REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NORTHERN MINDANAO SALES CORPORATION, **Petitioner,** -versus- **COMMISSIONER OF INTERNAL REVENUE,** **Respondent.**	**CTA EB NO. 2140** **(CTA Case No. 8959)**

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COMMISSIONER OF INTERNAL REVENUE, **Petitioner,** -versus- **NORTHERN MINDANAO SALES CORPORATION,** **Respondent.**	**CTA EB NO. 2152** **(CTA Case No. 8959)** **Present:** **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.* **Promulgated:** NOV 2 5 2021 3:49pm

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DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* are Petitions for Review[1] seeking nullification of the Decision dated March 11, 2019[2] (Assailed Decision) and Resolution[3] dated

[1] Rollo, CTA EB No. 2140, pp. 1-22, with annexes; CTA EB. No. 2152, pp. 6-19, with annexes.
[2] Rollo, pp. 24-65, CTA EB No. 2140.
[3] Rollo, pp. 67-88, CTA EB No. 2140.

August 30, 2019 (Assailed Resolution), all promulgated by the Special First Division of this Court (Court in Division) in CTA Case No. 8959 entitled "*Northern Mindanao Sales Corporation vs. Commissioner of Internal Revenue*" which partially granted Northern Mindanao Sales Corporation (NMSC)'s Petition for Review.

The dispositive portions of the assailed Decision and Resolution are as follows:

Decision:

"**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The deficiency VAT assessment issued by respondent against petitioner covering the period January 1, 2012 to June 30, 2012 is **UPHELD IN PART**. Accordingly, petitioner is ORDERED TO PAY the aggregate amount of **FIFTEEN MILLION FIVE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED SEVENTY-SIX PESOS AND SEVENTEEN CENTAVOS (P15,517,576.17)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

Basic Deficiency VAT	P 4,447,705.09
Add: 25% Surcharge	1,111,926.27
20% Deficiency Interest from July 26,2012 to June 23, 2014 *(P4,447,705.09 x 20% x 698/365 days)*	1,701,094.88
Total Amount Due, June 23, 2014	**P 7,260,726.24**
Add: 20% Deficiency Interest from June 24, 2014 to December 31, 2017 *(P4,447,705.09 x 20% x 1287/365 days)*	3,136,546.00
20% Delinquency Interest from June 24, 2014 to December 31, 2017 *(P7,260,726.24 x 20% x 1287/365 days)*	5,120,303.93
Total Amount Due, December 31, 2017	**P15,517,576.17**

In addition, petitioner is ORDERED TO PAY respondent delinquency interest at the rate of twelve percent (12%) on the aggregate amount due as of June 23, 2014 of P7,260,726.24, 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), as implemented by RR No. 21-2018.

SO ORDERED."

Resolution:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration (of the Decision promulgated on March 11, 2019)** and respondent's **Motion for Partial Reconsideration** are **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

NMSC is a corporation duly organized and existing under Philippine laws, with business address at 1141 Legaspi St., Legaspi Village, Makati City. It is principally engaged in the business of buying, selling, distributing, marketing at wholesale and retail of fermented liquor, bottled water and other beverages. NMSC is registered with the Securities and Exchange Commission (SEC), with duly issued SEC Company Registration No. AS091-194156. It is also registered with the Bureau of Internal Revenue (BIR). As evidenced by its Certificate of Registration No. OCN 9RC0000100816 issued on June 5, 1996.[4]

On the other hand, the Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto or other matter arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

THE FACTS

On November 22, 2012, NMSC received Letter of Authority No. LOA-V0*-2012-00000119 dated November 21, 2012, authorizing concerned revenue officers to examine its books of accounts and other accounting records for VAT for the period from January 1, 2012 to June 30, 2012 pursuant to Revenue Memorandum Order (RMO) 20-2012, VAT Audit Program.

On June 27, 2013, NMSC received a Notice for an Informal Conference with the Details of Discrepancies from the BIR assessing it for alleged deficiency VAT in the aggregate amount of P60,847,208.37, inclusive of surcharge and interest.

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[4] Decision, pp. 1-2. Citations omitted.
[5] Ibid., p. 3.

On July 10, 2013 and July 12, 2013, NMSC submitted its supporting documents as evidenced by Transmittal Letters dated July 10, 2013 and July 11, 2013, respectively. On July 30, 2013, NMSC received the BIR's Letter informing it of the receipt of the schedules and certificates relative to the Notice for an Informal Conference and requested for the submission of additional documents.

On September 25, 2013, NMSC received another Notice for Informal Conference together with the Details of Discrepancies dated September 24, 2013 from the BIR, assessing it for deficiency VAT in the aggregate amount of P98,209,204.62, inclusive of surcharge and interest.

NMSC received the Preliminary Assessment Notice (PAN) Part (I) with Details of Discrepancies and PAN Part II dated April 29, 2014.

On May 21, 2014, NMSC received the Formal Assessment Notice I with Details of Discrepancies and Formal Assessment Part II and Assessment Notices (FAN) of same date.

On May 29, 2014, NMSC filed its administrative protest dated May 28, 2014 against the FAN, praying for the cancellation and withdrawal of the proposed assessments, with the Office of the Regional Director, Revenue Region No. 8 – Makati City.

On November 5, 2014, NMSC received the BIR's Letter dated October 21, 2014, acknowledging receipt of the Protest Letter dated May 28, 2014 together with the schedules and documents, relative to the FAN dated May 21, 2014 covering deficiency VAT in the amount of P34,402,825.83, inclusive of increments for the period from January 1, 2012 to June 30, 2012.

On December 23, 2014, NMSC filed a Petition for Review before the Court in Division.

On March 6, 2015, the CIR filed his Answer.

In the Joint Stipulation of Facts and Issues,[6] the parties agreed that the issue to be resolved by the Court in Division is "*Whether or not Petitioner is liable for deficiency Value-Added Tax in the aggregate amount of P34,402,825.83, inclusive of surcharge and interest for the Taxable Period of January 1 to June 30, 2012.*"

The Pre-Trial Order was issued on July 13, 2015.[7]

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[6] Ibid., p. 490-498.
[7] Ibid., pp. 506-516.

After trial on the merits, and upon submission of the parties' memoranda, the case was submitted for decision on March 14, 2018.[8]

On March 11, 2019, the Court in Division rendered the questioned Decision.[9]

On March 29, 2019, NMSC filed a "Motion for Partial Reconsideration *(of the Decision Promulgated on March 11, 2019)*."[10]

On April 3, 2019, the CIR filed through registered mail a "Motion for Partial Reconsideration."[11]

On May 14, 2019, the CIR filed his Comment/Opposition (To Motion for Partial Reconsideration).[12]

On May 23, 2019, NMSC filed its "Comment (On the Respondent's Motion for Partial Reconsideration)."[13]

On August 30, 2019, the Court in Division issued a Resolution[14] on the parties' respective Motions for Partial Reconsideration.

On September 25, 2019, NMSC filed a Petition for Review before the Court En Banc docketed as CTA EB No. 2140, entitled *"Northern Mindanao Sales Corporation vs. Commissioner of Internal Revenue."*

Meanwhile, on September 26, 2019, the CIR filed by registered mail a "Motion for Extension of Time to File Petition For Review,"[15] praying that the CIR be given an additional period of fifteen (15) days from September 26, 2019 or until October 11, 2019, within which to file the Petition for Review.

On October 8, 2019, the Court *En Banc* issued a Minute Resolution which granted the CIR's "Motion for Extension of Time to File Petition for Review."

On October 11, 2019, the CIR filed his Petition for Review[16] before the Court *En Banc.*

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[8] Ibid. p. 970.
[9] Ibid. pp. 972-1013.
[10] Ibid. pp. 1014-1027.
[11] Ibid. pp.1030-1037.
[12] Ibid. pp. 1041-1045.
[13] Ibid., pp. 1046-1054.
[14] Ibid., pp. 1056-1079.
[15] Rollo, CTA EB No. 2152, pp. 1-3.
[16] Ibid., pp. 6-19, with Annexes.

On October 18, 2019, the Court *En Banc* issued a Minute Resolution[17] ordering the consolidation of CTA EB No. 2152 with CTA EB No. 2140, the case bearing the lower docket number.

On October 11, 2019, the CIR was ordered to file his Comment on the Petition for Review filed by NMSC, within ten (10) days from notice.[18]

On November 6, 2019, NMSC was ordered by the Court *En Banc* to file its Comment on the Petition for Review filed by the CIR, within ten (10) days from notice.[19]

On October 31, 2019, NMSC filed a "Motion for Extension of Time to File Comment"[20] praying for an additional period of fifteen (15) days from November 2, 2019, or until November 17, 2019, within which to file a Comment on the Petition for Review of the CIR in CTA EB No. 2140.

On November 13, 2019, the Court *En Banc* issued a Minute Resolution[21] which granted the CIR's "Motion for Extension of Time to File Comment."

On November 11, 2019, NMSC filed a "Manifestation"[22] stating that it will adopt its arguments in its Petition for Review as its Comment in CTA EB No. 2152. Said "Manifestation" was noted by the Court *En Banc* in the Minute Resolution dated November 18, 2019.[23]

On November 14, 2019, the CIR filed by registered mail his "Comment (To Petition for Review)."[24]

On December 4, 2019, the Court *En Banc* issued a Resolution referring the consolidated cases to mediation before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for initial appearance on January 10, 2020 at 1:30 p.m. for mediation proceedings.

On February 26, 2020, the Court *En Banc* received PMC Form 9, Request for Extension,[25] requesting that the parties be granted a final extension of thirty (30) days or until April 6, 2020, to give the parties additional time within which to reach an amicable settlement.

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[17] Ibid., p. 93.
[18] Ibid., pp. 91-92.
[19] Ibid., pp. 95-97.
[20] Ibid., pp. 98-100.
[21] Ibid., p. 102.
[22] Ibid., pp. 103-104.
[23] Ibid., p. 105.
[24] Ibid., pp. 106-112.
[25] Ibid., p. 117.

On June 29, 2020, the Court *En Banc* received NMSC's "Motion for Suspension of Proceedings Pending Settlement of Compromise Agreement."[26]

On September 7, 2019, the Court *En Banc* issued a Resolution[27] ordering the CIR to file his Comment on the "Motion for Suspension of Proceedings Pending Settlement of Compromise Agreement."

On October 13, 2020, the Court *En Banc* received the CIR's 'Comment (To Motion for Suspension of Proceedings Pending Settlement of Compromise Agreement filed by Northern Mindanao Sales Corporation)."[28]

On November 26, 2020, the Court *En Banc* issued a Resolution[29] denying NMSC's "Motion for Suspension of Proceedings Pending Settlement of Compromise Agreement." Hence, the consolidated cases were deemed submitted for decision.

On December 14, 2020, the Court *En Banc* received PMC-CTA Form 5 (Mediator's Report)[30] with a notation that there is compromise agreement subject to approval/denial of the CIR.

On May 18, 2021, the Court *En Banc* received another PMC-CTA Form 5 (Mediator's Report) with a notation "Successful Settlement (with Attachments).

On May 27, 20121, the Court *En Banc* issued a Resolution[31] noting the PMC-CTA Form No. 5 Mediator's Report and ordering the parties to update the status of the Compromise Agreement within ten (10) days from notice.

On June 14, 2021, the Court *En Banc* received NMSC's "Manifestation (On the Status of the Judicial Compromise Agreement) with Motion for Additional Time to Secure NEB Approval."

On July 9, 2021, the Court *En Banc* issued a Resolution granting the Motion for Additional Time to Secure NEB Approval.

On September 27, 2021, the Court *En Banc* received the CIR's "Compliance with Motion for Additional Time to Secure National Evaluation Board (NEB) Approval," submitting the following:

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26 Ibid., 119-121.
27 Ibid., pp. 126-128.
28 Ibid., pp. 129-133.
29 Ibid., pp. 170-171.
30 Ibid., p. 138.
31 Ibid., pp. 151-154.

a. Judicial Compromise Agreement executed by and between NMSC and CIR;
b. Secretary's Certificate authorizing NMSC's President Charles Garcia to enter into and sign the Judicial Compromise Agreement in its behalf;
c. Payment Form (BIR Form No. 0605) amounting to Php7,308,035.17;
d. EFPS Payment Details; and
e. Filing Reference No.

On October 20, 2021, the Court *En Banc* issued a Resolution noting and granting the "Compliance with Motion for Additional Time to Secure National Evaluation Board (NEB) Approval."

To date, the parties have not yet filed the Certificate of Availment. Hence, this decision.

ISSUE

The principal issue in these consolidated cases is ***whether or not the Court in Division erred in partially granting the Petition for Review filed by NMSC, which resulted in partially upholding the assessment issued by the BIR against NMSC.***

CONSOLIDATED ARGUMENTS OF THE PARTIES

NMSC contends that it is not liable for the alleged unreported sales in the amount of P11,014,517.17 resulting from the supposed unexplained debit to sales; that there was no other basis for the assessment except that the nature of the supposed "unexplained sales" subject to 12% VAT under Section 106 of the Tax Code; that NMSC was able to provide explanation as to the nature of the alleged unreported sales and adduced evidence to prove such fact, thus, the Court must deny the assessment issued by the BIR; that the input tax amounting to P3,125,962.95 should be allowed as credits; that the Court in Division should not disallow further on the basis of other reasons not cited in the FAN; that NMSC submits that it complied with the "substantiation requirement" which is the lone issue raised in the FAN, although there may have been some irregularities in the information stated on the submitted invoices or official receipts.; that the deficiency VAT assessment for the period of January 1, 2012 to June 30, 2012, issued against NMSC must be cancelled in toto; that the BIR incorrectly determined the deficiency VAT based on the return period prescribed by law; and that the BIR failed to properly compute the alleged deficiency VAT liability of NMSC for the period of January 1, 2012 to June 30, 2012 on a per quarter basis.

On the other hand, the CIR contends that the assessment on undeclared sales and unexplained debit sale of NMSC on the BIR's database should be upheld since the use of Third-Party Information (TPI) is allowed under Section 6 of the Tax Code; that the assessment based on based on Best Evidence Obtainable Rule, specifically, the benchmarking method in assessing NMSC has basis in fact and in law; that the BIR used the prescribed computation of sales of NMSC based on benchmark to arrive at NMSC's deficiency tax assessments because NMSC failed to submit its books of accounts and other accounting records with the BIR during the conduct of its examination; that since the assessment was valid, the imposition of 50% Surcharge pursuant to Section 248 of the Tax Code should be upheld; that there is presumption of falsity of returns of NMSC since there is substantial under-declaration of sales of more than 30% of that declared per return; and that NMSC's failure to present proof of error in the assessment will justify judicial affirmance of said assessment.

RULING OF THE COURT *EN BANC*

TIMELINESS OF THE PETITIONS FOR REVIEW

On March 29, 2019, NMSC received the Decision of the Court in Division. On March 29, 2019, the NMSC filed a "Motion for Partial Reconsideration (of the Decision promulgated on March 11, 2019)."

On the other hand, the CIR filed a "Motion for Partial Reconsideration."

On August 30, 2019, the Court in Division issued the assailed Resolution denying both motions for partial reconsideration.

On September 11, 2019, NMSC received the Court in Division's Resolution. From receipt of the Resolution denying the motions, NMSC filed on September 25, 2019 before the Court *En Banc* the present Petition for Review docketed as CTA EB No. 2140. On even date, the CIR also received the Court in Division's Resolution.

On September 26, 2019, the CIR filed a Motion for Extension of Time to File Petition for Review, praying that he be given until October 11, 2019 within which to file his Petition for Review. Said motion was granted by the Court *En Banc* in the Minute Resolution issued on October 8, 2019.

On September 25, 2019, NMSC filed its Petition for Review. On the other hand, the CIR filed by registered mail the instant Petition for Review on October 11, 2019. Hence, both Petitions for Review were timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

After a careful review of the arguments raised by the parties in their respective Petitions for Review and Comments to the Petitions for Review, the Court *En Banc* finds no reason to reverse the Decision and Resolution of the Court in Division. The records of the case show that they merely rehashed the very same arguments in their previous pleadings all of which have been thoroughly discussed and passed upon by the Court in Division in the assailed Decision and similarly in the assailed Resolution. Nonetheless, the Court *En Banc* shall discuss the issues raised by the parties to stress the salient points in the assailed Decision and assailed Resolution.

Whether the Court in Division erred in partially upholding the assessment issued by the BIR against NMSC

NMSC maintains that the Court in Division erred in upholding the deficiency VAT assessment on unreported sales in the reduced amount of P11,014,517.17 as a result of unexplained debit sales, and disallowed the input tax in the reduced amount of P3,125,962.95.

After a judicious review of the records of the consolidated cases, the Court *En Banc* finds no compelling reason to reconsider the ruling on unexplained unsupported debits to sales. The Court *En Banc* reiterates the findings of the Court in Division in the assailed Decision that there is a need to prove that the debits to the sales account certainly composed of sales discounts to customers.

In the assailed Decision[32] the Court in Division ruled as follows:

> "Petitioner needs to prove that these debits to the Sales account really are composed of sales discounts to customers. In its protest letter dated May 28, 2014, petitioner showed these debits to Sales were recorded in its books for the period January to June 2015: *xxx*
>
> Moreover, petitioner submitted its Schedule of Sales for the month of January to June 2012 with the related sales invoices, which were marked as Exhibits "P-34-A" to "P-34-D", "P-35-A" to "P-35-D", "P-36-A" to "P-36-D", P-37-A" to "P-37-D", "P-38-A" to "P-38-D", and "P-39-A" to "P-39-D", with numerical series. Out of these pieces of evidence, the Court disallowed "P-38-B and numerical series" for not being found in the records.

[32] Decision, pages 25-26. Citations omitted.

> According to the report of the Court-commissioned ICPA, the net sales in petitioner's VAT returns for the period January 2012 to June 2012 do not tie up with the supporting documents that were examined due to the passing of time. Nevertheless, the ICPA verified a total f P40,071,875.80 worth of sales discounts provided to merchants, without VAT.
>
> Upon examination of petitioners supporting documents, the Court finds the ICPA report to be correct and in order. The Court also finds that the petitioner recorded discounts as reflected in the sales invoices, as net of VAT. However, considering that the assessed amount of P47,769,106.50 is higher than the ICPA verified sales discounts of P40,071,875.80, the unaccounted/unsupported difference of P7,697,230.70 shall be upheld.
>
> Moreover, as earlier mentioned, Exhibit "P-38-B and numerical series" was denied admission by the Court for not having been found in the records of the case. Exhibit "P-38-B and numerical series" pertains to sales invoices from Butuan Branch for the month of May 2012. The sales discounts represented by these sales invoices from the said denies exhibits sum up to the amount of P3,317,286.47, which should be assessed of corresponding deficiency VAT."

Concerning the disallowed input tax, the Court *En Banc* agrees with the finding of the BIR when it disallowed the claimed input taxes in the amount of P3,308,360.14 because NMSC failed to submit the required VAT invoices or official receipts pursuant to Section 110 (A)(1) of the Tax Code.

As correctly found by the Court in Division in the assailed Decision:[33]

> "According to the ICPA, he was able to verify a total of P17, 966,995.20 supported purchases with equivalent input tax of P1,925,035.20, and presented the same in the schedules attached to the Amended ICPA Report. He then recommended that unsupported input tax in the amount of P1,383,325.02 should be upheld by the Court.
>
> It is worthy to note that Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implements by Sections 4.110-1, 4.110-8 and 4-113-1(A) and (B) of revenue regulations (RR) No. 16-2005, explicitly state that any input tax

[33] Decision, pages 27-29. Citations omitted.

may be creditable against output tax provided that the same is supported by VAT invoice (for purchases of goods) or VAT official receipts (for purchases of services) containing the required information under the Tax Code, to wit:

'SEC. 110. *Tax Credits.* -

(A) *Creditable Input Tax.* -

(1) Any **input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113** hereof on the following transactions **shall be creditable against the output tax**.'

'SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

(A) *Invoicing Requirements.* – A VAT-registered person shall issue:

(1) A **VAT invoice for every sale, barter or exchange of goods or properties**; and

(2) A **VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – **The following information shall be indicated in the VAT invoice or VAT official receipt:**

xxx xxx xxx

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quality, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One Thousand Pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.' *(Emphases supplied)*

> Upon verification of petitioner's supporting documents, the Court finds that aside from the ICPA recommended input VAT disallowance of P1,383,325.02, the amount of P1,742,637.93, *xxx,* should be disallowed for failure to meet the substantiation requirements under the afore-mentioned VAT law and regulations: *xxx*"

NMSC insists that the entire deficiency VAT tax assessment should be considered void, because the BIR improperly computed its alleged deficiency VAT liability. NMSC doubts as to what taxable period the assessed undeclared transactions arise. Hence, NMSC concluded that the assessment issued was based merely on presumptions of the examiner.

Contrary to NMSC's arguments, the Court *En Banc* finds that the assessments were properly made by the examiners. The figures arrived at by the BIR were based on information contained in the Quarterly VAT Returns for the first and second quarters of CY 2012, which are factual, even though they were summed up to show two consecutive quarters.

On the other hand, the Court *En Banc* finds without merit the CIR's claims that the assessments on undeclared sales and unexplained debits to sales of NMSC based on TPI and Best Evidence Obtainable Rule has basis in fact and in law. Records show that the BIR used the VAT Relief System to match the TPI with NMSC's Summary List of Sales (SLS), but the BIR failed to verify the amounts per TPI with the relevant customers. There is doubt as to the correctness of the assessments since the BIR failed to confirm said findings from the third parties. Thus, the assessments cannot be upheld since they were based on unverified amounts extracted from the BIR's own database.

Revenue Memorandum Order (RMO) No. 04-03 requires the verification of the amounts reflected in the quarterly report with other externally sourced data in ascertaining the taxpayer's under-declaration of revenues or overstatement of costs and expenses, if any. RMO No. 04-03 states in part:

> "The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.

The RELIEF System was created to support the third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR No. 13-97, RR-7-99 and RR-8-2002.

The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information **with other externally sourced data** will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential." *(Emphasis supplied)*

As regards the cancellation of the BIR's assessment of P75,332,536.46 undeclared sales based on industry benchmark rate, the Court *En Banc* agrees with the findings of the Court in Division in the assailed Decision[34] that the presumption of correctness of assessment being a mere presumption, should not be made to rest on another presumption. The Court in Division ruled as follows:

"Based on the Details of Discrepancies, respondent explains that since there is no means by which the correctness and accuracy of petitioner's receipts can be ascertained, assessment based on estimate was used pursuant to section 2.4(a) of RMC No. 23-2000 which states that "In the absence of any proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.

Respondent's comparison of petitioner's gross sales based on industry benchmark rate, pursuant to RMO No. 05-2012, against the gross sales reported per VAT returns disclosed that petitioner failed to pay the corresponding VAT in the portion of its gross receipts *xxx*

xxx xxx xxx

[34] Resolution, pp. 22. Citations omitted.

Respondent computed the alleged undeclared sales of P75,332,536.46 based on benchmark rate less total VATable sales per VAT returns. Apparently, respondent made no determination of the actual VATable sales of petitioner since the benchmark rate used by respondent pertain to the sales of other wholesaling companies as reflected in the computation. There was also no indication as to how the benchmark rate was derived by respondent or that it can at least be used to approximate the actual VATable sales of petitioner. Respondent merely assumed the actual VATable sales of petitioner. Respondent merely assumed that the amount of VATable sales of other wholesaling companies is the same with the VATable sales of petitioner.

To reiterate, the prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrarily and capricious. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest in another presumption. Hence, assessment should not be based in mere presumptions no matter how reasonable or logical said presumptions may be."[35]

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[36]

In view of the foregoing discussions, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and assailed Resolution.

WHEREFORE, premises considered, the Petition for Review dated September 23, 2019 filed by Northern Mindanao Sales Corporation and the Petition for Review dated October 8, 2019 filed by the Commissioner of Internal Revenue are **DENIED for lack of merit.** Accordingly, the assailed Decision dated March 11, 2019 and assailed Resolution dated August 30, 2019 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[35] Decision, pp. 19-21. Citations omitted.

[36] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice