REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

POWERNET SYSTEMS CORP.,
Petitioner,

CTA CASE NO. 10383

-versus-

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 11 2024
4:02 p.m.
x---x

DECISION

RINGPIS-LIBAN, J.

THE CASE

This *Petition for Review* filed on October 23, 2020 prays for the cancellation of the *Final Decision on Disputed Assessment* (FDDA) No. 040-2018-B074-15.[1]

THE PARTIES

Petitioner Powernet Systems Corp. is a domestic corporation duly organized under and by virtue of Philippine law, with principal office address at 88 New York Street corner Cambridge Street, Cubao, Quezon City.[2]

Respondent Commissioner of Internal Revenue is the duly mandated person authorized to implement the National Internal Revenue Code (NIRC), including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws administered by the Bureau of Internal Revenue (BIR). He may be served with summons,

[1] Summary of the Case, Pre-Trial Order dated December 2, 2021, Docket, p. 307.
[2] Par. 1, Facts Stipulated by Both Parties, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 299.

pleadings, and other processes at his office at the Litigation Division, Room 703 of the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS OF THE CASE

The BIR issued the LOA No. LOA-040-2017-00000134 / SN: eLA201500077042 dated May 23, 2017,[4] authorizing Revenue Officer (RO) Helenita Villablanca / Group Supervisor Judith Arcinue of Revenue District No. 040 – Cubao, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the period from January 1, 2015 to December 31, 2015.

Respondent issued the *Preliminary Assessment Notice* (PAN) on November 26, 2018,[5] informing petitioner that after investigation, there has been found due from the latter deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC), including interests, in the aggregate amount of ₱15,150,907.50, for taxable year 2015.

Subsequently, respondent issued the *Formal Letter of Demand* (FLD) dated December 14, 2018, with *Details of Discrepancies* and *Assessment Notices*,[6] assessing petitioner of deficiency income tax, VAT, EWT, and WTC, including interests, for the same taxable year, in the aggregate amount of ₱15,245,957.55, summarized as follows:

	Basic Tax	Interest	Total
Income tax	₱ 6,849,450.76	₱ 3,160,880.78	₱ 10,010,331.54
VAT	3,228,287.05	1,633,071.01	4,861,358.06
EWT	171,306.16	87,596.11	258,902.27
WTC	76,333.25	39,032.43	115,365.68
Total	**₱10,325,377.22**	**₱4,920,580.33**	**₱15,245,957.55**

In the FLD dated December 14, 2018, with attached *Details of Discrepancies* and *Assessment Notices*, and received by petitioner on even date,[7] respondent assessed petitioner with deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) in the aggregate amount of ₱15,245,957.55.

[3] Par. 3, Facts Stipulated by Both Parties, JSFI, Docket, pp. 299 to 300.
[4] Exhibit "R-2" [BIR Records (Exhibit "R-1", p. 1)], vis-à-vis par 5, Facts Stipulated by Both Parties, JSFI, Docket, p. 300.
[5] Exhibit "P-2" (Docket, pp. 352 to 357) and Exhibit "R-5" [BIR Records (Exhibit "R-1", pp. 312 to 317)], vis-à-vis par. 6, Facts Stipulated by Both Parties, JSFI, Docket, p. 300.
[6] Exhibits "P-3", "P-3-A", "P-3-B", "P-3-C", and "P-3-D" (Docket, pp. 358 to 367) and Exhibits "R-6", "R-6-A", "R-6-B", "R-6-C", "R-6-D", [BIR Records (Exhibit "R-1", pp. 335 to 344)], vis-à-vis par. 7, Facts Stipulated by Both Parties, JSFI, Docket, p. 300.
[7] Exhibit "P-3" and "P-3-A" to "P-3-D" for petitioner and Exhibits "R-6" and "R-6-A" to "R-6-D" for respondent, Docket, pp. 358 to 367 and 477 to 486, respectively

Petitioner then filed a request for reconsideration with the BIR on December 27, 2018.[8]

The BIR issued the assailed FDDA, which is dated September 4, 2020 and was received by petitioner of September 23, 2020.[9] In said FDDA, with attached *Details of Discrepancies* and *Assessment Notices*,[10] the assessments against petitioner were upheld, with adjustments on the interest, which then aggregated to ₱17,439,858.29, summarized as follows:

	Basic Tax	**Interest**	**Total**
Income tax	₱ 6,849,450.76	₱ 4,617,843.40	₱ 11,467,294.16
VAT	3,228,287.05	2,319,767.47	5,548,054.52
EWT	171,306.16	124,035.04	295,341.20
WTC	76,333.25	52,835.16	129,168.41
Total	**₱10,325,377.22**	**₱7,114,481.07**	**₱17,439,858.29**

Petitioner filed the present *Petition for Review* on October 23, 2020.[11]

Within the extended time granted by the Court,[12] respondent posted his *Answer* on January 11, 2021,[13] interposing the following special and affirmative defenses, to wit:

1. The PAN, FLD, and FDDA sufficiently provided the factual and legal basis for the assessments;

2. The FDDA provided a definite tax liability due, and clearly specified the total amount due for every assessment item and the due date for payment on October 5, 2020. Hence, there is no violation of petitioner's right to due process;

3. No supporting documents were submitted by petitioner to prove its allegations in the protest. Thus, the assessment was reiterated in the FDDA; and

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

[8] Exhibit "P-4", Docket, pp. 368 to 371; and par. 3, Facts Stipulated by Both Parties, JSFI, Docket, pp. 299 to 300.
[9] Pars. 4 and 8, Facts Stipulated by Both Parties, JSFI, Docket, p. 300.
[10] Exhibit "P-5", Docket, pp. 372 to 378.
[11] Docket, pp. 6 to 34.
[12] *Motion for Extension of Time to File Answer* filed on December 10, 2020, and Order dated December 14, 2020, Docket, pp. 152 to 154 and 156, respectively.
[13] Docket, pp. 209 to 214.

On January 19, 2021, respondent transmitted the *BIR Records* for the present case,[14] consisting of four hundred thirty (430) pages in one (1) folder.

The Pre-Trial Conference was initially set on March 8, 2021.[15] Prior to said date, *Respondent's Pre-Trial Brief* was filed on March 3, 2021;[16] while petitioner filed its *Pre-Trial Brief* on March 4, 2021.[17]

However, during the scheduled Pre-Trial Conference, upon agreement of both parties, the case was referred to mediation and the Court thereby ordered the parties to immediately proceed and to personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).[18]

Thereafter, on September 27, 2021, the PMC-CTA returned the case to Court on the ground that mediation was refused by petitioner.[19] Thus, the Court set and held the case anew for pre-trial on October 20, 2021.[20]

On November 8, 2021, the parties filed their *Joint Stipulation of Facts and Issues*,[21] which was approved and adopted by the Court in the Pre-Trial Order dated December 2, 2021.[22]

Trial thereafter ensued.

Petitioner offered the testimony of its President, Mr. Antonio Ramon T. Ongsiako.[23]

Thereafter, on March 25, 2022, petitioner filed its *Formal Offer of Evidence*.[24] Respondent filed his *Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated March 25, 2022)* on April 4, 2022.[25] In the Resolution dated April 20, 2022,[26] the Court admitted all of petitioner's offered exhibits, except for Exhibit "P-8" for failure to present the original for comparison.

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[14] Docket, pp. 157 to 158.
[15] Notice of Pre-Trial Conference dated January 21, 2021, Docket, pp. 258 to 259.
[16] Docket, pp. 264 to 271.
[17] Docket, pp. 272 to 281.
[18] Minutes of hearing held on, and Order dated, March 8, 2021, Docket, pp. 282 to 284; Resolution dated March 12, 2021, Docket, p. 286.
[19] PMC-CTA Back to Court Submission dated September 27, 2021 and *Manifestation and Motion* of petitioner dated August 23, 2021, Docket, pp. 292 to 295.
[20] Resolution dated October 6, 2021, and Order dated October 20, 2021, Docket, pp. 297 to 298.
[21] Docket, pp. 299 to 304.
[22] Docket, pp. 307 to 311.
[23] Exhibit "P-11", Docket, pp. 66 to 82; Minutes of hearing held on, and Order dated, March 23, 2022, Docket, pp. 323 to 324.
[24] Docket, pp. 325 to 331.
[25] Docket, pp. 430 to 432.
[26] Docket, pp. 434 to 435.

For his part, respondent offered the testimony of RO Ayesha Hajar A. Magalin.[27]

Respondent's Formal Offer of Evidence was filed on October 27, 2022,[28] to which petitioner posted its *Comment (to Respondent's Formal Offer of Evidence)* on November 4, 2022.[29] In the Resolution dated January 16, 2023,[30] the Court admitted all of respondent's offered exhibits.

Respondent's Memorandum was filed on February 27, 2023;[31] while petitioner submitted its *Memorandum* on March 20, 2023.[32]

The case was deemed submitted for decision on April 11, 2023.

THE ISSUES

The parties submit the following issues for this Court's resolution, to wit:

> "1. Whether or not the assessments for deficiency Income Tax, Value Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation for taxable year 2015 are valid.
>
> 2. Whether or not the Petitioner is liable for payment of deficiency Income Tax, Value Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation for taxable year 2015".[33]

THE ARGUMENTS OF THE PARTIES

Petitioner argues that the FDDA issued by respondent is not valid assessment as the latter violates its right to due process of law; that assuming without admitting that the FDDA is valid, petitioner is not liable for deficiency income tax, VAT, EWT, and WTC; and that respondent's witness was incompetent to testify on the documents she identified in her testimony.

Respondent counter-argues that the PAN, FLD, and FDDA sufficiently provided the factual and legal basis for the assessments; that the FDDA provides a definite tax liability due, that it clearly specified the total amount due for every assessment item and the due date for payment on October 5, 2020, hence, there

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[27] Exhibit "R-7", Docket, pp. 218 to 225; Minutes of the hearing held on, and Order dated, October 26, 2022, Docket, pp. 442 to 444.
[28] Docket, pp. 451 to 456.
[29] Docket, pp. 488 to 491.
[30] Docket, pp. 497 to 498.
[31] Docket, pp. 503 to 508.
[32] Docket, pp. 513 to 548.
[33] Issues to be Resolved, JSFI, Docket, p. 300.

is no violation of petitioner's right to due process; that no supporting documents were submitted by petitioner to prove its allegations in the protest, thus, the assessment was reiterated in the FDDA; and that assessments are *prima facie* presumed correct and made in good faith and that petitioner has the duty of proving otherwise.

THE COURT'S RULING

The present *Petition for Review* is partially meritorious.

When the assessment is comprised of several issues, only the particular issues validly protested are considered disputed; while the particular issues undisputed become final, executory and demandable.

The FLD dated December 14, 2018 presents the computation of deficiency tax assessments against petitioner for taxable year 2015, as follows:

INCOME TAX

Taxable Income/(Loss) per Income Tax Return (ITR)			₱(587,737.00)
Add: Adjustments per Investigation:			
Undeclared Income		₱1,331,836.19	
Undeclared Income from Undeclared Purchases		417,967.18	
Unaccounted Related Party Transactions		18,798,903.00	
Disallowed Expenses due to Non-Withholding		2,231,259.16	
Salaries, Wages and Benefits not subjected to Withholding Tax on Compensation (WC)		51,537.00	22,831,502.53
Taxable Income per Investigation			22,243,765.53
Add: Net Operating Loss Carry-Over			587,737.00
Adjusted Taxable Income			22,831,502.53
Income Tax Due (30%)			6,849,450.76
Less: Allowed Tax Credits/Payments			
Prior Year's Excess Tax Credits		874,664.00	
Less: Excess Tax Credits Credited Forward to the Succeeding Period	₱775,785.00		
Excess MCIT over NCIT Carried Forward to the Succeeding Period	98,879.00	874,664.00	-
Deficiency Income Tax			6,849,450.76
Add: 20% interest (April 16, 2016 to December 31, 2017)		2,345,702.31	
12% interest (January 1, 2018 to December 28, 2018)		815,178.47	3,160,880.78
TOTAL AMOUNT DUE			**₱10,010,331.54**

VALUE-ADDED TAX

Vatable sales per VAT Returns	₱22,881,581.52
Add: Adjustments per Investigation	

Undeclared Sales	₱6,165,908.29	
Undeclared Sales from Undeclared Purchases	1,935,033.23	
Unaccounted Related Party Transactions	18,798,903.00	
Sales not subject to VAT	2,547.48	26,902,392.00
Adjusted Vatable Sales		49,783,973.52
Output tax Due (12%)		5,974,076.82
Less: Allowed Tax Credits/Payments		
Input Tax on Current Purchases	2,247,030.54	
VAT Payments	498,759.23	2,745,789.77
Deficiency VAT		3,228,287.05
Add: 20% interest (January 26, 2016 to December 31, 2017)	1,248,860.63	
12% interest (January 1, 2018 to December 28, 2018)	384,210.38	1,633,071.01
TOTAL AMOUNT DUE		**₱4,861,358.06**

EXPANDED WITHHOLDING TAX

Basic Tax Due		₱171,306.16
Add: 20% interest (January 16, 2016 to December 31, 2017)	₱67,208.33	
12% interest (January 1, 2018 to December 28, 2018)	20,387.78	87,596.11
TOTAL AMOUNT DUE		**₱258,902.27**

WITHHOLDING TAX ON COMPENSATION

Basic Tax Due		₱76,333.25
Add: 20% interest (January 16, 2016 to December 31, 2017)	₱29,947.73	
12% interest (January 1, 2018 to December 28, 2018)	9,084.70	39,032.43
TOTAL AMOUNT DUE		**₱115,365.68**

Based on the foregoing, the following summarizes the assessment findings/items for deficiency income tax and VAT:

Description	Amount
Income tax	
Undeclared Income	₱ 1,331,836.19
Undeclared Income from Undeclared Purchases	417,967.18
Unaccounted Related Party Transactions	18,798,903.00
Disallowed Expenses due to Non-Withholding	2,231,259.16
Salaries, Wages and Benefits not subjected to Withholding Tax on Compensation (WC)	51,537.00
Net Operating Loss Carry-Over (NOLCO)	587,737.00
Excess Tax Credits Credited Forward to the Succeeding Period	775,785.00
Excess MCIT over NCIT Carried Forward to the Succeeding Period	98,879.00
VAT	
Undeclared Sales	₱ 6,165,908.29
Undeclared Sales from Undeclared Purchases	1,935,033.23
Unaccounted Related Party Transactions	18,798,903.00
Sales not subject to VAT	2,547.48

Section 228 of the NIRC of 1997, as amended, provides that **the 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.

Relevant thereto, Section 3.1.4 of Revenue Regulations (RR) No. 12-99[34], as amended by RR No. 18-2013[35], provides as follows:

> "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 defined as follows:
>
> (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.
>
> **The taxpayer <u>shall</u> state in his protest** (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and **(iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, <u>otherwise</u>, his protest shall be considered void and without force and effect.**
>
> **If there are several issues involved in the FLD/FAN but the taxpayer <u>only disputes or protests against the validity of some of the issues raised</u>, the <u>assessment attributable to the undisputed issue or issues shall become final, executory and demandable</u>**; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment

[34] SUBJECT: 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 Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[35] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

xxx xxx xxx

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable." *(Emphases and underscoring added)*

Based on the foregoing provisions, what constitutes as a valid protest must have the following details:

(i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation,
(ii) date of the assessment notice, and
(iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based.

Accordingly, failure to comply with foregoing renders the protest without force and effect and, consequently, void.

Furthermore, when the assessment is comprised of several issues, RR No. 12-99, as amended by RR No. 18-2013, gives the taxpayer the discretion which particular issue/s in the assessment to protest. Thus, if a particular issue is not protested, the same is considered undisputed and as such, the assessment attributable thereto, becomes final, executory and demandable.

The said RR also provides that in protesting a particular issue, the same is likewise bound by the requirement of stating the facts, the applicable law, rules and regulations, or jurisprudence in support thereof. Such being the case, failure to provide the same renders it undisputed and thus becomes final, executory and demandable.

A perusal of the undated request for reconsideration on the FLD filed on December 27, 2018[36] shows that it indeed indicates that it is a request for reconsideration, and the date of the assessment notice, in compliance with the form and manner of a valid protest as prescribed by the above-quoted provisions of RR No. 12-99, as amended by RR No. 18-2013, *viz*:

> "This has in reference to the **assessment notice dated December 14, 2018** relative to the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation of Powernet Systems Corp. for the Taxable Year 2015.
>
> Relative thereto, we are **filing a request for reconsideration** disputing the following assessments:
>
> xxx xxx xxx." *(Emphases added)*

However, as can be recalled, the assessment against petitioner is comprised of several issues or assessment items/findings. A further reading of the said request for reconsideration shows that, among the several issues raised, petitioner protests only the following assessment items/findings under deficiency income tax and VAT:

Description	Amount
Income tax	
Undeclared Income	₱ 1,331,836.19
Undeclared Income from Undeclared Purchases	417,967.18
Unaccounted Related Party Transactions	18,798,903.00
Net Operating Loss Carry-Over	587,737.00
Excess Tax Credits Credited Forward to the Succeeding Period	775,785.00
Excess MCIT over NCIT Carried Forward to the Succeeding Period	98,879.00
VAT	
Undeclared Sales	₱ 6,165,908.29
Undeclared Sales from Undeclared Purchases	₱1,935,033.23
Unaccounted Related Party Transactions	18,798,903.00

while the rest of the assessment items under deficiency income tax and VAT, as shown below, as well as the deficiency EWT and WTC, were no longer protested, to wit:

[36] Exhibit "P-4", Docket, pp. 368 to 371; and par. 3, Facts Stipulated by Both Parties, JSFI, Docket, pp. 299 to 300.

Description	Amount
Income tax	
Disallowed Expenses due to Non-Withholding	₱2,231,259.16
Salaries, Wages and Benefits not subjected to WTC	51,537.00
VAT	
Sales not subject to VAT	2,547.48

Thus, with respect to the foregoing undisputed items, the same are already final, executory and demandable. Verily, a tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 of the NIRC of 1997 can no longer be contested.[37]

As for the following assessment items/findings under deficiency income tax and VAT which were protested by petitioner, the Court shall determine their propriety in succession:

Description	Amount
Income Tax	
Undeclared Income	₱1,331,836.19
Undeclared Income from Undeclared Purchases	417,967.18
Unaccounted Related Party Transactions	18,798,903.00
Net Operating Carry Over	587,737.00
Excess Tax Credits Credited Forward to Succeeding Period	775,785.00
Excess MCIT over NCIT Carried Forward to the Succeeding Period	98,879.00
VAT	
Undeclared Sales	₱6,165,908.29
Undeclared Sales from Undeclared Purchases	1,935,033.23
Unaccounted Related Party Transactions	18,798,903.00

INCOME TAX

I. Undeclared Income - ₱1,331,836.19.

Upon comparison of the respondent of the amount of gross sales computed based on Third-Party Information (TPI) against that declared per Summary List of Sales (SLS) showed that there are undeclared sales amounting to ₱6,165,908.29 which was multiplied by the gross profit rate (GPR) to arrive at the amount of undeclared income that should be subjected to income tax pursuant to provision of Section 32 of the NIRC, as amended.

[37] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.

Schedule 1:

Name of Customer	Sales per SLS	Sales per TPI	Discrepancy
AWC (Philippines), Inc.	₱76,785.72	₱22,321.43	₱54,464.29
BSFIL Technologies, Inc.	93,975.92	93,975.89	0.03
CIS Bayad Center, Inc.	2,955,646.08	2,949,970.90	5,675.18
Cohingyan And Peralta Law Offices	26,250.00	-	26,250.00
Focus Global, Inc.	9,685,053.94	9,396,967.62	288,086.32
Linde Gas Asia Pte, Ltd. ROHQ	795,376.75	-	795,376.75
Petron Corporation	809,614.92	486,666.67	322,948.25
Phil. Transmarine Carries, Inc.	705,357.17	-	705,357.17
San Miguel Brewery, Inc.	1,724,339.31	386,982.14	1,337,357.17
SLA Prime Ventures Corp.	2,066,287.14	-	2,066,287.14
Txanton Torre Wine & Olive Oil Co. Inc.	564,105.99	-	564,105.99
Undeclared Sales			₱6,165,908.29
Multiply by GPR*			21.60%
Undeclared Income			₱1,331,836.19
		Amount	Percentage
Gross Sales		₱22,884,129.00	100.00%
Cost of Sales		17,940,161.00	78.40%
Gross Profit		₱4,943,968.00	21.60%*

On the other hand, petitioner disputes that there should be no undeclared income of ₱1,331,836.19 as the sales per SLS is more than the sales per TPI. Petitioner added that the difference is because of the timing in recording.

In response to petitioner's allegation, respondent confirmed that upon verification of the data, there was a typographical error wherein the column labels for TPI and SLS has been mistakenly interchanged, thus, the amount per TPI is still higher than the SLS.[38]

In the implementation of the BIR's RELIEF system, Revenue Memorandum Order (RMO) No. 04-2003[39] states:

> I. BACKGROUND
>
> The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.
>
> The RELIEF System was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the

[38] BIR Records, pp. 384. 384 and 389.
[39] Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002.

> taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.
>
> The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. **The consolidation and matching of information <u>with other externally sourced data</u> will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential.**[40]

Corollarily, RMO No. 46-2004[41] has laid down the procedures to be followed for TPI discrepancy, as follows:

> xxx
>
> III. PROCEDURES
>
> xxx
>
> <u>Action on Protested LNs due to TPI discrepancy</u>
>
> The <u>Revenue Officer</u> assigned to handle the Letter Notice **<u>shall</u>**:
>
> xxx xxx xxx
>
> 2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.
>
> 3. **<u>Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.</u>**
>
> 3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:
>
> 3.1.1 **Prepare "Confirmation Requests"** (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS[.]
>
> 3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

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[40] Emphasis and underscoring supplied.

[41] 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.

> 3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:
>
> > 3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:
> >
> > a. **Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source** (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);
> >
> > b. **Secure a sworn statement from the TPI source** thru the RDO/LTDO/LTAID having jurisdiction over the same; and,
> >
> > c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.[42]

Based on the foregoing guidelines, in assessment proceedings, if there arises TPI discrepancies, the taxpayer is required to submit schedules and reconciliations to substantiate its claim. In addition, the taxpayer is required to execute a sworn statement to attest the veracity and authenticity of the schedules and documents presented or submitted. On the other hand, the BIR is mandated to obtain sworn statements from TPI sources to attest the veracity of the data provided. To obtain the sworn statements, the BIR must first send confirmation requests to the third-party sources or coordinate with the RDO having jurisdiction over the third-party sources, to course through the confirmation requests to the latter.

Upon examination of the records of the case, respondent did not send confirmation requests to TPI sources in relation to undeclared sales amounting to ₱6,165,908.29, thus, no sworn statements were executed by the said third party sources.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[43]

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[42] Emphasis and underscoring supplied.

[43] *Collector of Internal Revenue (now Commissioner) v. Alberto D. Benipayo*, G.R. No. L-13656, 31 January 1962.

For lack of factual and legal bases, respondent's findings on undeclared income amounting to ₱1,331,836.19 corresponding to the alleged undeclared sales of ₱6,165,908.29 due to TPI matching should then be cancelled.

II. Undeclared Income from undeclared Purchases – ₱417,967.18.

Respondent's verification disclosed that the amount of purchases per TPI and that declared per Summary List of Purchases (SLP) showed that there are undeclared purchases amounting to ₱1,517,066.05 which was divided by the Cost of Sales (COS) ratio and multiplied by the GPR to arrive at the amount of undeclared income that should be subjected to income tax pursuant to Section 32 of the NIRC of 1997, as amended.

Schedule 2:

Name of Supplier	Purchases per SLP	Purchases per TPI	Discrepancy
Ardent Network, Inc.	₱37,552.96	-	₱37,552.96
Donpin Land Development Corp.	106,919.72	₱58,482.15	48,437.57
MBPS Cabling Corporation	1,355,594.67	1,355,594.65	0.02
MSI ECS Philippines, Inc.	2,114,081.99	1,258,648.22	855,433.77
Westcon Group Philippines	1,084,868.463	509,226.73	575,641.73
Undeclared Purchases			₱1,517,066.05
Divided by COS Ratio			78.40%
Undeclared Sales from Undeclared Purchases			₱1,935,033.23
Multiplied by GPR			21.60%
Undeclared Income from Undeclared Purchases			₱417,967.18
		Amount	Percentage
Gross Sales		₱22,884,129.00	100.00%
Cost of Sales		17,940,161.00	78.40%
Gross Profit		₱4,943,968.00	21.60%

As discussed earlier, in case of TPI discrepancy, under RMO No. 46-2004, the BIR is mandated to obtain sworn statements from TPI sources to attest the veracity of the data provided. To obtain the sworn statements, the BIR must first send confirmation requests to the third-party sources or coordinate with the RDO having jurisdiction over the third-party sources, to course through the confirmation requests to the latter.

In this case, confirmation letters were sent customer in relation to undeclared purchases of ₱1,517,066.05 to validate and verify the TPI amount. Moreover, the confirmation letters contain a statement that "*If this Office does not receive any response from you within five (5) days from receipt of this letter, we will consider the above sales amount to be true and correct*".[44]

[44] Confirmation Letters, BIR Records, pp. 258 to 273.

RMO No. 13-2012,[45] which lays down the guidelines and procedures in handling Letter Notices (LNs) generated through TPI data matching programs such as the RELIEF System for SLS and SLP under RMO No. 30-200387, as amended, states:

xxx xxx xxx

IV. GUIDELINES AND PROCEDURES

xxx xxx xxx

D. Investigating Offices

xxx xxx xxx

> 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. ")
>
> If no response from the TPI source after the lapse of five (s) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. **However, if there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO shall send the Confirmation Request to the taxpayer through registered mail with <u>Registered Return Card</u> and wait for the lapse of ten (10) days, after mailing thereof before proceeding to the next step.** 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.
>
> If the TPI source did not agree with the discrepancy reflected in the LN (DTCSR/DIRIM/DWAPR), he/she/it must be required to execute a Sworn Statement to that effect and state his/her/its true and correct sales/purchases (Annexes "J" and "J-1"). The RO shall recommend the issuance of an eLA and the filing of a perjury case against the TPI source for the erroneous declaration in the submitted SLS/SLP /information return or supplying incorrect information. 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.[46]

As can be gleaned from the foregoing, if the TPI source/s is/are located outside of the jurisdiction of the investigating or sending office, the BIR Confirmation Letters must be duly supported by registered return cards.

Here, although there are confirmation letters attached to the BIR Records, no registered return cards can be found. Under RMO No. 13-2012, Registered

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[45] Revised Guidelines and Procedures in Handling Letter Notices Generated Through Third-Party Information Data Matching with Tax Returns.
[46] Emphasis and underscoring supplied.

Return Cards are required for TPI sources located outside the jurisdiction of the investigating office, in this case, Revenue Region No.7-BIR, Quezon City, RDO 40, Cubao, Quezon City. The following are the addresses of the TPI sources in relation to the alleged undeclared income of ₱417,967.18 from undeclared purchases of ₱1,517,066.05, to wit:

Customer	Address per Confirmation Letter	Discrepancy
Ardent Networks Inc.[47]	Unit 808 & 809 8/F East Tower PSEC Exchange Rd Ortigas Center Brgy San Antonio Pasig City 1605	₱37,552.96
Donpin Land Development Corp.[48]	68 Manuel L. Quezon Avenue Parang Marikina City 1820	48,437.57
MBS Cabling[49]	2156-D P. Florentino St. Zone 051 Brgy 513 Sampaloc Manila 1008	0.02
MSI-ECS Philippines Inc.[50]	254 Benito Soliven Ave. Manggahan, Pasig City	855,433.77
Westcon Group Philippines[51]	Unit 6 & 7, Wilcon IT Hub 2251 Chino Roces Ave. Bangkal NCR Fourth District City of Makati 1233	575,641.73
Undeclared Purchases		**₱1,517,066.05**

In addition, although confirmation letters were sent to TPI sources via registered mail thru Quezon City Central Post Office on April 26, 2018 as evidenced by Registry Receipts,[52] no proof that the said letters were actually received by the TPI sources.

Based on the foregoing, the Court can only conclude that respondent failed to comply with its own regulations, thus resulting in an assessment arising from or based on unverified information.

For lack of factual and legal bases, respondent's findings on undeclared income amounting to ₱417,967.18 corresponding to the alleged undeclared purchases of ₱1,517,066.05 due to TPI matching should then be cancelled.

III. Unaccounted Related Party Transactions – ₱18,798,903.00.

Respondent's audit disclosed the petitioner's related party transactions amounting to ₱18,798,903.00 are not commensurate to amount declared in petitioner's Audited Financial Statements (AFS). Moreover, respondent believed that these transactions were not properly supported by relevant documents

[47] BIR Records, p. 263.
[48] BIR Records, p. 260.
[49] BIR Records, p. 272.
[50] BIR Records, p. 269.
[51] BIR Records, p. 265.
[52] Attached to the Confirmation Letters, BIR Records, pp. 263, 260, 272, 269 and 265.

requested during the conduct of the audit investigation; hence, assessed pursuant to Section 32 of the NIRC of 1997, as amended.

On the contrary, petitioner argued that the amount of ₱18,798,903.00 as disclosed in the 2015 AFS are advances from its stockholders as follows:

Shareholders	2015	2014	Inc/(Dec)
Mary Christine G. Tiongco	₱7,870,376.00	₱ 7,870,376.00	-
Edmundo T. Ongsiako	7,476,858.00	7,476,858.00	-
Margarita O. Tan Climaco	3,451,669.00	3,451,669.00	-
TOTAL	₱18,798,903.00	₱18,798,903.00	-

Petitioner asserts that the above shareholders are well within the scope of a related party as defined in the Philippine Accounting Standards. Petitioner further asserts that Documentary Stamp Tax (DST) on Advances from Shareholders should only be assessed to the amount increased for the year as the Letter of Authority covers taxable year 2015.

In reply to petitioner's allegation that the DST should only be assessed to the amount of increase in a given taxable year, respondent answered that it was not the DST on liabilities which it was assessed for. Rather, it was the petitioner's failure to present relevant documents to support the transactions.[53]

As stated by the petitioner in its "Statement of Management Responsibility for Financial Statements"[54] addressed to Securities and Exchange Commission signed by its President/Chairman of the Board, Antonio Ramon T. Ongsiako and its Treasurer, Edmundo T. Ongsiako, to wit:

> "The company had been incurring losses since prior years which resulted to deficit position and capital deficiency. These conditions indicate that the company maybe unable to continue as a going concern. Though these conditions may pose questions about the company's ability as a going concern, the stockholders are committed to infuse capital as needed, as supported by the increasing balance in related party transactions."

A study of the Audited Statement of Income (Loss) for the years ended December 31, 2014 and 2015[55] reveals that petitioner indeed incurred losses amounting to (₱2,065,856.00) and (₱587,736.00), respectively, thus, petitioner made advances from its stockholders.

Further scrutiny of the Notes to Financial Statements[56] indicates the assailed unaccounted related party transactions amounting to ₱18,798,903.00

[53] BIR Records, pp. 384, 385 and 389.
[54] Docket, p. 385.
[55] Docket, p. 387.
[56] Note 12, Docket, p. 402.

was already declared in taxable year 2014 and reflected again in taxable year 2015, thus, the AFS for the comparative years 2014 and 2015 were enough to support these transactions, to wit:

	2015	2014
Mary Christine G. Tiongco	₱ 7,870,376.00	₱ 7,870,376.00
Edmundo T. Ongsiako	7,476,858.00	7,476,858.00
Margarita O. Tan Climaco	3,451,669.00	3,451,669.00
Total	₱18,798,903.00	₱18,798,903.00

Account represents interest bearing loan from stockholders to fund the operating requirements of the company. Interest ranging from 10.625% to 13.5%.

This was also corroborated by the testimony of Antonio Ramon T. Ongsiako, President of Powernet Systems Corp.:

> "Q44: In the FDDA, the BIR said that these transactions were not properly supported by relevant documents. Do you agree or disagree with this statement?
>
> A44: I disagree because the 2015 AFS already reflects the advances from stockholders. As shown by the AFS, there was no change in the advances made by the stockholders Mary Christine G. Tiongco, Edmundo T. Ongsiako, and Margarita O. Tan Climaco. This has been constant in the records since 2014. Since no additional advances were made, it also follows that no other documentation would support these better than the 2015 AFS."

Clearly, the alleged unaccounted related party transactions amounting to ₱18,798,903.00 do not pertain to taxable year 2015. For being outside the scope of the present assessment, the assessment thereon must be cancelled.

IV. Net Operating Loss Carry-Over – ₱578,737.00, Excess Tax Credits Credited Forward to the Succeeding Period – ₱775,785.00, and Excess MCIT over NCIT Carried Forward to the Succeeding Period – ₱98,879.00.

A perusal of the subject FLD and FDDA shows that the foregoing assessment items were found only in the computation of the deficiency income tax liability of petitioner. A reading of the *Details of Discrepancies* respectively attached to the FLD and FDDA shows no discussion at all on the said findings.

Therefore, the glaring absence of a discussion as to the factual and legal basis on the foregoing assessment items boils down on the validity of the assessment itself. In the unequivocal mandate of Section 228 of the NIRC of 1997, as amended, and its implementing rules and regulations, the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Well-settled is the rule that a void assessment bears no fruit.[57] There being no valid assessment rendered with respect to the NOLCO, excess tax credits carried forward to the succeeding period, and excess MCIT over NCIT carried forward to the succeeding period, the same must rightfully be cancelled.

VALUE-ADDED TAX

I. Undeclared Sales – ₱6,165,908.29.

Respondent reiterated that the amount of undeclared sales (Schedule 1) under the deficiency income tax assessment is also subject to VAT under Title IV, Sections 105 and 106 of the NIRC of 1997, as amended.

It was also settled that upon examination of the records of the case, respondent did not send confirmation requests to TPI sources in relation to undeclared sales amounting to ₱6,165,908.29, thus, no sworn statements were executed by the said third party sources to attest the veracity of the data provided, thus, this assessment must be cancelled.

II. Undeclared Sales from Undeclared Purchases – ₱1,935,033.23.

Respondent reiterated that the amount of undeclared sales arising from undeclared purchases (Schedule 2) under the deficiency income tax assessment is also subject to VAT under Title IV, Sections 105 and 108 of the NIRC of 1997, as amended.

It was already settled that respondent failed to comply with its own regulations resulting in an assessment based on unverified information, thus, assessment on undeclared purchases of ₱1,935,033.23 should be cancelled.

III. Unaccounted Related Party Transactions – ₱18,798,903.00.

[57] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

As already discussed under the deficiency income tax assessment, the alleged unaccounted related party transactions amounting to ₱18,798,903.00 are outside the scope of the present assessment, thus, must be cancelled.

In sum, considering the foregoing findings, the deficiency EWT and WTC in the amounts of ₱171,306.16, and ₱76,333.25, as basic tax dues, respectively, are upheld; deficiency VAT is upheld but with modification in the amount of ₱305.71 as basic tax dues; while deficiency income tax is cancelled, computed as follows:

INCOME TAX		
Taxable Income/(Loss) per ITR		-₱587,737.00
Add: Adjustments per Investigation		
Undeclared Income (Schedule 1)	-	
Undeclared Income from Undeclared Purchases (Schedule 2)	-	
Unaccounted Related Party Transactions	-	
Disallowed Expenses Due to Non-Withholding(Schedule 3)	2,231,259.16	
Salaries, Wages and Benefits not subjected to Withholding Tax on Compensation (WC) (Schedule 4)	51,537.00	2,282,796.16
Taxable Income per Investigation		1,695,059.16
Add: NOLCO		-
Adjusted Taxable Income		1,695,059.16
Income Tax Due (30%)		508,517.75
Less: Allowed Tax Credits/Payments		
Prior Year's Excess Tax Credits	874,664.00	
Less: Excess Tax Credits Carried Forward to the succeeding period	-	
Excess MCIT over NCIT Carried Forward to the succeeding period	-	874,664.00
Deficiency Income Tax		-₱366,146.25
VALUE-ADDED TAX		
Vatable Sales per VAT Returns		₱22,881,581.52
Add: Adjustment per Investigation		
Undeclared Sales	-	
Undeclared Sales from Undeclared Purchases	-	
Unaccounted Related Party Transactions	-	
Sales Not Subjected to VAT (Schedule 5)	2,547.48	₱2,547.48
Adjusted VATable Sales		₱22,884,129.00
Output Tax Due (12%)		₱2,746,095.48
Less: Allowed Tax Credits/Payments		
Input Tax on Current Purchases	2,247,030.54	
VAT Payments	498,759.23	2,745,789.77
Deficiency Value-Added Tax		₱305.71
EXPANDED WITHOLDING TAX		
Basic Tax Due		₱171,306.16
WITHHOLDING TAX ON COMPENSATION		
Basic Tax Due		₱76,333.25

WHEREFORE, light of the foregoing considerations, the present Petition for Review is **PARTIALLY GRANTED.**

Accordingly, petitioner is **ORDERED TO PAY** the amount of ₱438,100.37 representing deficiency taxes for the taxable year 2015, inclusive of 25% surcharge and 20%/12% deficiency interest imposed under Section 248(A)(3) and Section 249(B) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations (RR) No. 21-2018, computed until January 14, 2019, as follows:

	VAT	EWT	WTC	TOTAL
Basic Tax Due	₱305.71	₱171,306.16	₱ 76,333.25	₱ 247,945.12
Add: 25% Surcharge	76.43	42,826.54	19,083.31	61,986.28
20% Deficiency Interest Jan. 26, 2016 to Dec. 31, 2017 *(₱305.71 x 20% x 706 / 365)*	118.26			118.26
20% Deficiency Interest Jan. 16, 2016 to Dec. 31, 2017 *(₱171,306.16 x 20% x 716 / 365)*		67,208.33		67,208.33
20% Deficiency Interest Jan. 16, 2016 to Dec. 31, 2017 *(₱76,333.25 x 20% x 716 / 365)*			29,947.73	29,947.73
Total Amount Due, Dec. 31, 2017	₱500.40	₱ 281,341.03	₱ 125,364.29	₱ 407,205.73
Add: 12% Deficiency Interest Jan. 1, 2018 to Jan. 14, 2019				
(₱305.71 x 12% x 379/ 365)	38.09			38.09
(₱171,306.16 x 12% x 379/ 365)		21,345.22		21,345.22
(₱76,333.25 x 12% x 379/ 365)			9,511.33	9,511.33
Total Amount Due, Jan. 14, 2019	**₱538.49**	**₱302,686.25**	**₱ 134,875.62**	**₱ 438,100.37**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) per annum, on the total unpaid deficiency taxes due as of January 14, 2019, in the amount of ₱438,100.37, as determined above, or equivalent to ₱144.03[58] per day, computed from January 15, 2019 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED.

Ma. Belen M.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[58] ₱438,100.37 x 12% ÷ 365 days.

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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.

ROMAN G. DEL ROSARIO
Presiding Justice