REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

KEANSBURG MARKETING CORPORATION Petitioner,	CTA CASE NO. 9076 Members: BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 23 2018 3:49 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

In the Decision promulgated on January 5, 2018, the Court partially granted the Petition for Review filed by Keansburg Marketing Corporation in the following fashion:

> **WHEREFORE**, the instant Petition for Review filed by petitioner Keansburg Marketing Corporation on June 22, 2015, is **PARTIALLY GRANTED**. Consequently, the assessment issued by respondent Commissioner of Internal Revenue against petitioner for taxable period January 1 to June 30, 2012 for deficiency Value-Added Tax is **UPHELD IN PART**. Accordingly, petitioner is hereby **DIRECTED TO PAY** respondent the amount of ₱7,917,533.18, representing deficiency VAT inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, as computed below:

Basic deficiency VAT	₱ 6,334,026.54
Add: 25% Surcharge	1,583,506.64

Total VAT due	₱ 7,917,533.18

In addition, petitioner is **ORDERED TO PAY** (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱6,334,026.54 computed from July 25, 2012, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) Delinquency interest at the rate of 20% per annum on the total amount of ₱7,917,533.18 and on the 20% deficiency interest which have accrued as afore-stated (a), computed from November 24, 2014, until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.[1]

Both unconvinced, petitioner and respondent filed their respective Motions for Partial Reconsideration dated January 25, 2018 and January 26, 2018.

Petitioner's Motion for Partial Reconsideration:

Petitioner complains that respondent failed to observe the proper procedure in the issuance of a VAT assessment, citing Section 114 of the NIRC, as amended, as its authority. It argues that a single Formal Assessment Notice and Formal Letter of Demand (FAN/FLD) must pertain to deficiency VAT covering only a single quarter. Since the FAN/FLD lumped together deficiency VAT for two (2) quarters of TY 2012, i.e., January to March and April to June, the subject assessment is infirm, hence, not binding against it.

Even assuming that the audit/examination is valid, the general reason advanced by respondent for the total disallowance of its input taxes in the FAN/FLD, specifically, lack of supporting documents, transgressed its right to due process in the issuance of assessment. According to petitioner, respondent should have specified in the FAN/FLD the grounds relied upon which led to the disallowance of its alleged input taxes, which rendered the subject assessment a patent nullity by virtue of Section 228 of the NIRC, as amended.

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[1] Docket, p. 1510.

Anent the merits of the assessment, petitioner submits that its failure to strictly abide with the substantiation requirements set forth under Sections 110(A) and 113 of the NIRC, as amended is inconsequential for only substantial compliance is mandated by the Tax Code and jurisprudence. Petitioner insists that the input taxes reflected in its VAT Returns for the 1st and 2nd Quarters of TY 2012, side by side with various Certifications originating from its suppliers show that it has existing input taxes in the aggregate sum of ₱76,463,021.95. Thus, the Court erred in partially upholding respondent's disallowance of its declared input taxes for the 1st and 2nd Quarters of TY 2012 amounting to ₱7,033,973.41, says petitioner.

Despite notice, respondent failed to register his comment.[2]

Respondent's Motion for Partial Reconsideration:

Respondent posits that the verification of the Summary List of Sales/Purchases (SLS/SLP) with externally-sourced information may be dispensed with since the said document was made under oath by the persons who prepared it. Further, the absence of Certifications, Confirmations or Sworn Statements originating from third-party sources is not required under Revenue Memorandum Order Nos. 04-03 and 46-04. Moreover, the undeclared sales resulting from the BIR's Third Party Information (TPI) System can stand independently and may be utilized for the imposition of internal revenue taxes. Additionally, the presumption of correctness of the assessment tilts in his favor. In closing, respondent states that the deficiency VAT resulting from undeclared sales of ₱9,596,358.14 together with increments thereon must consequently be paid by petitioner.

In its comment, petitioner counters that: 1) the accuracy of BIR information sourced from third-parties must be duly proved, lest such data shall be deemed self-serving and barren of probative value; 2) RMO No. 04-03 clearly decrees that any information leading to a finding of under-declaration of revenues must be duly validated; and 3) the presumption of correctness of assessment is inapplicable as

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[2] Records verification report dated March 1, 2018.

the third-party information obtained by the BIR is of doubtful source.

THE RULING OF THE COURT

Both Motions for Partial Reconsideration are denied.

On Petitioner's Motion for Partial Reconsideration:

Petitioner insinuates that it is a precondition to the validity of the assessment that the FAN/FLD must contain only deficiency VAT for a single taxable quarter. In support thereof, it cites Section 114(A) of the NIRC, as amended, which reads as follows:

> **SEC. 114. Return and Payment of Value-Added Tax. -**
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> **(A) In General.** - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis. xxx

The above provision reveals that petitioner's theory has no leg to stand on. It only provides for the time within which to file a VAT Return and the period to pay the corresponding VAT liability. Nowhere in the above provision does it hint, much less show that a VAT assessment should cover deficiency VAT for a single taxable quarter only. In fact, the provision does not even mention anything about a VAT assessment. There being no provision of law or existing jurisprudence requiring a VAT assessment must pertain to only one taxable quarter, respondent's issuance of a FAN/FLD for deficiency VAT covering the periods of January to March, and April to June of TY 2012 does not impair the assessment's validity/efficacy.

Equally unavailing is petitioner's posture that the legal basis provided by respondent in disallowing its declared input taxes, i.e., unsupported by proper documentation, constitutes violation of due process in the issuance of assessment.

Section 228 of the NIRC, as amended decrees, *inter alia,* that the taxpayer shall be informed in writing of the law and the facts upon which the assessment is based. Otherwise, the assessment is void.

In *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,*[3] the High Tribunal considered a Detailed Notice of Discrepancy or a justification on how the deficiency taxes were arrived at as sufficient to prove the factual and legal bases in a BIR assessment, *viz:*

> In the present case, a mere perusal of the FAN for the deficiency EWT for taxable year 1994will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis. Petitioner should have at least <u>attached a detailed notice of discrepancy or stated an explanation why the amount of ₱48,461.76 is collectible against respondent and how the same was arrived at</u>. (underscoring supplied, citations omitted)

A revisit of the record shows that respondent's FAN/FLD was accompanied by Details of Discrepancies,[4] not to mention his explicit justification that petitioner's alleged input taxes amounting to ₱76,462.926.61 was disallowed due to the latter's neglect to substantiate the same as required by Section 110(A) of the NIRC, as amended. Having sufficiently laid down the factual and legal bases for the disallowance of petitioner's input taxes in a Details of Discrepancies, respondent undoubtedly observed the due process requirement on assessment under Section 228 of the NIRC, as amended and settled case-law on the matter.

Likewise without merit is petitioner's argument that only substantial compliance is required to establish existence of input taxes.

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[3] G.R. No. 197515, July 2, 2014.
[4] Exhibit P-2, docket, p. 1130.

In *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue,*[5] the Supreme Court declared that a VAT-registered taxpayer is strictly required to present VAT O.Rs and/or invoices which are in harmony with <u>all</u> the substantiation requirements set forth under the NIRC, as amended and its implementing regulations. No valid input taxes can be demanded for non-compliant VAT O.Rs. and/or invoices, much more, if no VAT O.Rs and/or invoices were presented.

In the present case, the Court examined and weighed the various documents presented by petitioner and found that a part[6] thereof failed to pass the benchmark of substantiation required under Sections 110(A) and 113(A) and (B) of the NIRC, as amended. As such, no input tax may be claimed on said VAT O.Rs. and invoices. Hence, the partial disallowance of petitioner's declared input taxes for the first and second quarters of TY 2012 to the extent of ₱7,033,973.41 is in order.

On *respondent's Motion for Partial Reconsideration:*

It cannot be denied that the arguments raised by respondent in his Motion for Partial Reconsideration have already been discussed and passed upon by the Court in the assailed Decision of January 5, 2018, specifically in pages 14-19 thereof. To repeat, respondent's finding of deficiency taxes resulting from a mere Third-Party Information (BIR-TPI) and SLS/SLP without proof that it was verified with externally-sourced data cannot provide fulcrum to a valid assessment. The presumption that an assessment is correct presupposes that it rests on actual facts. The same cannot be predicated on another presumption, no matter how reasonable or logical said presumptions may be.[7]

WHEREFORE, petitioner's and respondent's Motions for Partial Reconsideration dated January 25, 2018 and

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[5] G.R. No. 180173, April 6, 2011.

[6] The discussion on non-compliant VAT O.Rs and/or invoices and declared input taxes which have no supporting documents is found in pages 19 to 28 of the assailed Decision.

[7] See *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation,* G.R. No. L-46644, September 11, 1987, citing *Collector of Internal Revenue vs. Benipayo,* G.R. No. 13656, January 31, 1962.

January 26, 2018 respectively are **DENIED,** for lack of merit. The Decision dated January 5, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice