REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

STEEL CORPORATION OF THE PHILIPPINES, *Petitioner,*	**CTA Case No. 9866**
-versus-	Members: **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN,** and **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 17 2022 9:55 a.m.

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D E C I S I O N

MANAHAN, J.:

This is an Amended Petition for Review filed by Steel Corporation of the Philippines on July 31, 2018, praying that a judgment be rendered cancelling the assessments against petitioner for alleged deficiency income and value-added tax (VAT) for taxable year (TY) 2012, in the aggregate amount of ₱376,408,260.67, inclusive of surcharges and interests.[1]

THE PARTIES

Petitioner Steel Corporation of the Philippines is a domestic corporation duly organized under Philippine laws on October 3, 1994 and registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer. Its principal activity is to manufacture and distribute cold-rolled and galvanized steel sheets and coils. Petitioner is a wholly-owned subsidiary of Philsteel Holdings Corporation, with office address at Philsteel Tower, 140 Amorsolo St., Legaspi Village, Makati City.[2]

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[1] Statement of the Case, Pre-Trial Order dated May 17, 2019, Docket – Vol. III, p. 1744; Statement of the Case, Amended Pre-Trial Order dated July 10, 2019, Docket – Vol. III, p. 1789.

[2] Refer to Exhibit "R-2", BIR Records, p. 405.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the officer vested by law with the power to enforce and implement the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and all its appurtenant rules and regulations. He holds office, and may be served with summons and legal processes at BIR Road, Diliman, Quezon City.[3]

THE FACTS

On September 11, 2006,[4] a verified petition was filed by Equitable PCI Bank, Inc. (petitioner's creditor) with the Regional Trial Court (RTC) of Batangas to have petitioner placed under corporate rehabilitation in accordance with the provisions of Presidential Decree (PD) No. 902-A, as amended, in relation to A.M. No. 00-8-10-SC.[5] The case was raffled to RTC Branch II – Batangas City, and was docketed as SP. Proc. No. 06-7993.[6] In its Order dated September 12, 2006,[7] the said Court, *inter alia*, granted the petition and we quote the dispositive portion as follows:

> "**WHEREFORE**, finding the petition to be sufficient in form and substance, this Order is hereby issued –
>
> xxx xxx xxx
>
> (c) Staying all claims against **Steel Corporation of the Philippines**, by all other corporations, persons or entities insofar as they may be affected by the present proceedings, until further notice from this Court, pursuant to Sec. 6, of Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.
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> xxx xxx xxx."

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[3] Par. 1, Facts, Statement of Facts and Issues, Pre-Trial Order dated May 17, 2019, Docket – Vol. III, at p. 1745; Par. 1, Facts, Statement of the Case, Amended Pre-Trial Order dated July 10, 2019, Docket – Vol. III, p. 1790.

[4] Refer to G.R. No. 191939, March 14, 2018 (*Allied Banking Corporation v. In the Matter of the Petition To Have Steel Corporation of the Philippines Placed Under Corporate Rehabilitation With Prayer for the Approval of the Proposed Rehabilitation Plan, Equitable PCI Bank, Inc.*).

[5] Refer to Exhibit "P-10", Docket – Vol. II, pp. 826 to 830.

[6] *Id.*

[7] Exhibit "P-10", Docket – Vol. II, pp. 826 to 830.

Thereafter, on the basis of the report of the court-appointed Rehabilitation Receiver of petitioner, RTC Branch 3 – Batangas City issued the Order dated September 19, 2012 (for SP. Proc. No. 06-7993),[8] the dispositive portion of which reads, in part, as follows:

> "**WHEREFORE, IN VIEW OF THE FOREGOING**, the instant corporate rehabilitation proceedings are hereby converted to liquidation proceedings.
>
> Pursuant to Section 112 of the Financial Rehabilitation and Insolvency Act of 2010, this Liquidation Order is hereby issued: (a) declaring debtor Steel Corporation of the Philippines as insolvent; (b) declaring debtor Steel Corporation of the Philippines as dissolved; xxx.
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> xxx xxx xxx
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> Pursuant to Section 113 of the Financial Rehabilitation and Insolvency Act of 2010: (a) debtor Steel Corporation of the Philippines is hereby deemed dissolved and its corporate or juridical existence terminated; (b) legal title to and control of all the assets of debtor Steel Corporation of the Philippines, except those that may be exempt from execution, are hereby deemed vested in the liquidator or, pending his election or appointment, with the court; xxx.
>
> Pursuant to Section 114 of the Financial Rehabilitation and Insolvency Act of 2010, this Liquidation Order shall not affect the rights of any secured creditor to enforce its lien against debtor Steel Corporation of the Philippines in accordance with applicable law.
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> xxx xxx xxx
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> **SO ORDERED**."

In the Resolution dated October 16, 2013 (for SP. Proc. No. 06-7993),[9] RTC Branch 3 – Batangas City ordered, *inter alia*, that the liquidation proceedings be closed and terminated effective upon the discharge of the liquidator. The latter then turned over custody of assets back to petitioner on November 15, 2013.[10]

On May 2, 2017, petitioner received a Preliminary Assessment Notice (PAN) dated April 21, 2017,[11] finding the

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[8] Exhibit "P-11", Docket – Vol. II, pp. 831 to 843.
[9] Exhibit "P-53", Docket – Vol. III, pp. 1516 to 1539.
[10] Exhibit "P-54", Docket – Vol. III, pp. 1541 to 1542.
[11] Exhibit "P-1", Docket – Vol. I, pp. 121 to 124; Par. 3.06, *Petition for Review*, Docket – Vol. I, p. 16; Par. 3.07, *Amended Petition for Review*, Docket – Vol. I, p. 217; Exhibit "R

latter liable for deficiency income tax and VAT for TY 2012, in the total amount of ₱373,746,344.03, inclusive of surcharges and interests.

Petitioner then filed its letter (Reply) to the above-mentioned PAN on May 17, 2017.[12]

On September 27, 2017, petitioner received a Formal Letter of Demand (FLD) dated September 20, 2017,[13] for petitioner's deficiency income tax and VAT for TY 2012, in the total amount of ₱376,408,260.67, inclusive of surcharges and interests.

On October 25, 2017, petitioner filed a Request for Reinvestigation dated October 24, 2017 with BIR Revenue Region (RR) No. 9A – CaBaMiRo.[14]

Thereafter, on February 19, 2018, petitioner received a Final Decision on Disputed Assessment (FDDA) dated February 9, 2018,[15] which denied petitioner's Reply dated May 17, 2017 and Request for Reinvestigation on October 24, 2017, for lack of legal and factual bases.

On March 21, 2018, petitioner filed a Request for Reconsideration dated March 21, 2018 on said FDDA.[16]

Respondent, acting through his duly authorized representative - the Chief of the Collection Division of BIR RR No. 9A - CaBaMiro - issued a Preliminary Collection Letter (PCL)

10", BIR Records (Folder 5), pp. 508 to 511. Refer also Par. 2, Facts, Statement of Facts and Issues, Pre-Trial Order dated May 17, 2019, Docket – Vol. III, at p. 1745; and Par. 2, Facts, Statement of the Case, Amended Pre-Trial Order dated July 10, 2019, Docket – Vol. III, p. 1790.

[12] Exhibit "P-2", Docket – Vol. II, pp. 612 to 626; Exhibit "R-11", BIR Records Folder 5, pp. 521 to 539.

[13] Exhibit "R-12", BIR Records (Folder 5), pp. 512 to 515; Par. 3.08, *Petition for Review*, Docket – Vol. I, p. 16; Par. 3.09, *Amended Petition for Review*, Docket – Vol. I, p. 218. Refer also Par. 2, Facts, Statement of Facts and Issues, Pre-Trial Order dated May 17, 2019, Docket – Vol. III, at p. 1745; and Par. 2, Facts, Statement of the Case, Amended Pre-Trial Order dated July 10, 2019, Docket – Vol. III, p. 1790.

[14] Exhibit "P-4", Docket – Vol. II, pp. 632 to 648.

[15] Exhibit "R-16", BIR Records Folder 5, pp. 608 to 610; Par. 3.10, *Petition for Review*, Docket – Vol. I, p. 17; Par. 3.11, *Amended Petition for Review*, Docket – Vol. I, p. 218. Refer also Par. 2, Facts, Statement of Facts and Issues, Pre-Trial Order dated May 17, 2019, Docket – Vol. III, at p. 1745; and Par. 2, Facts, Statement of the Case, Amended Pre-Trial Order dated July 10, 2019, Docket – Vol. III, p. 1790.

[16] Exhibit "P-6", Docket – Vol. II, pp. 653 to 670.

dated May 16, 2018,[17] which was received by petitioner on May 31, 2018.[18] On June 6, 2018, petitioner filed a letter in response to the PCL.[19]

On June 19, 2018, petitioner received the Final Notice Before Seizure (FNBS) dated May 31, 2018.[20]

Petitioner then filed a Petition for Review before this Court on July 2, 2018.[21] Thereafter, on July 31, 2018, petitioner filed the present Amended Petition for Review.[22] Both pleadings contain an Urgent Motion To Suspend Collection of Taxes.

Relative to the said Urgent Motion To Suspend Collection of Taxes, petitioner presented both documentary and testimonial evidence in support thereof. It presented the testimony of Atty. Aleli Manimtim-Cordero, the Group Legal Head of Philsteel Group of Companies.[23]

Respondent filed his Opposition Re: Petitioner's Prayer for Suspension of Collection on August 16, 2018.[24] Petitioner then filed its Reply To Respondent's Opposition (Re: Motion for Suspension of Collection of Taxes) on August 30, 2018.[25]

On September 11, 2018, petitioner filed its Formal Offer of Evidence.[26] Respondent, however, failed to file his comment thereon.[27]

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[17] Exhibit "P-7", Docket – Vol. 1, p. 82; Exhibit "R-17", BIR Records (Folder 5), p. 631. Refer also Par. 2, Facts, Statement of Facts and Issues, Pre-Trial Order dated May 17, 2019, Docket – Vol. III, at p. 1745; and Par. 2, Facts, Statement of the Case, Amended Pre-Trial Order dated July 10, 2019, Docket – Vol. III, p. 1790.

[18] Par. 2.02, *Petition for Review*, Docket – Vol. 1, p. 14; Par. 2.02, *Amended Petition for Review*, Docket – Vol. I, pp. 215 to 216.

[19] Exhibit "P-8", Docket – Vol. II, pp. 672 to 674.

[20] Exhibit "P-9", Docket – Vol. I, p. 84; Par. 2.03, *Petition for Review*, Docket – Vol. I, p. 14; Par. 2.02, *Amended Petition for Review*, Docket – Vol. 1, p. 216. Refer also Par. 2, Facts, Statement of Facts and Issues, Pre-Trial Order dated May 17, 2019, Docket – Vol. III, at p. 1745; and Par. 2, Facts, Statement of the Case, Amended Pre-Trial Order dated July 10, 2019, Docket – Vol. III, p. 1790.

[21] Docket – Vol. I, pp. 12 to 65.

[22] Docket – Vol. I, pp. 214 to 267.

[23] Exhibit "P-19", Docket – Vol. II, pp. 591 to 602; Minutes of the hearing held on, and Order dated, August 2, 2018, Docket – Vol. II, pp. 603 to 606; Minutes of the hearing held on, and Order dated, August 23, 2018, Docket – Vol. II, pp. 863 to 866; Minutes of the hearing held on, and Order dated, September 4, 2018, Docket – Vol. II, pp. 935 to 937.

[24] Docket – Vol. II, pp. 850 to 857.

[25] Docket – Vol. II, pp. 924 to 934.

[26] Docket – Vol. II, pp. 950 to 961.

[27] Records Verification dated November 6, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 1240.

Respondent filed his Answer to the Petition for Review on October 15, 2018,[28] interposing his special and affirmative defenses. On October 24, 2018, respondent transmitted the BIR Records of the case [consisting five (5) folders] to the Court.[29]

The Pre-Trial Conference was initially set on November 29, 2018.[30] However, respondent filed a Motion to Reset Pre-Trial Conference on November 12, 2018.[31] Correspondingly, in the Order dated November 15, 2018,[32] the Court granted the said Motion to Reset. The said Pre-Trial Conference was then reset to, and was held on, February 21, 2019.[33] Prior thereto, respondent's Pre-Trial Brief was filed on February 14, 2019,[34] while petitioner's Pre-Trial Brief was submitted on February 15, 2019.[35]

In the meantime, the Court, in its Resolution dated February 1, 2019,[36] resolved the Formal Offer of Evidence of Petitioner by admitting its evidence, except for Exhibits "P-3", "P-12", "P-14", "P-15", and "P-16", and granting petitioner's Urgent Motion To Suspend Collection of Taxes, subject to the condition that petitioner files a surety bond.

On March 1, 2019, petitioner filed its Motion for Partial Reconsideration (Of Resolution dated 01 February 2019).[37] Respondent then filed his Opposition Re: Petitioner's Motion for Partial Reconsideration (of Resolution dated 01 February 2019) on March 26, 2019.[38] Petitioner filed its Reply on May 2, 2019.[39] In the Resolution dated May 8, 2019,[40] the Court denied petitioner's Motion for Partial Reconsideration for lack of merit.

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[28] Docket – Vol. II, pp. 1210 to 1229.
[29] *Compliance* dated October 24, 2018, Docket – Vol. II, pp. 1234 to 1236.
[30] *Notice of Pre-Trial Conference* dated October 29, 2018, Docket – Vol. II, pp. 1238 to 1239.
[31] Docket – Vol. II, pp. 1241 to 1244.
[32] Docket – Vol. II, p. 1252.
[33] Minutes of the hearing held on, and Order dated, February 21, 2019, Docket – Vol. III, pp. 1588 to 1590, and 1592 to 1594, respectively.
[34] Docket – Vol. II, pp. 1272 to 1276.
[35] Docket – Vol. III, pp. 1293 to 1306.
[36] Docket – Vol. II, pp. 1260 to 1269.
[37] Docket – Vol. III, pp. 1596 to 1606.
[38] Docket – Vol. III, pp. 1688 to 1693.
[39] Docket – Vol. III, pp. 1725 to 1731. This *Reply* was filed as an attachment to petitioner's *Motion To Admit Attached Reply to Opposition [Re: Petitioner's Motion for Partial Reconsideration (of Resolution dated 01 February 2019O]* (Docket – Vol. III, pp. 1722 to 1724).
[40] Docket – Vol. III, pp. 1738 to 1741.

In view of the manifestation of the parties' counsels, during the Pre-Trial Conference, pertaining to the possibility of entering into a compromise agreement through mediation proceedings, the case was referred to the Philippine Mediation Center (PMC-CTA).[41] However, based on the Mediator's Report dated April 26, 2019,[42] there was an unsuccessful mediation, for failure of petitioner to meet respondent's requirement of payment of at least forty percent (40%) of the basic assessed tax.[43]

On March 13, 2019, petitioner filed a Manifestation,[44] manifesting that aside from the circumstances of respondent, the parties could not agree on any other matter; and that the parties shall no longer file a joint stipulation of facts and issues.

The Court then issued the Pre-Trial Order dated May 17, 2019,[45] deeming the termination of the Pre-Trial.

On May 27, 2019, petitioner filed a Motion To Amend Pre-Trial Order.[46] In the Resolution dated June 4, 2019,[47] the Court granted the said Motion To Amend. Thus, the Amended Pre-Trial Order was issued on July 10, 2019.[48]

As trial ensued, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Atty. Aleli Manimtim-Cordero;[49](2) Mr. Emelito C. Castro,[50] former Senior Vice President for Finance of Philsteel Group of Companies; and (3) Ms. Katherine O. Constantino,[51] the Court-commissioned Independent Certified Public Accountant (ICPA).[52]

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[41] Refer to the Order dated February 21, 2019, Docket – Vol. III, pp. 1592 to 1594, at p. 1593.
[42] Docket – Vol. III, p. 1715.
[43] Refer also to the Resolution dated May 7, 2019, Docket – Vol. III, pp. 1734 to 1735.
[44] Docket – Vol. III, pp. 1684 to 1686.
[45] Docket – Vol. III, pp. 1744 to 1754.
[46] Docket – Vol. III, pp. 1764 to 1771.
[47] Docket – Vol. III, p. 1778.
[48] Docket – Vol. III, pp. 1789 to 1801.
[49] Exhibit "P-3531", Docket – Vol. III, pp. 1397 to 1407; Minutes of the hearing held on, and Order dated, October 10, 2019, Docket – Vol. IV, pp. 1895 to 1897, and 1900 to 1901, respectively.
[50] Exhibit "P-3530", Docket – Vol. III, pp. 1308 to 1322; Minutes of the hearing held on, and Order dated, October 10, 2019, Docket – Vol. IV, pp. 1895 to 1897, and 1900 to 1901, respectively.
[51] Exhibit "P-3523", Docket – Vol. IV, pp. 1936 to 1960; Minutes of the hearing held on, and Order dated, December 12, 2019, Docket – Vol. IV, pp. 1961 to 1966.
[52] *Oath of Commission*, Docket Vol. III, p. 1806; Minutes of the hearing held on, and Order dated, July 11, 2019, Docket – Vol. III, pp. 1802 to 1805, and 1807 to 1808, respectively.

The ICPA's Report was submitted on August 13, 2019.[53]

The Formal Offer of Evidence For The Petitioner was filed on January 2, 2020.[54] Respondent then filed his Comment (Re: Petitioner's Formal Offer of Evidence on January 8, 2020.[55] In the Resolution dated March 9, 2020,[56] the Court admitted petitioner's Exhibits, except for the following:

1. Exhibits "P-3", "P-48", "P-49", and "P-50", for petitioner's failure to submit the originals for comparison;

2. Exhibits "P-12", and "P-47", for petitioner's failure to submit the duly marked exhibits;

3. Exhibit "P-58-d", for not being found in the records of the case;

4. Exhibit "P-754", for failure of petitioner to identify the same;

5. Exhibits "P-803", "P-804", "P-805", "P-806", "P-810", "P-811", "P-813", "P-815", "P-816", "P-817", "P-823", "P-829", "P-830", "P-831", "P-833", "P-834", "P-835", "P-836", "P-845", "P-847", "P-849", "P-850", "P-855", "P-856", "P857", "P-864", "P-865", "P-869", "P-874", "P-877", "P-887", "P-887", "P-888", "P-889", "P-890", "P-894", "P-898", "P-900", "P-901", "P-904", "P-905", "P-906", "P-907", "P-912", "P-914", "P-915", "P-918", "P-919", "P-922", P-923", "P-926", "P-928", "P-930", "P-940", "P-945", "P-951", "P-952", "P-953", "P-955", "P-956", "P-959", "P-968", "P-976", "P-979", "P-980", "P-983", "P-985", "P-986", "P-987", "P-988", "P-989", "P-993", "P-1002", "P-1005", "P-1011", "P-1022", "P-1023", "P-1026", "P-1027", "P-1028", "P-1029", "P-1037", "P-1061", "P-1063", "P-1064", "P-1065", "P-1067", "P-1068", "P-1069", "P-1077", "P-1079", "P-1080", "P-1081" and "P-1087", for the periods in the documents described in the Formal Offer of Evidence for the Petitioner as Certificate of Creditable Withholding Tax Withheld at Source for calendar year 2007, are illegible;

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[53] Docket – Vol. IV, pp. 1842 to 1846.
[54] Docket – Vol. IV, pp. 1972 to 1995.
[55] Docket – Vol. IV, pp. 1999 to 2000.
[56] Docket – Vol. IV, pp. 2007 to 2010.

6. Exhibit "P-895", for the period in the document described in the Formal Offer of Evidence for the Petitioner as Certificate of Creditable Withholding Tax Withheld at Source for calendar year 2007, is left blank;

7. Exhibits "P-1088", "P-1111", "P-1112", "P-1136", and "P-1193", "P-1237", "P-1280", and "P-1413", for the periods in the documents described in the Formal Offer of Evidence for the Petitioner as Certificate of Creditable Withholding Tax Withheld at Source for calendar year 2008, are left blank;

8. Exhibits "P-1474", "P-1478", "P-1479", "P-1484", "P-1494", and "P-1521", for the periods in the documents described in the Formal Offer of Evidence for the Petitioner as Certificate of Creditable Withholding Tax Withheld at Source for calendar year 2009, are left blank;

9. Exhibits "P-1546", "P-1547", "P-1685", "P-1716", "P-1722", "P-1759", "P-1806", "P-1816", "P-1851", "P-1868", "P-1869", "P-1870", "P-1871", "P-1872", "P-1878", "P-1879", "P-1906", "P-1939", "P-1984", "P-1985", "P-2032", "P-2076", "P-2082", and "P-2088", for the periods in the documents described in the Formal Offer of Evidence for the Petitioner as Certificate of Creditable Withholding Tax Withheld at Source for calendar year 2010, are left blank;

10. Exhibits "P-2245", "P-2397", "P-2500", "P-2521", "P-2582", and "P-2682", for the periods in the documents described in the Formal Offer of Evidence for the Petitioner as Certificate of Creditable Withholding Tax Withheld at Source for calendar year 2011, are left blank; and

11. Exhibits "P-2874", "P-2984", "P-3063", "P-3169", "P-3190", "P-3223", "P-3325", "P-3328", "P-3353", and "P-3446", for the periods in the documents described in the Formal Offer of Evidence for the Petitioner as Certificate of Creditable Withholding Tax Withheld at Source for calendar year 2012, are left blank.

For his part, respondent presented his documentary and testimonial evidence. He presented Revenue Officer (RO) Mary Jane P. Castillo-Caraan.[57]

On December 11, 2020, respondent posted his Formal Offer of Evidence.[58] Petitioner filed its Comment (on Respondent's Formal Offer of Evidence) via electronic mail on December 28, 2020.[59] In the Resolution dated February 2, 2021,[60] the Court admitted respondent's exhibits, and ordered the parties to file their respective memorandum within thirty (30) days from receipt thereof.

On March 17, 2021, respondent filed a Manifestation,[61] stating that he is adopting the arguments raised in his Answer dated October 15 2018, as his Memorandum. On the other hand, the Memorandum for Petitioner was filed on March 18, 2021.[62]

The present case was submitted for decision on May 19, 2021.[63]

THE ISSUE

The issue presented by the parties for this Court's resolution is as follows:

> "Whether petitioner is liable for assessed deficiency income tax and value-added tax, inclusive of interests and penalties for taxable year 2012, in the total amount of three hundred seventy-six million four hundred eight thousand two hundred sixty pesos and sixty-seven centavos (Php376,408,260.67), plus 50% surcharge, deficiency and delinquency interest, pursuant to Sections 248 and 249 of the 1997 National Internal Revenue Code (NIRC), as amended."[64]

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[57] Exhibit "R-19", Docket – Vol. II, pp. 1283 to 1292; Minutes of hearing held on, and Order dated, December 1, 2020, Docket – Vol. IV, pp. 2034 to 2036.
[58] Docket – Vol. IV, pp. 2038 to 2043.
[59] Docket – Vol. IV, pp. 2046 to 2055.
[60] Docket – Vol. IV, pp. 2071 to 2072
[61] Docket – Vol. IV, pp. 2073 to 2074.
[62] Docket – Vol. IV, pp. 2076 to 2115.
[63] Resolution dated May 19, 2021, Docket – Vol. IV, p. 2117.
[64] Issue, Pre-Trial Order dated May 17, 2019, Docket – Vol. III, at p. 1745; Issue, Amended Pre-Trial Order dated July 20, 2019, Docket – Vol. III, at p. 1790.

Petitioner's arguments:

Petitioner argues that it is not liable for the payment of taxes during the period of rehabilitation and that the Supreme Court had already ruled that its rehabilitation falls squarely within the coverage of the Financial Rehabilitation and Insolvency Act of 2010 (FRIA of 2010) as well as A.M. No. 12-12-11-SC or the Financial Rehabilitation Rules of Procedure of 2013. It cited the case of *Allied Banking Corp. vs. In the Matter of the Petition to have Steel Corporation of the Philippines Placed Under Corporate Rehabilitation,* [65] and opined that the Stay Order issued by the Rehabilitation Court on September 12, 2006 had the same force and effect as a commencement order under the Rehabilitation Rules. Section 19 of the FRIA of 2010 allegedly exempts the corporation under rehabilitation from national and local taxes upon the issuance of the commencement order, hence exempts it from any and all liabilities for taxes, fees, penalties and interests due from the national and local governments from September 11, 2006 which was the date of the filing of the petition for rehabilitation, until September 19, 2012 when the Liquidation Order was issued by the court.

Petitioner primarily argues that upon the issuance of the Stay Order by the RTC – Branch II of Batangas on September 12, 2006, (which had the same force and effect as a commencement order), its right to claim tax exemption under Section 19 of Republic Act (RA) No. 10142 or the FRIA of 2010 likewise commenced.

As to the merits of the deficiency assessments for TY 2012, petitioner maintains that it is not liable for the payment of deficiency income tax arising from the supposed undeclared sales in the amount of Php6,175,118.13. Petitioner contends that the so-called undeclared sales stemmed from a comparison of the VAT amount appearing in the database of the Bureau of Customs (BOC) as against the VAT reported in its quarterly VAT returns for the same period. The discrepancy was then divided by the VAT rate of 12% to arrive at the amount of Php178,708,658.33 supposedly constituting the undeclared importation. Petitioner contends that respondent is in error when it merely assumed that mere discrepancy between the BOC records and the quarterly VAT returns would automatically result to undeclared sales. As regards the VAT deficiency assessment, petitioner declares that it similarly

[65] G.R. No 191939, March 14, 2018.

resulted from respondent's conclusion that it had undeclared sales for TY 2012 and submits that importation by itself does not necessarily translate to undeclared sales resulting to taxable income and VAT liability.

Respondent's counter-arguments:

In his Answer, respondent argues that the restructuring plan entered into by petitioner with its creditors pursuant to the provisions of FRIA of 2010 does not necessarily affect its liability for internal revenue taxes sought to be collected for TY 2012. While he admits that Section 19 of the FRIA of 2010 provides for the waiver of imposition of taxes, respondent avers that no tax was imposed against petitioner during said covered period. Respondent maintains that petitioner was assessed only after the dismissal of the petition, that is after the proceeding was closed and terminated pursuant to the Order of the court dated March 17, 2014.

As to the findings of deficiency income tax and VAT for TY 2012, respondent asserts that the audit conducted on petitioner's books of accounts and other accounting records discloses that it had undeclared importation amounting to Php178,7078,658.33 which resulted to additional taxable income of Php6,175,118.13. This undeclared importation likewise resulted to unpaid VAT for the 1st, 2nd and 3rd quarters of TY 2012.

THE RULING OF THE COURT

We shall first rule on the issue of jurisdiction.

It is important that a Court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.[66]

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction and can take cognizance of matters which are clearly within its jurisdiction. Sections 7(a) (1) and 11 of

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[66] Bernadette S. Bilag, et.al., vs. Estela Ay-Ay, et.al., G.R. No. 189950, April 24, 2017.

Republic Act (RA) No. 1125,[67] as amended by RA No. 9282,[68] provides as follows:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis added)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue** xxx **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> xxx xxx xxx." (Emphasis supplied)

Records clearly show that on February 19, 2018, petitioner received an FDDA (dated February 9, 2018) in response to its Reply dated May 17, 2017 and Request for Reinvestigation dated October 24, 2017 against the FLD issued by respondent.

The FDDA was signed by the respondent's representative, Ms. Maridur V. Rosario, Officer-in-Charge (OIC)-Regional Director.

Petitioner opted to file a Request for Reconsideration against the FDDA with the respondent on March 21, 2018.

In response to the said Request for Reinvestigation, respondent, acting through his duly authorized representative-the Chief of the Collection Division of the BIR, issued a Preliminary Collection Letter (PCL) dated May 16, 2018 and which was received by petitioner on May 31, 2018.

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[67] AN ACT CREATING THE COURT OF TAX APPEALS.

[68] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. *cm*

Petitioner then filed a letter in response to the PCL on June 6, 2018 and on June 19, 2018 received a Final Notice Before Seizure (FNBS) from respondent.

Petitioner then filed the instant Petition for Review with this Court on July 2, 2018.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part,** or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction **may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision,** or from the lapse of the one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable**." (emphasis supplied)

When petitioner received the FDDA on February 19, 2018, it opted to file a Request for Reconsideration with respondent, Commissioner Caesar R. Dulay on March 21, 2018 instead of elevating an appeal with the Court.

The remedy to file an administrative appeal prior to a judicial appeal (against an FDDA) is permissible under Section 3.1.4 of Revenue Regulations (RR) No. 18-2013 (which amended RR 12-99) granting a taxpayer the option to elevate a request for reconsideration with the Commissioner within thirty (30) days from receipt of the decision on the protest, relevant portions of which are quoted, to wit:

> Section 3.1.4. Disputed Assessment.
>
> (ii) Request for reinvestigation. xxx xxx xxx
>
> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; **or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
>
> xxx xxx xxx
>
> **If the protest or administrative appeal, as the case, may, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30) day period to appeal to the CTA."** (emphases supplied)

Records show that the Commissioner did not directly act on petitioner's Request for Reconsideration but instead issued a PCL[69] on May 16, 2018, with the following statement, to wit:

> "xxx xxx xxx However, if payment has already been made, please send proofs of payment to the OIC-Assistant Chief, Collection Division, together with this letter to be the bases for cancelling/closing the liabilities. **Otherwise we shall be constrained to enforce the collection thereof, thru the Administrative Summary Remedies provided for by law, without further notice."** (emphasis supplied)

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[69] Exhibit "P-7", Volume I, Court Docket, page 82.

Guided by the applicable laws and relevant jurisprudence, we find that the tenor of finality which characterizes the wordings of the PCL qualifies as the final decision appealable to the Court. It is well-settled that a final demand letter from the Bureau of Internal Revenue, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. [70] In the case of *CIR vs. Union Shipping Corporation,* [71] the Supreme Court admonished the Commissioner of Internal Revenue to "always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment." This Court finds that the wordings of the PCL leave no doubt as to the finality of the demand made upon petitioner to pay the deficiency taxes, otherwise collection will be made without further notice. Records show that the petitioner received the PCL on May 31, 2018 and reckoned from the date of receipt, it had until June 30, 2018 within which to appeal with the Court. The Petition for Review filed on July 2, 2018 is still within the thirty (30) day period as June 30, 2018 fell on a Saturday.

We now proceed to rule on the main issue of this case.

Petitioner claims exemption from the payment of taxes under the FRIA Act of 2010.

Based on an astute analysis of the FRIA Act of 2010, we find petitioner's contention without merit.

While this Court agrees that the Order dated September 12, 2006 issued by RTC – Branch II has the same force and effect as a commencement order, petitioner cannot claim tax exemption for the period covered by the subject tax assessments, *i.e.*, for TY 2012.

Section 19 of RA No. 10142[72] otherwise known as the FRIA of 2010 reads as follows:

> "SEC. 19. *Waiver of Taxes and Fees Due to the National Government and to Local Government Units (LGUs).* – **Upon issuance of the Commencement Order by the court, and until the approval of the Rehabilitation Plan or dismissal**

[70] *CIR vs. Isabela Cultural Corporation,* G.R. No. 135210, July 11, 2001.
[71] G.R. No. L-66160, May 21, 1990.
[72] AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUALS.

> **of the petition, whichever is earlier, the imposition of taxes and fees, including penalties, interests and charges thereof, due to the national government or to LGUs shall be considered waived**, in furtherance of the objectives of rehabilitation." (emphasis supplied)

Based on the foregoing provision, it is plain that the imposition of taxes and fees, including penalties, interests and charges thereof, due to the government, whether national or local, shall be considered waived, upon issuance of the Commencement Order by the court, and until approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier. In other words, the waiver of taxes, etc., is not permanent upon the issuance of the said Commencement Order by the court and shall last only until the approval of the Rehabilitation Plan or dismissal of the petition for rehabilitation, whichever comes earlier. Simply put, such waiver is time-barred.

The Order dated September 12, 2006[73] issued by RTC Branch II – Batangas City, is akin to the Commencement Order contemplated under RA No. 10142 or the FRIA of 2010. Relative thereto, in *Allied Banking Corporation vs. In the Matter of the Petition To Have Steel Corporation of the Philippines Placed Under Corporate Rehabilitation With Prayer For the Approval of the Proposed Rehabilitation Plan, Equitable PCI Bank, Inc.*,[74] the Supreme Court ratiocinated as follows, to wit:

> "The rehabilitation petition was filed by EPCIB under A.M. No. 00-8-10-SC dated 21 November 2000, or the 2000 Interim Rules of Procedure on Corporate Rehabilitation (*Interim Rules*).
>
> On 27 August 2013, however, the Court enacted A.M. No. 12-12-11-SC, or the Financial Rehabilitation Rules of Procedure (*Rehabilitation Rules*), which amended and revised the Interim Rules and the subsequent 2008 Rules of Procedure on Corporate Rehabilitation (*2008 Rules*), in order to incorporate the significant changes brought about by Republic Act No, 10142 *(R.A. No. 10142)*, otherwise known as the Financial Rehabilitation and Insolvency Act of 2010 (*FRIA*).
>
> The Rehabilitation Rules provides that the court shall issue a commencement order once it finds the petition for rehabilitation sufficient in form and substance. This commencement order primarily contains: a declaration that

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[73] Exhibit "P-10", Docket – Vol. II, pp. 826 to 830.

[74] G.R. No 191939, March 14, 2018.

the debtor is under rehabilitation, the appointment of a rehabilitation receiver, a directive for all creditors to file their verified notices of claim, and an order staying claims against the debtor. The rehabilitation proceedings shall be deemed to have commenced from the date of filing of the petition, which is also termed the commencement date.

Under the same Rules, the effects of such commencement order shall retroact to the date that the petition was filed, and renders void any attempt to collect on or enforce a claim against the debtor or to set off any debt by the debtor's creditors, after the commencement date, to wit:

> SEC. 9. EFFECTS OF THE COMMENCEMENT ORDER. - The effects of the court's issuance of a Commencement Order shall retroact to the date of the filing of the petition and, in addition to the effects of a Stay or Suspension Order described in the foregoing section, shall
>
> xxx
>
> (B) **prohibit or otherwise serve as the legal basis for rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the debtor after the commencement date unless otherwise allowed under these Rules**, subject to the provisions of Section 49 of this Rule;
>
> (C) **serve as legal basis for rendering null and void any set-off after the commencement date of any debt owed to the debtor by any of the debtor's creditors**;
>
> xxx xxx xxx

The order issued by the RTC on 12 September 2006, which effectively initiated rehabilitation proceedings and included a suspension of all claims against SCP[75]**, is akin to the commencement order under the Rehabilitation Rules.**" (Emphasis supplied)

Notably, Section 9 (as quoted in the foregoing ruling) of Rule 2 of the Rehabilitation Rules (A.M. No. 12-12-11-SC) also includes the following effect of the Commencement Order, *viz.*:

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[75] That is petitioner Steel Corporation of the Philippines.

> "SEC. 9. EFFECTS OF THE COMMENCEMENT ORDER. – The effects of the court's issuance of a Commencement Order ...shall
>
> xxx xxx xxx
>
> (F) **exempt the debtor from liability of taxes and fees, including penalties, interests and charges thereof due to the national government or the LGU as provided in Section 19 of the Act**[76]." (emphasis supplied)

Such being the case, the waiver of taxes, etc. contemplated under Section 19 of RA No. 10142[77] or the FRIA of 2010, began on September 12, 2006—the date of issuance of the stay order in SP No. 06-7993. However, the period of the said waiver did not extend until the issuance of the subject tax assessments, *i.e.*, on September 20, 2017, via the issuance of the subject FLD,[78] since the Rehabilitation Plan for the said case was approved prior to the said date of issuance.

In resolving petitioner's Joint Motion for the Approval of Debt Reduction and Settlement and for the Termination of the Liquidation Proceeding dated July 1, 2013 filed by petitioner (among other movants), RTC – Branch 3 indicated in its Resolution dated October 16, 2013 (for SP No. 06-7993),[79] when the Rehabilitation Plan for the said case was approved, as follows:

> "According to the movants, they have agreed on the debt reduction and settlement of the Participating Creditors' respective claims against debtor SCP[80] and thus they seek judicial approval of the Debt Reduction and Settlement Agreements ('DSRAs') thru the Joint Motion of the Participating Creditors, namely, BDO, CBC and PAGT, hold an aggregate amount of PhP2,691,458,775.00, which amounts for 35.28% of the total outstanding debts of debtor SCP in the amount of PhP7,220,119,320.00 as computed under **the Court-approved Rehabilitation Plan ('ARP')**. xxx
>
> xxx xxx xxx

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[76] That is, RA No. 10142 or the FRIA of 2010.
[77] AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUALS.
[78] Exhibit "R-12", BIR Records (Folder 5), pp. 514 to 515; Par. 3.08, *Petition for Review*, Docket – Vol. I, p. 16; Par. 3.09, *Amended Petition for Review*, Docket – Vol. I, p. 218. Refer also Par. 2, Facts, Statement of Facts and Issues, Pre-Trial Order dated May 17, 2019, Docket – Vol. III, at p. 1745; and Par. 2, Facts, Statement of the Case, Amended Pre-Trial Order dated July 10, 2019, Docket – Vol. III, p. 1790.
[79] Exhibit "P-53", Docket – Vol. III, pp. 1516 to 1540.
[80] That is, petitioner Steel Corporation of the Philippines.

Whether solvency can be attained by debtor SCP under the Joint Motion and the DSRAs

> As to the issue of insolvency, a brief backgrounder may be necessary. **It should be recalled that this Court approved on December 7, 2007, the ARP** which applied four percent (4%) interest on the restructured secured debts of debtor SCP[81] and two percent (2%) interest on debts due its suppliers. These rates of interest are binding upon the debtor SCP, its creditors and all persons affected thereby, 'whether or not such persons have participated in the proceedings or opposed the Rehabilitation Plan or whether or not their clams have been scheduled' (Sec. 24 (a), Interim Rules on Corporate Rehabilitation; Sec. 69[a], FRIA). Section 69(e) of the FRIA likewise provides that the confirmation of the Rehabilitation Plan results in '[a]ny compromises on amounts or rescheduling of timing of payments by the debtor shall be binding on creditors regardless of whether or not the Plan is successfully implemented' (See also Sec. 24 (e), Interim Rules on Corporate Rehabilitation). Besides, as the records will bear, the secured creditors accepted payments by debtor SCP[82] for two (2) quarterly interest payments paid in May 2008 amounting to PhP86,383,395.75, **pursuant to the ARP**." *(emphasis supplied)*

It is clear from the foregoing that there was a Rehabilitation Plan in SP No. 06-7993, which was approved by RTC – Branch 3 on December 2, 2007.

Correspondingly, applying Section 19 of RA No. 10142 or the FRIA of 2010, the period of effectivity of the waiver (of the imposition of taxes), *inter alia*, is only from the issuance of the stay order on **September 12, 2006** until the approval of the said Rehabilitation Plan on **December 2, 2007**.

Considering that the subject tax assessments are for TY 2012, there can be no merit in petitioner's claim of tax exemption under the said FRIA of 2010.

Having said this, this Court still finds that said deficiency tax assessments are not valid impositions.

The FLD dated September 20, 2017,[83] which assessed petitioner of deficiency income tax and VAT for taxable year

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[81] *Id.*
[82] *Id.*
[83] Exhibit "R-12", BIR Records (Folder 5), pp. 512 to 515.

2012, shows how the total amount of ₱376,408,260.67, inclusive of surcharges and interests, was computed by the BIR, to wit:

I. INCOME TAX

Taxable Income per ITR		₱ -
Add: Undeclared Sales – Annex A		6,175,118.13
Taxable Income per Investigation		₱6,175,118.13
Deficiency Income Tax		₱1,852,535.44
Add: 50% Surcharge	₱ 926,267.72	
Interest (April 16, 2013 to July 31, 2017)	1,590,642.76	2,516,910.48
Total Amount Payable		₱4,369,445.92

II. VAT

Taxable Sales Per VAT Returns		₱1,655,229,129.78
Add: Undeclared Sales – Annex A		184,883,776.47
Total Taxable Sales		₱1,840,112,906.25
Multiply by: rate		12%
Output VAT		₱220,813,548.75
Less: Input tax per investigation	₱43,644,201.20	
Input tax on undeclared importation	21,445,039.00	
Creditable Withholding VAT	-	
Payments – Annex A	867,235.47	65,956,475.67
Deficiency Tax		154,857,073.08
Add: 50% Surcharge	₱77,428,536.54	
Interest (January 26, 2013 to July 31, 2017)	139,753,205.13	217,181,741.67
Total Amount Payable		₱372,038,814.75
TOTAL AMOUNT DUE		**₱376,408,260.67**

In the Details of Discrepancies attached to the said FLD, the BIR states the basis of the foregoing tax assessments, to wit:

"DETAILS OF DISCREPANCIES

I. INCOME TAX

Investigation thru computerized matching conducted by the RO Mary Jane C. Caraan under GS Nilda C. Zamudio on the details of importation provided by Bureau of Customs as stated per Letter of Notice No. 058-RLFTRS-12-00335 dated August 8, 2014 as against the declaration per income tax return pursuant to Revenue Memorandum Order No. 13-2012 revealed that you have undeclared importation amounting to P178,708,658.33 which then resulted to additional taxable income of P6,175,118.13, hence assessed pursuant to Section 5, 6(A) and 32 of the National Internal Revenue Code of 1997, as amended.

VAT Amount per BOC data	₱	21,855,435.00
Input Tax on Importations per VAT Returns filed		410,396.00
Discrepancy		21,445,039.00
Divide by: VAT rate		12%
Under-declaration of Imported Purchases		178,708,658.33
Divide by: Cost Ratio		96.66%
Undeclared Sales		184,883,776.47
Multiply by: GP rate		3.34%
Additional Taxable Income	₱	6,175,118.13

GROSS PROFIT ANALYSIS – Based on 2011 ITR

	AMOUNT	RATE
SALES PER ITR (TY)	2,552,831,647.28	100%
COST OF SALES	2,467,647,979.00	96.66%
GROSS PROFIT	85,183,668.28	3.34%

II. VALUE ADDED TAX

Moreover, computerized matching conducted by Revenue Officer Mary Jane C. Caraan under Group Supervisor Nilda C. Zamudio on the details of importation provided by the Bureau of Customs as stated per Letter of Notice No. 058-RLFTRS-12-00-00335 dated August 8, 2014 as against the declaration per value added tax returns pursuant to Revenue Memorandum Order No. 13-2012 revealed that you have undeclared importation amounting to P178,708,658.33 which then resulted to undeclared sales amounting to P184,883,776.47, as computed above, thus, assessed pursuant to Sections 5, 6(A), & 106 of the National Internal Revenue Code, as implemented by Section 4.106-1 of Revenue Regulation 16-2005.

xxx xxx xxx."

As can be gleaned from the foregoing, the subject deficiency income tax and VAT assessments sprung from the data the BIR obtained from the BOC on the supposed undeclared "Imported Purchases" of petitioner in the computed amount of ₱178,708,658.33, which the BIR translated as its "Undeclared Sales" amounting to ₱184,883,776.47, for the purpose of the deficiency VAT assessment; and "Undeclared

Sales" amounting to ₱6,175,118.13, in relation to the deficiency income assessment.

To be sure, the amount of undeclared "Imported Purchases", by itself, should not be treated as income, to which income tax should be imposed.

Income in tax law is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent. It is the gain derived and severed from capital, from labor or from both combined.[84] Income is profit or gain or the flow of wealth. The determining factor for the imposition of income tax is whether any gain or profit was derived by a taxpayer from a transaction.[85]

Moreover, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[86] Thus, even if a taxpayer has not claimed purchases or declared a lesser amount thereof, in the Income Tax Return (ITR), such action is allowed, and shall not necessarily result in the imposition of income tax on the undeclared or underdeclared purchases.

Thus, in this case, there being no gain or profit, and since petitioner is free to deduct from its gross income a lesser amount, the income tax imposition has clearly no factual and legal bases.

In the same vein, just as no income tax should be imposed on the supposed undeclared "Imported Purchases", no VAT should likewise be imposed thereon.

VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the

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[84] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[85] *Id.*
[86] *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd., et seq., G.R. Nos. L-19727 and L-19903, May 20, 1965.*

absence of profit attributable thereto.[87] It is a tax imposed on each sale of goods or services in the course of trade or business, or importation of goods as they pass along the production and distribution chain.[88] The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his/her customers.[89] The seller is the one statutorily liable for the payment of the VAT.[90] In other words, the party directly liable for the payment of the tax is the seller.[91]

For sure, when one has undeclared imported purchases, such person is logically deemed as the buyer or purchaser of the goods and/or services, not the seller thereof. Such being the case, no VAT should be imposed on the supposed petitioner's undeclared "Imported Purchases".

In fine, the subject tax assessments issued by respondent for income tax and VAT for TY 2012 have no valid foundation and thus, must be struck down.

Correspondingly, with the foregoing disquisitions, it becomes unnecessary to address the other arguments raised by the parties in their respective pleadings.

WHEREFORE, in light of the foregoing considerations, the present Amended Petition for Review is **GRANTED**.

Accordingly, the FLD dated September 30, 2017 and the FDDA dated February 9, 2018, holding petitioner liable for deficiency income and VAT for taxable year 2012, in the aggregate amount of ₱376,408,260.67, inclusive of surcharges and interests, are **CANCELLED** and **SET ASIDE**.

Furthermore, the PCL dated May 16, 2018 and the FNBS dated May 31, 2018 addressed to petitioner are likewise **CANCELLED** and **WITHDRAWN**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

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[87] *Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 125355, March 30, 2000.*
[88] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq., G.R. Nos. 197663 and 197770, March 14, 2018.*
[89] *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue, G.R. No. 178090, February 8, 2010.*
[90] *Section 4.105-2, Revenue Regulations No. 16-2005.*
[91] *Commissioner of Internal Revenue vs. Benguet Corporation, G.R. Nos. 134587 & 134588, July 8, 2005.*

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

STEEL CORPORATION OF THE PHILIPPINES, *Petitioner,*	**CTA CASE NO. 9866**
	Members:
-versus-	**DEL ROSARIO,** *PJ & Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 17 2022 , 9:55 a.m.

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* which grants the Petition for Review and cancels the disputed assessment.

In addition to the *ratio decidendi* of the *ponencia*, I submit that the assessment is void for having been issued beyond the three (3)-year prescriptive period.

An assessment **may neither attain finality nor be the subject of a lawful execution in situations where the assessment is intrinsically void such as when the Commissioner of Internal Revenue's (CIR) right to assess has prescribed.**

Under Section 203[1] of the National Internal Revenue Code (NIRC) of 1997, as amended, internal revenue taxes shall be assessed

[1] **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.

within three (3) years after the last day prescribed by law for the filing of the return, and in cases 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.

One of the exceptions to the three (3)-year prescriptive period to assess is provided in Section 222 of the NIRC of 1997, as amended, *viz.:*

> "**SEC. 222. Exceptions as to Period of Limitation of Assessment** and Collection **of Taxes.** –
>
> (a) **In the case of a <u>false or fraudulent return with intent to evade tax</u>** 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." *(Boldfacing and underscoring supplied)*

As shown in the Preliminary Assessment Notice (PAN) dated April 21, 2017[2] and the Formal Letter of Demand dated September 20, 2017,[3] the Bureau of Internal Revenue (BIR) relied on Section 222(a) of the NIRC of 1997, as amended, in issuing the disputed assessment. The BIR likewise imposed the fifty percent (50%) surcharge on the disputed deficiency taxes pursuant to Section 248(B) of the NIRC of 1997, as amended, in view of the supposed failure of petitioner to report sales of more than thirty percent (30%) of that declared per return, which allegedly constitutes *prima facie* evidence of a false or fraudulent return.

It is my view that the ten (10)-year prescriptive period to assess does not apply in this case.

In applying the ten (10)-year prescriptive period to assess, the Supreme Court in ***Commissioner of Internal Revenue vs. Asalus Corporation***,[4] declared as follows:

> "Considering the **<u>existing circumstances</u>**, the assessment was timely made because the applicable prescriptive period was the ten (10)-year prescriptive period under Section 222 of the NIRC. To reiterate, **<u>there was a *prima facie* showing that the returns filed</u>**

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[2] BIR Records Folder 5, pp. 508-511.
[3] BIR Records Folder 5, pp. 512-515.
[4] G.R. No. 221590, February 22, 2017.

> **by Asalus were false, which it failed to controvert.** Also, **it was adequately informed that it was being assessed within the extraordinary prescriptive period.**" *(Boldfacing and underscoring supplied)*

The doctrinal pronouncement in *Asalus* highlights the following vital circumstances: **one, there was *prima facie* showing that the returns filed by Asalus were false; and, two, Asalus was adequately informed that it was being assessed within the ten (10)-year prescriptive period.**

One (1) month after ***Asalus*** was promulgated, however, the same Division of the Supreme Court made a clarification in ***Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.***,[5] **declaring that mere entry of wrong information in tax returns due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return,** *viz.*:

> "Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, **the filing of a false return can be intentional or due to honest mistake**. In *CIR v. B.F. Goodrich Phils., Inc.*, the Court stated that **the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return.** In this case, we do not find enough evidence to prove fraud or intentional falsity on the part of PDI." *(Boldfacing and underscoring supplied; citation omitted)*

In light of the pronouncement in ***Philippine Daily Inquirer***, I submit that in applying the ten (10)-year prescriptive period to assess, it is not sufficient that the returns filed by the taxpayer contain erroneous or wrong entries but **there must be sufficient evidence to prove that the taxpayer intended to evade tax.** Stated differently, to warrant the application of the ten (10)-year prescriptive period to assess, it is incumbent upon the BIR to establish that the filing of the purported "false returns" was intentional and not due to honest mistake.

In the present case, while the BIR informed petitioner that it was assessed within the extraordinary prescriptive period of ten (10) years pursuant to Section 222(a) of the NIRC of 1997, as amended, there was, however, no *prima facie* showing that petitioner intended to evade tax when it filed the returns.

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[5] G.R. No. 213943, March 22, 2017.

On the contrary, it was the BIR that appears to have committed a palpable mistake in making an inference that an undeclared importation constitutes undeclared income.

Income tax is imposed on the taxable income of the corporation.[6] The determining factor for the imposition of income tax is whether any gain or profit was derived from a transaction.[7] Thus, it is incumbent upon the BIR to show that a gain or income was derived by petitioner from its undeclared importation.

Here, there is nothing in the PAN or FLD which shows that petitioner derived gain or income from its undeclared importation. It bears stressing that an assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. The assessment must be based on actual facts.[8]

As aptly mentioned by the *ponencia*, for income tax purposes, a taxpayer is allowed to subject its gross income to a lesser amount of deduction or not to claim any deduction at all, and such will not necessarily result in the taxability of the underdeclared or undeclared purchases. Needless to say, what the law prohibits is for a taxpayer to claim a deduction beyond the authorized amount.

Anent the deficiency VAT assessment, it is likewise rash to presume that petitioner had vatable sales simply because petitioner had undeclared importation. As elucidated in the *ponencia*, VAT is an indirect tax that may be passed on to the customer by the provider of goods or services, and the seller is the one statutorily liable for the payment of the VAT. The root of the VAT assessment in this case is the supposed undeclared sales arising from the undeclared importation. It appears that petitioner, as importer, was the buyer/purchaser of the imported goods, and not the seller thereof.

Plainly, there was no *prima facie* evidence from the very start to justify the issuance of the assessment against petitioner beyond the ordinary prescriptive period of three (3) years.

On the basis of the foregoing, the Formal Letter of Demand and the Assessment Notices all dated September 20, 2017, which were

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[6] Section 27, NIRC of 1997, as amended.
[7] Commissioner of Internal Revenue vs. Court of Appeals et al., G.R. No. 108576, January 20, 1999.
[8] Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation et al., G.R. No. L-46644, September 11, 1987.

received by petitioner on September 27, 2017, having been issued beyond the three (3)-year prescriptive period for the BIR to assess petitioner for deficiency income tax and VAT for taxable year 2012, is void *ab initio* and without legal effect.

All told, I CONCUR in the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice