

THIRD DIVISION

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

Promulgated:

February 28, 2024

X-----M. S. Dimampao-----X

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*,<sup>1</sup> wherein I opposed the wholesale abandonment of the doctrine in *Aznar v. Court of Tax Appeals*,<sup>2</sup> 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.

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

<sup>2</sup> 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*