REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GCOMM BUSINESS SUPPLIES CORPORATION, *Petitioner,*	**CTA Case No. 10696**
- versus -	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** NOV 19 2024 2:30 p.m.

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DECISION

REYES-FAJARDO, J.:

Before the Court is a Petition for Review[1] filed by GComm Business Supplies Corporation (petitioner or GComm) against respondent Commissioner of Internal Revenue (CIR), praying for the Court to reverse, cancel, nullify, and/or declare void the assessment finding GComm liable for deficiency value-added tax (VAT) relative to the taxable period January 1, 2012 to June 30, 2012.

FACTS

GComm is a domestic corporation duly organized and existing under Philippine Laws, with principal office address at Unit 907 9th Floor Cityland 10 Tower 1, Ayala Avenue corner H.V. dela Costa St., Makati City.[2]

Respondent CIR is the head of the Bureau of Internal Revenue (BIR), the government agency tasked to assess and collect all national internal revenue taxes. Respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the

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1 Docket – Vol. 1, pp. 7-37.
2 Par. I(1)(b), *Joint Stipulation of Facts and Issues (JSFI)*, Docket – Vol. 2, p. 715.

National Internal Revenue Code, as amended (Tax Code), or other laws or portions thereof administered by the BIR.[3]

Administrative Proceedings.

By virtue of **Letter of Authority** (LOA) No. V08-2013-00000275 SN: eLA 201100011683l,[4] the BIR commenced the examination of GComm's books of accounts and other accounting records for VAT relative to the taxable period January 1, 2012 to June 30, 2012.[5]

On May 15, 2014, the BIR Regional Director[6] issued a **Preliminary Assessment Notice** with attached Details of Discrepancies (hereinafter collectively referred to as "PAN")[7] finding GComm liable for deficiency VAT amounting to ₱16,328,929.30, inclusive of interest, relative to the taxable period January 1, 2012 to June 30, 2012, computed[8] as follows:

Vatable Sales per Return			₱435,509,294.92
Add/(Less): Adjustments			
Undeclared sales (Schedule 1)		₱1,074,999.79	
Taxable Sales from Advances from Clients		51,516,127.34	52,591,127.13
Vatable Sales per Audit			₱488,100,422.05
Output Tax (12%)			₱58,572,050.65
Less: Input tax def. on cap goods > 1M	₱1,091,910.69		
Input Tax Carry-over	6,590,994.26		
Input Tax on current purchases	51,720,873.72	₱59,403,778.67	
Less: Deductions from Input Tax			
Unsupported	₱1,943,149.91		
Carried over from previous prd.	3,628,010.52		
Def. on cap goods >1M	1,019,032.11		
Carried over to succeeding prd.	6,123,631.16	12,713,823.70	46,689,954.97
VAT Payable/(Excess Input Tax)			₱11,882,095.68
Less: Tax Paid per Return/VAT Withheld			-
Basic Deficiency Value-Added Tax			₱11,882,095.68
Add: Penalties			
Interest (07/26/12 to 6/09/14)			4,446,833.62
TOTAL AMOUNT STILL DUE			**₱16,328,929.30**

[3] Par. I(1)(c), *Joint Stipulation of Facts and Issues (JSFI)*, Docket – Vol. 2, p. 715.
[4] Dated July 12, 2013, served upon GComm on July 16, 2013.
[5] Par. I(1)(d), Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 2, p. 715.
[6] Nestor S. Valeroso, Regional Director, BIR Revenue Region No. 8 – Makati.
[7] Exhibit "P-5," "R-6," BIR Records, pp. 405-409.
[8] Exhibit "P-5," "R-6," BIR Records, p. 405.

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Gcomm received the PAN on even date[9] and was given 15 days therefrom to pay the amount due; it filed a **Reply to the PAN** on May 30, 2014.[10]

With reference to said Reply, the BIR Regional Director[11] issued a **Formal Assessment Notice** with attached Details of Discrepancies (hereinafter collectively referred to as "FAN")[12] and **Assessment Notice No. VT-ELA16831-12-14547**[13] on June 9, 2014, providing the following explanation for the issuance thereof:

> In reply, we hereby acknowledge your protest letter and could be given credence and shall form part of the tax docket. However, pursuant to Section 3.1.1 of Revenue Regulation (RR) No. 18-2013, this Formal Assessment Notice (FAN) has been issued to protect the interest of the government. Nevertheless, you may still file/reiterate your protest against this FAN within thirty (30) days from receipt hereof in accordance with the provisions of Revenue Regulations (RR) 12-99, as amended by RR No. 18-2013 and clarified under RMC 11-2014, in relation to Revenue Memorandum Circular (RMC) No. 39-2013.

GComm received the FAN and Assessment Notice No. VT-ELA16831-12-14547 on June 10, 2014.[14]

In the FAN, the BIR Regional Director found GComm liable for deficiency VAT amounting to ₱16,556,805.10,[15] inclusive of interest, computed[16] as follows:

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[9] Par. I(1)(e), Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 2, p. 715.
[10] Par. I(1)(f), Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 2, p. 715.
[11] Jonas DP. Amora, Regional Director, BIR Revenue Region No. 8 – Makati.
[12] Exhibit "P-7-1," "R-9," BIR Records, pp. 509-513.
[13] Exhibit "P-7," "R-8," BIR Records, p. 514.
[14] Par. I(1)(g), Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 2, p. 715.
[15] Par. I(1)(h), Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 2, p. 716.
[16] Exhibit "P-7-1," "R-9," BIR Records, p. 509.

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Vatable Sales per Return			₱435,509,294.92
Add/(Less): Adjustments			
Undeclared sales (Schedule 1)		₱1,074,999.79	
Taxable Sales from Advances from Clients		51,516,127.34	52,591,127.13
Vatable Sales per Audit			₱488,100,422.05
Output Tax (12%)			₱58,572,050.65
Less: Input tax def. on cap goods > 1M	₱1,091,910.69		
Input Tax Carry-over	6,590,994.26		
Input Tax on current purchases	51,720,873.72	₱59,403,778.67	
Less: Deductions from Input Tax			
Unsupported	₱1,943,149.91		
Carried over from previous prd.	3,628,010.52		
Def. on cap goods >1M	1,019,032.11		
Carried over to succeeding prd.	6,123,631.16	12,713,823.70	46,689,954.97
VAT Payable/(Excess Input Tax)			₱11,882,095.68
Less: Tax Paid per Return/VAT Withheld			-
Basic Deficiency Value-Added Tax			₱11,882,095.68
Add: Penalties			
Interest (07/26/12 to **7/14/14**)			4,674,709.42
TOTAL AMOUNT STILL DUE			**₱16,556,805.10**

While interest was computed until **July 14, 2014**, the BIR Regional Director requested GComm "to please pay the above amount on or before **July 9, 2014**," as indicated on Assessment Notice No. VT-ELA16831-12-14547.

This prompted GComm to file an **administrative protest**[17] on July 8, 2014,[18] requesting for a reinvestigation of its case. GComm submitted[19] the documents supporting the administrative protest on September 5, 2014.[20]

On December 7, 2016, the BIR Regional Director[21] issued a **Final Decision on Disputed Assessment**,[22] reducing the assessed amount to ₱9,114,581.53, inclusive of interest, computed as follows:

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[17] Exhibit "P-8," Docket – Vol. 3, pp. 1057-1068.

[18] Par. I(1)(i), Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 2, p. 716.

[19] Through a Transmittal Letter dated September 5, 2014, Exhibit "P-9," Docket Vol. 3, pp. 1069-1071.

[20] Exhibit "P-9-1," Docket – Vol. 3, p. 1069.

[21] Jonas DP. Amora, BIR Regional Director.

[22] Exhibit "P-10," BIR Records, pp. 584-585.

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Vatable Sales per Return			₱435,509,294.92
Add/(Less): Adjustments			
Undeclared sales (Schedule 1)			99,309.75
Vatable Sales per Audit			₱435,608,604.67
Output Tax (12%)			₱52,273,032.56
Less: Input tax def. on cap goods > 1M	₱1,091,910.69		
Input Tax Carry-over	6,590,994.26		
Input Tax on current purchases	51,720,873.72	₱59,403,778.67	
Less: Deductions from Input Tax			
Unsupported	₱1,202,608.36		
Carried over from previous prd.	3,628,010.52		
Def. on cap goods >1M	1,019,032.11		
Carried over to succeeding prd.	6,123,631.16	11,973,282.15	47,430,496.52
VAT Payable/(Excess Input Tax)			₱4,842,536.04
Less: Tax Paid per Return/VAT Withheld			-
Basic Deficiency Value-Added Tax			₱4,842,536.04
Add: Penalties			
Interest (07/26/12 to 12/23/14)			4,272,045.49
TOTAL AMOUNT STILL DUE			**₱9,114,581.53**

GComm received the Final Decision on Disputed Assessment with attached Details of Discrepancies (hereinafter collectively referred to as "FDDA"),[23] as well as the corresponding **Amended Assessment Notice** No. VT-ELA1831-12-16-1164,[24] on December 12, 2016.[25]

Aggrieved, on December 21, 2016, GComm filed a motion for reconsideration of the FDDA before the CIR (administrative appeal).[26] During the pendency of the appeal, on July 11, 2017, GComm received a **Preliminary Collection Letter**[27] from the BIR Collection Division.

In a **Decision**[28] dated October 29, 2021, the CIR affirmed the FDDA and ordered GComm to pay the assessed amount stated therein, plus accrued interest.[29] Therein, it stated, "[t]his constitutes the Final Decision of this Office on the matter."[30]

23 Exhibits "P-10" and "P-10-1" for petitioner; "R-13" and "R-14" for respondent; BIR Records, pp. 579-585 (Exhibit "R-16").
24 Exhibit "P-10-2" for petitioner; "R-12" for respondent; BIR Records, p. 586 (Exhibit "R-16").
25 Par. I(1)(j), Joint Stipulation of Facts and Issues (JSFI), Docket - Vol. 2, p. 716.
26 Par. I(1)(m), Joint Stipulation of Facts and Issues (JSFI), Docket - Vol. 2, p. 716.
27 Signed by Luisa M. Labad, OIC-Assistant Chief, BIR Collection Division. Exhibit "P-12," Docket - Vol. 3, p. 1089.
28 Exhibit "P-14," Docket - Vol. 3, pp. 1092-1097.
29 Par. I(1)(o), Joint Stipulation of Facts and Issues (JSFI), Docket - Vol. 2, pp. 717-718.
30 Exhibit "P-14," Docket - Vol. 3, p. 1097.

Alleging to have received a copy of the CIR's adverse decision on November 9, 2021,[31] GComm filed the present petition on December 9, 2021 to appeal the CIR's Decision dated October 29, 2021 (judicial protest).

Proceedings before the Court.

Respondent CIR filed an Answer[32] and submitted the BIR Records[33] of the case on April 18, 2022 and April 25, 2022, respectively. The case was referred to mediation in the Philippine Mediation Center - Court of Tax Appeals.[34] However, the parties did not agree to mediate; thus, the Court set[35] the case for pre-trial.

After the parties' submission of their respective pre-trial briefs,[36] the pre-trial conference was held on August 25, 2022.[37] Per agreement, the parties executed and filed[38] a Joint Stipulation of Facts and Issues (JSFI).[39] Upon the Court's approval thereof, pre-trial was deemed terminated.[40] The Court promulgated a pre-trial order[41] on November 8, 2022.

In the meantime, GComm moved[42] for the commissioning of Christian Gene A. Rasos as Independent Certified Public Accountant (ICPA), which the Court granted[43] on October 13, 2022. The ICPA filed his Report[44] on November 14, 2022.[45]

During trial, GComm presented Christian Gene A. Rasos,[46] ICPA, and Maureen C. Antonio,[47] GComm Accountant, as its

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31 Par. 3, Petition for Review, Docket - Vol. 1, p. 8; Par. 13, Judicial Affidavit of Maureen C. Antonio, Exhibit "P-19," Docket - Vol. 1, p. 268. Also see Exhibit "P-14," Docket - Vol. 3, p. 1092.
32 Docket - Vol. 2, pp. 523-539.
33 Per Compliance filed on April 25, 2022; Noted by the Court in a Resolution dated May 12, 2022. Marked collectively as Exhibit "R-16."
34 Resolution dated May 12, 2022.
35 Resolution dated July 7, 2022, Docket - Vol. 2, p. 653.
36 For petitioner, Docket - Vol. 2, pp. 673-686; for respondent, Docket - Vol. 2, pp. 660-669.
37 Order dated August 25, 2022, Docket - Vol. 2, pp. 688-690.
38 Filed on September 27, 2022.
39 Docket - Vol. 2, pp. 714-729.
40 Resolution dated October 10, 2022, Docket - Vol. 2, p. 918.
41 Docket - Vol. 2, 949.
42 Docket - Vol. 2, pp. 632-634
43 Docket - Vol. 2, pp. 925-925-A
44 Exhibit "P-20," Docket - Vol. 2, pp. 952-990.
45 Per Minute Resolution dated November 23, 2022.
46 Judicial Affidavit of Christian Gene A. Rasos, Docket - Vol. 3, pp. 993-1004.
47 Amended Judicial Affidavit of Maureen C. Antonio, Exhibit "P-19," Docket - Vol. 2 pp. 730-744

witnesses. It filed its Formal Offer of Evidence on December 22, 2022. After taking into consideration the CIR's Comment/Opposition thereon, the Court resolved[48] to admit GComm's exhibits *except* for Exhibits "P-22," "P-23," "P-24," "P-25," and "P-26" for not being found in the records.

For its part, the CIR presented Charlene D. Beldia,[49] BIR Group Supervisor, as its witness. It filed its Formal Offer of Evidence on May 18, 2023. In view of GComm's failure to file a comment/opposition thereon, the Court resolved to admit respondent's Exhibits "R-1," "R-1-a," "R-1-b," "R-2," "R-2-a," "R-2-b," "R-3," "R-3-a," "R-3-b," "R-4," "R-4-a," "R-4-b," "R-4-c," "R-4-d," "R-4-e," "R-4-f," "R-4-g," "R-5," "R-5-a," "R-6," "R-6-a," "R-7," "R-8," "R-8-a," "R-9," "R-9-a," "R-10," "R-10-a," "R-11," "R-12," "R-12-a," "R-13," "R-14," "R-15," and "R-16."

After the parties' filing of their respective memoranda,[50] the case was deemed submitted for decision on November 20, 2023.[51]

ARGUMENTS

GComm's Arguments

Petitioner argues as follows:

First, the FAN, Assessment Notice, FDDA, and Amended Assessment Notice are all void on account of the CIR's failure to observe the due process requirements applicable in tax assessments, pursuant to Section 228 of the Tax Code, as implemented by Revenue Regulations No. (RR) 12-99.

The CIR's due process violations consist of the following:

(a) failure to consider the merits of the explanations in and documentary evidence submitted relative to its Reply to the PAN;

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48 Resolution dated February 9, 2023, Docket – Vol. 3, pp. 1111-1115.
49 Judicial Affidavit of Group Supervisor Charlene D. Beldia, Exhibit "R-17," Docket – Vol. 2, pp. 540-554.
50 For petitioner, Docket – Vol. 3, pp. 1128-1158; For respondent, Docket – Vol. 3, pp. 1159-1174.
51 Minute Resolution dated November 20, 2023, Docket – Vol. 3, p. 1177.

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(b) failure to issue a *Formal Letter of Demand* upon issuing the *FAN and FDDA*; and

(c) failure to provide a detailed explanation in support of the alleged deficiency VAT relative to the item referred to as "Input tax def. on cap. Goods > 1M" in the FAN and FDDA, amounting to ₱1,019,032.11.

Second, assuming *arguendo* that the FAN, Assessment Notice, FDDA, and Amended Assessment Notice are all valid, the CIR's finding of deficiency tax liability has no legal basis. In particular, there is no basis for the disallowance as a deduction from output tax of "imputed input tax" on purchase discounts amounting to ₱1,202,608.36, referred to in the FAN and FDDA.

Third, assuming *arguendo* that the FAN, Assessment Notice, FDDA, and Amended Assessment Notice are all valid, the following disallowances were made beyond the scope of the subject LOA:

(a) disallowance of input tax carried over from previous periods corresponding to imputed input tax on purchase discounts in 2011 and 2010, in the aggregate amount of ₱3,628,010.32, and

(b) the disallowance of accumulated excess input tax carried over to succeeding taxable periods amounting ₱6,123,631.16.

CIR's Arguments

Respondent counters as follows:

First, GComm was afforded due process in the assessment of its deficiency taxes.

(a) It was fully apprised of the facts and the law upon which the assessment was based. The FAN and FDDA contained the amount of tax due, manner of computation, and demand for payment within a given due date; as such, these served as a Formal Letter of Demand;

(b) It was given the opportunity to explain or present its side throughout the process of investigation through tax assessment. It filed a Reply to the PAN, an administrative protest (to the FAN) with request for reinvestigation, a motion for reconsideration of the FDDA. In the Amended Assessment Notice, the assessed deficiency VAT was reduced after the matters raised in the administrative protest had been considered; and

(c) The item referred to as "Input tax def. on cap. Goods > 1M" in the FAN and FDDA, amounting to ₱1,019,032.11 was not among the input taxes disallowed in the assessment; it was even part of GComm's computation in its quarterly VAT returns for the first and second quarters of 2012.

Second, the assessment is supported by factual and legal bases.

(a) The undeclared sales amounting to ₱99,309.75 is the difference between the sales declared per returns and purchases of suppliers. This was not disputed by GComm;

(b) Input taxes amounting to ₱1,202,608.36 were disallowed as deductions from output tax because these were "over-claimed." Input tax on purchases should be based on the cost of purchases, *net* of purchase discounts. However, GComm claimed input taxes based on the *gross selling price* of its purchases, without considering the purchase discounts granted to it during the same period. Also, it did not report these discounts as other income; and

(c) Similarly, input taxes carried over from previous periods, amounting ₱3,628,010.52, corresponded to over-claimed input taxes due to the erroneous recording of purchase discounts in past quarters. Having been carried over to the periods subject of the assessment, the disallowance thereof is within the audit period covered by the subject LOA.

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ISSUES

The parties stipulated[52] for the Court to resolve the following:

> Whether or not [GComm] is liable for deficiency VAT in the amount of Nine Million One Hundred Fourteen Thousand Five Hundred Eighty-One Pesos and Fifty-Three Centavos (Php9,114,581.53), inclusive of increments, covering the taxable period 01 January 2012 to 30 June 2012.

In conjunction with the parties' respective arguments, We are tasked to resolve the following matters:

A. Timeliness and Jurisdiction of the Court

1. Did GComm lodge its administrative and judicial protests within the time allowed by the law and rules?

B. Due Process

2. Is the identity between the amount of basic taxes assessed in the PAN and the FAN/Assessment Notice a due process violation? Is this sufficient ground to invalidate the assessment?

3. Are the subject FAN and Assessment Notice valid? Do these comply with the requirements under Section 228 of the Tax Code?

4. Was the CIR duty-bound to provide an explanation in support of amounts lifted from GComm's return?

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52 Part II, JSFI, Docket - Vol. 2, p. 718.

C. Correctness of the Assessment

5. Did GComm present evidence to refute the CIR's finding of undeclared sales (₱99,309.75)?

6. Should the VAT passed on by the supplier to the purchaser as reflected in the original invoice be adjusted/reduced on account of *subsequent* reductions from the invoice price on account of early payment (i.e., cash discount)?

OUR RULING

While We uphold the validity of the subject assessment, the Court finds it proper to reduce the deficiency VAT liability due from petitioner.

The issues of whether GComm's protests had been timely *and* whether the CIR observed due process requirements shall be resolved in accordance with the standards set out in Section 228 of the Tax Code:

> SECTION 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:
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> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
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> (d) When the excise tax due on excisable articles has not been paid; or

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> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
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> 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.

The above-quoted provision is implemented by Section 3 of RR 12-99,[53] as amended by RR 18-13;[54] the applicable implementing rules shall be discussed separately below.

Timeliness and Jurisdiction of the Court.

GComm's administrative and judicial protests were filed on time; the Court has jurisdiction over the present petition.

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[53] Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty (September 6, 1999).

[54] Subject: Amending Certain Sections of Revenue Regulations No. 12-99 (November 28, 2013).

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The process of disputing an assessment as relevant to the present case may be outlined as follows:

First, the taxpayer shall file an administrative protest within **30 days** after receipt of the formal assessment, which may request for either a **reconsideration** or **reinvestigation**.

Second, in case of a request for reinvestigation, the taxpayer shall submit all relevant supporting documentation within **60 days** from filing of the protest.

Third, if the protest is denied by the CIR's **duly authorized representative**, the taxpayer may first file an **administrative appeal before the CIR**, which shall be done within **30 days** from receipt of the representative's ruling.

Fourth, in case the CIR does not act on the appeal within 180 days from its filing, the taxpayer may opt to either (a) proceed to the **Court of Tax Appeals** within 30 days after the expiration of said 180-day period *or* (b) await the CIR's final decision on the administrative appeal, which, in turn, shall be appealable to the Court of Tax Appeals within **30 days** from receipt of the CIR's ruling.

In the present case, GComm's administrative protest, submission of supporting documentation, administrative appeal, and judicial protest were lodged within the aforementioned time limits, *viz.*:

Remedy	Reckoned from	Last day of Filing	Actual date of Filing
Administrative protest	Receipt of FAN, June 10, 2014.	July 10, 2014	July 8, 2014
Submission of supporting documents	Filing of administrative protest, July 8, 2014	September 6, 2014	September 5, 2014
Administrative appeal	Receipt of FDDA, December 12, 2016	January 11, 2017	December 21, 2016
Judicial protest	Receipt of CIR Decision, November 9, 2021	December 9, 2021	December 9, 2021

Notably, while its administrative appeal was still pending before the CIR, GComm received a Preliminary Collection Letter on July 11, 2017, relative to the assessed amount in the FDDA; it did not appeal

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this matter to the Court. Instead, it opted to wait for the CIR's final decision, which it received on November 9, 2021,[55] or 1,789 days after the filing of its administrative appeal. Correspondingly, it proceeded before the Court on December 9, 2021, or exactly on the 30th day after its receipt of the CIR's decision, to lodge its judicial protest, as allowed by Section 3.1.4 of RR 12-99, as amended.

Due Process.

The totality of administrative proceedings demonstrates that GComm was given sufficient opportunity to be heard.

The essence of administrative due process is the **ample opportunity to be heard**; "...one is heard when he is accorded a fair and reasonable opportunity **to explain his case or is given the chance to have the ruling complained of reconsidered.**"[56]

Administrative due process must be understood with **flexibility** and **fluidity**, perhaps owing to the different administrative tribunals in this jurisdiction that adjudicate controversies varying in nature and applicable law, rules, and regulations. Whether an administrative agency has transgressed fundamental due process requirements shall "**[depend] on the circumstances and varies with the subject matter and the necessities of the situation.**"[57]

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon),*[58] the Supreme Court set aside the tax assessment after finding the tax authorities guilty of breaching the taxpayer's right to administrative due process. The case involved **<u>several</u> infractions** committed by the tax authorities, *viz.*:

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[55] Par. 3, Petition for Review, Docket - Vol. 1, p. 8; Par. 13, Judicial Affidavit of Maureen C. Antonio, Exhibit "P-19," Docket - Vol. 1, p. 268. Also see Exhibit "P-14," Stamped Docket - Vol. 3, p. 1092. Apart from a general denial in Par. 2 of the Answer (Docket - Vol. 2, p. 523), the CIR did not offer any evidence, testimonial or documentary, to refute the date (*i.e.*, November 9, 2021) on which GComm alleges to have received the Decision dated October 29, 2021. Respondent also did not raise any argument questioning the timeliness of GComm's judicial protest or the jurisdiction of the Court.

[56] *Fontanilla v. Commissioner Proper*, G.R. No. 209714, June 21, 2016, citing *Besaga v. Spouses Acosta*, G.R. No. 194061, April 20, 2015.

[57] *Saunar v. Ermita*, G.R. No. 186502, December 13, 2017.

[58] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

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First, the CIR issued identical PAN and FAN, without acknowledging and considering the taxpayer's reply to the PAN, administrative protest, submission of additional supporting documents. There was no reference to, comment on, or, much less, explanation of the merits of Avon's explanations.

Second, in a meeting after the FAN's issuance, the BIR examiners accepted the taxpayer's explanation that there was no undeclaration of sales; nonetheless, the CIR issued a Collection Letter, which reiterated the same assessed amount as indicated in the PAN and FAN. While the taxpayer submitted proof of these correspondences, the BIR Records therein had no trace of the events that took place after the taxpayer protested the assessment.

Third, the tax authorities proceeded to collect the original assessed amount without even deducting the portion already paid by the taxpayer.

Still in *Avon,* the BIR's service of the FAN was only three days shy of the impending expiration of the prescriptive period for assessment.[59] This practice of issuing a formal assessment in haste, under the guise of protecting the State's interest, has been expressly regarded by the Supreme Court as a due process violation as well.[60]

To differentiate from *Avon,* the administrative proceedings in this case cannot be regarded as "a farce, an idle ritual," inasmuch as GComm ably raised its defenses, which, eventually, were considered by the tax authorities and resulted in a reduction of the assessment.

While the FAN contained the same basic VAT amount as indicated previously in the PAN, it cannot be said that GComm's Reply to the PAN was totally disregarded; to the contrary, it was acknowledged in the FAN and made part of the BIR Records. Accordingly, when the arguments in and documents supporting the Reply were re-pleaded and -submitted relative to its administrative protest to the FAN, these were duly accepted by the BIR Regional

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[59] The Waiver in *Avon,* had it been upheld, would have extended the assessment period to April 14, 2003. On the other hand, the FAN/FLD was issued and served upon *Avon* on February 28, 2003 and April 11, 2003, respectively.

[60] See *Commissioner of Internal Revenue v. Unioil Corp.,* G.R. No. 204405, August 4, 2021; *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue,* G.R. No. 247737, August 8, 2023.

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Director and appreciated in favor of the reduction of GComm's deficiency VAT liability, *viz.*:

		PAN	FAN	FDDA
Vatable sales per return		₱435,509,294.92	₱435,509,294.92	₱435,509,294.92
Add: Adjustments				
Undeclared sales		₱1,074,999.79	₱1,074,999.79	nil
Taxable advances from clients		51,516,127.34	51,516,127.34	99,309.75
Total adjustments		₱52,591,127.13	₱52,591,127.13	₱99,309.75
Vatable sales per audit		₱488,100,422.05	₱488,100,422.05	₱435,608,604.67
Output tax rate		12%	12%	12%
Output tax (12%)	A	₱58,572,050.65	₱58,572,050.65	₱52,273,032.56
Available input tax per return		₱59,403,778.67	₱59,403,778.67	₱59,403,778.67
Less: Deductions from Input Tax				
Unsupported Input Taxes		1,943,149.91	1,943,149.91	1,202,608.36
IT carried over from prev. prd.		3,628,010.52	3,628,010.52	3,628,010.52
Input tax def. on cap goods >1M		1,019,032.11	1,019,032.11	1,019,032.11
IT carried over to succeeding prd.		6,123,631.16	6,123,631.16	6,123,631.16
Total deductions	B	₱12,713,823.70	₱12,713,823.70	₱11,973,282.15
Available input tax per audit		₱46,689,954.97	₱46,689,954.97	₱47,430,496.52
VAT Payable	A-B	₱11,882,095.68	₱11,882,095.68	₱4,842,536.04
Less: Payments / Credits		-	-	-
Basic Deficiency VAT		₱11,882,095.68	₱11,882,095.68	₱4,842,536.04
Add: Interest		4,446,833.62	4,674,709.42	4,272,045.49
TOTAL AMOUNT STILL DUE		₱16,328,929.30	₱16,556,805.10	**₱9,114,581.53**

Here, GComm filed a Reply to the PAN, an administrative protest to the FAN, submitted documents in support thereof, as well as an administrative appeal to the CIR . GComm availed of all possible administrative remedies and, in stark contrast to the factual backdrop in *Avon*, its defenses were heard. It convinced the BIR Regional Director to re-examine its findings and conclusions, so much so that the amount due was reduced in the FDDA. When GComm appealed the FDDA, its arguments therein were again considered before the issuance of the now-assailed final decision of the CIR. As it appears in the records, the singular administrative attempt to collect deficiency tax from GComm was made based on the reduced amount (i.e., amount due in the FDDA).

Further, there is no indication here that the tax authorities were only in a hurry to issue a formal assessment. The CIR's right to assess GComm for deficiency VAT relative to the first and second quarters of

2012 was set to expire in 2015; whereas, the BIR Regional Director already issued a FAN as early as June 2014.

The mere identity of the basic VAT amounts in the PAN and FAN in this case cannot be construed as a deprivation of property without due process of the law. The above circumstances, **taken together**, show that GComm had been accorded sufficient opportunity to contest the assessment. GComm was notified of the factual and legal bases of the tax assessment; resultantly, it ably set up its defenses in its Reply to the PAN, administrative protest to the FAN, and motion for reconsideration of the FDDA. More importantly, the tax authorities did not ignore its contentions. Not only were GComm's defenses and submissions acknowledged; these were considered and even pivotal in the subsequent reduction of the assessed amount.

That the assessment was not expressly denominated as a "formal letter of demand" does not affect its validity.

Section 228 of the Tax Code refers to an "assessment," which shall contain the CIR's findings relative to a person's deficiency tax liability; when read together with Section 203[61] of the Tax Code, the issuance of an "assessment" shall toll the running of the three-year period of limitation on the CIR's right to charge a taxpayer liable for deficiency taxes.[62]

The Supreme Court has recognized that **there is no specific definition or form of an assessment**;[63] it has been referred to as a "formal assessment" and/or "final assessment." However, the Tax Code provides a clear outline of its functions and effects,[64] which, in

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[61] SECTION 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.

[62] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016, 799 Phil 391-420.

[63] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016, 799 Phil 391-420.

[64] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016, 799 Phil 391-420.

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turn, are echoed in RR 12-99, as amended by RR 18-13,[65] as the formal letter of demand and FLD, *viz.*:

> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX "B" hereof).

To be valid, the formal letter of demand and FAN must state the facts, law, rules, and regulations upon which the computation of tax liabilities is founded. Furthermore, the formal assessment notice must be served upon the taxpayer; it shall include a demand for payment within a specified period,[66] "thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor."[67]

That the assessment served upon GComm was denominated as a "Formal Assessment Notice" rather than a "Formal Letter of Demand" is not a fatal mistake that invalidates the tax findings against it. The FAN contains all the information required under the law and rules: *First,* a **clear and straightforward computation**[68] of the tax due, amounting to ₱16,556,805.10, inclusive of interest; the factual and legal bases thereof were set out in the accompanying **Details of Discrepancies.**[69] *Second,* a categorical demand for payment, as well as a specified due date, *viz.*:

> <u>FORMAL ASSESSMENT NOTICE</u>
>
> x x x
>
> In view thereof, you are requested to pay your aforestated deficiency tax liability through the duly authorized agent bank in which you are enrolled using the BIR Payment Form (BIR Form 0605)

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[65] Subject: Amending Certain Sections of Revenue Regulations No. 12-99, Revenue Regulations No. 18-13, [November 28, 2013.

[66] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016, 799 Phil 391-420.

[67] *Commissioner of Internal Revenue v. Menguito*, G.R. No. 167560, September 17, 2008, 587 Phil 234-257.

[68] Exhibit "P-7-1," "R-9," BIR Records, p. 513.

[69] Exhibit "P-7-1," "R-9," BIR Records, pp. 509-511.

attached herewith within the **time shown in the enclosed assessment notice** x x x[70]

ASSESSMENT NOTICE[71]

PERIOD COVERED: JANUARY 1, 2012 TO JUNE 30 2012	DATE ISSUED: JUNE 09 2014	ASSESSMENT NO. VT-ELA16831-12-14547
KIND OF TAX ☐ Income ☐ Percentage	☐ Transfer ☐ Capital Gains ☒ VAT	☐ WF WE WC ☐ Others Doc Stamp Comp. Pen.
NAME OF TAXPAYER: GCOMM BUSINESS SUPPLIES CORP.		TAXPAYER IDENTIFICATION NO. 007-642-328-000
ADDRESS: UNIT 907 9F FLR CITYLAND 10 TOWER 1, AYALA AVENUE COR. H DELA COSTA ST., MAKATI CITY		

PARTICULAR		IMPORTANT
1. Tax Due	₱11,882,095.68	IF YOU DISAGREE WITH THIS ASSESSMENT FILE YOUR PROTEST IN WRITING INDICATING YOUR REASONS WITH THE COMMISSIONER OF INTERNAL REVENUE, BIR, DILIMAN QUEZON CITY OR REGIONAL DIRECTOR WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF: OTHERWISE THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED.
2. Add: Surcharge		
Interest (7.26.12 to 7.14.14)	4,674,709.42	
Suggested Compromise		**FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL INCREMENTS INCIDENT TO DELINQUENCY.**
3. TOTAL AMOUNT DUE	₱16,556,805.10	
PLEASE PAY ABOVE AMOUNT ON OR BEFORE **JUL 09 2014**		KIM S. JACINTO-HENARES COMMISSIONER OF INTERNAL REVENUE *BY:* [signed] JONAS DP. AMORA Regional Director

(Emphasis supplied)

Subsequently, GComm protested the FAN, which was granted, in part, by the BIR Regional Director in the FDDA. Such favorable ruling only underscores the **effectiveness** of GComm's administrative protest; which could not have been possible if the assessment was

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[70] Page 2 of the FAN (signature page), Exhibit "P-7-1," "R-9," BIR Records, p. 512.
[71] Assessment Notice No. VT-ELA16831-12-14547, Exhibit "P-7," "R-8," BIR Records, p. 514.

substantially defective. The FAN and Assessment Notice No. VT-ELA16831-12-14547 sufficiently notified GComm of the assessment and the grounds cited in support thereof; thus, enabling GComm to prepare and lodge an effective defense. There shall be no due process violation where there has been **substantial compliance** with the requirements under Section 228 and its implementing regulations.[72]

In case an amount used in working out deficiency tax liability was lifted from the taxpayer's return/schedule, the CIR must point to the specific portions of the return/schedule from which it derived the same.

It is inherent in the determination of correct tax liability during an audit investigation and assessment for the CIR to refer to amounts declared in the taxpayer's return. However, while based on the taxpayer's own declaration, the CIR must identify the specific portions of the taxpayer's return/schedule from which the amounts are referenced. Otherwise, the taxpayer will be unable to address exceptions arising, therefrom, if any.

The BIR included "*deferred input tax from purchases of capital goods exceeding ₱1 million*" amounting to ₱1,091,910.69 in the computation of available input tax in the subject FAN, FDDA, and Decision dated October 29, 2021, *viz.*:

Input tax def. on cap goods > 1M	₱1,091,910.69	
Input Tax Carry-over	6,590,994.26	
Input Tax on current purchases	51,720,873.72	₱59,403,778.67

According to the CIR, this amount was based on GComm's declaration of current input VAT in the returns relative to the first and second quarters of 2012. However, it did not specify the portions of the VAT returns from which this was lifted.

Based on Our own analysis, the amount in question is the **sum** of the "Input Tax Deferred on Capital Goods Exceeding ₱1 Million *from*

[72] See *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016, 784 Phil 874-899; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 749 Phil 772-790.

Previous Quarter" (Item 20B in BIR Form No. 2550Q) for the **first** and **second quarters** of 2012, *viz.*:

Quarter	Exh.	Amount
First	"P-15"	₱527,735.70
Second	"P-16"	564,174.99
Total		₱1,091,910.69

Item 20B in BIR Form No. 2550Q refers to the **unamortized balance** of input tax arising from purchases of capital goods exceeding ₱1 million. To recall, input tax from these transactions cannot be recognized wholly in the period in which the purchase takes place; rather, it shall be available as credit or offset against output tax in gradual portions over 60 months or the asset's estimated useful life, whichever is shorter.[73] The taxpayer is required to disclose the **remaining balance** of such input tax at the **end** of each taxable quarter, which shall, in turn, be reported as the beginning balance of the succeeding period.

The amount in Item 20B does not pertain to input taxes arising only during a specific quarter; it is **cumulative**, reflecting the year-to-date balance of deferred input tax. Aggregating these amounts will only result in an overstatement of available input tax as of a given period.

We shall rectify this erroneous approach in recomputing GComm's deficiency VAT liability after We determine the correctness of the assessment.

Correctness of the Assessment.

In the assailed ruling, the CIR upheld the FDDA and found GComm liable for deficiency VAT amounting to ₱9,114,581.53, on account of **undeclared sales** and **disallowed input VAT credits**, *viz.*:

[73] SECTION 4.110-3, Consolidated Value-Added Tax Regulations of 2005, RR 16-05, September 1, 2005.

Vatable Sales per Return			₱435,509,294.92
Add/(Less): Adjustments			
Undeclared sales (Schedule 1)			**99,309.75**
Vatable Sales per Audit			₱435,608,604.67
Output Tax (12%)			₱52,273,032.56
Less: Input tax def. on cap goods > 1M	₱1,091,910.69		
Input Tax Carry-over	6,590,994.26		
Input Tax on current purchases	51,720,873.72	₱59,403,778.67	
Less: Deductions from Input Tax			
Unsupported	**₱1,202,608.36**		
Carried over from previous prd.	**3,628,010.52**		
Def. on cap goods >1M	1,019,032.11		
Carried over to succeeding prd.	6,123,631.16	11,973,282.15	47,430,496.52
VAT Payable/(Excess Input Tax)			₱4,842,536.04
Less: Tax Paid per Return/VAT Withheld			-
Basic Deficiency Value-Added Tax			₱4,842,536.04
Add: Penalties			
Interest (07/26/12 to 12/23/14)			4,272,045.49
TOTAL AMOUNT STILL DUE			₱9,114,581.53

We shall discuss the three items **highlighted above** separately.

GComm did not refute the CIR's finding of undeclared sales.

We uphold the finding of undeclared sales amounting to ₱99,309.75; GComm no longer questioned this item in the assessment.

Cash discounts given by the supplier to GComm on account of prompt payment do not meet the requisites for allowable deductions from the gross purchase price.

Hewlett-Packard Philippines Corporation (HP Philippines) granted discounts to GComm under the Early Payment Discount Program for Tier 1 Partners, where tier 1 partners such as GComm could avail of 2.00% and 0.75% discounts when they remit payment to HP within two and 14 business days from invoice date (discount period), respectively.[74]

[74] Exhibit "P-17." Also see *Amended Judicial Affidavit of Maureen C. Antonio*, Question and Answer Nos. 65-68, Docket - Vol. 2, pp. 743-744.

At the outset, HP Philippines issued an invoice for each of GComm's purchases, reflecting the **gross selling price** of the goods and the ***output*** VAT due thereon, payable within 30 days (credit period).[75] The output VAT upon the gross selling price passed on by HP Philippines was recorded wholly by GComm as ***input*** VAT and claimed as a credit against its own output VAT due. Upon payment of the invoice **within the discount period**, GComm recorded the discounts taken as "Purchase Discounts."

In the FDDA,[76] the CIR disallowed input VAT credits amounting to **₱1,202,608.36,** representing **imputed** input VAT from discounts obtained from suppliers, *viz.*:

> Schedule 2.1
>
> | | |
> |---|---|
> | Purchase Discounts per Trial Balance | ₱10,021,736.33 |
> | Multiplied by: 12% VAT rate | 12% |
> | Overclaimed Input Tax | ₱1,202,608.36 |
>
> x x x
>
> In your letter, you alleged that the actual input VAT paid by the company should be entirely allowed as tax credit since the company paid HP the VAT based on the gross amount which HP in turn remitted by HP to the BIR the output tax thereof. You relied on the provision of Section 106(D) which provides that "Sales Discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from gross sales within the same quarter it was given."
>
> **In reply, your contention is valid to the extent that at the time of purchase, the purchases discount may be excluded from gross purchases within the same quarter it was given. However, at the time that the company pays within the discount period, the purchase discount should be recognized, proper entries should be made, and eventually recorded in the books.**
>
> x x x
>
> Similarly, the fact that you recognized and booked said discounts in your accounting records reflects that payment was made within the discount period, **hence your company should have reduced the**

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[75] The usual terms of payment indicated on the HP Philippines invoices is "Net 30," see Exhibits "P-28" to "P-630." Maureen C. Antonio, GComm's outsourced accountant, also testified that petitioner's credit purchases from suppliers of inventory is usually payable within 30 days from the invoice date, *Amended Judicial Affidavit of Maureen C. Antonio*, Question and Answer No. 64, Docket - Vol. 2, p. 743.

[76] Exhibits "P-10-1" and "R-14;" BIR Records, p. 581.

> **input tax by twelve percent (12%) of Purchase Discount by crediting thereof the input tax in your entries**. Foregoing considered, assessment on this item amounting to ₱1,202,608.36 is maintained.[77] (Emphasis supplied)

Using the reasoning above, the CIR also disallowed input VAT credits **carried over from previous periods** amounting to ₱3,628,010.52, *viz.*:

> [A]s explained above, the input tax claimed should be net of discounts, hence, the corresponding input tax on your purchase discounts carried over from previous period shall be accordingly adjusted pursuant to Section 4.106-9 of Revenue Regulation[s] No. 16-2005.
>
> Schedule 3
> Input Tax accumulated from Purchase Discounts recorded in the previous years: (Please see 2011 AFS)

2011	₱26,781,305.46
2010	3,452,115.54
Total	₱30,233,421.00
Multiplied by VAT rate	0.12
Input Tax erroneously tacked-in in the Input Tax Carried Over FROM Previous Periods/Quarters	₱3,628,010.52

> For this item, the assessment is also hereby maintained as explained in our position in the previous item that when payment is made within the discount period, the company should have reduced the input tax by twelve percent (12%) of Purchase Discount by crediting thereof the input tax in the books and accounting entries. (Emphasis supplied)

In the subject assessments, the CIR used the balances of "Purchase Discounts" in the 2012 Trial Balance and 2011/2010 Audited Financial Statements and referred to these amounts wholly as discounts granted by HP Philippines to GComm under the Early Payment Discount Program for Tier 1 Partners for the taxable period January 1, 2012 to June 30, 2012 and previous periods, respectively; GComm does not question this approach. However, the parties differ in the interpretation of the relevant Tax Code provisions and administrative issuances.

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[77] Exhibits "P-10-1" and "R-14;" BIR Records, p. 581.

The CIR does not dispute that the discounts were incentives for early payment, but insists that input VAT arising from the purchases must be computed based on the discounted price (net), not the invoice price (gross). Thus, it assumed that 12% of the balance of "Purchase Discounts" in the trial balance (₱10,021,736.33), as well as those in the previous periods (₱30,233,421.00), to be discounts that should have been deducted from the VAT base and disallowed as credits the input VAT arising therefrom.

This position contravenes the Tax Code and RR 16-05.

As a general rule, the tax base of VAT on the sale of goods or property shall be the gross selling price or gross value in money of the goods or properties sold, bartered, or exchanged,[78] *as indicated on the invoice*.[79] By exception, the tax base may be **reduced** should there be **returns or allowances** and/or **discounts** that meet the requisites for deductibility under Section 106(D)(2) of the Tax Code:

> Sales Returns, Allowances and Sales Discounts.— The value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. **Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given.** (Emphasis supplied)

The **conditions for deductibility** of returns, allowances, and discounts are set out further in RR 16-05, *viz.*:

> SECTION 4.106-9. Allowable Deductions from Gross Selling Price.— In computing the taxable base during the month or quarter, the following shall be allowed as deductions from gross selling price:
>
> (a) <u>**Discounts**</u> determined and granted **at the time of sale**, which are **expressly indicated in the invoice**, the amount thereof forming part of the gross sales duly recorded in the books of accounts.
>
> Sales discount **indicated in the invoice at the time of sale, the grant of which is not dependent upon the happening of a future**

[78] Section 106(A), Tax Code.
[79] Section 106(D)(1), Tax Code.

event, may be excluded from the gross sales within the same month/quarter it was given.

(b) <u>**Sales returns and allowances**</u> for which a proper credit or refund was made during the month or quarter to the buyer for sales previously recorded as taxable sales. (Consolidated Value-Added Tax Regulations of 2005, Revenue Regulations No. 16-05, [September 1, 2005])

Clearly, not all **adjustments** to the invoice shall cause a reduction of the VAT base.

Returns and allowances shall reduce the VAT base when the seller made a proper credit or refund (*e.g*, seller decreased the amount due from the buyer on account of defective goods).

While there are various types of ***discounts***, only those which are **indicated on the invoice upon issuance/at the time of sale *and* not conditional upon the happening of a future event** may, for VAT purposes, be deducted from the gross selling price.[80] The discount must have been already granted at the time of sale; the value of the goods should be reflected at the discounted price at the outset. If the discount is granted after the issuance of the invoice, the discount does not affect the VAT base. Thus, VAT shall be 12% of the original gross invoice/undiscounted price.

A ***sales*** discount granted by the seller is viewed as a ***purchase*** discount by the buyer.

The buyer is entitled to claim the input VAT arising from its purchases as credits against its own output VAT.[81] Section 110(C) of the Tax Code and RR 16-05 set out the manner of working out one's total input VAT credits; purchasers are expressly directed to reduce their input VAT credits by the amount of any pending refund claim and **other adjustments**, such as **purchase returns or allowances**. There is **no mandate to deduct purchase discounts** from the creditable balance of input VAT, *viz.*:

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[80] Also see *Pag-Asa Steel Works, Inc. v. Bureau of Internal Revenue*, C.T.A. Case No. 9506, September 2, 2020.

[81] Section 110(1)(a), Tax Code.

> SECTION 4.110-5. *Determination of Input Tax Creditable during a Taxable Month or Quarter.*— The amount of input taxes creditable during a month or quarter shall be determined in the manner illustrated above by adding all creditable input taxes arising from the transactions enumerated under the preceding subsections of Sec. 4.110 during the month or quarter plus any amount of input tax carried-over from the preceding month or quarter, **reduced by the amount of claim for VAT refund or tax credit certificate (whether filed with the BIR, the Department of Finance, the Board of Investments or the BOC) and other adjustments, <u>such as purchases returns or allowances</u>, input tax attributable to exempt sales and input tax attributable to sales subject to final VAT withholding.** (Emphasis supplied)

While the discount was agreed upon at the outset, it was not given automatically. It remained **conditional** upon GComm's payment within the discount period. This is known as a **cash discount,** *viz.*:

> A cash discount, for example, is one granted by business establishments to credit customers for their prompt payment. It is a "reduction in price offered to the purchaser if payment is made within a shorter period of time than the maximum time specified." Also referred to as a sales discount on the part of the seller and a purchase discount on the part of the buyer, it may be expressed in such terms as "5/10, n/30."[82]

The purchase discounts in the present case did not meet the requisites for deductibility for VAT purposes; these were dependent upon GComm's payment within the discount period and regarded to have been taken on the date of payment (not on the date of sale). As such, these were also not reflected on the face of the invoice.

Based on the foregoing, G**Comm is entitled to claim the input VAT arising from its purchases from HP Philippines as credits against its own output VAT**. Verily, GComm eventually paid a lower price for the goods purchased. However, the law does not require purchasers to reduce their input VAT credits as a result of **cash discounts** taken after the invoice date. It was incorrect for the CIR to impute VAT upon the cash discounts taken by GComm; this deprived them of input VAT credits which were granted expressly by statute.

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[82] *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, G.R. No. 159647, April 15, 2005, 496 Phil 307-341.

Resultantly, We shall **delete** all input VAT disallowances based on these imputations, namely: (a) overclaimed input tax amounting to **₱1,202,608.36**, and (b) input tax erroneously tacked-in in the Input Tax Carried Over from previous periods amounting to **₱3,628,010.52**.

Summary

Based on the foregoing discussions, GComm shall be liable for basic deficiency VAT amounting to **₱11,917.16**, computed as follows:

		CIR Decision	Adjusted
Vatable Sales per Return		₱435,509,294.92	₱435,509,294.92
Add: Adjustments			
Undeclared sales		nil	nil
Taxable Sales from Advances from Clients		99,309.75	99,309.75
Total adjustments		99,309.75	99,309.75
Vatable Sales per Audit		₱435,608,604.67	₱435,608,604.67
Output tax rate		12%	12%
Output Tax (12%)	A	₱52,273,032.56	₱52,273,032.56
Input tax def. on cap goods > 1M		₱1,091,910.69	**₱564,174.99**
Input Tax Carry-over		6,590,994.26	6,590,994.26
Input Tax on current purchases		51,720,873.72	51,720,873.72
Available input tax per return		₱59,403,778.67	₱58,876,042.97
Less: Deductions from Input Tax			
Disallowed/Unsupported Input Taxes		1,202,608.36	**nil**
Disallowed IT carried over from previous prd.		3,628,010.52	**nil**
Input tax def. on cap goods >1M		1,019,032.11	**491,296.41**
Input Tax carried over to succeeding period		6,123,631.16	6,123,631.16
Total deductions	B	₱11,973,282.15	₱6,614,927.57
Available input tax per audit		₱47,430,496.52	₱52,261,115.40
VAT Payable	A-B	₱4,842,536.04	₱11,917.16
Less: Tax Paid per Return/VAT Withheld		-	-
Basic Deficiency VAT		₱4,842,536.04	**₱11,917.16**

As discussed above, in working out the balance of available input tax, We have referred to the beginning and ending balances of the unamortized portion of input tax from purchases of capital goods exceeding ₱1 million (₱564,174.99 and ₱491,296.41, respectively), instead of aggregating the balances reflected in Item 20B of the quarterly VAT returns.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **PARTIALLY GRANTED**. The Decision dated October 29, 2021 rendered by respondent Commissioner of Internal Revenue is hereby **MODIFIED**. Accordingly, petitioner GComm Business Supplies Corporation is **ORDERED TO PAY** the amount of **₱41,610.36**, representing deficiency value-added tax relative taxable period January 1, 2012 to June 30, 2012, plus 25% surcharge pursuant to Section 248(B) of the Tax Code, and deficiency and delinquency interest pursuant to Sections 249(B) and (C) of the same Code, respectively, computed until December 31, 2017 as follows:

Basic Deficiency VAT	₱11,917.16
Add: 25% Surcharge	2,979.29
Interest	
20% *Deficiency interest* from July 26, 2012 to June 10, 2014 (684 days)	4,466.49
Amount due as of June 10, 2014	₱14,896.45
20% *Deficiency interest* on basic deficiency VAT from June 11, 2014 to December 31, 2017 (1,299 days)	8,475.87
20% *Delinquency interest* on amount due as of June 10, 2014 from June 11, 2014 to December 31, 2017 (1,299 days)	13,771.55
Amount due as of December 31, 2017	**₱41,610.36**

In addition, petitioner GComm Business Supplies Corporation is **ORDERED TO PAY** delinquency interest at the rate of 12% per annum on the total amount due as of June 10, 2014 (₱14,896.45), as determined above, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the Tax Code, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion and as implemented by Revenue Regulations No. 21-18.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest 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.

CATHERINE T. MANAHAN
Chairperson
Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Third Division Chairperson's Attestation, 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