REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1961** *(CTA Case No. 9045)*
-*versus*-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
MCC TRANSPORT SINGAPORE PTE. LTD., *Respondent.*	Promulgated: JAN 19 2021 3:39 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is petitioner's Motion for Reconsideration (hereinafter referred to as "Motion"), posted on 24 August 2020,[1] with respondent's Comment/Opposition (to Petitioner's Motion for Reconsideration dated 19 August 2020) (hereinafter referred to as "Comment"), filed on 14 September 2020.[2]

In his Motion, petitioner moves for the reconsideration of the Court *En Banc*'s Decision, promulgated on 14 July 2020, denying his Petition for Review for lack of merit and affirming the Decision, dated 18 May 2018, and Resolution, dated 12 October 2018, of the Court of Tax Appeals ("CTA") Third Division and Special Third Division (hereinafter collectively referred to as "Court in Division"), respectively.

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[1] *EB* Docket, pp. 160-173.
[2] *EB* Docket pp. 174-184.

Petitioner argues that the Court *En Banc* erred in affirming the cancelation and withdrawal of the Final Decision on Disputed Assessment ("FDDA"), dated 15 April 2015. The FDDA, which assessed respondent for deficiency value-added tax ("VAT") for calendar year 2009, was struck down on the ground of prescription and for petitioner's failure to secure sworn statements, certifications, or confirmations from third-party information ("TPI") sources to support the data he had gathered from his computerized matching.

Petitioner insists that the Court *En Banc's* Decision is bereft of factual and legal bases. He asserts that the Court *En Banc* failed to consider the pieces of documentary evidence he presented proving that he was able to serve Bureau of Internal Revenue ("BIR") Confirmation Letters to the various TPI sources in order to validate the truthfulness and veracity of the data obtained from his computerized matching.

Petitioner contends that since the TPI sources failed to reply to the BIR Confirmation Letters, he was justified to use the said data as basis for respondent's assessment in accordance with ***Revenue Memorandum Order ("RMO") 13-2012,***[3] ***46-2004,***[4] and ***04-2003;***[5] and the ***"Best Evidence Obtainable" Rule*** pursuant to ***Section 6(B) of the 1997 National Internal Revenue Code (hereinafter referred to as "Tax Code").***

Considering the same, petitioner insists that his assessment finding respondent to have undeclared sales/receipts in the amount of ₱83,886,643.55, which exceeded thirty percent (30%) of respondent's declared sales/receipts, should stand; and consequently renders the applicability of the ten (10) year prescriptive period on the ground that its VAT returns are false and fraudulent.

Also, petitioner avers that the cases of ***CIR v. Hantex Trading Co., Inc. (hereinafter referred to as "Hantex Case")***[6] and ***CIR v. G&W Architects, Engineers and Project Consultants Co., (hereinafter referred to as "G&W Case")***[7] are not applicable herein. He explains that these cases have different factual milieu and issues which are not in all fours with this case.

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[3] Subject: Revised Guidelines and Procedures in Handling Letter Notices Generated Through Third-Party Information Data Matching with Tax Returns, 29 March 2012.

[4] Subject: Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers, 2 September 2004.

[5] Subject: Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Taxes covered by a Letter Notice (LN) issued under the RELIEF System as defined in Revenue Memorandum Order (RMO) No. 30-2003 and other data matching processes, 20 February 2003.

[6] G.R. No. 136975, 31 March 2005.

[7] CTA *EB* Case No. 1572, 23 February 2018.

Lastly, petitioner contends that assessments are presumed correct and should not be disturbed absent proof of any irregularities in its issuance. Hence, he argues that this Court is duty-bound to uphold the assessment.

On the other hand, respondent opines that although petitioner was able to present documentary evidence showing proof that he was able to send out the BIR Confirmation Letters to the various TPI sources, the same do not constitute the confirmation or certification required by BIR Regulations and jurisprudence to render the assessment valid.

Likewise, it stresses that the "Best Evidence Obtainable" Rule is not applicable in this case since petitioner was only able to send out the BIR Confirmation Letters during the reinvestigation stage of the audit, in violation of its right to due process.

Finally, it points out that petitioner failed to cite any valid ground to support his contention that the ***Hantex Case*** and ***G& W Case*** are not applicable herein.

After a thorough review of the foregoing arguments, the Court *En Banc* finds petitioner's Motion unmeritorious.

Contrary to the argument of petitioner, the Court in Division had considered all the pieces of documentary evidence he had submitted, including the BIR Confirmation Letters. However, the same were found insufficient to support the assessment since petitioner failed to prove that the said letters were actually received by most of the TPI sources. The pertinent portion of the Court in Division's Decision is hereby reproduced, to wit:

> "However, records do not show that the information provided by the BIR were verified.
>
> **In her attempt to investigate, respondent's witness, RO Karen Joy D. Lutching, attested that she sent Confirmation Letters to those customers of petitioner for them to reply and to confirm the veracity of the data per Letter Notice of the BIR involving their purchases made from petitioner.**
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> **Records show that only the letters sent to customers "Kawasaki Kisen Kaisha, Ltd.", "Starfire Co., Inc.", and to "Transcontainer (TCL) Philippines, Inc." had return cards from the addressee. All others only have registry receipt, which the Court finds insufficient to prove that the Confirmation Letters were actually received by the addressees.**
>
> Upon examination of the BIR Confirmation Letters, the Court notes that the letter to "Kawasaki Kisen Kaisha, Ltd." has a confirmation reply but the details regarding the TIN and authority or title of the signatory are

> lacking. Hence, the Court cannot verify if the person who received and confirmed the same is indeed a representative from "Kawasaki Kisen Kaisha, Ltd." and an authorized signatory.
>
> As a result, only the purported sales transactions made to "Starfire Co., Inc." (Php5,050.00) and "Transcontainer (TCL) Philippines, Inc." (Php81,225.08) with an aggregate amount of Php86,275.08 appear to have been verified. Furthermore, considering that petitioner was not able to account for the undeclared sales/receipts from these third-party sources, the same may be a proper subject of a deficiency VAT assessment. **All other items of assessment are considered void and shall be cancelled as respondent failed to secure the required certifications or confirmations from the third-party sources. Although Section 6(B) of the NIRC of 1997, as amended, authorizes the BIR to assess proper tax on the best evidence obtainable, the law, however, provides that the assessment must be based on actual facts.**"[8]

The aforementioned findings of the Court in Division, as affirmed by the Court *En Banc*, are in accordance with the requirements laid down in ***RMO Nos. 46-2004*** and ***04-2003*** which require all data gathered from the CIR's computerized matching to be verified by securing certifications or sworn confirmations from the TPI sources.

The Court *En Banc* cannot give weight to the argument of petitioner that he was justified in using the unverified data gathered from the computerized matching as basis of the assessment on account of ***RMO No. 13-2012*** and the ***"Best Evidence Obtainable" Rule***.

The Court *En Banc* notes that ***RMO No. 13-2012*** became effective only on 29 March 2012, or after the Letter Notice ("LN") was issued to respondent on 24 May 2011. Although the transitory provision of the said RMO provides that it can be made applicable to priorly issued LNs, the same is only limited to 2009 and 2010 issued LNs, to wit:

> "V. Transitory Provisions
>
> 1. **The herein procedures shall be used in the resolution of issues on 2009 and 2010 LNs issued prior to the effectivity of this Order, if applicable**."[9]

However, even assuming that ***RMO No. 13-2012*** is applicable in this case, petitioner still cannot find solace in the said BIR Regulation. ***RMO No. 13-2012*** is clear that the CIR can only use unverified data obtained from his computerized matching as basis of the assessment only after proving that he was able to serve or send via registered mail with return card the Confirmation

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[8] Emphasis supplied.
[9] Emphasis supplied.

Requests to the TPI sources. The relevant portion of the RMO is hereby quoted, as follows:

> "9. **Send a Confirmation Request from TPI sources attesting to the veracity of the data included in the LN package** (Annexes "I" and "I-1").
>
> **<u>If no response from the TPI source after the lapse of five (5) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct</u>**. However, if there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO shall **<u>send the Confirmation Request to the taxpayer through registered mail with Registered Return Card and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step</u>**. The RO shall recommend the issuance of an eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales. In case the TPI source/s is/are located outside of the jurisdiction of the investigating office, the RO shall recommend to the concerned RD/ACIR-LTS the issuance of eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales."[10]

In this case, the BIR Confirmation Letters are not duly supported by registered return cards from their respective addressees and, therefore, cannot be relied upon by the Court *En Banc*.

Neither can petitioner anchor the validity of the assessment on account of the ***"Best Evidence Obtainable" Rule***. The Court *En Banc* notes that ***Revenue Memorandum Circular No. 23-00***[11] only provides for two instances when the said Rule may be invoked, to wit:

> "2.3 Assessment Based on Best Evidence Obtainable. — An assessment based on best evidence obtainable is justified when any of the grounds provided by law is clearly established viz:
>
> **<u>1. The report or records requested from the taxpayer are not forthcoming i.e. the records are lost; refusal of the taxpayer to submit such records;</u>**
>
> **<u>2. The reports submitted are false, incomplete or erroneous</u>**."[12]

Close scrutiny of the case records shows that the aforementioned circumstances are not present in this case. Here, respondent, in various instances, submitted to the BIR copies of its tax returns, and accounting books and records.[13] Hence, the petitioner is erroneous to have invoked the said Rule.

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[10] Emphasis supplied.
[11] Subject: Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable, 27 November 2000.
[12] Emphasis supplied.
[13] Exhibit R-1, BIR Records, pp 1-346.

Considering that petitioner failed to verify the truthfulness and veracity of the data he had obtained from the computerized matching in the amount of ₱83,800,368.47, it follows that the assessment up to the aforementioned amount is void for lack of factual and legal basis. Hence, only the amount of ₱86,275.08 can be validly considered as valid undeclared sales/receipts assessment.

Since the amount of the substantiated undeclared sales/receipts only represents 1.21% of the latter's total declared sales, then the ten (10) year prescriptive period is not applicable in this case. Apropos, the assessment issued against respondent had already prescribed.

Finally, the Court *En Banc* finds no merit in the contention of petitioner that the ***Hantex Case*** and ***G& W Case*** are not applicable herein. Both cases emphasize the well-settled doctrines that assessments must be based on facts, and that the presumption of the correctness of assessment, being a mere presumption, cannot be made to rest on another presumption which the Court *En Banc* is bound not to ignore.

In view of the foregoing disquisitions, the Court *En Banc* finds no justifiable reason to reverse or modify the conclusion reached in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice