REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ALLEGRO MICROSYSTEMS PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8445

Members:

DEL ROSARIO, *P.J.*,
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

FEB 12 2015 ; 3:28 pm.

x - x

DECISION

UY, *J.*:

This Petition for Review filed on March 27, 2012 seeks the annulment, reversal and setting aside of the Final Decision on Disputed Assessment (FDDA) dated January 18, 2012, and the cancellation of the deficiency assessment in the aggregate amount of ₱17,755,765.05 for the fiscal year ending March 31, 2008, issued by the Bureau of Internal Revenue (BIR) against petitioner.

THE FACTS

Petitioner Allegro Microsystems Philippines, Inc. is a corporation duly organized under Philippine laws, with principal office at Sampaguita Street, Marimar Village, Parañaque City.[1] It is registered with the Board of Investments, pursuant to the Omnibus Investment Code of 1987.[2]

[1] Joint Stipulation of Facts and Issues (JSFI), Par. 1.1, Docket, p. 153.
[2] JSFI, Par. 1.10, Docket, p. 155; and Exhibit "D".

Respondent, on the other hand, is the Head of the BIR, the government agency charged with, among other powers and duties, the enforcement of revenue laws and the collection of all national internal revenue taxes.[3]

On July 15, 2008, petitioner filed its Annual Income Tax Return for the fiscal year ending March 31, 2008.[4]

Subsequently, the BIR issued Letter of Authority (LA) dated July 17, 2008 numbered 00067654, authorizing certain Revenue Officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the fiscal year ending March 31, 2008. The said LA was received by petitioner on August 1, 2008.[5]

Petitioner then received the Preliminary Assessment Notice (PAN) dated May 27, 2011 issued by the BIR, informing petitioner of the latter's finding that a deficiency income tax in the amount of ₱452,304,361.60, including interest, is due from petitioner for fiscal year ending March 31, 2008.[6] The said PAN was received by petitioner on June 6, 2011.[7]

In answer to the said PAN, petitioner filed with the BIR, on June 21, 2011, the letter dated June 21, 2011, expressing its disagreement to the BIR's findings and stating the reasons therefor.[8]

Acting on the said letter of petitioner, respondent reconsidered its position, reducing the amount of deficiency income tax to ₱17,687,864.78, inclusive of interest.[9] Correspondingly, the BIR issued the Formal Letter of Demand (FLD) dated June 22, 2011,[10] and the Audit Result/Assessment Notice No. LTDO-122-IT-2007-00012 (FAN),[11] requesting the payment of the said amount. Petitioner received the said FLD and FAN on July 13, 2011.[12]

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[3] JSFI, Par. 1.2, Docket, p. 154.
[4] JSFI, Par. 1.11, Docket, p. 155.
[5] Exhibit "R-1", BIR Records (marked as Exhibit "R-24"), p. 516.
[6] Exhibits "R-14" and "R-15", BIR Records, pp. 772 to 774.
[7] Exhibit "R-14-B", BIR Records , p. 774.
[8] Exhibit "R-16", BIR Records, pp. 851 to 854.
[9] Refer to Exhibit "R-18", BIR Records, pp. 932 to 935.
[10] JSFI, Par. 1.4, Docket, p. 154; Exhibit "A", Docket, p. 174; and Exhibit "R-19", BIR Records, p. 941.
[11] Exhibit "R-20", BIR Records, p. 940-A.
[12] JSFI, Par. 1.13, Docket, p. 155; and Exhibit "R-20-B", BIR Records, p. 940-A.

The amount of ₱17,687,864.78 is computed as follows:[13]

Taxable Income per Return		₱ 101,790,902.00
Add: Understatement of Gross Income due to overstatement of cost	₱ 26,600,001.00	
Understatement of 3% mark up	67,462.59	
Purchases – Unsupported	3,420,981.09	
Bad Debts – not ascertained to be worthless	1,497,029.00	31,585,473.68
Taxable Income per Audit		₱ 133,376,375.68
Income Tax Due per Audit		₱ 46,681,731.49
Less: Income Tax Due per Return		35,626,816.00
Deficiency Tax		₱ 11,054,915.49
Add: Interest as of 7/15/2011		6,632,949.29
Total Deficiency Income Tax, including increments		₱ 17,687,864.78

Petitioner filed its protest on August 11, 2011.[14]

On February 27, 2012, petitioner received a copy of the Final Decision of Disputed Assessment (FDDA) dated January 18, 2012,[15] wherein the BIR revised the assessment, and requested the payment of ₱17,755,765.05, representing the deficiency income tax, inclusive of interest, for the same taxable year, determined as follows:[16]

Taxable Income per Return		₱ 101,790,902.00
Add: Understatement of Gross Income due to overstatement of cost	₱ 26,600,000.00	
Purchases – unsupported/overclaimed	836,829.72	
Bad Debts – not ascertained to be worthless	1,471,232.73	28,908,062.45
Taxable Income per Audit		₱ 130,698,964.45
Income Tax Due per Audit		₱ 45,744,637.56
Less: Income Tax Due per Return		35,626,816.00
Deficiency Tax		₱ 10,117,821.56
Add: Interest as of 2/29/2012		7,637,943.49
Total Deficiency Income Tax, including increments		₱ 17,755,765.05

The instant Petition for Review was filed on March 27, 2012, wherein petitioner prays that this Court:

[13] BIR Records, p. 939-A.
[14] JSFI, Par. 1.14, Docket, p. 155, Common Exhibit: Exhibit "B" (Docket, pp. 178-181) and Exhibit "R-21" (BIR Records, pp. 969 to 972).
[15] JSFI, Pars. 1.5 and 1.15, Docket, pp. 154 and 155, respectively; Common Exhibit: Exhibit "C" (Docket, pp. 210-212) and Exhibit "R-23" (BIR Records, pp. 1007 to 1009).
[16] BIR Records, p. 1003.

1. Annul, reverse and set aside the FDDA dated January 18, 2012;
2. Cancel the deficiency assessment against petitioner in the aggregate amount of ₱17,755,765.05; and
3. Issue an order directing the BIR to issue the corresponding Authority to Cancel Assessment.

In her Answer filed on May 17, 2012,[17] respondent raises the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES / GROUNDS FOR THE DISMISSAL OF THE PETITION FO REVIEW**

11. Petitioner's claim for the cancellation of assessment against it in the instant Petition for Review has no basis in fact and in law, for the following reasons:

11.1 On the question of Deficiency of Income Tax. There is an overstatement by the Petitioner relative to its gross income. Upon examination and verification, there was a material discrepancy in the Summary List of Importation and the Import Entry Internal Revenue Declaration No. 12998 dated July 4, 2007, in the amount of ₱26,600,000.00. However, petitioner argues that the difference between the amount of ₱29,555,974.10 and the alleged correct amount of ₱2,9995,974.10 as claimed by petitioner only resulted from alleged 'inadvertent inclusion of another '5' in the value of the importation as reported in the SLI'. But to this, we ask, **was there any other proof furnished by the petitioner in its Petition for Review aside from mere allegations?** We daresay **nothing**, but mere protestation of clerical error without anything under the law or fact that will substantiate such allegation;

11.2. We must point out the fact that petitioner's invocation of the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue* (G.R. No. 179356, December 14, 2009) is not square in the present case.

[17] Docket, pp. 99 to 110.

Worse, the same is being misquoted by petitioner in its attempt to tailor-fit the same case to its position. Petitioner states in par. 5.4 of its Petition for Review that *'as between a source document and an erroneous entry in a mere repot* [*sic*], *clearly, the source document must prevail as it is that on which AMPI based its income tax computations'* and then making a footnote quoting the aforementioned case, as if that was what is stated by the Honorable Supreme Court. We reproduce below the pertinent statement of the Honorable Supreme Court in the said case, to wit:

> 'A general ledger is a record of a business entity's accounts which make up its financial statements. Information contained in a general ledger is gathered from source documents such as account vouchers, purchase orders and sales invoices. In case of **variance** between the source document and the general ledger, the former is preferred.' ***(Emphasis and underlining all provided)***

11.3. As to Petitioner's insistence that the purchases disallowed by the respondent was substantiated. Regarding this matter, we can only say that petitioner is trying to grasp at straws. Looking at the Petition for Review itself on its face, nowhere may it be seen that there was any material fact or even a shred of proof that was interposed so as to substantiate petitioner's position that the disallowed purchases were supported and that the pertinent documents were submitted. Petitioner assailed the disallowance by making a baseless and unsubstantiated allegation that its alleged evidence were ignored, without forwarding any basis to such claim;

11.4. Rule 131, Sec. 2 (m) of the 1997 Revised Rules of Court states 'That official duty has been regularly performed.' And as held by the Honorable Supreme Court in the case of ***ABAKADA Guro Party List, et al. vs. Hon. Cesar Purisima, et al.*** **(G.R. No. 166715, August 14, 2008)**:

> '**Public officers enjoy the presumption of regularity in the performance of their duties. This presumption necessarily obtains in favor of BIR and BOC officials and employees.** xxx.' ***(Emphases and underlining all provided)***

And that:

> '**The presumption is disputable but proof to the contrary is required to rebut it. It cannot be overturned by mere conjecture or denied in advance** (as petitioners would have the Court do) specially in this case where it is an underlying principle to advance a declared public policy.' ***(Emphases and underlining all provided)***

11.5. In the case at bar, petitioner made a sweeping statement that respondent ignored its evidence so as to arrive in the assailed assessment, without anything to back up its claim. How do we treat such allegation now? Well, we can only conclude that, in the absence of proof in the instant Petition, then such imputation against the Public Respondent is a mere conjecture and not a proof of a fact. Thus, the assessment made by the Respondent must be sustained by this Honorable Court by virtue of the presumption of regularity in favor of the respondent and considering that material fact was adduced so as to overcome such presumption and the validity of the assessment being assailed;

11.6. Aside from petitioner's failure to adduce proof to substantiate its claims of respondent allegedly ignoring its evidence and not overcoming the presumption of regularity, petitioner also made the fatal mistake of making an implied admission that, indeed, it failed to present evidence to substantiate its claims for its purchases. Par. 6.3 of the same Petition explicitly stated that petitioner will present evidence that it purchased materials. What does that mean, **that petitioner did not present evidence before the Bureau of Internal Revenue so as to support its claim?** How can the petitioner now fault the respondent as to how the assessment was arrived at, if petitioner itself failed to present the necessary documents? By petitioner's express statement in the Petition for Review itself that it will present evidence so as to substantiate its claims that were disallowed, then it logically and necessarily mean that it never presented the documents before the Public Respondent that may support its claims. Hence, it can never assail the validity of the assessment;

11.7. As to the disallowed alleged bad debts. Suffice it to state that no sufficient evidence to overthrow the validity of the findings of the Public Respondent was presented by the petitioner. As found in the assailed Final Decision on Disputed Assessment dated January 18, 2012, no proof was submitted that attempts were made to collect against the proper party was ever made by the petitioner, and that there is a lack of proof of the value of the equipment held as security against the receivable. Thus, petitioner has no basis to claim that those alleged bad debts were properly written off;

11.8. Moreover, by stating in par. 7.2 of the same Petition that it will present evidence, petitioner is once more impliedly admitting that it failed to present evidence to substantiate its claims for its alleged bad debts. By petitioner's express statement in the Petition for Review itself that it will present evidence so as to substantiate its bad debts that were disallowed, then it logically and necessarily mean that it failed to present the supporting documents before the Public Respondent that may support its claims. Further demonstrating that it can never assail the validity of the assessment as issued by the Public Respondent;

12. No evidence was submitted by the petitioner to disprove such findings by the Respondent. Thus, the assailed assessments are to be presumed correct. As held by the Honorable Supreme Court in the case of ***Tan Guan vs. The Court of Tax Appeals*** **(G.R. No. L-23676, April 27, 1967):**

> 'The Commissioner of Internal Revenue, sustained by the Tax Court, found for a fact that **the expenses in the amount of P206,870.00 are fictitious.** **Tan Guan presented no evidence to disprove such finding. In appeals to the Court of Tax Appeals, the determination of the Commissioner of Internal Revenue is presumed correct and its behooves the taxpayers to rebut such presumption (Perez vs. Court of Tax Appeals, et al., L-10507, May 30, 1958). Tan Guan failed to overcome his burden. Hence, the finding that the expenses are fictitious must be sustained. And being fictitious, the expenses cannot be claimed as deduction from gross income.**' ***(Emphases and underlining all provided)***

13. And as further held by the Honorable Supreme Court in the case of ***Collector of Internal Revenue vs. Bohol Land Transportation Co.*** **(G.R. Nos. L-13099 & L-13462, April 29, 1960):**

> '**Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessment for the years 1948, 1949 and 1950, the trial court had no other alternative than to resort to the legal truism that 'all presumption are in favor of the correctness of tax assessments'. The burden of proof is on the taxpayer to show the contrary. This the company failed to do.** This action finds support in the following authorities:
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> > '**All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.**

'**As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment is erroneous, in order to relieve himself from it.** (51 *Am. Jur.* Pages 620-621)' **(*Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue*, 98 Phil., 290; 52 Off. Gaz., [2] 791.)**

'When an importer challenges by legal steps the correctness of the assessment of a duty by the Collector of Customs, **the question to be decided is not whether the Collector was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contention.**' **(*Behn, Meyer & Co. vs. Collector of Customs*, 26 Phil., 647)**

'**That the determination of the tax deficiency by the Government has prima facie validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct.**' **(*Perez vs. Court of Tax Appeals*, et al., G.R. No. L-10507, May 30, 1958).**' **(*Emphases and underlining all provided*)**"

14. Petitioner cannot question the assessments made against it for all presumptions are **in favor of tax assessments** **(*Interprovincial Autobus Co, Inc. v. Collector* [98 Phil. 290]; *Cecilia Teodoro Dayrit v. Hon. Fernando Cruz and Commissioner* [L-39910, Sept. 26, 1988]; and *Bonifacia Sy Po v. CTA & Commissioner*, [G.R. No. 81446, Aug. 18, 1988]**);

15. Thus, applying the pertinent provisions of the law, rules, and jurisprudence in the matter at hand, **it is crystal clear that the instant petition for review lacks basis and merit, and should be dismissed outrightly by this Honorable Court.** Consequently, **petitioner should already be made to pay the**

> **deficient taxes for the same are already final, executory, and demandable under the facts and the law;"**

On May 31, 2012, petitioner filed its Reply,[18] arguing as follows:

1. Petitioner has amply substantiated at the administrative level and will present evidence during trial that will establish the cause of the discrepancy between Import Entry & Internal Revenue Declaration (IEIRD) No. 12998 and the Summary List of Importation (SLI);
2. Petitioner did not misquote the ruling in *Kepco Philippines Corporation vs. Commissioner of Internal Revenue* in the Petition; and
3. The presumption of regularity can be rebutted by evidence to the contrary.

This case was set for pre-trial on June 22, 2012, and the parties were directed to file their respective Pre-Trial Briefs.[19] Correspondingly, respondent filed her Pre-Trial Brief on June 18, 2012;[20] while petitioner filed its Pre-Trial Brief on June 19, 2012.[21] Thereafter, as directed by the Court,[22] the parties filed their Joint Stipulation of Facts and Issues (JSFI) on July 17, 2012.[23] The said JSFI was approved by the Court in the Resolution dated July 24, 2012, thereby terminating the Pre-Trial stage.[24]

Trial of the case then ensued.

During trial, the parties presented and offered their respective documentary and testimonial evidence. The Court respectively admitted the parties' evidence.[25]

In the Resolution dated January 28, 2014, the Court ordered the parties to file their respective memorandum.[26]

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[18] Docket, pp. 112 to 117.
[19] Notice of Pre-trial Conference, Docket, p. 119.
[20] Docket, pp. 120 to 125.
[21] Docket, pp. 126 to 138.
[22] Resolution dated July 12, 2012, Docket, pp. 151 to 152.
[23] Docket, pp. 153 to 157.
[24] Docket, pp. 159 to 160.
[25] Resolution dated June 4, 2013, Docket, pp. 518 to 519; and Resolution dated January 28, 2014, Docket, pp. 619 to 620.
[26] Docket, pp. 619 to 620.

Thereafter, petitioner filed its Memorandum on March 10, 2014.[27]

Respondent, however, filed on March 21, 2014, a Manifestation and Motion, manifesting that she is adopting all her arguments found in the special and affirmative defenses in her Answer dated May 17, 2012, emphasizing with certain arguments in support of her defense, as well as, the statement of purposes for which all the documentary evidence of respondent were formally offered; and moving that the same be admitted by this Court, as part of her Memorandum.[28]

On April 21, 2014, the Court took note of the said Manifestation and Motion of respondent, and the filing of petitioner's Memorandum. On the same date, the instant case was submitted for decision.[29]

Hence, this Decision.

THE ISSUES

As jointly stipulated by the parties, the following issues are submitted for the resolution of the Court, to wit:

"2.1. Whether AMPI overstated its cost up to the extent of ₱26,600,000.00

2.2. Whether AMPI purchases in the amount of ₱836,829.72 are duly substantiated.

2.3. Whether AMPI may claim as income tax deductions its unpaid receivables from Kras Asia and M/A Com.

2.4. Whether AMPI is liable for deficiency income tax in the amount of ₱17,755,765.05."[30]

Petitioner's arguments:

Petitioner argues that it did not overstate its cost with respect to the importation covered by IEIRD No. 12998 to the extent of ₱26,600,000.00. It points out that the Independent Certified Public

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[27] Docket, pp. 621 to 636.
[28] Docket, pp. 642 to 644.
[29] Docket, p. 647.
[30] Docket, pp. 155 to 156.

Accountant (ICPA) commissioned by this Court, was able to determine that the total cost of the 200,000 pieces of imported magnets purchased from Shin-Etsu Magnetics, Inc. that was claimed as deduction by petitioner for income tax purposes is the actual cost paid, *i.e.*, ₱3,035,480.50 (with landed of ₱2,955,974.10 upon importation), and not ₱29,555,974.10 as alleged by the BIR.

Petitioner emphasizes that it merely erred in preparing the SLI submitted together with its VAT Return by inadvertently including another '5' in the value of the importation for IEIRD No. 12998. Petitioner then concludes that the amount of ₱29,555,974.10 should have been written as ₱2,955,974.10. The difference between these figures gave rise to a discrepancy of ₱26,600,000.00 which was erroneously considered by respondent as an overstatement of cost. According to petitioner, this typographical error in the SLI attached to the VAT Return did not affect the computation of petitioner's income tax.

Furthermore, petitioner contends that it properly considered as bad debts its receivables from Kras Worldwide Limited / Kras Asia Limited in the amount of ₱675,944.44, and from M/A Com in the amount of ₱795,288.229, or the total amount of ₱1,471,232.73. In this connection, petitioner underscores that the disallowance of the said bad debts is erroneous as it has complied with the requirements of Revenue Regulations (RR) No. 5-99, as amended by RR No.25-02.

Respondent's counter-arguments:

In her Answer, respondent contends that since petitioner failed to present supporting documents before respondent, it can never assail the validity of the subject tax assessment.

In addition, respondent asserts that no evidence was submitted by petitioner to disprove her findings.

According to respondent, petitioner's invocation of the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*[31] is not square in the present case; and that the said case is being misquoted by petitioner in its attempt to tailor-fit the same case to its position.

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[31] G.R. No. 179356, December 14, 2009.

Respondent asserts that petitioner cannot question the assessments made against it because all presumptions are in favor of tax assessments.

Moreover, in her Manifestation and Motion filed on March 21, 2014, respondent points out that long-settled is the rule that tax assessments made by tax examiners are presumed correct and made in good faith. Allegedly, the taxpayer has the duty of proving otherwise with strong and convincing evidence, and failure to present proof of error in the assessment will justify judicial affirmation of the same.

Lastly, respondent opines that since petitioner failed to prove by clear and convincing evidence that it is not liable to pay the assessed deficiency income tax for fiscal year ending March 31, 2008, the presumption that the said deficiency tax assessment was made by the respondent in accordance with law and regulations was not overcome by petitioner.

THE COURT'S RULING

In her Answer, respondent raises the argument that since petitioner failed to present supporting documents before respondent, it can never assail the validity of the subject tax assessment.

Thus, before addressing the aforequoted issues raised by the parties in their JSFI, this Court shall deal with the issues of whether petitioner has submitted documents to support its claim at the administrative level, and assuming petitioner failed to do so, whether this Court may allow petitioner to present evidence to assail the said assessment.

The answers to both questions are in the affirmative.

In its protest letter dated August 11, 2011,[32] petitioner points to certain Annexes that were supposedly attached thereto in support of its arguments. Upon verification of the BIR records, the said Annexes have evidently been attached to the said protest letter.[33] Thus, respondent's allegation that petitioner failed to submit supporting documents is untenable.

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[32] Exhibit "B"; and Exhibit "R-21", BIR Records (Exhibit "R-24"), p. 969 to 972.
[33] Refer to Annexes "A" to "T", BIR Records (Exhibit "R-24"), p. 942 to 968-A.

As a corollary, the Supreme Court, in the case of *Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue,*[34] has ruled as follows:

> "The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant supporting documents within 60 days from the filing of its protest on 17 January 2003, **when the CIR does not even identify what these documents are**. If the Court does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. **In addition, there appear to be sufficient documents submitted by Metrobank to the CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former**."

In this case, respondent merely makes a broad and vague allegation that petitioner failed to submit supporting documents, but does not identify what these documents are. Clearly, it would be inequitable to charge petitioner with failing to submit documents in support of his/its protest, when respondent has not specified what these documents are. More so that respondent was able to arrive at a decision, as embodied in the subject FDDA, revising the assessment that was earlier made.

Be that as it may, the term "relevant supporting documents" under Section 228[35] of the National Internal Revenue Code (NIRC) of 1997 should be understood as those documents necessary to support the legal basis in disputing a tax assessment **as determined by the taxpayer**. **The BIR can only inform the taxpayer to submit additional documents.** The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer

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[34] G.R. No. 178797, August 4, 2009.

[35] "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: xxx

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

xxx xxx xxx

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.

xxx xxx xxx." *(Emphasis supplied)*

will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[36]

Moreover, even granting that petitioner failed to present supporting documents at the administrative level, this Court is not prevented to accept petitioner's evidence, which are intended to assail the subject tax assessment.

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[37] the Supreme Court said:

> "More importantly, **the Court of Tax Appeals is <u>not precluded</u> from accepting respondent's evidence <u>assuming these were not presented at the administrative level</u>**. Cases filed in the Court of Tax Appeals are litigated *de novo*.[38] Thus, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting. . .to the Court of Tax Appeals **[<u>all evidence</u>]** . . . required for the successful prosecution of [its] administrative claim.'"[39] *(Emphases and underscoring supplied)*

Having resolved the additional issues raised, this Court shall proceed to address the issues stipulated by the parties in their JSFI.

Factors that brought about the subject tax assessment.

As can be gleaned from the computation of the BIR,[40] the tax assessment in the aggregate amount of ₱17,755,765.05 arose from the following factors/findings:

1. Understatement of gross income due to overstatement of cost in the amount of ₱26,600,000.00;
2. Unsupported or over-claimed purchases in the amount of

[36] *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009.
[37] G.R. No. 180290, September 29, 2014.
[38] Citing *CIR v. Manila Mining Corporation*, 505 Phil. 650. 664 (2005) [Per J. Carpio Morales, Third Division]; *C.F. Sharp & Company, Inc. v. Commissioner of Customs*, 130 Phil. 777, 782 (1968) [Per J. J.P. Bengzon, En Banc)
[39] Citing *Atlas Consolidated Mining and Development Corporation v. CIR*, 547 Phil. 332 (2007) [Per J. Corona, First Division], and *Dizon v. Court of Tax Appeals*, 576 Phil. 110, 128 (2008) [Per J. Nachura, Third Division].
[40] BIR Records (Exhibit "R-24"), p. 1003.

₱836,829.72; and

3. Bad debts in the aggregate amount of ₱1,471,232.73, which is not ascertained to be worthless.

The Court shall resolve the merits of the foregoing *in seriatim*.

Petitioner did not overstate its cost in the amount of ₱26,600,000.00.

Based on the FDDA dated January 18, 2012,[41] the amount of ₱26,600,000.00 represents the difference between the amount indicated in IEIRD No. 12998 dated July 4, 2007 and the amount indicated in the SLI attached to petitioner's Quarterly VAT Return filed on October 24, 2007.[42] In the said IEIRD No. 12998, it is shown that petitioner imported 200,000 units of permanent magnet, and the landed cost therefor is ₱2,955,974.10 (to which the imposition of the VAT was based);[43] while on the other hand, in the said SLI, the amount reflected for the same importation is ₱29,555,974.10.[44]

According to petitioner's witness, Mr. Ronald B. De La Rosa, *"the amount of ₱29,555,974 being referred to by the Respondent is the result of the inadvertent inclusion of an additional '5' in the landed cost of IEIRD No. 12998 as indicated in the SLI."*[45] This testimony was never disputed by respondent, either by cross-examination[46] or by contrary evidence.

Furthermore, in *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*,[47] the High Court ruled:

> "From petitioner's evidence, the account vouchers specifically indicate that the disallowed purchases were recorded under inventory accounts, instead of depreciable accounts. That petitioner failed to indicate under its fixed assets or depreciable assets account, goods and services allegedly purchased pursuant to the rehabilitation and maintenance of Malaya Power Plant,

[41] Common Exhibit: Exhibit "C" (Docket, pp. 210-212) and Exhibit "R-23", BIR Records, pp. 1007 to 1009.

[42] JSFI, Par. 1.8, Docket, p. 154.

[43] JSFI, Par. 1.6, Docket, p. 154; Exhibit "E".

[44] JSFI, Par. 1.7, Docket, p. 154; and Exhibit "G-1".

[45] Exhibit "O" (Q28-A28, Affidavit of Ronald B. Dela Rosa dated 30 July 2012), Docket, pp. 167 to 168.

[46] See Transcript of Stenographic Notes at the hearing held on August 2, 2012.

[47] G.R. No. 179356, 14 December 2009.

> Complex, militates against its claim for refund. As correctly found by the CTA, the goods or properties must be recorded and treated as depreciable assets under Section 34 (F) of the NIRC.
>
> Petitioner further contends that since the disallowed items are treated as capital goods in the general ledger and accounting records, as testified on by its senior accountant, Karen Bulos, before the CTA, this should have been given more significance than the account vouchers which listed the items under inventory accounts.
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> A general ledger is a record of a business entity's accounts which, make up its financial statements. Information contained in a general ledger is gathered from source documents such as account vouchers, purchase orders and sales invoices. **In case of variance between the source document and the general ledger, the former is preferred.**"

Applying the foregoing ruling *mutatis mutandis* to the instant case, the IEIRD, being the source document, should prevail over the SLI, which merely report the transaction reflected in the said IEIRD.

Thus, considering the contents of the said IEIRD vis-à-vis of the said SLI, coupled with the testimony of Mr. De La Rosa, We find that the true amount for the subject importation is ₱2,955,974.10, and not ₱29,555,974.10.

With the prevalence of the IEIRD being resolved, We now proceed to the main issue as to correctness of the amount deducted for income tax purposes.

The Court-commissioned ICPA[48] was able to verify that, based on the procedures they performed, the amount *"that was claimed as deduction by the Company for income tax purposes is the actual cost paid of ₱3,035,480.50, (with landed cost of ₱2,955,974.10 upon importation) and not ₱29,555,974.10 as alleged by the BIR."*[49] The difference between the actual cost recorded versus the amount being questioned in this case arose from the *"increase in price of the magnets from the time of importation up to the time of usage and*

[48] Glenn Ian D. Villanueva of Reyes Tacandong and Company.
[49] Exhibit "Q", p. 10, Docket, p. 306.

recording as inventory in the books of the Company"[50], computed as follows:

Particulars	Amounts in PhP	Amounts in USD
Date of importation (June 29, 2007)	**₱ 2,955,974.10**	**$ 59,800.00**
Date of usage/invoice:		
Sales Invoice No. 24706 (Exhibit "AA-1")	1,317,165.04	28,205.00
Sales Invoice No. 24710 (Exhibit "AA-2")	3,420,981.09	36,795.00
Total	**₱ 3,035,480.50**	**$ 65,000.00**
Total price increase	**₱ 79,506.40**	**$ 5,200.00**

In accordance with petitioner's accounting policy of using the standard cost method in accounting for its inventories, the amount of ₱3,035,480.50 was further broken down as follows:[51]

Particulars	Amount
Standard cost of the magnets	₱ 2,876,000.00
(Under DM – Assembly Materials – Magnets)	
(200,000 pcs x ₱14.38 standard cost)	
Purchase price variance of the magnets	
(Under DM – PPV-Others)	159,480.50
Total cost	₱ 3,035,480.50

The ICPA explained the process flow[52] over which IEIRD No. 12998 had undergone in petitioner's accounting system which led to the deduction of the correct amount of cost and not the erroneous amount as reported in the SLI.

An examination of the ICPA Report on the flow of accounting entries shows that the cost of the 200,000 pieces of magnets per the IEIRD was properly forwarded to the general ledger account of 5018 DM - Purchase Price Variance[53] amounting to ₱159,480.50 and to 5021 DM - Assembly Materials - Magnets[54] with series of entries totaling ₱2,876,000.00. The total ending balances of the two aforementioned general ledger accounts are ₱10,524,937.67 and ₱251,906,351.35, respectively. These comprise one of the accounts in the Audited Trial Balance[55] under the grouping Raw Materials Used

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[50] Exhibit "Q", p. 7, Docket , p. 303.
[51] Exhibit "Q", pp. 7-8, Docket, pp. 303-304.
[52] Exhibits "Q", pp. 6-10, "T", "X", "Y", "Z", "AA-1", "AA-2""CC", "DD", "EE", "FF-1" to "FF-2", "GG-1" to "GG-2", "HH", "II", "JJ-1" to "JJ-2", "KK-1" to "KK-2", "LL", p. 9, "MM", pp. 4 and 26, and "EEE".
[53] Exhibit "II".
[54] Exhibit "GG-2".
[55] Exhibit "LL-9".

and Changes in Inventory with a total of ₱903,471,316.59[56]. This amount was in turn presented in Note 14[57] of petitioner's Audited Financial Statements, which provided a breakdown of the Cost of Goods Sold amounting to ₱2,608,799,128.00 as reflected in the Statement of Income[58] of the same Financial Statements[59].

And while in its Annual Income Tax Return for the fiscal year ended March 31, 2008 filed on July 15, 2008,[60] petitioner claimed a total deductible Cost of Sales/Services amounting to ₱2,607,770,279.00, the difference of ₱1,028,849.00 was reconciled as follows[61]:

Particulars	**Regular**	**Exempt**	**Total**
Cost of goods sold per FS	**₱ 2,508,540,532**	**₱ 100,258,596**	**₱ 2,608,799,128**
Reconciling items:			
Provision for inventory obsolescence	(3,314,452)	(185,651)	(3,500,103)
Accrued retirement benefits cost	(9,092,695)	(509,305)	(9,602,000)
Contribution to retirement fund	9,642,530	540,102	10,182,632
Amortization of past service cost	356,887	19,990	376,877
Non-deductible rental expense	1,430,680	80,136	1,510,816
Provision (payment) for employee indemnities	2,772	155	2,927
Cost of goods sold per ITR	**₱ 2,507,566,254**	**₱ 100,204,025**	**₱ 2,607,770,279**

Based on all the foregoing, petitioner sufficiently proved that the amount of ₱2,955,974.10 per IEIRD was correctly taken up in the computation of its taxable gross income and not the erroneous amount of ₱29,555,974.10 per SLI.

Petitioner's purchases in the amount of ₱836,829.72 were <u>not</u> duly substantiated.

Anent the amount of ₱836,829.72, representing the supposed unsupported or over-claimed purchases of petitioner, the BIR, upon verification of the SLI against the submitted copies of the IEIRDs, found that there were IEIRDs that were undocumented, while those submitted for examination showed discrepancies in the amount indicated in the SLI, to wit[62]:

[56] Exhibit "Q", p. 9, Docket, p. 305; Exhibit "LL-9".
[57] Exhibit "MM-26"
[58] Exhibit "MM-4".
[59] Exhibit "MM", p. 4.
[60] Exhibit "NN", p. 1.
[61] Exhibit "Q", p. 10, Docket p. 306.
[62] Exhibit "C"; and Exhibit "R-23", BIR Records (Exhibit "R-24"), pp. 1007 to 1009.

1. MISSING IEIRDs		
	PER SLI	**PER AUDIT**
April, 2007	₱ 62,525,323.15	₱ 62,671,550.36
May	18,912,015.05	18,883,416.13
June	67,457,959.25	67,360,340.91
July	79,637,182.00	79,640,161.26
August	10,572,897.02	10,572,898.21
September	134,164,586.89	107,531,489.69
October	59,854,623.07	59,497,025.75
November	15,323,719.23	15,323,732.94
December	91,078,688.96	91,529,439.55
January, 2008	43,259,040.54	42,944,166.30
February	57,401,748.92	57,588,941.01
March	60,559,516.26	56,585,239.14
	₱ 700,747,300.34	**₱ 670,128,401.25**
ERROR IN IED # 12998	26,600,000.00	
SHOULD BE IMPORTATION PER S/S	**₱ 674,147,300.34**	
ADDITIONAL IED SUBMITTED		
13597	₱ 492,150.34	
13598	85,574.74	
22012	12,758.86	
22014	7,484.06	
4269	27,044.83	
2983	28,574.18	
3855	97,244.28	
8651	315,933.51	
16934	27,955.56	
11352	680,471.39	
21560	676,345.57	
22018	822,698.26	3,274,235.58
TOTAL IMPORTATION PER AUDIT		**₱ 673,402,636.83**
LESS: SHOULD BE IMPORTATION		674,147,300.34
DISALLOWED PURCHASES (UNSUPPORTED)		**₱ 744,663.51**

IERD #	**PER SLI**	**PER IEDs SUBMITTED**	**ALLOWED**	**OVERCLAIMED PURCHASES**
a. 10025	₱ 56,949.13	₱ 56,949.13	₱ 56,949.13	-
b. 10468	56,645.08	56,645.08	56,645.08	-
c. 10666	481,512.00	480,853.92	480,853.92	₱ 658.08
d. 11111	48,487.00	32,520.78	32,520.78	15,966.22
e. 11281	78,279.08	63,038.20	63,038.20	15,240.88
f. 13001	469,282.48	469,282.48	469,282.48	-
g. 7667	15,094.00	14,745.81	14,745.81	348.19
h. 21855	98,900.13	38,947.29	38,947.29	59,952.84
i. 17381	11,255.38	114,255.38	11,255.38	-
j. 10689	93,888.57	93,888.57	93,888.57	-
k. 17494	76,623.66	76,623.66	76,623.66	-
l. 17683	43,875.77	46,147.92	43,875.77	-
	₱ 1,530,792.28			**₱ 92,166.21**
DISALLOWED PURCHASES (UNSUPPORTED) *(supra)*				744,663.51
TOTAL DISALLOWED PURCHASES (UNSUPPORTED/ OVERCLAIMED)				**₱ 836,829.72**

During the course of the trial, petitioner failed to present any evidence that the above purchases are duly supported. Hence, respondent's finding and the corresponding assessment for this item must perforce be sustained.

Well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[63]

Respondent correctly disallowed the bad debts expense claimed by petitioner.

Section 34 of the NIRC of 1997 reads:

> SEC. 34. *Deductions from Gross Income.* – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), **there shall be allowed the following deductions from gross income**:
>
> xxx xxx xxx
>
> (E) *Bad Debts.* –
>
> (1) *In General.* – **Debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year except those not connected with profession, trade or business and those sustained in a transaction entered into between parties mentioned under Section 36(B) of this Code**: *Provided*, That recovery of bad debts previously allowed as deduction in the preceding years shall be included as part of the gross income in the year of recovery to the extent of the income tax benefit of said deduction.
>
> xxx xxx xxx

[63] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

> Notwithstanding the provision of the preceding Subsections, **the Secretary of Finance, upon recommendation of the Commissioner,** after a public hearing shall have been held for this purpose, **may prescribe by rules and regulations, limitations or ceilings for any of the itemized deductions under Subsections (A) to (J) of this Section**: *Provided,* That for purposes of determining such ceilings or limitations, the Secretary of Finance shall consider the following factors: (1) adequacy of the prescribed limits on the actual expenditure requirements of each particular industry; and (2) effects of inflation on expenditure levels: *Provided, further,* That no ceilings shall further be imposed on items of expense already subject to ceilings under present law." *(Emphases supplied)*

In addition, deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed.[64]

In relation to foregoing, Section 3 of RR No. 5-99,[65] as amended by RR No. 25-02,[66] provides as follows:

> "Sec. 3. *Requisites for valid deduction of bad debts from gross income.* — The requisites for deductibility of bad debts are:
>
> (1) There must be an existing indebtedness due to the taxpayer which must be valid and legally demandable;
>
> (2)The same must be connected with the taxpayer's trade, business or practice of profession;
>
> (3)The same must not be sustained in a transaction entered into between related parties enumerated under Sec. 36(B) of the Tax Code of 1997;
>
> (4)The same must be actually charged off the books of

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[64] *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 148187, April 16, 2008.

[65] SUBJECT: Implementing Section 34(E) of the Tax Code of 1997 on the Requirements for Deductibility of Bad Debts from Gross Income.

[66] SUBJECT: Amending Revenue Regulations No. 5-99, Further Implementing Section 34(E) of the Tax Code of 1997 on the Requirements for Deductibility of Bad Debts from Gross Income.

accounts of the taxpayer as of the end of the taxable year; and

(5)The same must be actually ascertained to be worthless and uncollectible as of the end of the taxable year.

Before a taxpayer may charge off and deduct a debt, he must ascertain and be able to demonstrate with reasonable degree of certainty the uncollectibility of the debt. **The Commissioner of Internal Revenue will consider all pertinent evidence, including the value of the collateral, if any, securing the debt and the financial condition of the debtor in determining whether a debt is worthless, or the assigning of the case for collection to an independent collection lawyer who is not under the employ of the taxpayer and who shall report on the legal obstacle and the virtual impossibility of collecting the same from the debtor and who shall issue a statement under oath showing the propriety of the deductions thereon made for alleged bad debts.** Thus, where the surrounding circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, a showing of those facts will be sufficient evidence of the worthlessness of the debt for the purpose of deduction.

xxx xxx xxx."

Parenthetically, relative to the above-stated third requisite and the aforequoted Section 34(E)(1) of the NIRC of 1997, Section 36(B) of the same Code provides as follows:

"SEC. 36. *Items Not Deductible.* —

xxx xxx xxx

(B) *Losses from Sales or Exchanges of Property.*— In computing net income, no deduction shall in any case be allowed in respect of losses from sales or exchanges of property directly or indirectly –

(1) Between members of a family. For purposes of this paragraph, the family of an individual shall include

only his brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants; or

(2) Except in the case of distributions in liquidation, between an individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual; or

(3) Except in the case of distributions in liquidation, between two corporations more than fifty percent (50%) in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;

(4) Between the grantor and a fiduciary of any trust; or

(5) Between the fiduciary of a trust and the fiduciary of another trust if the same person is a grantor with respect to each trust; or

(6) Between a fiduciary of a trust and a beneficiary of such trust."

Furthermore, in *Philippine Refining Company vs. Court of Appeals, et al.* ("*PRC* case"),[67] the Supreme Court ruled as follows:

"Petitioner then elevated the case to respondent Court of Appeals which, as earlier stated, denied due course to the petition for review and dismissed the same on August 24, 1994 in CA-C.R. S.P. No. 31190, on the following ratiocination:

'We agree with respondent Court of Tax Appeals:

xxx xxx xxx

xxx. Mere testimony of the Financial Accountant of the Petitioner explaining the worthlessness of said debts is seen by this Court as nothing more than a self-serving

[67] G.R. No. 118794, May 8, 1996.

exercise which lacks probative value. There was no iota of documentary evidence (e.g., collecting letters sent, report from investigating fieldmen, letter of referral to their legal department, police report/affidavit that the owners were bankrupt due to fire that engulfed their stores or that the owner has been murdered, etc.), to give support to the testimony of an employee of the Petitioner. Mere allegations cannot prove the worthlessness of such debts in 1985. Hence, the claim for deduction of these thirteen (13) debts should be rejected.'

1. This pronouncement of respondent Court of Appeals relied on the ruling of this Court in *Collector vs. Goodrich International Rubber Co.*,[68] which established the rule in determining the 'worthlessness of a debt.' In said case, we held that for debts to be considered as 'worthless,' and thereby qualify as 'bad debts' making them deductible, the taxpayer should show that (1) there is a valid and subsisting debt; (2) the debt must be actually ascertained to be worthless and uncollectible during the taxable year; (3) the debt must be charged off during the taxable year; and (4) the debt must arise from the business or trade of the taxpayer. **Additionally, before a debt can be considered worthless, the taxpayer must also show that it is indeed uncollectible even in the future.**

Furthermore, there are steps outlined to be undertaken by the taxpayer to prove that he exerted diligent efforts to collect the debts, viz: (1) sending of statement of accounts; (2) sending of collection letters; (3) giving the account to a lawyer for collection; and (4) filing a collection case in court.

xxx xxx xxx

xxx. Regarding the accounts of C. Itoh in the amount of P19,272.22, Crocklaan B.V. in the sum of P77,690.00, Craig, Mostyn Pty. Ltd. with a balance of P23,738.00, petitioner contends that these debtors being foreign corporations, it can sue them only in their country of incorporation; and since this will entail expenses more than the amounts of the debts to be collected, petitioner did not file any collection suit but opted to write them off as bad debts. Petitioner was unable to show proof of its

[68] L-22265, December 26, 1967, 21 SCRA 1336.

efforts to collect the debts, even by a single demand letter therefor. **While it is not required to file suit, it is at least expected by the law to produce reasonable proof that the debts are uncollectible although diligent efforts were exerted to collect the same.**" *(Emphases and underscoring supplied)*

In this case, the disallowed amount of ₱1,471,232.73 represents receivables of petitioner which it treated as bad debts, broken down as follows:

Receivable from Kras Asia Limited	₱ 675,944.44
Receivable from M/A Com	795,288.29
TOTAL	**₱ 1,471,232.73**

For ease of reference, the subject FDDA dated January 18, 2012[69] states the grounds for the disallowance of the said bad debts, *viz*:

"Verification disclosed that the claimed Bad Debts Expense resulted from the following transactions:

a. Uncollectibility of deposits made to Kras Asia Limited (KAL), which claim was rejected by Mr. Briscoe, KAL's Liquidator, on the ground that the proper party against whom the claim should be made is Kras Worldwide Limited and not KAL. **No proof was submitted that attempts were made to collect against the proper party.**

b. Receivables from M/A Com arising from sales made between the period March 2001 to May 2005. **Proof of its uncollectibility was submitted in the form of e-mails between persons discussing the change in management in M/A Com. In the same e-mails however, it was stated that Allegro will 'hold on' to their (M/A Com) equipments until they pay up.' Thus, lacking proof of the value of the equipment held as security against the receivable, the same cannot be allowed.**

The records of this case disclosed that you have not

[69] JSFI, Par. 1.5, Docket, p. 154; Exhibit "C"; and Exhibit "R-23", BIR Records (Exhibit "R-24"), pp. 1007 to 1009.

introduced sufficient evidence to overthrow the validity of said findings." *(Emphases supplied)*

After a careful evaluation of petitioner's evidence, We find that petitioner failed to establish that respondent erred in disallowing the said amount. In other words, petitioner fell short of proving that it has fully complied with the requisites set forth under the aforequoted Section 3 of RR No. 5-99, as amended by RR No. 25-02, and with the above-stated ruling in the *PRC* case.

For both the receivables from Kras Asia Limited and M/A Com, petitioner failed to specifically establish the following:

1. That petitioner has no relation to Kras Asia Limited and M/A Com in the capacities mentioned under Section 36(B) of the NIRC of 1997. The law is clear. Debts *"sustained in a transaction entered into between parties mentioned under Section 36(B) of"* the NIRC of 1997 is an exception to the allowed deductions under Section 34 of the same Code.

2. That the subject debts are *"indeed uncollectible even in the future"*, as have been required in the *PRC* case.

3. That petitioner gave *"the account to a lawyer for collection"*, as likewise have been required in the *PRC* case.

And *"(w)hile it is not required to file suit,"* in accordance with the *PRC* case, petitioner *"is at least expected by law to produce reasonable proof that the debts are uncollectible although diligent efforts were exerted to collect the same."* However, as will be further shown below, no reasonable proof was produced by petitioner to establish that the subject debts were uncollectible, much less, that diligent efforts were exerted for the collection thereof.

A. <u>For Kras Asia Limited</u>

It is undisputed that the receivables in the amount ₱675,944.44, which were written off by petitioner, resulted from deposits made to ***Kras Worldwide Limited***. Said deposits are considered advance payments for the orders placed by petitioner with ***Kras Worldwide Limited***.[70]

[70] Exhibit "Q" (Par. 3.1), p. 11, Docket, p. 307; Exhibits "OO" and "PP"

It is likewise clear that petitioner send two letters respectively dated July 18, 2002 and December 13, 2002 to the supposed Joint and Several Liquidator of **Kras Asia Limited**, Mr. Stephen Briscoe, claiming the amount owed by **Kras Asia Limited** to petitioner.[71]

However, the response of Mr. Briscoe is noteworthy, to wit:

> "FORM 65
>
> NOTICE OF REJECTION OF PROOF OF DEBT
>
> **KRAS ASIA LIMITED**
> (IN CREDITORS' VOLUNTARY LIQUIDATION)
>
> Take notice that, as Liquidator of the above-named company, **I have this day rejected your claim against the company to the extent of HK$99,925.31 on the grounds that the amount represents your claim for a refund of deposits in respect of orders previously placed with Kras Worldwide Limited and the deposits were paid by you to Kras Worldwide Limited and not the above-named company.**
>
> xxx xxx xxx
>
> **Dated this 6 day of May 2003**". *(Emphases and underscoring supplied)*

Thus, the crux of the issue is whether or not ***Kras Worldwide Limited*** and ***Kras Asia Limited*** are one and the same entity.

We answer in the negative.

While petitioner made allegations that it appears that the two entities were one and the same, it never presented even a shred of evidence to show that they are in fact so.

Mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof.[72] As a corollary, it must be emphasized that as cases filed before this Court are litigated *de*

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[71] Exhibits "I" and "J".
[72] *Ernesto Martin vs. Hon. Court of Appeals and Manila Electric Company*, G.R. No. 82248, January 30, 1992.

novo, party-litigants should prove **every minute aspect** of their cases.[73]

Considering that the ground upon which the said Liquidator based its rejection to the claim of petitioner is the distinction between the two companies, petitioner should have been prompted to determine whether ***Kras Worldwide Limited*** and ***Kras Asia Limited*** are in fact the same, and should have acted accordingly with whatever information it has obtained in relation thereto, such as appealing the decision of the said Liquidator (if the said entities are indeed the same) or demanding from ***Kras Worldwide Limited*** the amount owed (if the same entities are separate and distinct). For its failure to do so, such inaction is tantamount to not exerting any effort to collect the said outstanding liability.

Thus, the subject debt cannot be considered as worthless and uncollectible.

B. <u>For M/A Com</u>

As already stated, the amount of disallowed bad debts for M/A Com is ₱795,288.29. To reiterate, the ground for the disallowance is stated in the FDDA dated January 18, 2012,[74] to wit:

> "Proof of its uncollectibility was submitted in the form of e-mails between persons discussing the change in management in M/A Com. In the same e-mails however, it was stated that Allegro will 'hold on' to their (M/A Com) equipments until they pay up.' Thus, lacking proof of the value of the equipment held as security against the receivable, the same cannot be allowed."

Petitioner, however, avers that while it may have had the equipment to M/A Com, as it conducted testing services for the latter, petitioner already returned the equipment owned by M/A Com.[75] According to petitioner's witness, Mr. Dela Rosa,[76] petitioner sent

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[73] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[74] JSFI, Par. 1.5, Docket, p. 154; Exhibit "C" and Exhibit "R-23", BIR Records, pp. 1007 to 1009.

[75] Petitioner's Memorandum, Par. 5.4, Docket, p. 634; Exhibits "AAA", "BBB" and "CCC".

[76] Exhibit "O", Par. 66, Docket, p. 172.

back the equipment to M/A Com when it was determined by their Test Engineering Team that such had no use to petitioner and the same had very minimal salvage value.

Petitioner's reasoning is specious.

It is hard for this Court to conceive that petitioner would still have the temerity to send back the said equipment to M/A Com, knowing full well that the latter has still outstanding obligations to it. To return the said equipment to M/A Com, which is situated in another country, entails not only the loss of security for the subject debt, but also the incurring of additional expenses (such as shipping costs) on the part of either party. To the mind of the Court, petitioner's action runs against logic and prudence. For one who claims that it exerted diligent efforts to collect the subject debt, petitioner is very lax.

Moreover, none of the supposed Test Engineering Team of petitioner was ever presented to testify that the subject equipment *"had very minimal salvage value."* Neither was it shown that they are competent to determine the value of the said equipment, assuming that such determination was in fact made.

Again, as cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[77]

In sum, respondent was correct in disallowing the bad debts related to petitioner's receivables from Kras Asia Limited and M/A Com as deductions for income tax purposes.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessment issued by respondent against the petitioner covering deficiency income tax for the fiscal year ended March 31, 2008 is hereby **MODIFIED**. Petitioner is hereby **ORDERED TO PAY** respondent the amount of ₱1,009,776.95, consisting of the basic income tax due and surcharge, computed as follows:

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[77] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner* G.R. No. 145526, March 16, 2007

Taxable Income per Return		₱ 101,790,902.00
Add: Purchases – unsupported/overclaimed	836,829.72	
Bad Debts – not ascertained to be worthless	1,471,232.73	2,308,062.45
Taxable Income		₱ 104,098,964.45
Income Tax Due		₱ 36,434,637.56
Less: Income Tax Due per Return		35,626,816.00
Deficiency Income Tax Due		₱ 807,821.56
Add: Surcharge (25%)		201,955.39
Total Deficiency Income Tax, including increments		₱ 1,009,776.95

In addition, petitioner is **ORDERED TO PAY**:

(a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax of ₱807,821.56, computed from July 15, 2008 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount of ₱1,009,776.95, plus the 20% deficiency interest which have accrued under subparagraph (a) hereof, computed from February 27, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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
Chairperson
Presiding Justice