EN BANC

G.R. No. 247737 – MCDONALD'S PHILIPPINES REALTY CORPORATION, Petitioner, *v.* **COMMISSIONER OF INTERNAL REVENUE,** Respondent.

Promulgated: August 8, 2023

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CONCURRING & DISSENTING OPINION

DIMAAMPAO, *J.*:

I concur in granting the present Petition and cancelling the subject assessment on the ground of prescription. I agree that the Commissioner of Internal Revenue failed to prove that the present case warranted the application of the extraordinary ten-year prescriptive period under Section 222 (a) of the National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 8424.[1]

However, I dissent as to the *ponencia*'s abandonment of the doctrine in *Aznar v. Court of Tax Appeals*,[2] which declared that Section 222 (a) (formerly, Section 332 [a]) of the NIRC contemplates both intentional and unintentional false returns, and instead exclusively qualifies "false returns" in the aforementioned provision to returns containing errors made deliberately or willfully with intent to evade taxes.[3]

The relevant provision under consideration is Section 222 (a) of the NIRC, particularly as to the proper characterization of a "false return" which would trigger the extraordinary ten-year period to assess or collect taxes –

> 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)

The *cause célèbre* between the majority and this dissent rests on whether a false return under the aforecited provision is necessarily qualified by the phrase "with intent to evade tax," in the same manner as fraudulent returns. It is my humble assertion that it is not.

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1 An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes, enacted on December 11, 1997.

2 G.R. No. L-20569, August 23, 1974, 157 Phil. 510-536.

3 *Ponencia*, p. 34.

Section 222 (a) of the present NIRC traces its legislative origins to Section 332 (a) of the NIRC of 1939:[4]

> 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.

Subsequently, Presidential Decree (PD) No. 69[5] introduced the *proviso* to the effect that in a collection case instituted by the Bureau of Internal Revenue (BIR) involving fraud assessment, which has become final and executory, the fact of fraud shall be judicially taken cognizance of by the court:[6]

> Sec. 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; 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.

Following this amendment, the provision saw no changes up until its present form in the NIRC of 1997.[7]

Having seen little to no changes in its wording or styling since its introduction in 1939, it would be safe to assume that its intended meaning has not changed and even decades old jurisprudence interpreting the provision

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4 Commonwealth Act No. 466, entitled "AN ACT TO REVISE, AMEND AND CODIFY THE INTERNAL REVENUE LAWS OF THE PHILIPPINES," enacted on June 15, 1939.

5 AMENDING CERTAIN SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE, enacted on November 24, 1972.

6 Revenue Memorandum Circular No. 09-73, issued on January 9, 1973.

7 See Section 319 (a) of PD No. 1158, or the NIRC of 1977, enacted on June 3, 1977 –

> SECTION 319. 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: 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.

See Section 2 of Batas Pambansa Blg. 700, entitled AN ACT AMENDING SECTIONS 318 AND 319 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, SO AS TO REDUCE THE PERIOD OF LIMITATION FOR ASSESSMENT OF INTERNAL REVENUE TAXES FROM FIVE (5) TO THREE (3) YEARS, enacted on April 5, 1984 –

> SECTION 2. Section 319 of the same Code is hereby amended to read as follows:
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> "Sec. 319. 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 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 the collection thereof.

remains instructive to properly glean the will of the legislative, as the repository of the sovereign power of taxation.[8]

Pertinently, the provision was first interpreted by the Court in the seminal case of *Aznar v. Court of Tax Appeals*,[9] which declared that Section 222 (a) (formerly, Section 332 [a]) of the NIRC recognizes three distinct scenarios: false returns, fraudulent returns with intent to evade taxes, and failure to file returns. The Court then distinguished between the first two in this wise:

> 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 aggregates the situations into three different classes, namely "falsity", "fraud" and "omission". That there is a difference between "false return" and "fraudulent return" cannot be denied. **While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.** (Emphasis supplied)

In *Aznar,* the Court found that the taxpayer had filed false returns given that the information therein did not accurately reflect his financial condition at the time based on the evidence presented. The Court also found that the lower court erred in presuming that the returns were fraudulent based solely on the substantial disparity of incomes as reported and determined by the inventory method and on the similarity of consecutive disparities for six years. It held that the intent to evade taxes was actually belied by the Commissioner of Internal Revenue's own findings that resulted in varied tax liability results based on mistakes in the use of the inventory method. This bolstered the taxpayer's defense that the falsity of the returns was merely due to mistake, carelessness, or ignorance of the taxpayer's accountants.[10]

In *Commissioner of Internal Revenue v. Javier, Jr.*,[11] the Court maintained the particular distinction of fraudulent returns as opposed to false returns and stated that "[a] 'fraudulent return' is always an attempt to evade a tax, but a merely 'false return' may not be." It emphasized that the fraud contemplated by the NIRC is "actual and intentional fraud through willful and deliberate misleading of the government agency concerned," and which

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8 See *Abakada Guro Party List v. Ermita*, G.R. Nos. 168056, 168207, 168461, 168463 & 168730, September 1, 2005.

9 Supra note 2.

10 Id.

11 G.R. No. 78953, July 31, 1991, 276 Phil. 914-923.

would induce government "to give up some legal right and place itself at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities."[12]

The doctrine drawing a distinction between false returns and fraudulent returns was then reiterated in subsequent cases,[13] most recently in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[14] where the Court clarified that "[a] false return simply involves a 'deviation from the truth, whether intentional or not' while a fraudulent return 'implies intentional or deceitful entry with intent to evade the taxes due.'" Simply put, the line of cases following *Aznar* interpreted Section 222 (a) of the NIRC by not qualifying "false returns" with the subsequent phrase of "with intent to evade taxes".

Contrarily, the case of *Commissioner of Internal Revenue v. Estate of Toda, Jr.*[15] advanced a different interpretation and provided that the three situations contemplated by Section 222 (a)[16] are: (1) fraudulent returns; (2) false returns **with intent to evade tax**; and (3) failure to file a return.[17] The Court then went on to say that the transactions covered by the assessment were a "a tax ploy, a sham, and without business purpose and economic substance" done to circumvent tax laws.[18] Moreover, the Court also held that assuming *arguendo* that there was no fraud, the return was still false as it did not accurately reflect the actual amount gained by the taxpayer from the transaction and was "done with intent to evade or reduce tax liability."[19]

This was followed by *Commissioner of Internal Revenue v. Asalus Corp.*,[20] where it was implied that the extraordinary ten-year period would only apply for false returns filed with "intent to defraud."

The case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*,[21] appears to echo this doctrine insofar as it concluded that "the entry of wrong information due to mistake, carelessness, or ignorance, **without intent to evade tax**, does not constitute a false return,"[22] citing

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12 Id.

13 See *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, G.R. No. 104171, February 24, 1999, 363 Phil. 169-181; *Republic v. Marcos II*, G.R. Nos. 130371 & 130855, August 4, 2009, 612 Phil. 355-379; and *Samar-I Electric Cooperative. v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 749 Phil. 772-790.

14 G.R. No. 215957, November 9, 2016, 799 Phil. 391-420.

15 G.R. No. 147188, September 14, 2004, 481 Phil. 626-645.

16 Then Section 269 (a) of the NIRC, as renumbered by Executive Order No. 273, entitled "ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES," issued on July 25, 1987.

17 See *Commissioner of Internal Revenue v. Estate of Toda, Jr.*, supra note 15.

18 Id.

19 Id.

20 G.R. No. 221590, February 22, 2017, 806 Phil. 397-413.

21 G.R. No. 213943, March 22, 2017, 807 Phil. 912-941.

22 Id. Emphasis supplied.

Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.[23] as its basis.[24] Notably, the implication of the foregoing statement is that a false return under Section 222 (a) must be attended by intent to evade tax. However, a circumspect analysis of *B.F. Goodrich Phils., Inc.* would show that the Court never expressly drew such a conclusion.

The issue resolved in *B.F. Goodrich Phils., Inc.* was whether or not the BIR's right to assess therein taxpayer for deficiency taxes had already prescribed. The BIR primarily argued that the extraordinary period under Section 222 (a) (then Section 332 [a]) of the NIRC applied due to the falsity in the filed returns given that the property subject of the underlying transaction was sold "for a price lesser than its declared fair market value." The Court rejected this argument in the following manner:

> Nor is petitioner's claim of falsity sufficient to take the questioned assessments out of the ambit of the statute of limitations. The relevant part of then Section 332 of the NIRC, which enumerates the exceptions to the period of prescription, provides:
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> > "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 a 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: . . . ."
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> 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**

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[23] G.R. No. 104171, February 24, 1999, 363 Phil. 169-181.

[24] See footnote 31 of *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, supra note 21.

> **significant was its failure to prove respondent's intent to evade the payment of the correct amount of tax.**
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> 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," 6 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 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. (Emphasis and underscoring supplied)

A reading of the Court's discourse readily shows that there was neither an interchanging of the concept of false returns and fraudulent returns, nor was there a qualification that false returns must be attended by an intent to defraud or evade taxes. While the BIR's argument was based only on the "falsity" of the returns, the Court still examined the applicability of all three types of situations under Section 222 (a) (then Section 332 [a]) of the NIRC. As above-quoted there were separate discussions for the three types: the Court first examined whether the subject returns were "false" for "contain[ing] wrong information due to mistake, carelessness or ignorance"; second, it determined whether the returns can be considered to have been filed "fraudulently" for being attended with "intent to evade the payment of the correct tax"; and third, it determined that there was no "fail[ure]" to file a return at all. Undoubtedly, nowhere in its *ratio* did the Court ever directly link intent to evade tax with "false returns".[25] If at all, it shows that *B.F. Goodrich Phils., Inc.* directly followed the framework in *Aznar,* as the former did, in fact, cite the latter as basis,[26] by confining false returns to those "contain[ing] wrong information due to mistake, carelessness or ignorance." Consequently, *Philippine Daily Inquirer, Inc.* may have misunderstood the doctrine in *B.F. Goodrich Phils., Inc.*

More recently, the case of *Commissioner of Internal Revenue v. Spouses Magaan*,[27] seems to follow the interpretation put forth in *Estate of*

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25 See *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, supra note 23.
26 See footnote 13 of *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, supra note 23.
27 G.R. No. 232663, May 3, 2021.

Toda, Jr. where the lines between false returns and fraudulent returns are blurred. In *Spouses Magaan,* fraudulent filing was characterized as "false and deceitful entry with intent to evade the taxes due", and that fraudulent returns must not be attributable to "mistake, carelessness, or ignorance," which is the indication typically associated with false returns in previous cases. It is well to note, however, that *Spouses Magaan* did not involve a determination of "falsity" but a testing of whether the subject returns were fraudulent.

Whether intentionally or unintentionally, there existed two competing schools of thought in jurisprudence for interpreting Section 222 (a) of the Tax Code, which has now been resolved by the majority's abandonment of *Aznar.* As I will further propound on below, I respectfully submit that this is error. It is my considered opinion that the *Aznar* interpretation is better supported not only by the text of the provision and the law as a whole, but also the spirit and impelling purpose behind providing for extraordinary periods to assess and collect taxes.

The Aznar interpretation is more in keeping with the literal wording of Section 222(a) of the NIRC.

First, the most basic rule in statutory construction is that words used in law must be given their ordinary meaning.[28] Indeed, the ordinary meaning of "false" and "fraudulent" support the notion that these are distinct. "False" in its general sense means untrue, deceitful, not genuine, inauthentic, wrong, or erroneous;[29] and "fraud" means a knowing misrepresentation or knowing concealment of a material fact to induce another to act to their detriment.[30] Verily, the key distinction lies in the mental state and objective of the actor. "Fraud" involves an active machination to deceive in order to take advantage or swindle another, whereas "false" has a more general connotation of simply being untruthful. Axiomatically, a fraudulent return is always false, but not all false returns are fraudulent. Necessarily, in the context of tax returns, a fraudulent return is always filed to evade taxes, whereas the filing of a false return may or may not result in deficiency taxes.

Second, it is presumed that in enacting a law, the Legislature does not "insert any section or provision which is unnecessary and a mere surplusage; that all provisions contained in a law should be given effect, and that contradictions are to be avoided."[31] As above adumbrated, while there is a correlation between falseness and fraudulence, these are distinct concepts. **If the phrase "with intent to evade tax" similarly qualifies false returns, how would it then differ from fraudulent returns? In what manner may a false**

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28 See *Republic v. Sereno*, G.R. No. 237428, May 11, 2018.
29 See *False,* Black's Law Dictionary p. 745 (11th ed. 2019).
30 See *Fraud,* Black's Law Dictionary p. 802 (11th ed. 2019).
31 *Mcgee v. Republic*, G.R. No. L-5387, April 29, 1954, 94 Phil. 820-825.

return be filed with intent to evade tax, and yet not qualify as a fraudulent return? I submit that such an interpretation would render the word superfluous, which could not have been the intent of the lawmakers. Moreover, a reading of the provision in its entirety supports the idea that there are three distinct situations contemplated therein. As the Court held in *Aznar:* "[o]ur 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 aggregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission'.**"[32] Undeniably, a contrary interpretation would also render nugatory and ineffective the word "falsity" in Section 222 (a). Furthermore, the *proviso* inserted by PD No. 69 also validates this interpretation. Notably, only the "fact of fraud" in fraud assessments shall be judicially taken cognizance of, and not the fact of "falsity" or "omission". Clearly, the provision itself recognizes a distinction, which the Court must give effect to.

The Aznar interpretation is supported by other provisions of the NIRC.

Another principle in statutory construction is to read a word or phrase in the context of the entire statute. "The particular words, clauses and phrases in a law should not be studied as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole."[33]

A reading of the following provisions of the NIRC would show that the law recognizes a distinct concept of a "false return" that is not tied to intent to evade taxes:

> SECTION 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.—
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> x x x x
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> (B) Failure to Submit Required Returns, Statements, Reports and other Documents.— When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is **false, incomplete or erroneous,** the Commissioner shall assess the proper tax on the best evidence obtainable.

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32 Emphasis supplied.

33 *Kanemitsu Yamaoka v. Pescarich Manufacturing Corp.*, G.R. No. 146079, July 20, 2001, 414 Phil. 211-220.

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a **false** or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes. (Emphasis supplied)

SECTION 51. Individual Return.—

x x x x

(F) Persons Under Disability.— If the taxpayer is unable to make his own return, the return may be made by his duly authorized agent or representative or by the guardian or other person charged with the care of his person or property, the principal and his representative or guardian assuming the responsibility of making the return and incurring penalties provided for **erroneous, false or fraudulent returns**. (Emphasis supplied)

SECTION 72. Suit to Recover Tax Based on False or Fraudulent Returns.— When an assessment is made in case of any list, statement or return, which in the opinion of the Commissioner was **false** or fraudulent **or contained any understatement or undervaluation**, no tax collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement or return was **not false** nor fraudulent and **did not contain any understatement or undervaluation**; but this provision shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines. (Emphasis supplied)

SECTION 269. Violations Committed by Government Enforcement Officers.— Every official, agent, or employee of the Bureau of Internal Revenue or any other agency of the Government charged with the enforcement of the provisions of this Code, who is guilty of any of the offenses hereinbelow specified shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than ten (10) years but not more than fifteen (15) years and shall likewise suffer an additional penalty of perpetual disqualification to hold public office, to vote, and to participate in any public election:

x x x x

(f) Making or signing any false entry or entries in any book, or making or signing any **false** certificate or **return**; (Emphasis supplied)

SECTION 272. Violation of Withholding Tax Provision.— Every officer or employee of the Government of the Republic of the Philippines or any of its agencies and instrumentalities, its political subdivisions, as well as government-owned or -controlled corporations, including the Bangko

> Sentral ng Pilipinas (BSP),who, under the provisions of this Code or rules and regulations promulgated thereunder, is charged with the duty to deduct and withhold any internal revenue tax and to remit the same in accordance with the provisions of this Code and other laws is guilty of any offense hereinbelow specified shall, upon conviction for each act or omission be punished by a fine of not less than Five thousand pesos (P5,000) but not more than Fifty thousand pesos (P50,000) or suffer imprisonment of not less than six (6) months and one (1) day but not more than two (2) years, or both:
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> x x x x
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> (c) Failing or causing the failure to file return or statement within the time prescribed, or **rendering or furnishing a false** or fraudulent **return** or statement required under the withholding tax laws and rules and regulations. (Emphasis supplied)

The Aznar interpretation is more in keeping with the apparent spirit of the law.

While the *Estate of Toda, Jr.* line of cases is concededly more advantageous to taxpayers, it would not be in keeping with the spirit of the law. It is not hard to imagine that Section 222(a) seeks to afford the taxing authority some leeway to recover taxes rightfully due to the government. However, false returns, meaning those that simply do not speak the truth regardless of the taxpayer's intent, are not less onerous or misleading than when no returns are filed. It is absurd to presume that the Legislative would allow the extraordinary period to situations where no return is filed, but not to situations where a return was filed that was rife with errors or inaccuracies. Both are equally disarming to the taxing authority's collection effort. To shoehorn the provision to false returns filed with intent to evade would foreclose avenues for the government to recover taxes. Additionally, and as seen in the provisions above-quoted, the tax code affords remedies to the taxing authority and consequences to taxpayers for the filing of false returns in general, with no particular qualification as to intent. Had lawmakers intended to only cover false returns with intent to evade taxes under the NIRC, they could have used the very same phrasing in the other provisions as found in Section 222 (a). While the *Aznar* interpretation may be less favorable to taxpayers, it is the law. *Dura lex sed lex*.[34]

It bears stressing that the "Courts should not, by construction, revise even the most arbitrary and unfair action of the legislature, nor rewrite the law to conform with what they think should be the law. Nor may they interpret into the law a requirement which the law does not prescribe. xxx To do any of such things would be to do violence to the language of the law and to invade

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[34] See *Qatar Airways Co. with Limited Liability v. Commissioner of Internal Revenue*, G.R. No. 238914, June 8, 2020.

the legislative sphere."[35] This doctrine is particularly true in the field of taxation as the power to tax is legislative in nature and all incidents thereof are within the control of the Legislature.[36]

Not all false returns are covered by Section 222(a).

As a point of clarification, I am not advocating that any erroneous entry done by mistake, carelessness, or ignorance should constitute a false return as to justify the application of the extraordinary ten-year prescriptive period. In this regard, the *ponencia* is correct that jurisprudence has been consistent on this point. Nevertheless, what I propose is that only false returns, whether done intentionally or unintentionally, **that have a true impact on the government's collection of taxes should qualify.** In short, we must look into the nature of the "falsity" and its consequent effects. Certainly, not every incorrect entry affects the amount that the government may reasonably collect from taxpayers, and not every entry which results in a decrease of the taxes due is prohibited, as seen in the case of *B.F. Goodrich Phils., Inc.* In the end, 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.

This qualification requiring apparent prejudice to the government is grounded on the title of Section 222 (a) itself insofar as it provides an extraordinary period only for the "assessment and collection of taxes". It is also warranted based on the other above-quoted provisions of the NIRC, especially Sections 6 (B), 51, and 72. It is also further supported by Section 248 (B) the Tax Code, which make a clear reference to the taxes "lost" on account of the false return:

> Section 248. Civil Penalties. –
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> x x x x
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> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a **false** or fraudulent return is willfully made, **the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax**, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a **substantial underdeclaration of taxable sales, receipts or income**, or a **substantial overstatement of deductions**, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That **failure to report sales, receipts or income in an amount exceeding thirty percent**

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35 *Canet v. Decena*, G.R. No. 155344, January 20, 2004, 465 Phil. 325-334.

36 See *National Dental Supply Co. v. Meer*, G.R. No. L-4183, October 26, 1951, 90 Phil. 265-269.

> **(30%) of that declared per return**, and **a claim of deductions in an amount exceeding (30%) of actual deductions**, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein. (Emphasis supplied)

The government still bears the burden of proving falsity.

Relevantly, I am also not asserting that the Court departs from the general rule that the taxing authority bears the burden of proving the fact of falsity or fraudulence. Rather, it is only a recognition that there are some underdeclarations that may fall short of the 30% threshold in Section 248 (B) and may not necessarily be borne from machinations to evade taxes, but may constitute falsity based on a wrong presumption or mistaken notion on the part of the taxpayer. In such instances, the taxing authority should be allowed to prove the fact of falsity to apply the extraordinary ten-year period, if warranted. This interpretation would breathe life into all the provisions of the Tax Code.

As a final point, I must stress that the "falsity" of returns must still be based on facts and law, as is every other aspect of a valid assessment, and that the same being an exception to the ordinary three-year period will still be strictly construed against the taxing authority; any doubt on the existence of the purported falsity and prejudice to the government will be resolved in favor of the taxpayer. By requiring the taxing authority to provide clear basis for a return's purported falsity, I believe that the fears intimated by the *ponencia* on undue extensions of tax audits may be forestalled without needing to abandon *Aznar*.

With the foregoing discourse, I vote to **GRANT** the Petition.

JAPAR B. DIMAAMPAO
Associate Justice