REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BENCHMARK MARKETING CORP., *Petitioner,*	**CTA Case No. 9224**
	Members:
-versus-	
	CASTAÑEDA, JR., *Chairperson*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**MANAHAN**, JJ.
	Promulgated:
	FEB 1 2 2019 3:30 PM

x- x

RESOLUTION

MANAHAN, J.:

For resolution are the following:

1. Petitioner's *Motion for Partial Reconsideration (of the Decision Promulgated on October 17, 2018),* filed on November 5, 2018, with respondent's *Opposition (Re: Petitioner's Motion for Partial Reconsideration dated 31 October 2018),* filed on December 17, 2018; and

2. Respondent's *Motion for Partial Reconsideration (Re: Decision dated 17 October 2018),* filed on November 5, 2018, with petitioner's *Comment (On Respondent's Motion for Partial Reconsideration),* filed on December 3, 2018.

Both parties move for the reconsideration of the Court's Decision promulgated on October 17, 2018 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The compromise penalties in the total amount of ₱128,000.00 imposed by respondent against petitioner for taxable year 2010 are **CANCELLED**. However, the assessments issued by respondent against petitioner for taxable year 2010 covering deficiency income tax, VAT, EWT and FBT are **PARTIALLY UPHELD**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of ₱40,704,439.00, representing basic deficiency IT, VAT, EWT and FBT and twenty-five (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and 20% deficiency interest and 20% delinquency interest imposed under Sections 249(B) and (C) of the same Code, respectively, computed until December 31, 2017, as determined below:

	IT	VAT	EWT	FBT	TOTAL
Basic	₱ 6,258,507.09	₱ 4,221,161.17	₱ 357,795.39	₱ 93,654.97	₱ 10,931,118.62
Surcharge (25%)	1,564,626.77	1,055,290.29	89,448.85	23,413.74	2,732,779.65
Deficiency Interest (20%) until April 30, 2015					
IT - 4/16/2011 to 4/30/2015 (₱6,258,507.09 x 20% x 1,476 days/365 days)	5,061,674.78				
VAT - 1/26/2011 to 4/30/2015 (₱4,221,161.17 x 20% x 1,556 days/365 days)		3,598,973.58			
EWT - 1/16/2011 to 4/30/2015 (₱357,795.39 x 20% x 1,566 days/365 days)			307,017.85		
FBT - 1/11/2011 to 4/30/2015 (₱93,654.97 x 20% x 1,571 days/365 days)				80,620.25	9,048,286.46
Total Amount Due, April 30, 2015	₱12,884,808.64	₱ 8,875,425.04	₱ 754,262.09	₱197,688.96	₱22,712,184.73
Deficiency Interest (20%) from May 1, 2015 until December 31, 2017					
IT - 5/1/2015 to 12/31/2017 (₱6,258,507.09 x 20% x 976 days/365 days)	3,347,015.30				
VAT - 5/1/2015 to 12/31/2017 (₱4,221,161.17 x 20% x 976 days/365 days)		2,257,453.86			
EWT - 5/1/2015 to 12/31/2017 (₱357,795.39 x 20% x 976 days/365 days)			191,347.01		
FBT - 5/1/2015 to 12/31/2017 (₱93,654.97 x 20% x 976 days/365 days)				50,086.16	5,845,902.33
Delinquency Interest (20%) from May 1, 2015 until December 31, 2017					
IT - 5/1/2015 to 12/31/2017 (₱12,884,808.64 x 20% x 976 days/365 days)	6,890,725.06				
VAT - 5/1/2015 to 12/31/2017 (₱8,875,425.04 x 20% x 976 days/365 days)		4,746,528.68			
EWT - 5/1/2015 to 12/31/2017 (₱754,262.09 x 20% x 976 days/365 days)			403,375.23		
FBT - 5/1/2015 to 12/31/2017 (₱197,688.96 x 20% x 976 days/365 days)				105,722.97	12,146,351.94

Total Amount Due as of December 31, 2017	₱23,122,549.00	₱15,879,407.58	₱1,348,984.33	₱353,498.09	₱40,704,439.00

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the total unpaid amount of ₱22,712,184.73 as of April 30, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED."

Considering that the arguments raised by petitioner and respondent in their respective motions and comment/opposition are intertwined with each other, the Court shall discuss their arguments on a per item basis and in the order (and in the same numbering) that these assessments were presented in the assailed Decision.

Petitioner raises the principal issue of prescription when it alleges that the assessments for value-added tax (VAT) and expanded withholding tax (EWT)for calendar year (CY) 2010 were made beyond the periods prescribed by law. Petitioner firmly disagrees with the conclusion of the Court that notwithstanding its findings that certain periods have already prescribed, "petitioner did not show which portion of the assessments pertain to the prescribed period." Petitioner asserts that it should not bear the burden of dividing the total deficiency VAT and EWT assessments per quarter and month, in order to determine which portions have already prescribed because the Court's pronouncement of prescription, by itself, already overturns the presumption of correctness of the assessment. Petitioner cites the well-established doctrine that assessments issued beyond the prescriptive period is void and without any legal effect and that there is no need for the taxpayer to itemize the particular periods which have prescribed. Petitioner adds that the right to due process enshrined in our Constitution demands not only that a taxpayer be informed of the nature (and computation) of its tax liabilities but that it must include a demand for payment within a period prescribed. Hence, assessments made beyond the prescribed period would not be binding on the taxpayer. Petitioner imputes on the respondent his shortcoming in not making an assessment on a quarterly or monthly basis for VAT and EWT because the law requires that the examination of any taxpayer and the assessment of the correct amount of tax may be done after a return has been filed as required under Sections 6 (a) and 203 of the 1997 NIRC.

In its *Opposition to the Motion for Reconsideration* filed by petitioner, respondent emphasizes that petitioner never raised the issue of alleged prescription of the deficiency assessments for taxable year 2010 in its petition and even assuming that the Court can still rule on this issue, it is incumbent upon the petitioner to prove that his right to issue an assessment has already prescribed.

In his *Motion for Partial Reconsideration*, on the other hand, respondent insists that the Court erred in ruling that petitioner is not liable for deficiency income tax for taxable year 2010 in the entire amount of Php354,387,300.73. This conclusion stems from the finding of the Court that "the figures lifted by respondent from his Audit Information, Tax Exemption and Incentives Division (AITEID) data were not verified with externally sourced data to check their veracity." Respondent disagrees and claims that the Bureau of Internal Revenue's (BIR) Reconciliation of Listing and Enforcement (RELIEF) was purposely formulated to detect tax leaks by matching data available under its Integrated Tax System (ITS) with data gathered from third party sources. Respondent avers that their office's audit investigation for deficiency taxes is not confined to the examination of the documents provided or obtained from petitioner taxpayer and that the records will show that petitioner was not able to adduce evidence to support its allegations as to the existence of its sales returns and discounts. Respondent concludes that petitioner's failure to submit relevant documents in support of its request for reinvestigation made the deficiency income tax assessment final and unappealable.

Respondent also assails the Decision when it found that petitioner is not liable for deficiency VAT for taxable year 2010 in the entire amount of Php 30,108,251.64. Further, respondent also found the conclusion that petitioner is not subject to compromise penalty, erroneous.

RULING OF THE COURT

Prescription

The Court shall first address petitioner's argument on prescription.

The Court disagrees with petitioner's argument that it was respondent's obligation to compute the deficiency VAT per quarter and the deficiency EWT on a monthly basis.

In support of this argument, petitioner cites Section 6(A) of the 1997 National Internal Revenue Code (1997 NIRC), as amended, which provides:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — **After a return has been filed** as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax; *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."(*Emphasis supplied*)

Petitioner's reading of the above-quoted provision that the examination to be done by the BIR examiners is on a per tax return basis, is without merit. Rather, the provision merely states when an examination may be authorized, *i.e.*, "after a return has been filed as required under the provisions of this Code". As explained in the Supreme Court case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[1], an LOA is premised on the fact that the examination of a taxpayer **who has already filed his tax returns** is a power that statutorily belongs only to the Commissioner of Internal Revenue himself or his duly authorized representatives.

---

[1] G.R. No. 222743, April 5, 2017. *en*

Further, when Section 6(A) of the 1997 NIRC, as amended, is read together with Section 203[2] of the same code, it shows that the Commissioner or his duly authorized representative may authorize the examination of any taxpayer "after a return has been filed" because, in general, prescription starts to run from the filing of the tax return.

Hence, Section 6(A) of the 1997 NIRC, as amended, does not limit the authority to conduct the examination on a per return basis. In fact, the issuance of a Letter of Authority (LOA) for the conduct of the examination of petitioner's books of accounts and other accounting records covering the period from January 1, 2010 to December 31, 2010 is consistent with the guidelines in Revenue Memorandum Order (RMO) No. 43-90[3] dated September 20, 1990, that an LOA should cover a taxable period not exceeding one taxable year.

Pursuant to the LOA issued in this case, the revenue officers, in computing the deficiency VAT and EWT assessments on an annual basis, acted within the authority given them for the conduct of the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2010 to December 31, 2010.

Moreover, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[4] Applying this doctrine to the case, it is presumed that the assessment made by respondent pertains to the unprescribed portion and petitioner has the duty to prove otherwise.

---

[2] SEC. 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.

[3] SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

[4] *Commissioner of Internal Revenue vs. Traders Royal Bank*, G.R. No. 167134, March 18, 2015, citing *Sy Po vs. Court of Tax Appeals*, 247 Phil. 487 (1988).

Under Section 8 [5] of Republic Act (RA) No. 1125, as amended, the Court of Tax Appeals (CTA) is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases.[6]

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[7], the Supreme Court reiterated this principle, to wit:

> "More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed before the Court of Tax Appeals are litigated *de novo*. Thus, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim."

Considering that petitioner was unable to prove which portion of the deficiency tax assessments pertain to the prescribed quarter/months, then the whole amount of the assessed item shall be treated as referring to the unprescribed portion.

We now proceed to resolve the arguments raised by both parties on the substantive features of the assessment.

I. Deficiency Income Tax

A. Undeclared Income due to Discrepancy of Sales - SLS vs AITEID vs SAWT (₱1,992,397.90) [modified to ₱92,988.88][8]

In his motion, respondent disagrees with the following ruling of the Court:

---

[5] Section 8. *Court of record; seal; proceedings.*- The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[6] *Rafael Arsenio S. Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.

[7] G.R. No. 180290, September 29, 2014.

[8] Bracketed notation is the ruling in the assailed Decision.

> "The Court finds that the deficiency assessment pertaining to items no. 1, 3, 4, and 5 should be cancelled considering that the figures lifted by respondent from its AITEID data were not verified with externally sourced data to check its veracity. Neither did respondent secure the required certifications or confirmation from the alleged third-party sources to support the integrity of the amounts per AITEID data."

Citing RMO Nos. 30-2003 and 28-2007, respondent avers that the RELIEF System which stands for "Reconciliation of Listing for Enforcement" was purposely designed to detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third party sources. Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services). Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible. Respondent also claims that the Tax Reconciliation System (TRS) is geared towards enhancing revenue collection by computerized matching of data available under the BIR's ITS. Through the consolidation and cross-referencing of data from withholding agents (WAs) and declaration of income recipients, discrepancy reports can be generated to uncover violations on tax rules and regulations such as under declaration of income, non-declaration of income, under remittance and/or non-remittance of taxes withheld, over withholding, under withholding, over declaration of credits to name a few. Timely recognition and accurate reporting of unregistered taxpayers and non-filers will also be possible.

Respondent further submits that petitioner's sales transactions are directly related to its customers' purchases and ultimately to the Creditable Withholding Taxes withheld from the payments made to petitioner. The information gathered by respondent and used as bases for the assessment came from the declaration of petitioner's customers/clients as mandated by the applicable RMOs. Therefore, respondent submits that there is no need to confirm each and every transactions or information as declared by petitioner's clients. Otherwise, this would render ineffective the very purpose which the RMOs intend to achieve. On the other hand, petitioner counters that there is nothing in the cited RMOs which mentions that the results generated by the RELIEF system, when compared with third party information, shall give a conclusive amount of any tax deficiency of the taxpayer. At most, they can be used to "uncover" possible violations of the tax law as well as rules and regulations but subject to further confirmation.

The Court finds that respondent's above argument has already been sufficiently addressed in the assailed Decision. The Court found that the revenue examiner did not even attempt to verify the information coming from the purported third-party sources per AITEID. Thus, the information being unverified, the reliability and correctness of alleged discrepancy found by respondent is doubtful. We therefore sustain our findings as regards this item.

B.1. Unsupported Sales Returns and Discounts (₱38,893,472.37) [modified to ₱3,672,204.81]

Respondent maintains that, for being unsupported, the entire amount of ₱38,893,472.37 should be disallowed as deduction for purposes of computing petitioner's income tax liabilities. Respondent argues that the alleged invoices to support the claim for sales returns and discounts were not presented during petitioner's audit. Since only the worksheet was presented by petitioner during audit, the entries in the worksheet, if unsupported by relevant documents, deserves scant consideration considering that a taxpayer can easily prepare a worksheet allegedly representing returns, discounts or rebates.

In its comment, petitioner avers that respondent failed to take into account that the Court is a trier of facts and conducts trial *de novo*. Hence, petitioner submits that although those voluminous documents supporting such sales returns and discounts were not examined during the audit stage, the fact that these documents exist in petitioner's records could not be denied.

As correctly pointed out by petitioner and mentioned earlier by the Court, the CTA is not precluded from accepting petitioner's evidence assuming these were not presented by petitioner during its audit at the administrative level. Under Section 8 of RA No. 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.

The Court already made an extensive discussion in the assailed Decision on why sales returns and discounts also require proper substantiation before they can be allowed as deductions from gross sales to arrive at gross income. Petitioner must have misunderstood the Court's ruling that "[e]ssentially, sales returns and discounts, being deductions from gross sales to come up with the gross income, ultimately reduce the taxable net income of a taxpayer, hence, partake the nature of tax exemptions" since petitioner stresses that it is not claiming any tax exemption (or anything of such nature).

Seeing no cogent reason to deviate from our ruling in the assailed Decision, we affirm our findings and conclusion as regards this matter.

B.2. Disallowed Losses (₱340,578.80)

In its motion, petitioner argues that respondent disallowed losses, again, on the basis of Section 34(A)(1)(b) of the NIRC of 1997, as amended, which pertains to the requirement for substantiation of "deductible expenses". Hence, petitioner contends that respondent once again failed to provide in the FLD the sufficient legal basis for the present assessment issue which is in violation of Section 228 of the 1997 NIRC, as amended, which renders this deficiency income tax assessment from disallowed losses void. Even if the correct basis for disallowance was cited, petitioner claims that the losses represent breakages, missing products and returnable containers during load out and load in of stocks and during the transfer of stocks from petitioner's main office to its various warehouses, then to customers and vice-versa. Petitioner also argues that the total losses claimed in the amount of ₱340,578.80 is just 1.11% of petitioner's total inventory cost, hence, the amount is so negligible for it to be disallowed.

Respondent disagrees with petitioner and counters that petitioner's claim are mere self-serving arguments. In order to claim losses as deduction, respondent submits that the same must be an actual loss, not compensated by insurance and incurred in trade or business. Hence, without submitting proof to that effect, respondent contends that petitioner should not be allowed to claim the applicable deductions pertaining to said losses.

We again sustain our ruling in the assailed Decision. Petitioner never presented any proof to support its claimed losses, hence, the assessment thereon should be sustained. Petitioner does not even deny this finding but merely argues that there is no revenue issuance or law that specifically provides for what could properly support or prove such losses. Notwithstanding, the recording of these alleged losses representing breakages, missing products and returnable containers in petitioner's books of account should have been supported by a source document, *i.e.*, a business form that will document that such accounting transaction transpired.

C. Unaccounted Income due to Undeclared Purchases from Affiliates (₱2,295,600.83) and Purchase of Services (₱1,657,244.46) [cancelled]

The assailed Decision canceled this portion of the assessment and in his motion, respondent disagrees with the Court. Respondent avers that the assessments arose from undeclared purchases of petitioner who admitted that the subject transactions are from its major suppliers. Hence, respondent contends that he is not just making any presumption since there is a clear connection between the items purchased by petitioner and its line of business. Respondent submits that undeclared purchases constitute undeclared revenue. Citing *Perez vs. Court of Tax Appeals, et al.*, respondent argues that unreflected sources of funds not accounted for in the taxpayer's returns leads to the inference that part of his income had not been reported. Respondent argues that when purchases are undeclared in the books and returns, it is highly suspect; it begs the question - where did the funds used to purchase came from when such is not reflected in the books. Hence, there is only one conclusion – this is undeclared income.

Petitioner opposes respondent's argument and counters that the basis for cancelling the present assessment is not the alleged discrepancy in purchase declaration per SLP vs. ITR that was said to be presumed but the undeclared income resulting from such undeclared purchases. Petitioner also contends that the requisites for the use of the net worth method declared in *Perez vs. Court of Tax Appeals, et al.* were not met.

Respondent's argument has no merit and we sustain our ruling in the assailed Decision. Respondent merely presumed that the alleged discrepancy/under-declared purchases constitute undeclared income. Hence, respondent's assessment was not based on undeclared income actually received by petitioner. Even when there is under-declaration of purchases, the same is not prohibited by law. Accordingly, mere reliance on the fact that there were under-declared purchases is not enough basis for the Court to uphold respondent's assessment of the subject deficiency income tax. Consequently, respondent's deficiency income tax on the alleged additional taxable income on the undeclared purchases from Asia Brewery and Interbev should be cancelled. As regards the discrepancy of ₱16,274,903.07 (or the discrepancy between the purchase of services per ITR and per VAT return), we find that respondent's imposition of income tax thereto does not hold water as he simply relied on the presumption that there were unaccounted purchases of services. To reiterate, findings that there are unaccounted purchases would automatically result in an undeclared income which would in turn increase petitioner's income tax liability is not based on actual facts and thus, is a mere presumption. It is well -settled that all presumptions are in favor of the correctness of an assessment. It is to be presumed, however, that such assessment was based on sufficient evidence.[9]

D. Disallowed Income Payments due to Non-Withholding of Tax (₱17,810,519.93) [modified to ₱17,889,776.47]

Petitioner maintains that it has properly subjected all its income payments to EWT for CY 2010. The alleged non-withholding of tax based on the reconciliation made by respondent is not accurate because not all operational expenses of petitioner are covered by the Expanded Withholding Tax System under RR No. 2-98, as amended.

Petitioner points out that the Independent Certified Public Accountant (ICPA) found that out of the total invoices/official receipts examined for the period amounting to

---

[9] *CIR vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31. 2005.

₱403,742,757.58, invoices/official receipts amounting to ₱359,857,399.32 are actually exempt from withholding tax, thus, leaving only ₱43,885,358.26 subject to withholding tax; hence, there is only a deficiency EWT in the amount of ₱37,393.28.

On the other hand, respondent submits that the disallowed expenses of ₱17,889,776.47 is proper.

The assailed Decision already passed upon and adequately discussed the reason for sustaining this item of assessment and modifying the amount and we see no compelling reason to reverse our ruling.

In addition, Section 3, Rule 13 of the RRCTA, as amended, provides that "**findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court**, which may, in whole or in part, adopt such findings and conclusions subject to verification."

Hence, this Court is not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[10]

E. Unsupported Prior Year's Excess Credits (₱86,870.87)

Petitioner maintains that the Details of Discrepancies failed to provide the explanation for the disallowance of the amount of ₱86,870.87 as petitioner's prior years' credits; what was reflected in the Details of Discrepancies is the disallowance of petitioner's prior years' excess credits in the amount of ₱427,028.47 and not the amount of ₱86,870.87.

As found in the Assailed Decision, this item of assessment was disallowed for being **unsupported** as reflected in the FLD.

---

[10] *First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue*, CTA E.B. Case No. 563, March 1, 2011.

The disallowance is proper since records of the case reveal that petitioner failed to present the corresponding Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) to substantiate the same.

F. Excess MCIT Carried-Over to Succeeding Period (₱427,028.47) [cancelled]

Respondent disagrees with the above cancellation considering that petitioner was assessed deficiency income tax for underdeclaration of sales and purchases, correspondingly, the excess MCIT should be added back to determine the proper income tax liability of petitioner.

This argument is bereft of merit.

As held in the assailed Decision, considering that petitioner's MCIT is greater than its RCIT due as reflected in its Annual ITR for 2010, the MCIT applies. Considering further that the MCIT will be credited against the RCIT for the three (3) immediately succeeding taxable years, pursuant to Section 27(E)(2) of the NIRC of 1997, as amended, its benefit will redound in the succeeding years. Thus, it is inappropriate to disallow the same for such is beyond the scope of the present assessment.

II. Deficiency Value-Added Tax

A. Undeclared Sales not subjected to VAT (₱64,330,266.54) [cancelled]

B. Undeclared Sales Returns and Discounts (₱38,893,472.37) [modified to ₱3,672,204.81]

The Court will no longer delve into these items of assessment considering that these were already addressed earlier.

C. Disallowed Input Tax - (₱3,809,409.02) [sustained]

Petitioner argues that in "BIR's Schedule 5-Disallowed Input Tax", the reason stated in justifying the disallowance of the input taxes is due to "INVALID/NO TIN", without indication as to which purchase invoices/official receipts are subject of disallowance. Moreover, petitioner avers that there was no specification as to whose tax identification numbers have "invalid/no TIN"; or what is the meaning of "INVALID/NO TIN". Petitioner contends that such failure to indicate with particularity the basis of the disallowance of the input taxes makes it difficult for the petitioner to respond to such disallowance.

Respondent counters that the Court correctly disallowed petitioner's input tax as audit verification revealed that purchase invoices/official receipts evidencing input tax claimed did not meet the invoicing requirements as set forth under Section 113, in relation to Sections 110 and 237 of 1997 NIRC, as amended. Based on these provisions, respondent submits that it is indispensable that the sales invoice or official receipt supporting a claim for input tax shall bare the needed information before the same can be applied against petitioner's output tax; and without such vital information, the invoices should not be allowed as proper support for an input tax credit.

The Court noted that petitioner's arguments are the very same arguments found in the Memorandum for Petitioner that the Court already considered and thoroughly discussed in the assailed Decision.

D. Input Tax Carry Over (₱149,654.30) [cancelled]

The Court reiterates its findings that respondent did not explain the basis of the disallowance of the said excess input tax, thus, pursuant to Section 228 of the NIRC of 1997, as amended, this item of assessment shall be considered void.

E. Unremitted VAT (₱8,647.00) [cancelled]

Again, the Court already thoroughly discussed this item of assessment in the assailed Decision and thus, affirms its ruling that this item in the subject assessment should be cancelled.

III. Deficiency Fringe Benefit Tax

(Basic deficiency of ₱93,654.97)
[sustained]

Petitioner reiterates that the BIR examiners merely relied on the term "fringe benefits" in making the assessment, without appreciating the arguments raised by petitioner during the audit and in its administrative protest.

On the other hand, respondent submits that the Court correctly ruled that petitioner is liable for fringe benefit tax.

The Court already sufficiently addressed this item of assessment in the assailed Decision.

As regards the arguments of respondent on the non-imposition of compromise penalties against the petitioner and the imposition of surcharges and interest, the same have been thoroughly addressed and discussed by the Court in the assailed Decision and we see no cogent reason to reverse or modify the same.

Overall, it must be noted that all the grounds raised by both parties are mere rehash of their arguments raised during trial which have already been passed upon and resolved by the Court in the assailed Decision and we find no reason to disturb or modify the same.

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration (of the Decision Promulgated on October 17, 2018)* and respondent's *Motion for Partial Reconsideration (Re: Decision dated 17 October 2018)* are **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice