CTA Form No. 8

22-000090-0067

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10791

NATIONAL REINSURANCE CORPORATION OF THE PHILIPPINES,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. KARL KENNY M. RAMO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

CABRERA & COMPANY
29th Floor, AIA Tower (Formerly Philamlife Tower)
8767 Paseo de Roxas
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **June 2, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 4, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NATIONAL REINSURANCE CORPORATION OF THE PHILIPPINES, Petitioner,	**CTA CASE NO. 10791**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 02 2025; 4:00PM

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] (**Petition**) filed by petitioner National Reinsurance Corporation of the Philippines (**petitioner**), pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of

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[1] Filed on 02 February 2022, Division Docket, Volume I, pp. 6-24.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases Within the Jurisdiction of the Court in Division.* — The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

the Revised Rules of the Court of Tax Appeals (**RRCTA**).[4] It seeks to cancel and set aside the Final Decision on Disputed Assessment dated 27 December 2021[5] (**FDDA**) that respondent Commissioner of Internal Revenue (**respondent/CIR**) issued to petitioner for its alleged value-added tax (**VAT**) deficiency assessment in the aggregate amount of ₱53,064,531.57, for the calendar year ending 31 December 2016 (**CY 2016**).

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office address at 31/F BPI- Philam Life Makati, 6 Bel-Air, Makati City, Philippines.[6] Petitioner is primarily engaged in the business of reinsurance.[7]

Respondent, on the other hand, is the duly appointed CIR vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (**BIR**).

FACTS OF THE CASE

On 07 November 2018, respondent issued a Letter of Authority (**LOA**) No. 125-2018-00000021/eLA201600030741[8], authorizing Revenue Officer Sean Ruthie Villanueva (**RO Villanueva**), RO Hapsah Baunto (**RO Baunto**), RO Ricardo Esteban (**RO Esteban**) and Group Supervisor Joseph Christian Santos (**GS Santos**) of the Regular Large Tax Audit Division (**LTAD**) 2, to examine petitioner's books of accounts for all

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(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

4 A.M. No. 05-11-07-CTA.

5 Exhibits "R-11", BIR Records, Folder 2, pp. 264-265.

6 See paragraph 1, I. The Parties, Petition for Review, supra at note 1, p. 6.

7 See par. 4, III. Statement of Antecedent Facts, Petitioner' Memorandum, Division Docket, Volume III, p. 1697.

8 Exhibit "R-1", BIR Records, Folder 1, p. 12.

internal revenue taxes for the period of 01 January 2016 to 31 December 2016, or CY 2016. Petitioner's authorized representative, Rolly M. Velasquez (**Velasquez**), received the LOA on 15 November 2018.

Thereafter, on 02 September 2019, respondent issued a "First Notice for the Presentation of Books of Accounts and Other Accounting Records"[9] (**First Notice**). In the said First Notice, the BIR directed petitioner to present its books of accounts and other related accounting records within ten (10) days from receipt.

Later, or on 07 October 2019, petitioner, through its President, Allan R. Santos (**Santos**), executed a Waiver of the Defense of Prescription under Statute of Limitations of the NIRC[10] (**First Waiver**), extending the period of investigation, collection, and enforcement until 30 June 2020. GS Santos accepted the said Waiver.[11]

On 26 November 2019, respondent issued a "Second and Final Notice for the Presentation of Books of Accounts and Other Accounting Records"[12] (**Final Notice**). Thereafter, or on 26 June 2020, through Santos, petitioner executed another Waiver[13] (**Second Waiver**) extending the period of investigation, collection, and enforcement until 31 December 2020. GS Santos accepted the said Waiver.[14]

On 09 July 2020, petitioner received a Notice of Informal Conference (**NIC**) dated 07 July 2020[15] informing it of the assessment for deficiency taxes in the aggregate amount of ₱1,382,732,696.49. The NIC contained findings that it should be held liable for deficiency Income Tax (**IT**), VAT, Expanded Withholding Tax (**EWT**), Withholding Tax on Compensation (**WTC**), Final Withholding Tax (**FWT**), Final Withholding VAT (**FWVT**), Fringe Benefits Tax (**FBT**), Documentary Stamp Tax (**DST**), and Compromise Penalty.

Still later, or on 02 September 2020, petitioner filed its position paper[16], together with supporting documents, offering its explanation to

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9 Exhibit "R-3", id., pp. 16-17.
10 Id., p. 18.
11 Id., see signatory portion of the acceptance section on the Waiver.
12 Exhibit "R-4", id., pp. 19-20.
13 Id., p. 994.
14 Id., see signatory portion of the acceptance section on the Waiver.
15 Exhibit "R-5", id., pp. 377-384.
16 Id., pp. 996-1030.

the discrepancies that gave rise to the findings in the NIC. Along with its Letters dated 25 September 2020[17] and 18 November 2020[18], respectively, it also submitted the second and third batch of documents to support its arguments against respondent's findings in the NIC.

On 20 November 2020, through Santos, petitioner executed another Waiver[19] (**Third Waiver**), extending thus the period of investigation, collection, and enforcement until 31 March 2021. GS Santos accepted the said Waiver.[20]

Thereafter, on 03 December 2020, petitioner received the Preliminary Assessment Notice[21] (**PAN**), with Details of Discrepancies, where it was stated that it has been assessed with deficiency IT, VAT, EWT, WTC, FWT, FWVT, FBT, DST and compromise penalty in the total amount of ₱202,323,042.06.

On 14 December 2020, petitioner paid the assessed deficiency IT, EWT, WTC, FBT, FWT, FWV, and DST but only in the amount of ₱19,505,229.68, inclusive of interests and penalties.[22]

Four days after, or on 18 December 2020, still disagreeing with respondent's findings, petitioner filed a Reply Letter[23] to PAN (**Reply to PAN**) before the BIR Regular LTAD. In the Reply to PAN, it argued that: (1) it had already settled the deficiency taxes in the aggregate amount of ₱19,505,229.68; and (2) even if its input VAT for CY 2016 were to be disallowed, it had sufficient input VAT carry-over from prior years that is more than enough to absorb the output VAT incurred.

On 08 March 2021, petitioner received the Final Assessment Notice/Formal Letter of Demand[24] (**FAN/FLD**) with Details of Discrepancies, demanding the payment of its deficiency VAT liability on or before 30 April 2021.[25] Therein, the sole assessment item that had

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17 Exhibit "P-9", Division Docket, Volume III, pp. 1322-1355.
18 Exhibit "P-10", id., pp. 1356-1386.
19 BIR Records, Folder 1, p. 1205.
20 See the signatory portion of the acceptance section on the Waiver, id.
21 Exhibit "R-7", id., pp. 1168-1175.
22 Id., p. 1202.
23 Exhibit "P-21", Division Docket, Volume III, pp. 1416-1423.
24 Exhibits "R-9" to "R-9-1", BIR Records, Folder 2, pp. 12-14.
25 Exhibit "R-9-1", id., p. 12.

been retained was respondent's finding on disallowed input tax allocable to exempt sales resulting in a deficiency VAT liability of ₱51,433,362.27.[26]

Dissatisfied with respondent's findings, on 07 April 2021, petitioner filed a Protest[27] (in the nature of a request for reconsideration) to the FAN/FLD (**Protest to FAN**) before the BIR LTAD. In the Protest to FAN, it reiterated its argument that it had sufficient input VAT carry-over from prior years that was more than enough to absorb the output VAT incurred and that the VAT assessment arose primarily from the disallowance of the input VAT credits, not from any sales transactions or importations.

On 29 December 2021, petitioner received the FDDA dated 27 December 2021[28], issued and signed by then CIR Caesar Dulay (**CIR Dulay**). The FDDA maintained the findings of tax deficiency against petitioner who was also ordered to immediately pay the deficiency VAT, inclusive of interest in the aggregate amount of ₱53,064,531.57. In the FDDA, respondent noted that its input VAT was not utilized, yet it was still forwarded to the succeeding quarter. According to respondent, since it is engaged in both VATable and VAT-exempt transactions, the tax credits allowable should have been computed under an apportionment formula.

PROCEEDINGS BEFORE THE COURT

On 02 February 2022, petitioner filed a "Petition for Review"[29] before this Court. The case was raffled to the Second Division and was docketed as CTA Case No. 10791.

Later, with the issuance of the Summons, the Second Division ordered respondent to file his or her Answer to the instant petition.[30] On 14 March 2022, petitioner filed an "Urgent Motion to Lift Warrant of Distraint and/or Levy, and Suspend Tax Collection (**Motion to Lift WDL**)".[31] On 22 March 2022, the Second Division issued a Resolution

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[26] Supra at note 24.
[27] Exhibit "P-23", Division Docket, Volume III, pp. 1427-1433.
[28] Exhibit "R-11", supra at note 5.
[29] Supra at note 1.
[30] See Summons dated 07 March 2022, Division Docket, Volume II, p. 599.
[31] Id., pp. 602-606.

giving respondent five (5) days from notice to file his or her Comment or Opposition. It also set the Motion to Lift WDL for hearing on 18 April 2022.[32]

On 04 April 2022, respondent filed his or her "Comment (on Petitioner's [Motion to Lift WDL])"[33], where he or she essentially stated that: (1) petitioner should not be entitled to the relief prayed for, *i.e.*, suspension of collection of taxes; and (2) it failed to prove that the collection of taxes will jeopardize its interest.

During the hearing on the Motion to Lift WDL held on 18 April 2022[34], after petitioner expressed its willingness to post a bond, it presented its sole witness - Santino U. Sontillano (**Sontillano**).

On the witness stand, Sontillano testified by way of a Judicial Affidavit dated 13 April 2022[35] and declared that: (1) he is petitioner's Vice President and Head of Finance; (2) as Head of Finance, his duties include reviewing financial reports and financial statements as audited by external auditors; (3) on 11 March 2022, petitioner received the assailed WDL; (4) on 17 March 2022, petitioner received a copy of a Warrant of Garnishment (**WOG**) issued against its bank deposit with Union Bank amounting to ₱53,064,531.57; (5) petitioner is primarily engaged in reinsurance business and it provides adequate risk protection for local insurance companies by providing them with reinsurance capacity (that lessens risk volatility for prompt payment of claims of policy holders); (6) petitioner had paid claims to local insurance companies amounting to ₱5,784,555,481.00 for the years 2021, 2020 and 2019 (that included claims related to various typhoons in 2019 and 2020); (7) about ₱5,784,555,481.00 was based on its unaudited financial statements, as reflected on Note 21.1[36] of the Notes to the

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32 See Resolution dated 22 March 2022, id., p. 615.

33 Id., pp. 616-626.

34 See Minutes of the Hearing and Order, both dated 18 April 2022, id., pp. 635 and 636-637, respectively.

35 Exhibit "P-40", id., pp. 642-653.

36 **21.1 Share in Reported Losses** – *Net*

	Notes	2021	2020	2019
Gross Claims Paid	17	₱1,906,123	₱1,927,445	₱1,950,987
...				
		₱1,696,576	₱1,785,900	₱1,806,624

Financial Statements[37]; (8) the garnishment of petitioner's bank deposit will reduce the amount of cash available for its operation and working capital requirements; (9) the said garnishment will also negatively impact petitioner's ability to meet its day to day obligation to pay off employees' salaries, suppliers, vendors, lessors and taxes; (10) in 2021, petitioner's cash used for operating activities exceeded the amount of cash received from the said activities by ₱22,788,000.00, thus the WOG's enforcement will result in a disruption in its operation; (11) based on industry reports, in December 2021, Typhoon Odette caused ₱16.9 billion worth of losses and damages in agriculture and ₱17.3 billion in infrastructure (amounts that although may only be initial and partial are nevertheless good estimates of future claims that petitioner may have to pay); (13) petitioner's bank deposits are mainly sourced from premiums received from its client and from other sources of income such as "yield on investments"; (14) as a reinsurance business, petitioner is required to have sufficient cash balance to answer for unexpected contingencies; and (15) if the WOG will be enforced, petitioner would have to pre-terminate its investments and take out loans, both will entail cost that can no longer be recovered.

During cross-examination, Sontillano averred that: (1) petitioner's total asset amounts to about ₱16.7 billion; (2) the BIR's assessment is around ₱53 million; (3) the payment of the garnished amount of ₱53 million will be sourced from its working capital which is primarily used in its day to day operations; (4) if the said amount will become inaccessible, petitioner may be constrained to either pre-terminate its short term investments or borrow funds; and (5) petitioner has a financial asset estimated to be at around ₱5.95 billion (which may be available for sale or disposal); and (6) petitioner also has cash equivalents[38] at around ₱658 million which, if liquidated, will result in loss of income.[39]

No redirect and re-cross examination were conducted.[40]

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37 Division Docket, Volume II, p. 931.

38 Id., p. 872.

Note 2.4 Financial Assets

...

Cash and cash equivalents include cash on hand, demand deposits and short-term highly liquid investments with original maturities of three months or less, readily convertible to known amount of cash and which are subject to insignificant risk of changes in value.

39 TSN dated 18 April 2022, pp. 8-10.

40 Id., pp. 10-11.

Later, or on 04 May 2022, both parties filed their respective Memorandum.[41] On even date, petitioner likewise filed its "Formal Offer of Evidence"[42] (**FOE**), and offered Exhibits "**P-2**", and "**P-35**" to "**P-40**"[43], inclusive of the sub-markings. In a Resolution dated 30 May 2022[44], the Second Division, noting that respondent did not object to the exhibits being offered as manifested during the hearing on 18 April 2022[45], admitted all of them.

In the *interim*, after being granted an extension of time to file an Answer[46], respondent filed the same on 10 May 2022.[47] In his or her Answer, respondent interposed the following defenses: (1) petitioner was properly assessed to pay deficiency VAT in the total amount of ₱53,064,531.57; (2) since petitioner has transactions exempt from VAT, the corresponding input tax attributable thereto shall be deducted from the allowable input tax; (3) assessments are presumed correct and made in good faith; and (4) the burden of proof is on the taxpayer contesting the validity or correctness of an assessment.[48]

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41 See Respondent's Memorandum (Re: [Motion to Lift WDL]), Division Docket, Volume II, pp. 772-784 and Petitioner's Memorandum (with Supplemental Motion to Admit Additional Prayer for the Issuance of a Writ of Preliminary Mandatory Injunction), id., pp. 801-818.

42 Id., pp. 822-826.

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Exhibit No.	Description
"P-2"	Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission ("SEC").
"P-35"	Urgent Motion to Lift Warrant of Distraint and/or Levy, and Suspend Tax Collection.
"P-36"	Set of Financial Statements and the Notes to Financial Statements with Cover Letter/Certification by [Santino] Sontillano.
"P-36-2"	Note 21.1 (2021) of the Set of Financial Statements.
"P-36-3"	Note 21.1 (2021) of the Set of Financial Statements.
"P-36-4"	Note 21.1 (2021) of the Set of Financial Statements.
"P-36-1"	Signature of Santino Sontillano Cover Letter.
"P-37"	Warrant of Distraint and/or Levy.
"P-38"	Warrant of Garnishment.
"P-39"	Statement of Cash Flows.
"P-40"	Judicial Affidavit of Santino U. Sontillano on the Motion to Suspend Tax Collection dated 13 April 2022.
"P-40-1"	Signature above the name of Santino U. Sontillano.

44 Division Docket, Volume II, p. 981.

45 Supra at note 34.

46 See Resolution dated 05 May 2022, Division Docket, Volume II, pp. 787-788.

47 Id., pp. 789-794.

48 See Respondent's Answer, id.

Subsequently, the Second Division issued a Resolution dated 25 July 2022[49], denying petitioner's Motion to Lift WDL[50] for lack of merit. In the said Resolution, it held that: (1) petitioner has enough assets to cover the assessed tax and still has sufficient assets to be used in its day-to-day operations; (2) loss of future revenue or incurring additional cost in case of collection of the assessed deficiency VAT is not the irreparable injury that the injunctive writ seeks to protect; and (3) petitioner failed to prove that the collection of the alleged deficiency VAT would jeopardized its interest or that of the government. Consequently, on 17 August 2022, petitioner filed a Motion for Reconsideration[51] (**MR**) assailing the said Resolution.[52]

Subsequently, both parties filed their Pre-Trial Briefs[53] on 17 October 2022 and 18 October 2022, respectively. The pre-trial then proceeded on 20 October 2022[54], during which the parties were: (1) granted thirty (30) days to file their Joint Stipulation of Facts and Issues (**JSFI**); and (2) given dates for the presentation of their witnesses. In the same pre-trial, the Second Division also noted both parties' manifestation that they are not willing to have the case referred to mediation. The Court also granted respondent a period of five (5) days to file the Judicial Affidavit of RO Villanueva.

On 21 November 2022, the parties filed their "[JSFI]".[55] On 14 March 2023, the Second Division issued the Pre-Trial Order[56], declaring the pre-trial terminated.[57] Thereafter, or on 22 November 2022, respondent submitted the BIR Records[58] which the Second Division noted in a Resolution dated 14 March 2023.[59]

In the trial that ensued, petitioner presented its first witness, Jose Luis M. Yupangco (**Yupangco**), who testified by way of his Judicial

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49 See Resolution dated 25 July 2022, id., pp. 987-1001.
50 Supra at note 31.
51 See Motion for Reconsideration (Re: 25 July 2022 Resolution of the Honorable Court of Tax Appeals – Second Division), Division Docket, Volume II, pp. 1004-1016.
52 Supra at note 49.
53 See Respondent's Pre Trial-Brief and Petitioner's Pre Trial-Brief, Division Docket, Volume II, pp. 1023-1027 and 1028-1044, respectively.
54 See Minutes of the Hearing and Order, both dated 20 October 2022, id., pp. 1046-1047 and 1048-1049, respectively.
55 Id., pp. 1086-1095.
56 Id., pp. 1104-1110.
57 See Resolution dated 10 January 2023, id., p. 1102.
58 See Compliance, id., pp. 1097-1099.
59 Supra at note 57.

Affidavit dated 31 January 2022.[60] There, he stated that: (1) he is a Senior Associate of Isla Lipana & Co.; (2) petitioner engaged Isla Lipana & Co. to act as its External Tax Consultant for the tax investigation covering CY 2016; (3) respondent issued an LOA authorizing GS Santos, RO Villanueva and RO Baunto to examine petitioner's books of accounts and other accounting records; (4) on 09 July 2020[61], petitioner received an NIC to which it responded with three (3) position papers and supporting documents; (5) on 03 December 2020, petitioner received a PAN assessing it of deficiency taxes in the aggregate amount of ₱202,323,042.06; (6) in the Letter dated 14 December 2020, petitioner communicated with the BIR that it had made payments in the total amount of ₱19,505,229.68 for its deficiency IT, EWT, WTC, FBT, FWT, FWV, and DST; (7) on 18 December 2020, petitioner filed its Reply to PAN; (8) on 08 March 2021, respondent issued the FAN/FLD assessing petitioner of deficiency VAT amounting to ₱51,433,362.27; (9) on 07 April 2021, petitioner filed a Protest to the FAN/FLD; (10) in the said Protest, petitioner argued that it has sufficient input VAT carry-over from prior years enough to absorb any Output VAT for CY 2016 and the VAT assessment that arose from the disallowance of input VAT credits; (11) on 29 December 2021, petitioner received an FDDA reiterating the findings in the FAN/FLD; and (12) after its receipt of the FDDA, petitioner filed the present petition before the Court. No cross-examination followed.[62]

In the Resolution dated 29 May 2023, the Second Division transferred the case to the First Division pursuant to Administrative Circular No. 01-2023 dated 23 May 2023.[63]

On 19 July 2023, the First Division issued a Resolution[64] denying petitioner's MR[65] (on the Resolution dated 25 July 2022[66]) for being moot and academic. In the said Resolution, the First Division held that petitioner had already admitted in its Memorandum[67] that on 19 April

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60 Exhibit "P-31", Division Docket, Volume I, pp. 249-258.

61 As *per* Exhibit "P-31", Yupangco's Judicial Affidavit, the date of the NIC's receipt is on <u>07 July 2020</u>, however upon examination of Exhibit "R-5" – Notice of Informal Conference, it was dated 07 July 2020, but petitioner <u>actually received the NIC on 09 July 2020.</u>

62 See Minutes of the Hearing and Order, both dated 11 May 2023, id., pp. 1123 and 1124, respectively.

63 Reorganizing the Divisions of the Court following the retirement of Associate Justice Erlinda P. Uy, id, p. 1127.

64 See Resolution dated 19 July 2023, id., pp. 1137-1141.

65 Supra at note 51.

66 Supra at note 49.

67 Supra at note 41.

2022, respondent had already garnished and collected from its Unionbank account the amount of ₱53,064,531.57, thus its Motion to Lift WDL[68] had become moot.

During the hearing held on 13 September 2023[69], petitioner presented its witnesses, namely: Raul G. Tumangday (**Tumangday**), Irene G. Lozada (**Lozada**) and Sontillano.

On the witness stand, Tumangday, testified by way of his Judicial Affidavit dated 31 January 2022[70], and declared that: (1) he is petitioner's Senior Manager and Compliance Officer; (2) petitioner is primarily engaged in the business of reinsurance; (3) petitioner is a BIR registered taxpayer; and (4) petitioner is an entity registered with the Philippine Insurance Commission. No cross-examination was conducted.[71]

Thereafter, petitioner presented its second witness, Lozada, who also testified by way of her Judicial Affidavit dated 31 January 2022.[72] In her direct examination, she stated that: (1) she is petitioner's Deputy Accounting Head; (2) petitioner has Output VAT reported in its CY 2016 returns as follows: first (1st) quarter - ₱4,487,609.81, second (2nd) quarter - ₱1,916,036.11, third (3rd) quarter - ₱5,445,423.29, fourth (4th) quarter - ₱3,403,198.47, and total Output VAT due - ₱15,252,267.88; (3) petitioner has available Input VAT reported in its CY 2016 returns as follows: 1st quarter - ₱125,645,426.81, 2nd quarter - ₱130,336,288.14, 3rd quarter - ₱140,212,403.90, and 4th quarter - ₱145,769,418.44; (4) after applying the input VAT against petitioner's output VAT, it still had an overpayment or excess input VAT in the following amounts: 1st quarter - ₱121,157,817.00, 2nd quarter - ₱128,420,252.03, 3rd quarter - ₱134,766,980.61, and 4th quarter - ₱143,140,581.42; (5) the excess input VAT for the 4th quarter of CY 2016 amounting to ₱143,140,581.42 were to be carried forward to the 1st quarter of 2017 as available input VAT that may be used against the output VAT liabilities in the succeeding period; and (6) the amount of petitioner's excess input VAT carried over from the 4th quarter of CY 2015 amounted to ₱121,640,731.89. No further examinations followed.[73]

68 Supra at note 31.
69 See Order dated 13 September 2023, Division Docket, Volume III, pp. 1149-1150.
70 Exhibit "P-32", id., Volume I, pp. 427-432.
71 Supra at note 69.
72 Exhibit "P-34", Division Docket, Volume I, pp. 569-578.
73 Supra at note 69.

Sontillano also testified by way of his Judicial Affidavit dated 31 January 2022.[74] There, he averred that: (1) he is petitioner's Vice President and Head of Finance; (2) his duties include reviewing its financial statements; (3) based on Note 13[75] of the Audited Financial Statements (**AFS**), petitioner had Excess Input VAT of ₱142,366,220.00 and ₱121,640,732.00 as of 31 December 2016 and as of 31 December 2015, respectively[76]; (4) the input VAT reported at the end of the year pertains to the net amount after considering additions and deductions to the same; (5) input VAT is an asset that was already paid on petitioner's purchase of goods and services; and (6) the excess input VAT as at the end of 2015 amounting to ₱121,640,732.00, which was carried over to 2016 may be used to settle the 2016 output VAT due. Respondent did not conduct any cross- examination.[77]

Thereafter, or on 22 September 2023, the First Division received a copy of petitioner's "Petition for *Certiorari*"[78] filed before the Supreme Court. In the said Petition, petitioner alleged that the First Division acted with grave abuse of discretion when it issued the Resolution dated 19 July 2023.[79]

After it presented its witnesses, on 13 October 2023, petitioner filed its FOE[80] and offered Exhibits "**P-1**" to "**P-41**", inclusive of the sub-markings. Respondent failed to file his or her Comment thereto.[81] In a Resolution dated 25 January 2024[82], the First Division admitted all of petitioner's offered exhibits.

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[74] Exhibit "P-33", Division Docket, Volume I, pp. 459-463.

[75] **13. Other Assets**

	Notes	**2016**	2015
...			
Input VAT	32.1 (b)	142,366,220	121,640,732
...			
		₱567,104,396	₱406,384,402

[76] Division Docket, Volume III, p. 1490.

[77] Supra at note 69.

[78] Division Docket, Volume III, pp. 1159-1185.

[79] Supra at note 64.

[80] See Compliance (with Submission of Petitioner's Formal Offer of Evidence), Division Docket, Volume III, pp. 1244-1257.

[81] See Records Verification dated 25 October 2023, id., p. 1647.

[82] Id., pp. 1652-1653.

For his or her part, respondent presented RO Villanueva as his or her sole witness.[83] In her Judicial Affidavit dated 24 October 2022[84], RO Villanueva declared that: (1) she is an employee of the BIR for six (6) years; (2) she is currently assigned as Revenue Officer III at LTAD; (3) she served a copy of the LOA and Checklist of Requirements on petitioner; (4) petitioner failed to submit and comply with what was requested in the list of requirement; (5) she served a copy of the First Notice on petitioner; (6) petitioner did not submit any documents, thus she served the Final Notice; (7) based on her investigation, she eventually issued and served an NIC on petitioner; (8) she submitted a Memorandum dated 25 November 2020, recommending the issuance of a PAN against petitioner; (9) the PAN was eventually issued to petitioner; (10) thereafter, petitioner filed a Reply to PAN; (11) petitioner failed to rebut the findings in the PAN; (12) through a Memorandum dated 29 January 2021, she recommended the issuance of the FAN/FLD; (12) the FAN/FLD was issued and served on petitioner; (13) subsequently, petitioner also filed a Protest to FAN; and (14) she proceeded with the evaluation of petitioner's Protest to FAN, and finding the arguments therein unmeritorious, she prepared a Memorandum recommending the issuance of an FDDA, which was eventually issued.

During her cross-examination, RO Villanueva testified further that: (1) she is the assigned RO to audit petitioner's books of accounts for CY 2016; (2) in the FDDA, the BIR stated - "also, it was noted that the input VAT was not utilized it was forwarded to the succeeding quarter or period"; (3) as stated in the FDDA, the VATable receipts or returns are the only basis for the output tax computation; and (4) the total available input tax is greater than the output tax.[85] No redirect and re-cross examination followed.[86]

Later, respondent filed his or her "[FOE]".[87] On the other hand, petitioner filed its comment thereto on 26 February 2024.[88] On 12 April

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83 See Order and Minutes of Hearing both dated 30 January 2024, id., pp. 1659-1660 and 1656-1658, respectively.
84 Exhibit "R-13", id., Volume II, pp. 1076-1084.
85 TSN dated 30 January 2024, pp. 10-13.
86 Id., p. 13.
87 Respondent's Formal Offer of Evidence, Division Docket, Volume III, pp. 1662-1668.
88 See Comment on the Respondent's Formal Offer of Exhibits, id., pp. 1670-1672.

2024, the First Division issued a Resolution that admitted all of respondent's exhibits.[89]

On 20 May 2024, petitioner filed its Memorandum[90], while respondent filed a Manifestation[91] on even date, that he or she is adopting his or her arguments raised in the Answer[92] as his or her Memorandum. On 31 May 2024, the Court submitted the case for decision.[93]

Later, or on 08 October 2024, the Supreme Court, through a Notice of Resolution dated 13 May 2024, informed the First Division that petitioner's Petition for *Certiorari* was dismissed due to its failure to sufficiently show that the First Division acted with grave abuse of discretion when it issued the Resolutions dated 25 July 2022 and 19 July 2023, respectively.[94] Then, on 21 October 2024, the First Division received a copy of its MR assailing the said Resolution.[95]

ISSUE

The parties put forward this sole issue for this Court's resolution –

> WHETHER PETITIONER NATIONAL REINSURANCE CORPORATION OF THE PHILIPPINES IS LIABLE TO PAY ASSESSED DEFICIENCY VALUE-ADDDED TAX (VAT) IN THE TOTAL AMOUNT OF ₱53,064,531.57, INCLUSIVE OF SURCHARGES, INTEREST AND PENALTIES FOR THE CALENDAR YEAR (CY) 2016.

ARGUMENTS

In support of the petition, petitioner claims that respondent failed to identify any unreported sales or receipts for CY 2016 that would have given rise to additional output VAT liability on its part.[96]

89 See Resolution dated 12 April 2024, id., pp. 1685-1686.
90 See Compliance with Submission (Re: Resolution dated 12 April 2024), id., pp. 1693-1717.
91 See Manifestation dated 16 May 2024, id., p. 1689.
92 Supra at note 47.
93 See Notice dated 31 May 2024, Division Docket, Volume III, p. 1718.
94 Id., p. 1720.
95 Id., pp. 1722-1742.
96 See Petitioner's Memorandum, id., pp. 1696-1717.

Petitioner adds that the disallowance of input VAT is not a transaction that gives rise to output VAT liability.[97] The NIRC, as amended, does not provide that the disallowance of input VAT results in a VAT liability, hence respondent's assessment is without any factual or legal basis.[98] It further explains that the amount of output tax due for CY 2016 has already been settled and that it had more than enough input VAT available for each quarter's VAT liability.[99]

Petitioner also claims that respondent has no authority to disallow the input VAT carried over to the succeeding period. The deduction of the entire amount of input VAT amounting to ₱143,140,581.42, arising from the overpayment of input taxes during the 4^{th} quarter of CY 2016, is not within respondent's authority (since the carry-over will be utilized in the succeeding period, and his or her assessment should have only covered CY 2016). Thus, for petitioner, respondent should not have passed upon the validity of the input tax credit available for CY 2017. Lastly, it maintained that it has more than enough input VAT that could be offset against its output VAT liability, hence it should not be required to pay any deficiency output VAT liability for CY 2016.[100]

Responding to petitioner's arguments, respondent contends that petitioner was properly assessed of deficiency VAT in the total amount of ₱53,064,531.57. Respondent reiterates that petitioner has VAT-exempt transactions, thus, the corresponding input tax attributable thereto should have been deducted from the allowable input tax.[101] Again, he or she insists that assessments are always presumed correct and made in good faith. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.[102]

Finally, respondent maintains that the burden of proof is on the taxpayer contesting the validity of an assessment. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.[103]

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97 Id., p. 1706.
98 Id., p. 1707.
99 Id.
100 Id., p. 1715.
101 See Answer, id., Volume II, pp. 789-794.
102 Id., p. 791.
103 Id.

RULING OF THE COURT

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[104] Section 7(a)(1) of Republic Act (**RA**) No. 1125[105], as amended by RA 9282[106], provides:

> ...
>
> **Sec. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.][107]
>
> ...

The perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[108] The law is clear on the period to appeal to this Court if a decision on the protest is denied in whole or in part by the CIR. Section 228 of the NIRC of 1997, as amended, in part, reads as follows:

> ...
>
> **Sec. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings[.] ...
>
> ...

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104 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

105 AN ACT CREATING THE COURT OF TAX APPEALS.

106 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

107 Italics in the original text, emphasis and underscoring supplied.

108 *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

> 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 <u>receipt</u> 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.**[109]
>
> ...

The afore-quoted Section 228 is implemented by Revenue Regulations (**RR**) No. 12-99[110], as amended by RR No. 18-2013[111], issued on 28 November 2013. Relevant portions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provide the taxpayer's options on disputed assessments, to wit:

> ...
>
> Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> Sec. 3.1.4. *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation as follows:

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109 Italics in the original text, emphasis and underscoring supplied.

110 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.

111 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

(i) ***Request for reconsideration*** **— refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.**

(ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

...

For request for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. ...

...

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may <u>either</u>: <u>(i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision</u>; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.[112]

...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[113] (**PAGCOR**) and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[114], explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

[112] Italics in the original text, emphasis and underscoring supplied.

[113] G.R. No. 208731, 27 January 2016; Citation omitted, italics, underscoring and emphasis in the original text and supplied.

[114] G.R. No. 221780, 25 March 2019.

...

Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:

> **1. If the protest is wholly or partially denied by the CIR <u>or</u> his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

...

In this case, We refer to the following pertinent dates and events in determining the timeliness of the instant Petition for Review:

Date	Event
08 March 2021	Petitioner received respondent's FAN/FLD.[115]
07 April 2021	Petitioner filed its Request for Reconsideration (Protest to FAN)[116] within the 30-day reglementary period.
29 December 2021	Petitioner received respondent's FDDA dated 27 December 2021[117], signed by then CIR Dulay.
02 February 2022	Petitioner filed its Petition for Review.[118]

As earlier provided, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a Petition for Review with the CTA. Here, petitioner admits that it received the FDDA on <u>29 December 2021</u>.[119] Counting 30 days therefrom, it originally had until <u>28 January 2022</u> to file its judicial appeal.

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115 Exhibit "R-9" and "R-9-1", supra at note 24.
116 Supra at note 27.
117 Exhibit "R-11", supra at note 5.
118 Supra at note 1.
119 Par. 4, part II, Petition for Review, Division Docket, Volume I, p. 7.

Relevantly, on 10 January 2022, in response to the challenges brought by the COVID-19 pandemic and super typhoon "Odette", the Supreme Court issued Administrative Circular (AC) No. 01-2022.[120] The said AC extended the filing periods of all pleadings and court submissions falling due in the month of January 2022 to 01 February 2022. In consideration thereof, the end of petitioner's period to file his Petition for Review had fallen on 01 February 2022. However, such date coincided with the celebration of Chinese New Year, a designated special non-working day (pursuant to Proclamation No. 1236, s. 2021[121]). Thus, petitioner had until Wednesday, 02 February 2022, or the next working day, to file his Petition. Clearly then, petitioner timely filed the instant Petition for Review on **02 February 2022.**[122]

We now proceed to a discussion of the merits of the case.

PETITIONER FAILED TO PROPERLY ATTRIBUTE INPUT TAXES ALLOCABLE TO ITS EXEMPT SALES.

Here, petitioner insists that respondent failed to identify any unreported sales or receipts that would have given rise to any additional output VAT liability. It further argued that the disallowance of input VAT is not a transaction that gives rise to any output VAT liability, hence respondent's assessment lacks factual and legal basis.

On the other hand, respondent maintains that petitioner has VAT-exempt transactions, thus the corresponding input taxes attributable thereto shall be deducted from the allowable input tax pursuant to Section 110(A)(3)[123] of the NIRC of 1997, as amended.[124]

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120 RE: EXTENSION OF THE DEADLINES FOR THE FILING OF ANY AND ALL PLEADINGS AND OTHER COURT SUBMISSIONS FALLING DUE IN THE MONTH OF JANUARY 2022 IN ALL COURTS.

121 DECLARING THE REGULAR HOLIDAYS AND SPECIAL (WORKING/NON-WORKING) DAYS FOR THE YEAR 2022.

122 Supra at note 1.

123 SEC. 110. *Tax Credits.* –
(A) *Creditable Input Tax.* –
...
(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:
(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and
(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

124 See Answer, Division Docket, Volume II, p. 791.

Accordingly, input taxes allocable to exempt sales aggregating to ₱32,427,929.99 were assessed based on the table computation below[125]:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
VATable sales	37,396,748.42	15,966,967.58	45,378,527.42	28,359,987.25	127,102,230.67
Exempt Sales	404,390,761.52	355,020,842.06	624,885,601.26	476,481,588.56	1,860,778,793.40
Total	441,787,509.94	370,987,809.64	670,264,128.68	504,841,575.81	1,987,881,024.07
Ratio of Exempt Sales to Total Receipts	91.535%	95.696%	93.230%	94.382%	
Input tax on current purchases:					
Domestic purchases of goods	53,452.85	75,063.09	77,687.78	101,958.14	308,161.86
Domestic purchase of services	5,536,461.98	11,246,074.06	13,883,270.15	12,728,714.10	43,394,520.29
Purchase of capital goods not exceeding ₱1 million	14,638.22	5,916.43	77,613.38	42,857.14	141,025.17
Services rendered by non-residents	-	-	-	696,049.07	696,049.07
TOTAL	5,604,553.05	11,327,053.58	14,038,571.31	13,569,578.45	44,539,756.39
Input Tax Allocable to Exempt Sales	5,130,134.79	10,839,547.81	13,088,125.56	12,807,293.63	
Input Tax Allocable to Exempt Sales *per* Returns	1,823,077.69	2,368,873.44	2,457,074.86	2,788,145.81	
Disallowed Input Tax	3,307,057.10	8,470,674.37	10,631,050.70	10,019,147.82	32,427,929.99

125 See Schedule 1 attached to FDDA, BIR Records, Folder 2, p. 264-A.

We find respondent's disallowance of input tax proper.

Section 110(C) of the NIRC of 1997, as amended, provides for the determination of the amount of input tax creditable for a certain period, as follows:

> ...
> Sec. 110. *Tax Credits.* —
> ...
>
> (C) *Determination of Creditable Input Tax.* — The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be reduced by the amount** of claim for refund or tax credit for value-added tax and **other adjustments, such as** purchase returns or allowances and **input tax attributable to exempt sale.**
>
> The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments and the Bureau of Customs.[126]
>
> ...

The Court finds that petitioner has been engaged in taxable and exempt sales, or in mixed transactions. It is clearly shown that for CY 2016, it reported in its Quarterly VAT returns[127] taxable sales subject to 12% VAT and exempt sales. Accordingly, if a VAT-registered entity is engaged in VATable and VAT-exempt transactions, the tax credits allowable will be computed under an apportionment formula, in view of the provision of Section 112(A) of the NIRC of 1997, as amended, to wit:

> ...
> [W]here the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it **shall be allocated proportionately on the basis of the volume of sales.**[128]
> ...

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126 Emphasis supplied and italics in the original text.
127 See Exhibit "P-27", Exhibit "P-28", Exhibit "P-29" and Exhibit "P-30", Division Docket, Volume III, pp. 1521-1528.
128 Emphasis supplied.

Corollary thereto, Section 4.110-4 of RR No. 16-2005[129] provides the guidelines in determining the amount of input tax attributable to a specific sales type in case of mixed sales for a particular period. The pertinent provisions state:

> ...
> SEC. 4.110-4. *Apportionment of Input Tax on Mixed Transactions.* — A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed to recognize input tax credit on transactions subject to VAT as follows:
>
> 1. All input taxes that can be directly attributed to transactions subject to VAT may be recognized for input tax credit; *Provided*, that input taxes that can be directly attributable to VAT taxable sales of goods and services to the Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall not be credited against output taxes arising from sales to non-Government entities; and
>
> 2. **If any input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for input tax credit.**[130]
>
> ...

Thus, based on the foregoing, there is no dispute that when there are mixed transactions, and a direct attribution of the input VAT cannot be made on such sales, a proportionate allocation on the basis of volume of sales must be made. No tax credit, however, is allowed for input taxes in case of VAT-exempt transactions. Thus, contrary to petitioner's argument, it appears that respondent's assessment has both factual and legal basis. Since petitioner has transactions exempt from payment of VAT, the corresponding input taxes attributable thereto should have been deducted from the allowable input tax pursuant to Section 110(A)(3)[131] of the NIRC of 1997, as amended.

It is noted that the records do not support petitioner's insistence that it could not be liable for deficiency VAT. Upon examination of the

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129 Consolidated Value-Added Tax Regulations of 2005, dated 01 September 2005.
130 Italics in the original and emphasis supplied.
131 Supra at note 123.

FDDA, it appears that respondent properly computed its VAT deficiency. We reproduce below the relevant portion of the FDDA[132], *viz*:

VATable Receipts *per* Returns		127,102,230.67
VAT Rate		12%
Output Tax		15,252,267.68
Less: Total allowable input tax		
Input tax from previous period	123,627,778.97	
Input tax on current purchases	44,539,756.39	
Total available input tax	168,167,535.36	
Add: Input tax forwarded to succeeding period	(142,173,362.82)	
Input tax on purchases of capital goods deferred to succeeding period	(1,304,733.06)	
Input tax allocable to exempt sales *per* return	(9,437,171.80)	
Input tax allocable to Exempt Sales *per* audit	(32,427,929.99)	(17,175,662.31)
VAT Due		32,427,929.99
Add: Interest at 20% p.a. (1/26/17 to 12/31/17)	6,041,367.78	
Interest at 12% p.a. (1/1/18 to 9/30/21)	14,595,233.80	20,636,601.58
DEFICIENCY VAT		**₱ 53,064,531.57**

According to petitioner, it has available input VAT for the CY 2016 amounting to ₱168,167,535.36, thus it can therefore offset the ₱15,252,267.88 VAT due and the additional disallowance of ₱32,427,929.99. It further argued that respondent has no authority to disallow the input VAT carried over to the succeeding period.[133]

Upon examination of the FDDA, it appears that respondent's disallowance does not pertain to the input VAT carried over to the succeeding period. Instead, the same pertains to petitioner's failure to properly allocate its input tax that should have been allocated to its exempt sales.

We also do not find any merit in petitioner's argument that respondent lacked the necessary authority to disallow the input VAT

132 Supra at note 5.

133 See petitioner's Memorandum, supra at note 96, p. 1712.

carried over to the succeeding period. Here, the disallowance of excess input tax carry-over is not disallowance *per se*. It is employed so as not to disrupt the amount of deficiency tax being assessed for the period.

The next important query is - is it proper for petitioner to utilize its excess input tax carry-over and apply it against respondent's assessment on disallowed input taxes? The Court responds in the negative.

Firstly, if We are to sustain petitioner's argument that the available input VAT for the year amounting to ₱168,167,535.36 should be utilized against the ₱15,252,267.88 VAT due and the additional disallowance of ₱32,427,929.99, a portion of the excess input tax that should have been carried forward and utilized in the subsequent period would be utilized and offset against the basic deficiency VAT. This procedure will be in violation of the rule that the tax benefit from excess tax credits carried forward redounds to the subsequent period.[134]

Secondly, if respondent's assessment will not be sustained, petitioner's input tax that will be forwarded to the succeeding period will be overstated by ₱32,427,929.99. To the mind of the Court, there could be no VAT deficiency finding if petitioner had properly reported its input taxes in its VAT Quarterly Returns. If this Court will not "disallow" or reduce the total allowable input tax, this would put additional burden on the taxpayer to amend subsequent returns to remove the excess input tax already utilized in order to prevent any BIR assessment on the matter. Additional burden would also be imposed upon the BIR to monitor the decisions of this Court to make sure that utilized excess tax credits are not being utilized again in the subsequent periods. This additional burden imposed (on both parties) will clearly violate the canons of a sound tax system, specially on administrative feasibility. In *Municipality of Cainta v. City of Pasig and Uniwide Sales Warehouse Club, Inc.*[135], the Supreme Court ruled that tax administration should not be inconvenient to the taxpayer, it was held thusly:

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[134] See *Commissioner of Internal Revenue v. De La Salle University Inc.*, G.R. Nos. 196596, 198841 & 198941, 09 November 2016.

[135] G.R. No. 176703 & 176721, 28 June 2017; Citation omitted, italics in the original and emphasis supplied.

> ...
>
> Without the adjudication of the RTC-Antipolo finally determining the precise territorial jurisdiction of these local government units *(LGU[s])*, these documents alone cannot automatically effect a modification or amendment to the stated location in the TCTs for the purpose of exacting tax compliance, as the taxpayer is entitled to rely on the location clearly reflected in the certificate of title covering the properties. To hold otherwise would subject taxpayers to the vagaries of boundary disputes, to their prejudice and inconvenience and to the detriment of proper tax administration. Such scenario is contrary to the canons of a sound tax system. **Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer.**
>
> ...

In sum, petitioner failed to sufficiently establish how it plans to utilize the input tax carried over of ₱143,140,581.42. If We are to allow this without ascertaining that such excess input tax carried over is still available, petitioner may end up benefiting twice from it, *i.e.*, tax credit against output VAT in the subsequent periods and payment for deficiency VAT at the expense of the government.

Lastly, petitioner cannot claim that it should not be assessed for deficiency VAT on the ground that its available input VAT for the year amounting to ₱168,167,535.36, can be used to offset the additional disallowance of ₱32,427,929.99. In the case of *Philex Mining Corporation v. Commissioner of Internal Revenue, Court of Appeals and the Court of Tax Appeals*[136], the Supreme Court ruled that taxes cannot be subject to set-off or compensation since claim for taxes is not a debt or contract, this would amount to a violation of basic principle that taxes are the lifeblood of the government, *viz:*

> ...
>
> Moreover, the Court of Tax Appeals ruled that "taxes cannot be subject to set-off on compensation since claim for taxes is not a debt or contract."
>
> ...
>
> We fail to see the logic of Philex's claim for this is an outright disregard of the basic principle in tax law that **taxes are the lifeblood**

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[136] G.R. No. 125704, 28 August 1998; Citations omitted and emphasis supplied.

of the government and so should be collected without unnecessary hindrance. Evidently, to countenance Philex's whimsical reason would render ineffective our tax collection system. Too simplistic, it finds no support in law or in jurisprudence.

To be sure, **we cannot allow Philex to refuse the payment of its tax liabilities on the ground that it has a pending tax claim for refund or credit against the government which has not yet been granted.** It must be noted that a distinguishing feature of a tax is that it is **compulsory** rather than a matter of bargain. Hence, a tax does not depend upon the consent of the taxpayer. **If any taxpayer can defer the payment of taxes by raising the defense that it still has a pending claim for refund or credit, this would adversely affect the government revenue system.** A taxpayer cannot refuse to pay his taxes when they fall due simply because he has a claim against the government or that the collection of the tax is contingent on the result of the lawsuit it filed against the government. Moreover, Philex's theory that would automatically apply its VAT input credit/refund against its tax liabilities can easily give rise to confusion and abuse, depriving the government of authority over the manner by which taxpayers credit and offset their tax liabilities.

Corollarily, the fact that Philex has pending claims for VAT input claim/refund with the government is immaterial for the imposition of charges and penalties prescribed under Section 248 and 249 of the Tax Code of 1977. The payment of the surcharge is mandatory and the BIR is not vested with any authority to waive the collection thereof. The same cannot be condoned for flimsy reasons, similar to the one advanced by Philex in justifying its non-payment of its tax liabilities.

...

PETITIONER FAILED TO OVERCOME WITH EVIDENCE THE CORRECTNESS OF RESPONDENT'S ASSESSMENT.

A review of petitioner's evidence yields that it failed to adduce evidence to negate respondent's finding that it failed to properly allocate input taxes attributable to its transactions exempt from payment of VAT, pursuant to Section 110(A)(3)[137] of the NIRC of 1997, as amended. As the records clearly bear, it simply relied on a bare argument that it has sufficient input taxes that can be applied to the said disallowance. We quote below the pertinent portion of Lozada's testimony[138], to wit:

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137 Supra at note 123.
138 Supra at note 72, pp. 575-576.

...

20. Q: You mentioned in your answer to Question No. 14 **that [p]etitioner had input taxes which it may use to settle the [o]utput taxes due each quarter of CY 2016.** Would you know the result after [p]etitioner has applied the input VAT against the [o]utput VAT due for each quarter?

A: At the end of each quarter the [p]etitioner still had an **overpayment or excess [i]nput VAT** amounting to the following:

1st quarter - ₱121,157,817.00
2nd quarter - ₱128,420,252.03
3rd quarter - ₱134,766,980.61
4th quarter - ₱143,140,581.42

...

24. Q: I am showing you item no. 29 of the Quarterly [VAT] Return for the 4th Quarter which indicates the amount (143,140,581.42), which for the record were pre-marked as Exhibit P-30-4. Is this Net VAT overpayment or excess input VAT for the 4th Quarter?

A: Yes.

25. Q: What will happen to the amount you mentioned in Question number 24?

A: The amount of ₱143,140,581.42 will be **carried forward to the next period or in the 1st Quarter of 2017 as available input VAT that may be used to offset against the [o]utput liabilities in the succeeding period.**[139]

...

In addition, we also highlight petitioner's argument in its Memorandum[140], to wit:

...

39. Following the above discussion, [p]etitioner **has more than enough [i]nput VAT to offset against the proposed VAT assessment of the [r]espondent even if the disallowance is treated as an additional output VAT liability.**[141]

...

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139 Emphasis supplied.
140 Supra at note 96, pp. 1711-1712.
141 Emphasis supplied.

Tersely, the burden of proof is always on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands.[142] In this case, petitioner has failed to discharge that burden of proof.

WHEREFORE, with the foregoing premises, the Petition for Review filed by petitioner National Reinsurance Corporation of the Philippines on 02 February 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

142 *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, 31 March 2005.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice