REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FARCON MARKETING CORP., Petitioner,	**CTA CASE NO. 8367**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: APR 16 2015 3:54 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

Before this Court is respondent's **Motion for Reconsideration (Decision of 03 February 2015)** filed on February 20, 2015, with petitioner's **Opposition (To the Motion for Reconsideration dated February 20, 2015)** filed on March 20, 2015.

Respondent seeks reconsideration of the Court's Decision dated February 3, 2015, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency income tax assessment in the amount of P516,502.26, inclusive of interest, for calendar year 2007 is hereby **CANCELLED** and **WITHDRAWN**.

The aforesaid motion is anchored on the sole ground that "the Assessment Notice and Formal Letter of Demand with Details of Discrepancies state the factual and legal bases of the assessment"[1].

Respondent contends that the bases and foundation of the assessment were derived on petitioner's income as declared in the latter's Income Tax Return and the unsupported expenses. The said expenses were disallowed due to the alleged failure of petitioner to meet the substantiation requirements provided by Section 34 (A)(1)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent likewise emphasizes that an assessment is presumed correct and made in good faith, unless the taxpayer proves otherwise. Further, respondent alleges that since there is no proof that the said assessment is erroneous or arbitrary, the assessment should stand.

Petitioner opposes the motion on the basis that respondent failed to comply with the ruling pronounced in the case of *CIR vs. Hantex* when resorting to the Best Evidence Obtainable Rule. Petitioner posits that it is absurd to prove the correctness of an assessment just by presenting the assessment itself.

We deny respondent's Motion for Reconsideration.

After a thorough evaluation of the respondent's discussion, the Court finds the same as mere rehash of what has been extensively passed upon in the assailed Decision.

The Court emphasizes that in applying the Best Evidence Obtainable Rule laid down in the case of *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[2], (*Hantex* case) respondent may determine petitioner's tax liability through estimation, however, such estimation should be based on sufficient evidence[3].

While petitioner established the fact that its accounting records were destroyed by typhoons Ondoy and Pepeng[4], respondent may alternatively seek other modes or obtain information from other sources in order to assess the proper tax. Yet, a perusal of the

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[1] Docket, p. 484.
[2] G.R. 136975, March 31, 2005, 454 SCRA 301, 329.
[3] *Ibid.*
[4] Exhibits "D", "D-1", and "D-2", docket, pp. 85-87.

records shows that respondent, while resorting to the Best Evidence Obtainable Rule, failed to present any evidence supposedly procured as basis of the deficiency assessment against petitioner.[5]

We reiterate the ruling of the Supreme Court in the *Hantex* case, to wit:

> The "best evidence" envisaged in Section 16 of the 1977 NIRC, as amended, includes the **corporate and accounting records of the taxpayer** who is the subject of the assessment process, the **accounting records of other taxpayers engaged in the same line of business, including their gross profit and net profit sales**. Such evidence also includes **data, record, paper, document or any evidence gathered by internal revenue officers from other taxpayers who had personal transactions or from whom the subject taxpayer received any income; and record, data, document and information secured from government offices or agencies, such as the SEC, the Central Bank of the Philippines, the Bureau of Customs, and the Tariff and Customs Commission**.
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> The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable the BIR to get at the taxpayer's records in whatever form they may be kept. Such records include computer tapes of the said records prepared by the taxpayer in the course of business. In this era of developing information-storage technology, there is no valid reason to immunize companies with computer-based, record-keeping capabilities from BIR scrutiny. *The standard is not the form of the record but where it might shed light on the accuracy of the taxpayer's return.*
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> In *Campbell, Jr. v. Guetersloh*, the United States (U.S.) Court of Appeals (5th Circuit) declared that it is the duty of the Commissioner of Internal Revenue to investigate any circumstance which led him to believe

[5] Docket, p. 480.

> that the taxpayer had taxable income larger than reported. Necessarily, this inquiry would have to be outside of the books because they supported the return as filed. He may take the sworn testimony of the taxpayer; he may take the testimony of third parties; he may examine and subpoena, if necessary, traders' and brokers' accounts and books and the taxpayer's book accounts. The Commissioner is not bound to follow any set of patterns. The existence of unreported income may be shown by any practicable proof that is available in the circumstances of the particular situation. Citing its ruling in *Kenney v. Commissioner*, the U.S. appellate court declared that **where the records of the taxpayer are manifestly inaccurate and incomplete, the Commissioner may look to other sources of information to establish income made by the taxpayer during the years in question**. *(Emphases supplied.)*
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> The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.
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> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. 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.[6]

WHEREFORE, considering the foregoing, respondent's **Motion for Reconsideration (Decision of 03 February 2015)** is **DENIED** for lack of merit.

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[6] *Supra*, note 2.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice