REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CENTER FOR TRAINING AND DEVELOPMENT, INC., Petitioner,	**CTA CASE NO. 8742**
- versus -	Members: **BAUTISTA,** *Chairperson* **FABON- VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 17 2017 3:00 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For this Court's resolution is respondent's Motion for Partial Reconsideration, filed on March 23, 2016, with petitioner's Comment/Opposition (to the Motion for Reconsideration dated 23 March 2016), filed on May 4, 2016.

Respondent seeks partial reconsideration of the Decision[1] promulgated on March 8, 2016 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The deficiency income tax assessment issued by respondent against petitioner for taxable year 2006 in the amount of ₱2,536,904.33 is **CANCELLED AND SET ASIDE**. However, the deficiency VAT assessment for taxable year 2006 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **EIGHT THOUSAND TEN PESOS AND EIGHTY-SIX CENTAVOS (₱8,010.86)** representing deficiency VAT for the fourth quarter of taxable year 2006,

[1] Docket, vol. II, pp. 1127-1146.

inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Basic VAT Due	₱6,408.69
25% Surcharge	₱1,602.17
Total Amount Due	**₱8,010.86**

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

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱6,408.69 computed from January 25, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱8,010.86 and on the deficiency interest which have accrued as afore-stated in (a), computed from December 4, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.[2]

In his Motion for Partial Reconsideration, respondent prays that the assailed Decision be partly modified, ordering petitioner to pay deficiency income tax and value-added tax (VAT) for the first, second and third quarters of taxable year 2006. Respondent maintains his previous arguments, *viz*:

INCOME TAX

1. There is a discrepancy between the service fees declared per VAT Returns and Trade Receivables accounts and per Annual Income Tax Return in the amount of ₱1,212,181.14, which was not subjected to income tax;

2. Expenses amounting to ₱1,818,134.70 were not properly supported, hence, should be disallowed;

3. It is inappropriate for petitioner to claim Net Operating Loss Carry-Over (NOLCO) amounting to ₱273,032.00 if there was an income received by their company;

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2 Docket, vol. II, p. 1145.

4. The Minimum Corporate Income Tax (MCIT) carried over amounting to ₱47,070.31 was not allowed as tax credit against the computed deficiency income tax considering that the said amount shall be carried over and credited against normal corporate income tax for the three (3) immediately succeeding taxable years;

5. The excess credit carried over amounting to ₱1,175,599.69 cannot be credited against the deficiency income tax since said amount was already carried forward to the succeeding year 2007; and

6. The creditable withholding taxes amounting to ₱27,741.69 were unsupported, hence, should be disallowed.

VALUE-ADDED TAX

1. The amount of ₱1,046,633.56 represents the output tax due on the gross receipts subject to 12% VAT;

2. The claimed input taxes per VAT returns amounting to ₱12,297.49 were unsupported, thus, should be disallowed; and

3. Input tax credit pertains to total sales and cannot be directly attributed to a particular transaction, hence, the input tax was proportionately allocated to exempt sales and should be disallowed. Considering that zero rated sales per return in the amount of ₱40,000.00 were not supported with PEZA certificate, hence, considered as exempt sales.

PRESCRIPTIVE PERIOD

Respondent invokes the application of the ten (10) year prescriptive period alleging that petitioner's declarations in its VAT returns, covering the first to fourth quarters of taxable year 2006, were substantially deficient in amount and did not disclose the truth regarding the correct amount of income subject to tax when compared to the amount remitted to the Bureau of Internal Revenue (BIR). Hence, the Formal Assessment Notice (FAN) dated January 14, 2010 was validly made within the prescriptive period from the discovery of the falsity.

On the other hand, petitioner seeks the dismissal of respondent's Motion for Partial Reconsideration for lack of merit.

Petitioner claims that the issue of falsity and the application of the 10-year prescriptive period were raised for the first time on appeal. According to petitioner, respondent never presented any single evidence to prove the claim of falsity considering that the burden of proof in establishing whether the taxpayer is guilty of filing false or fraudulent returns rests with the respondent or his duly authorized representative. Meanwhile, the rest of his arguments are mere rehash of issues duly resolved and passed upon in the assailed Decision. Thus, respondent's motion should be considered a mere scrap of paper.

After due consideration of the parties' arguments, the Court finds respondent's Motion for Partial Reconsideration bereft of merit.

The issues presented are mere rehash of respondent's previous arguments, all of which have been thoroughly considered and threshed out in the assailed Decision. Again, records reveal that petitioner is not liable for any deficiency income tax for taxable year 2006, but is liable for deficiency VAT for the fourth quarter of taxable year 2006.

A. On the alleged undeclared income

Petitioner has no undeclared income for the subject year. In the assailed Decision, we held that:

> Respondent committed an accounting slide arising from an erroneous positioning of the decimal point. Moreover, following respondent's computation of petitioner's "Trade receivable, end – net of VAT", the amount of ₱1,714,124.42 shall be divided by 1.10. The resulting amount of ₱1,558,294.93 represents petitioner's "Trade receivable, beg. – net of VAT". Consequently, petitioner has no undeclared income for the said year:

Gross receipts per VAT return	₱ 8,770,446.36
Add: Trade receivable, end - net of VAT (₱2,750,877.00 / 1.12)	2,456,140.18
Subtotal	₱ 11,226,586.54
Less: Trade receivable, beg - net of VAT (₱1,714,124.42 / 1.10)	1,558,294.93
Service fees per audit	₱ 9,668,291.61
Service fees per ITR	9,842,993.00
Overdeclaration of Service Fees	**₱(174,701.39)**

> Evidently, respondent's assessment should be cancelled for lack of merit.[3]

B. On the alleged unsupported expenses

[3] Docket, vol. II, p. 1135.

As regards the alleged unsupported expenses, the Court sustained the findings of respondent. However, even if the said expenses were disallowed, the same were fully covered by petitioner's tax credits duly supported by Creditable Withholding Tax Certificates (BIR Form No. 2307).[4] We ruled that:[5]

> In fine, notwithstanding petitioner's unsupported expenses of ₱754,571.70, the income tax due thereon shall be offset against petitioner's total tax credits in the amount of ₱1,222,670.00. Therefore, petitioner is not liable for any deficiency income tax for taxable year 2006, as in fact it has excess tax credit computed below:

Taxable income (loss) per ITR		₱ (273,032.00)
Add: Unsupported expenses		
Association dues	₱ 17,702.97	
Light and water	54,697.50	
Consultancy fees	569,201.45	
Representation and entertainment	12,500.00	
Telephone	16,494.78	
Professors'/reviewers' fee	83,975.00	754,571.70
Taxable income (loss) per audit		₱ 481,539.70
Basic income tax due (35%)		₱ 168,538.90
Less: Tax credit paid per return		
Prior year's excess credits other than MCIT	₱ 830,824.59	
Creditable tax withheld	391,845.41	1,222,670.00
Excess Tax Credits		**₱(1,054,131.11)**

C. NOLCO and MCIT

The Court reiterates that the Net Operating Loss Carryover (NOLCO) is beyond the scope of the present assessment as it can only be the subject of assessment in the taxable year when it is claimed as a deduction. The same holds true for the Minimum Corporate Income Tax (MCIT), as any tax benefit derived by petitioner form the carry-over of the said amount redounds to the succeeding year. Considering that the tax benefit will only affect the succeeding year/s, then petitioner may only be assessed in the years when MCIT is applied.

D. On the issue of prescription

[4] Exhibits "P-23.1" to "P-23.83", docket, vol. II, pp. 813-895.
[5] Docket, vol. II, pp. 1142-1143.

The Court rejects respondent's allegation that this case falls under the exception of the three-year prescriptive period for assessment, and that the 10-year prescriptive period should apply on the ground of filing a false return. Under Section 222(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, in case a taxpayer filed a false return, the Commissioner of Internal Revenue may assess a taxpayer for deficiency tax within ten (10) years after the discovery of the falsity.

A re-examination of the Preliminary Assessment Notice (PAN),[6] Formal Assessment Notice (FAN),[7] and Final Decision on Disputed Assessment (FDDA)[8] reveals that the issue of falsity was neither mentioned during the examination of petitioner's records nor considered by respondent in his computation of civil penalties. The contents of said documents contradict respondent's allegation of falsity. In fact, not a tinge of any consideration of falsity can be deduced from the PAN, FAN and FDDA.

Thus, respondent's issue of falsity is merely an afterthought in order to justify the application of the 10-year prescriptive period to assess. Moreover, respondent failed to substantiate the belated claim of falsity. The basic rule is that bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[9] Thus, the Court will not disturb its previous findings absent any compelling evidence to the contrary.

WHEREFORE, finding no compelling reason to reverse the ruling of the Court in the assailed Decision, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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6 Exhibit "P-5", docket, vol. I, pp. 214-218.
7 Exhibit "P-9", docket, vol. I, pp. 222-226.
8 Exhibit "P-15", docket, vol. I, pp. 237-241.
9 *LNS International Manpower Services v. Armando C. Padua, Jr.*, G.R. No. 179792, March 5, 2010.