is Section 332 of the 1939 Tax Code:

> SECTION 332. *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 a 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 falsity, fraud, or omission. (Emphasis supplied)

Furthermore, for purposes of imposing a civil penalty, Section 248(B) of the 1997 NIRC provides a fifty percent (50%) surcharge "in case a false or fraudulent return is **willfully made**," thus:

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

Section 248(B) of the 1997 NIRC affirms my position, as in *B.F. Goodrich Phils.*, that the entry of wrong information due to mistake, carelessness, or ignorance, *without intent to evade tax*, does not warrant the application of the 10-year prescriptive period.

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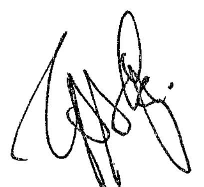
[22] *Government Service Insurance System, et al. v. Commission on Audit, et al.*, 674 Phil. 578, 600–601 (2011).



At the risk of being repetitive, in order to render a false return within the ambit of Section 222 of the 1997 NIRC, such filing must be done **willfully or intentionally or with intent to evade the payment of tax**. As emphasized by the Court, the law on prescription should be liberally construed in favor of taxpayers and that, as a corollary, Section 222 of the 1997 NIRC, as an exception to the statute of limitations, should perforce be strictly construed. In *GMCC United Development Corp.*, the Court explained anew the reasons behind 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 the approval of the law.[23] (Emphasis supplied)

Justice Dimaampao proposes that only false returns, whether done intentionally or unintentionally, that have a true impact on the government's collection of taxes should qualify for the extended period for assessment and collection. The test should be whether the false entries resulted in actual prejudice to the government, without necessarily a specific intent to evade taxes, and must be of such a degree that the government is prevented from uncovering the same with reasonable efforts.[24]

This proposal is simply an invitation to do judicial legislation that is totally uncalled for. Section 222(a) of the 1997 NIRC is clear and unambiguous. The law states that false returns, filed with the intent to evade tax, are subject to the extraordinary 10-year prescriptive period. **The requirement of specific intent to evade tax is an <u>*essential element*</u> in the determination of whether the extraordinary prescriptive period will apply.**

To adopt Justice Dimaampao's proposed interpretation would introduce an additional requirement that goes beyond what the law prescribes. It would deviate from the express intent and wording of the statute. The clear legislative intent is that the 10-year prescriptive period will apply when false returns with the intent to evade tax are involved. **Moreover, determining the**

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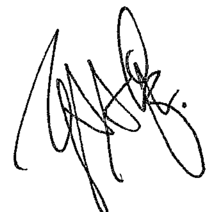
[23] *Republic of the Phils. v. GMCC United Development Corp., et al., supra* note 8, at 447, citing *Republic of the Phils. v. Ablaza*, 108 Phil. 1105 (1960).

[24] Dimaampao, *J.*, Concurring and Dissenting Opinion, pp. 11–12.



impact on the government's tax collection or the extent of prejudice suffered would require subjective evaluations and may lead to inconsistent application. This also creates another door for "**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.**"

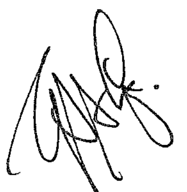
In sum, mere falsity of a return does not merit the application of the 10-year prescriptive period. The animating element of fraud as in the case of taxpayer's intent to evade the payment of the correct amount of tax must be clearly established. Hence, in cases of "false returns," the Bureau of Internal Revenue (BIR) should only invoke the 10-year prescriptive period where there is clear and convincing evidence of fraud or intent to evade tax.

To my mind, 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 discrepancies, **which could have been easily detected by the BIR within the ordinary period of prescription given its bountiful resources and machineries, especially in this age of computerization**. To repeat the wisdom of earlier years, imposing the prescriptive period will compel 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, if any. To allow the BIR the 10-year period runs counter to this impetus and leads only to situations of unscrupulous BIR examiners continuing to shag innocent, peaceful, and law-abiding citizens.

In this case, as correctly found by the CTA Division and CTA EB, the under-declaration in MPRC's gross receipts in its 2007 Quarterly VAT returns did not arise from an intent to evade tax. On the contrary, such under-declaration arose from MPRC's honest belief that it was not subject to VAT. More, the fact that MPRC reported its interest income in its annual Income Tax Return for calendar year 2007 is a clear indication that it did not intent to evade tax.

Where such intent to evade tax is absent, the BIR is not justified in invoking the 10-year prescriptive period to assess. Indeed, as between the strict and literal but erroneous interpretation in *Aznar* and the liberal albeit correct ruling in *B.F. Goodrich Phils.*, as affirmed in *Estate of Toda, Jr.*, *GMCC United Development Corp.*, and *Philippine Daily Inquirer*, the Court is now bound to apply the latter because the Court's duty is to give effect not only to the letter of the law, but more importantly, to the spirit and the policy that animate it.

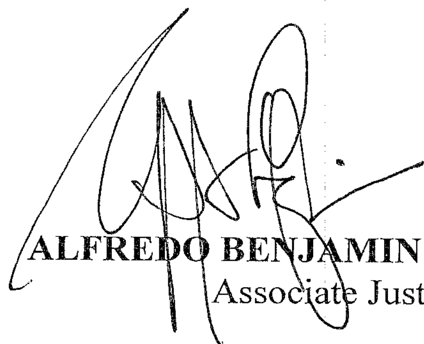
Again, it is a settled rule that the law on prescription is liberally interpreted in favor of taxpayers, while exceptions thereto are strictly construed. Considering that the exception to the statute of limitations



principally favors the BIR, the burden to prove the filing of a false return with intent to evade tax rests upon its shoulders.

Unfortunately, in this case, the BIR failed to discharge its burden. Apart from bare claims of falsity of MPRC's return, the BIR failed to clearly demonstrate, as in *B.F. Goodrich Phils.*, *Estate of Toda, Jr.*, *GMCC United Development Corp.*, and *Philippine Daily Inquirer*, that MPRC filed its return with intent to evade the payment of the correct taxes. Verily, inasmuch as intent to evade the payment of tax on the part of MPRC has not been established, the application of the 10-year prescriptive period is not warranted.

For these reasons, I fully concur with the *ponencia*, and accordingly vote to **GRANT** the present Petition, **REVERSE** and **SET ASIDE** the Decision and Resolution of the Court of Tax Appeals *En Banc*, and **CANCEL** the value-added tax assessment against Mcdonald's Philippines Realty Corporation for calendar year 2007 on the ground that the three-year period for assessment has already prescribed.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice