REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, BIR REGIONAL DIRECTOR, REGION 12, BACOLOD CITY,
Petitioner,

- versus -

ANAPI MULTI-PURPOSE COOPERATIVE,
Respondent.

CTA EB No. 2063
(CTA Case No. 9399)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

Promulgated:

JUN 3 0 2021 4:05 pm

x - x

RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION [Re: Decision dated 06 October 2020]"**[1] filed on October 26, 2020, with respondent's **"COMMENT to MOTION FOR RECONSIDERATION Re: Decision dated 06 October 2020"** filed on January 25, 2021.[2] In the said Motion, petitioner prays for reconsideration of the Court's Decision dated October 6, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated January 21, 2019 and the Resolution dated April 22, 2019

[1] A copy of which was received by this Court on November 5, 2021.
[2] A copy of which was received by this Court on February 24, 2021.

rendered by the Special Second Division of this Court in CTA Case No. 9399 are hereby **AFFIRMED.**

SO ORDERED."

In support of his Motion, petitioner argues that:

1. The Court erred when it held that the assessments should be cancelled for alleged lack of legal and factual bases.

2. Respondent, not being the owner or producer of the sugar cane, is liable for deficiency VAT on its sale of refined sugar, mandated under Section 3 of Revenue Regulations No. 29-2002, which was enacted pursuant to Section 6 and 244, in relation to Sections 106, 109, 110, and 111 (B) of the NIRC of 1997, as amended.

3. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

In its Comment, respondent counters that:

1. The Court did not err when it held that the assessments should be cancelled for lack of legal and factual bases.

2. Respondent is a tax exempt cooperative and was the owner of the refined sugar withdrawn from the sugar mill in the year 2005. All the refined sugar withdrawals made by respondent were covered by their respective Authorization Allowing the Release of Refined Sugar (AARRS).

3. Considering that the sugar quedans were in the name of respondent cooperative, the BIR issued all the corresponding AARRS in favor of respondent when it withdrew the refined sugar from the mill for the year 2005. There is the presumption of regularity on the part of the BIR when it issued the AARRS in favor of respondent for the year 2005.

4. Petitioner has failed to present sufficient and competent evidence to support its allegations, thus the tax assessments made for the year 2005 having no factual basis or supporting evidence, have to be cancelled.

THE COURT *EN BANC'S* RULING

Petitioner's Motion lacks merit.

After a careful examination and consideration of the petitioner's Motion for Reconsideration, it is noted that the main arguments raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

However, this Court stresses that the assessment subject of this case lacks any factual or legal basis.

While as a general rule, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment, it is to be presumed, however, that such assessment was based on sufficient evidence. The *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "*naked assessment*," *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[3]

In this case, the alleged VAT liability of the respondent is based primarily on unspecified "*BIR data*." As stated in the records, both Annex "A" of the PAN dated December 22, 2010,[4] as well as Schedule 1 of the FLD dated January 14, 2011,[5] refer to "BIR data" as the basis for respondent's alleged deficiency VAT, without any further elaboration thereon.

Apart from the foregoing allegations, however, the records are bereft of any other evidence on which the assessment for deficiency VAT could be based on. Moreover, no other evidence was proffered by the petitioner to validate any of the allegations or conclusions, which stated that respondent is not the owner/producer of the sugar.

---

[3] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.
[4] Exhibit "R-8," BIR Records, pp. 160 to 164, at 161.
[5] Exhibit "R-9," BIR Records, pp. 165 to 169, at 169.

On the contrary, testimonial evidence offered by the petitioner proves that an AARRS, a clearance that is issued only if the quedan is in the name of the cooperative, was issued in favor of the respondent.[6] This fact was corroborated by petitioner's other witnesses, who confirmed that the withdrawals of refined sugar were covered by the appropriate authorization allowing release of refined sugar.[7]

In view of the absence of proof that the sugar quedans were not under the name of the respondent, there is no other basis on which the subject deficiency VAT assessment could be anchored on. Thus, this Court finds the subject assessment was in fact, a "naked assessment," or one that is without any rational basis. Without any basis, the presumption of correctness cannot be sustained and the deficiency VAT assessment should be cancelled.

WHEREFORE, in light of the foregoing consideration, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

---

[6] Testimony of Revenue Officer Markneil S. Collado, TSN dated October 23, 2017, pp. 10 to 14.

[7] Testimonies of Chief Revenue Officer Carmen Grace L. Comoda and Revenue Officer Amelita J. Domingo, TSN dated January 31, 2018, pp. 8 to 9 and 16.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice