REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HONDA CARS KALOOKAN, INC.,	**CTA CASE NO. 9552** For: Assessment
Petitioner,	Members: CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE	Promulgated:
Respondent.	OCT 2 1 2019

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on November 23, 2018 is a Petition for Review[1], filed on March 24, 2017 by petitioner Honda Cars Kalookan, Inc. against respondent Commissioner of Internal Revenue (CIR), which prays for the reversal of the respondent's Decision[2] dated February 22, 2017, denying the Request for Reconsideration of the Final Decision on Disputed Assessment (FDDA)[3], assessing petitioner in the total amount of ₱10,639,502.33, allegedly representing deficiency income tax, inclusive of interests and penalties, for the taxable year (TY) from January 1, 2008 to December 31, 2008.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with office address at 589 Edsa Balintawak, Caloocan City. It is registered with the Securities and Exchange Commission (SEC) and is engaged mainly in the sale,

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[1] Docket, Vol. I, pp. 10-24.
[2] Exhibit "P-14", Docket, Vol. II, pp. 696-708.
[3] Exhibit "P-1", Docket, Vol. II, pp. 649-651.

distribution, service and repair of automobiles from Honda Cars Philippines, Inc. It also sells parts and accessories of Honda automobiles.[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has 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 National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

On March 11, 2010, respondent issued a Letter of Authority (LOA) No. 200900007490[5], authorizing Revenue Officers Miriam Jalandoni, Francisco Ramos IV, Ali Hassan Lucman Jr. and Group Supervisor Nicasio H. Lumagui Jr., of Large Taxpayers Excise Audit Division 2, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008.[6]

On March 12, 2010, respondent issued a First Letter Notice[7], requesting petitioner to present its records and documents pertinent to the investigation. On March 25, 2010, respondent issued a Second Request for Presentation of Records[8] reiterating his request to petitioner for the presentation of its accounting records for examination.[9]

On December 26, 2011, petitioner received a Notice for Informal Conference[10] giving it the opportunity to go over the findings and present or raise its objections thereto.[11]

On January 27, 2012, a Preliminary Assessment Notice (PAN)[12] was issued against petitioner demanding payment of deficiency

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[4] As culled from Exhibit "P-14", Docket, Vol. II, p. 696.
[5] Exhibit "P-2", Docket, Vol. II, p. 652.
[6] Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, pp. 364-365.
[7] Exhibit "P-3", Docket, Vol. II, pp. 653-654.
[8] Exhibit "P-4", Docket, Vol. II, p. 655.
[9] Par. 3, JSFI, Docket, Vol. I, p. 365.
[10] Exhibit "P-6", Docket, Vol. II, p. 657.
[11] Par. 4, JSFI, Docket, Vol. I, p. 365.
[12] Exhibit "P-7", Docket, Vol. II, pp. 658-659.

income tax for taxable year 2008.[13] Petitioner filed a Reply[14] to the PAN dated February 9, 2012.

On April 12, 2012, petitioner received a copy of the Final Assessment Notice (FAN)[15] dated March 27, 2012, finding it liable for deficiency income tax in the total amount of ₱21,727,245.27, inclusive of interests and penalties.[16] On May 11, 2012, petitioner filed its Protest to the FAN.[17] Petitioner also filed Supplemental Protests dated September 10, 2012[18] and May 6, 2014.[19]

On June 3, 2014, petitioner received an undated FDDA rendered by OIC-Assistant Commissioner of Large Taxpayer Service, Alfredo V. Misajon, assessing it for deficiency income tax in the total amount of ₱10,639,502.33, inclusive of interests and penalties.[20] Petitioner filed a Request for Reconsideration[21] dated June 18, 2014, on July 2, 2014.

On February 22, 2017, respondent issued the Decision denying the Request for Reconsideration[22] which was received by petitioner on even date.[23]

Petitioner filed the present Petition for Review on March 24, 2017.

On August 4, 2017, respondent filed his Answer[24], interposing the following defenses:

> 3.1 Petitioner is liable for deficiency income tax. The deficiency tax assessment of petitioner in the amount of Php 10,639,502.33 was based on the discrepancies resulting from the matching of information in the Summary List of Sales (SLS), Summary Alphalist of Withholding Taxes (SAWT) and Reconciliation of Listing

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[13] Par. 5, JSFI, Docket, Vol. I, p. 365.
[14] Exhibit "P-8", Docket, Vol. II, pp. 660-664.
[15] Exhibit "P-10", Docket, Vol. II, pp. 667-669.
[16] Par. 6, JSFI, Docket, Vol. I, p. 365.
[17] As culled from Exhibit "P-14", Docket, Vol. II, p. 698.
[18] Exhibit "P-11", Docket, Vol. II, pp. 670-685.
[19] Exhibit "P-12", Docket, Vol. II, pp. 686-691.
[20] Pars. 7 and 8, JSFI, Docket, Vol. I, p. 365.
[21] Exhibit "P-13", Docket, Vol. II, pp. 692-695.
[22] Par. 9, JSFI, Docket, Vol. I, p. 365.
[23] Par. 1, Petition for Review, Docket, Vol. I, p. 11.
[24] Docket, Vol. I, pp. 247-257.

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for Enforcement (RELIEF). Comparison of the same resulted to unreported gross income of petitioner and only the gross profit portion of the total difference was considered in the assessment of petitioner.

3.3 Further, except from the details listed in the RELIEF, which came from Honda's customers, the data listed in the SLS and SWAT came from Petitioner itself. Unfortunately, Petitioner failed to justify the difference between the abovementioned comparison.

3.4 Contrary to the contention of petitioner that the assessment of respondent was based merely on presumption resulting from the discrepancies in the comparison of its SLS, SAWT and RELIEF is the well-established rule in taxation that assessments are prima facie presumed correct and made in good faith. Such presumption of regularity can only be refuted by proof that the assessment is utterly without foundation, arbitrary and capricious. Petitioner was given the chance to refute the items in the assessment through contrary evidence which it failed to produce.

3.5 Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by the superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessment.

3.6 In fact, the assessment in the Final Assessment Notice (FAN) was greatly reduced already after considering the explanations and justifications made by Honda in its protest with accompanying documents.

3.8 Moreover, petitioner had transactions with its parent company as well as the latter's branches including Honda Cars Quezon City, Manila, Fairview and Marikina. There is therefore legal and factual basis in the Bureau's use of third-party information under RELIEF and the use of CATTS to ensure that the correct internal revenue tax liability is assessed against petitioner.

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3.9 Respondent's audit investigation for deficiency taxes is not confined to the examination of the documents provided or obtained from petitioner. The CIR has the power to promulgate rules to ensure the accuracy and truthfulness of the taxes declared and paid by taxpayers. Such power of the CIR to obtain information from other sources is enshrined in Sections 5 and 6 of the Tax Code as mentioned above

3.10 Respondent is allowed under Section 5 of the NIRC of 1997 to assess the proper tax on the 'best evidence obtainable' when a report required by law as basis for the assessment shall not be forthcoming within the time fixed by laws or rules and regulations. When a taxpayer fails to file a required return or other documents at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the respondent shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be presumed correct and sufficient for all legal purposes.

3.11 Section 5 of the NIRC of 1997 provides:

'Section 5. Power of the Commissioner to Obtain Information, and to Summon, Examine and Take Testimony of Persons- In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) **To examine any book, paper record, or other data which may be relevant or material to such inquiry**;

(B) **To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation**, or from any office or office of the national and local governments, government agencies, and instrumentalities, including the Bangko Sentral ng Pilipinas and government owned or controlled corporations, any **information such as,**

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> **but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers**, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members;' (Emphasis supplied)

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3.12 The power of the Commissioner to assess based on the best evidence obtainable was elaborated in the case of Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., wherein the Supreme Court ruled:

> 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 taxpayers 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 taxpayers 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 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

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> the testimony of third parties; he may examine and subpoena, if necessary, traders and brokers accounts and books and the taxpayers 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.

3.13 In view of the foregoing, respondent is not constrained to limit itself to the documents submitted by petitioner in the determination of its income tax liabilities. In the investigation report submitted by the concerned Revenue Officers, the Bureau noticed a big difference of the figures indicated in the SLS and SAWT submitted by the taxpayer. The Revenue Officers concluded that the difference may be attributed to the peculiarity of the car retail industry as well as omission in the accounting systems of Honda. It includes among others:

a.) Names of customers paying through financial or insurance companies are the ones reflected in the SLS whereas names of the financing or insurance companies are the ones reflected in the SWT.

b.) Names of beneficial individual owners are the ones reflected in the SLS whereas the actual company payors are the ones reflected in the SAWTs.

c.) Car dealers lend their inventory to one another according to the specifications of buyers and availability of inventories at cost.

3.14 The said omissions and irregularities existing on the documents submitted by petitioner in the audit, especially its SLS and SAWT which are required to be submitted under RMO 4-2003 that prescribes the guidelines and procedures relative to the processing of Quarterly Summary Lists of Sales and Purchases and the imposition of penalties thereof, prompted respondent to investigate further on the correctness of petitioner's declared income tax liability.

3.15 For this reason, respondent resorted to third-party information through the reconciliation of Listing for Enforcement (RELIEF) under Revenue Memorandum Order (RMO) 30-2003 and utilization of the Computer Assisted Audit Tools and Techniques System (CAATS) under RMO 14-2011 which is geared towards an efficient and expedient process of completing an audit. Likewise, the use of CAATS as an audit tool is justified under RMO No. 36-2010 which was issued to govern the conduct of special investigation and enforcement activities of interrelated companies, conglomerates, their affiliates and subsidiaries for taxable year 2009 as petitioner had transactions with its parent company as well as the latter's branches including Honda Cars Quezon City, Manila, Fairview and Marikina. There is therefore legal and factual basis in the Bureau's use of third-party information under RELIEF and the use of CATTS to ensure that the correct internal revenue tax liability is assessed against petitioner.

3.16 Upon investigation, it was discovered that petitioner had gross income based on the difference between SLS and SAWT as well as between its SLS and RELIEF in the total amount of Php 11,143,612.32 after comparing petitioner's SLS, SAWT and RELIEF. This was after it was discovered that a huge difference exists in its recorded sales between its SLS and SAWT in the amount of Php 32,967,778.02 while between its SLS and RELIEF in the amount of Php 85,619,410.72.

3.17 The allegation of petitioner that the comparison of SLS, SAWT and RELIEF is unreliable and inaccurate without proof and supporting documents cannot prevail over the presumption of correctness in the tax assessment. Thus, for failure of petitioner to provide supporting documents, the assessment for deficiency tax must stand.

3.18 Without proof of any irregularities in the performance of examiner's duty, given the fact that petitioner was accorded ample opportunity to raise any issues as to the correctness and validity of assessment

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and adduce evidence in support thereof, the presumption as to the correctness of tax assessment must be upheld.

3.19 The Honorable Supreme Court has thoroughly explained in the case of CIR v. Hantex the presumption in favor of the correctness of tax assessments, specifically:

> 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.** Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. **This rule for tax initiated suites is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer:** the presumption of administrative regularity; the likehood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.

(Emphasis supplied).

3.20 In the case at hand, the revenue officers have painstakingly examined all records of petitioner made available to them as regards petitioner's sales and purchases.

3.21 As to the allegation of petitioner on the timing difference in the recognition by the suppliers of their purchases compared to its sales recognition method, petitioner failed to support its claim with material and relevant evidence. Moreover, the

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discrepancy in the sales records, especially in the SLS and SAWT cannot be denied by petitioner because the data and figures listed thereon as well as the other documents came from petitioner itself.

3.22 In addition, petitioner's contention that the non-withholding of taxes is not based on facts and jurisprudence is bereft of merit. During the investigation, it was verified that petitioner failed to withhold and remit the corresponding expanded withholding tax on income payments for suppliers, material inventory, delivery and forwarding, parts and accessories, as well as interest expense. Such failure to withhold and remit is a violation of Section 2.57.2(M) of Revenue Regulations (RR) No. 2-98 as amended by RR No. 14-2008 which states:

> 'Section 2.57.2 Income Payment Subject to Creditable Withholding and Rates Prescribed Thereon- Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
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> x x x x x x
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> M) Income payments made by the top twenty thousand (20,000) private corporations to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines
>
> Supplier of goods-One percent (1%)
> Supplier of services-Two percent (2%)

3.23 Consequently, under the aforecited provision of law, petitioner has the obligation to withhold from its income payments for goods and services which the subject expenses belong to. No amount of industry practice would exempt petitioner from its obligation to withhold in accordance with the abovementioned provisions of the law.

3.24 Thus, respondent disallowed a total amount of Php 2,160,969.07 of claimed expenses for failure to subject the same to expanded withholding tax despite

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petitioner's classification as one of the top 20,000 corporations in accordance with Section 2.57.2 of Revenue Regulations No. 2-98 as amended.

3.25 Likewise, said obligation does not depend on the amount of the income payment. As long as petitioner pays for suppliers, material inventory, delivery and forwarding, parts and accessories, as well as interest expense, regardless of the amount, it shall be liable to withhold a portion of its income payments in accordance with the rates under the above-mentioned provisions of the law. The argument of petitioner that withholding of taxes depends on the enormity of payment has simply no legal basis. Thus, the allowance of the claimed expenses for failure to withhold under the terms of Section 34(K) of the NIRC is justified.

3.26 The Assessment issued against petitioner is valid and lawful. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. *(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R No. 136975, March 31, 2005)*

3.27 All presumptions are in favor of the correctness of tax assessment *(Sy Po vs. Court of tax Appeals, 164 SCRA 524)*. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

3.28 In view of the foregoing, petitioner is liable to pay its **assessed deficiency Income Tax in the amount of Php 10,639,502.33** as the said assessment was issued in accordance with law and jurisprudence."

The Pre-Trial Conference was reset to April 12, 2018.[25] Respondent's Pre-Trial Brief[26] was filed on September 25, 2017; while Petitioner's Pre-Trial Brief[27] was filed on November 16, 2017.

[25] Resolution dated February 23, 2018, Docket, Vol. I, pp. 331-333.
[26] Docket, Vol. I, pp. 280-284.
[27] Docket, Vol. I, pp. 293-302.

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On May 17, 2018, the parties filed their Joint Stipulation of Facts and Issues[28], which was approved by the Court in its Pre-Trial Order[29] issued on May 18, 2018.

Petitioner presented[30] its only witness, Mr. Christopher C. Apsay.

On July 25, 2018, petitioner filed its Formal Offer of Evidence[31], offering the following documentary evidence, to wit:

Exhibit:	Description:
P-1	Final Decision on Disputed Assessment (FDDA) dated May 30, 2014
P-2	Letter of Authority No. 00007490 dated March 11, 2010
P-3	First Letter Notice dated March 12, 2010
P-4	Second Request for Presentation of Records dated March 25, 2010
P-5	Waiver of Defense of Prescription dated March 14, 2011
P-6	Undated Notice of Informal Conference
P-7	Preliminary Assessment Notice (PAN) dated January 27, 2012
P-8	Reply to the PAN dated February 9, 2012
P-9	Memorandum dated March 27, 2012
P-10	Final Assessment Notice dated March 27, 2012
P-11	First Supplemental Protest dated September 10, 2012
P-12	Second Supplemental Protest dated May 6, 2014
P-13	Request for Reconsideration dated June 18, 2014
P-14	BIR Decision dated February 22, 2017
P-15	HCKI Audited Financial Statements (AFS) as of December 31, 2008
P-16	BIR Form 1702 (Annual Income Tax Return) for taxable year 2008
P-17	BIR Form No. 1702-Q (Quarterly Income Tax Return) for the 1st Quarter of 2008
P-18	BIR Form No. 1702-Q (Quarterly Income Tax Return) for the 2nd Quarter of 2008
P-19	BIR Form No. 1702-Q (Quarterly Income Tax Return) for the 3rd Quarter of 2008
P-20	BIR Form No. 2550-Q (Quarterly VAT Return) for the 1st Quarter of 2008

[28] Docket, Vol. I, pp. 364-374.
[29] Docket, Vol. I, pp. 375-382.
[30] Minutes of the hearing dated July 16, 2018, Docket, Vol. II, p. 623.
[31] Docket, Vol II, pp. 630-648.

P-21	BIR Form No. 2550-Q (Quarterly VAT Return) for the 2nd Quarter of 2008
P-22	BIR Form No. 2550-Q (Quarterly VAT Return) for the 3rd Quarter of 2008
P-23	BIR Form No. 2550-Q (Quarterly VAT Return) for the 4th Quarter of 2008
P-24	BIR Form No. 2550-M (Monthly VAT Return) for January 2008
P-25	BIR Form No. 2550-M (Monthly VAT Return) for February 2008
P-26	BIR Form No. 2550-M (Monthly VAT Return) for May 2008
P-27	BIR Form No. 2550-M (Monthly VAT Return) for July 2008
P-28	BIR Form No. 2550-M (Monthly VAT Return) for August 2008
P-29	BIR Form No. 2550-M (Monthly VAT Return) for October 2008
P-30	BIR Form No. 1604-CF (Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes) For the Year 2006
P-32	BIR Form No. 1604-CF (Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes) For the Year 2007
P-33	BIR Form No. 1604-CF (Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes) For the Year 2008
P-34	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for January 2008
P-35	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for February 2008
P-36	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for March 2008
P-37	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for April 2008
P-38	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for May 2008
P-39	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for June 2008
P-40	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for July 2008
P-41	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for August 2008

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P-42	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for September 2008
P-43	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for October 2008
P-44	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for November 2008
P-45	BIR Form No. 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for December 2008
P-46	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for January 2008
P-47	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for February 2008
P-48	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for March 2008
P-49	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for April 2008
P-50	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for May 2008
P-51	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for June 2008
P-52	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for July 2008
P-53	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for August 2008
P-54	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for September 2008
P-55	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for October 2008
P-56	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for November 2008
P-57	BIR Form No. 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for December 2008
P-58	Certification from Honda Cars Pangasinan, Inc. stating that Honda Cars Kalookan, Inc. withheld 1%

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	of its total net purchases amounting to P20,789,053.57 for the year 2008
P-59	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for February 2008
P-60	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for March 2008
P-61	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for April 2008
P-62	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for May 2008
P-63	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for June 2008
P-64	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for July 2008
P-65	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for August 2008
P-66	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for September 2008
P-67	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for October 2008
P-68	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for November 2008
P-69	Honda Cars Kalookan, Inc.'s Reconciliation of Vehicle Pull-outs to Other Honda Dealers for December 2008
P-70	Judicial Affidavit of Christopher P. Apsay dated June 8, 2018 consisting of twenty (20) pages
P-70-A	Signature of Mr. Christopher P. Apsay

Respondent failed to file his comment thereto.[32]

The Court admitted all the exhibits formally offered by petitioner in the Resolution[33] dated August 31, 2018. For his part, respondent manifested that he will not present evidence in this case.[34]

Memorandum (For Petitioner)[35] was filed on November 9, 2018. Respondent manifested that he is adopting the arguments raised in the Answer dated April 27, 2017 as his Memorandum.[36] On November 23, 2018, the case was submitted for decision.[37]

[32] Records Verification dated August 15, 2018, Docket, Vol II, p. 873.
[33] Docket, Vol II, pp. 875-876.
[34] Minutes of the hearing dated September 10, 2018, Docket, Vol. II, p. 879.
[35] Docket, Vol II, pp. 892-927.
[36] Manifestation dated November 8, 2018, Docket, Vol II, pp. 889-891.
[37] Resolution dated November 23, 2018, Docket, II, p. 928.

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THE ISSUE:

The parties stipulated[38] on the following issue:

> Whether or not petitioner is liable to pay the assessed deficiency income tax in the aggregate amount of Ten Million Six Hundred Thirty-Nine Thousand Five Hundred Two Pesos and Thirty-Three Centavos (₱10,639,502.33) for taxable year 2008.

DISCUSSION/RULING

The Court has jurisdiction over the present Petition for Review

Section 203 of the NIRC of 1997, as amended, provides that respondent shall make an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later, to wit:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* –Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

In relation thereto, Section 77 of the same NIRC, provides that the final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the

[38] JSFI, Docket, Vol. I, pp. 365-366.

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fourth (4th) month following the close of the fiscal year, as the case may be, to wit:

> SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* – xxx
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> xxx xxx xxx
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> (B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.
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> xxx xxx xxx

In the instant case, petitioner filed its Annual Income Tax Return on April 15, 2009[39], which is also the last day prescribed by law for filing of the return for TY 2008. Counting three years from April 15, 2009, respondent had until April 16, 2012[40] to assess petitioner of deficiency income tax for TY 2008. Thus, the FAN[41] dated March 27, 2012 and received by petitioner on April 12, 2012 was within the three-year prescriptive period.

On the other hand, Section 228 of the NIRC of 1997, as amended, provides periods in filing an administrative protest, 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 xxx
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> xxx xxx xxx
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> Such assessment may be protested administratively by filing a request for reconsideration or

[39] Exhibit "P-16", Docket, Vol. II, pp.744-746.
[40] April 15, 2012 fell on a Sunday.
[41] Exhibit "P-10", Docket, Vol. II, pp.667-669.

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> 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 receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Relative thereto is Revenue Regulations (RR) No. 12-99[42] which provides:

> xxx xxx xxx
>
> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> xxx xxx xxx
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer

[42] 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. Issued on September 6, 1999.

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or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, 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. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. 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 taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required

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documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable. (*Emphasis supplied*)

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In the case of *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue, at al.*[43], the Supreme Court held that:

> Section 3.1.5 of Revenue Regulations No. 12-99, implementing Section 228 above, provides:
>
> 3.1.5. Disputed Assessment. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.xx x.
>
> x x x x
>
> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of

[43] G.R. No. 208731, January 27, 2016.

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> submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise the assessment shall become final, executory and demandable.
>
> 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 of RR No. 12-99 gives a protesting taxpayer only three options:
>
> 1. If the protest is wholly or partially denied by the CIR or 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.

Moreover, Section 3.1.4 of RR No. 18-2013[44] provides that "if the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision".

Applying the foregoing, petitioner had thirty (30) days from receipt of the FAN within which to file its administrative protest and another thirty (30) days from receipt of respondent's Decision within which to appeal to the Court. Moreover, if the protest is denied, in whole or in part, by the Commissioner's duly authorized

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[44] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment. Issued November 28, 2013.

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representative, the taxpayer may either: (a) appeal to the CTA within thirty (30) days from date of receipt of the said decision; or (b) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the decision of the Commissioner's duly authorized representative.

In this case, petitioner received a copy of the FAN dated March 27, 2012, finding it liable for deficiency income tax in the total amount of ₱21,727,245.27, inclusive of interests and penalties on April 12, 2012. Petitioner had thirty (30) days from April 12, 2012 or until May 12, 2012 within which to file its administrative protest. On May 11, 2012, petitioner filed its Protest to the FAN. Petitioner also filed Supplemental Protests dated September 10, 2012 and May 6, 2014.

On June 3, 2014, petitioner received an undated FDDA issued by OIC-Assistant Commissioner of Large Taxpayer Service, Alfredo V. Misajon, assessing it for deficiency income tax in the total amount of ₱10,639,502.33, inclusive of interests and penalties. Petitioner filed a Request for Reconsideration dated June 18, 2014, on July 2, 2014.

On February 22, 2017, respondent issued the Decision denying the Request for Reconsideration which was received by petitioner on even date. Counting thirty (30) days from February 22, 2017, petitioner had until March 24, 2017 within which to file its Petition for Review with the Court. Hence, the Petition for Review filed by petitioner on March 24, 2017 was clearly within the thirty-day prescriptive period.

Determination of whether or not the deficiency income tax assessment has factual and legal bases

The Court shall now proceed to resolve the issue on the propriety of the deficiency income tax being assessed against petitioner for TY 2008 in the amount of ₱10,639,502.34. computed as follows:[45]

Differences b/w SLS, SAWT, and RELIEF	₱ 11,143,612.32
Non-withholding on expenses	2,160,969.07

[45] Exhibit "P-1", Docket, Vol. II, p. 650.

Total amount of discrepancies		₱ 13,304,581.39
Add: Taxable income, per income tax return		22,696,766.00
Adjusted taxable income		₱ 36,001,347.39
Income tax due, per audit		₱ 12,600,471.59
Less: Income tax payments		7,943,869.00
Deficiency income tax		₱ 4,656,602.59
Add: Incremental penalties		
Interest on deficiency (4/16/09 - 4/27/2012)	₱2,793,961.00	
Compromise penalty for late payment	25,000.00	2,818,961.55[46]
Total		₱ 7,475,564.14[47]
Add: Interest on delinquency (4/16/09 - 4/27/2012)		3,163,938.20
Total Delinquent Income Taxes due and payable		**₱10,639,502.33**[48]

Based on the above computation, the assessment resulted from the discrepancies noted by respondent, *i.e.* a) differences in Summary List of Sales (SLS), Summary Alphalist of Withholding Agents/Payors of Income Payments Subjected to Creditable Withholding Tax at Source (SAWT) and Reconciliation of Listings for Enforcement (RELIEF) amounting to ₱11,143,612.32 and b) non-withholding on expenses amounting to ₱2,160,969.07.

a.) Differences in SLS, SAWT and RELIEF- ₱11,143,612.32

Respondent found discrepancies in petitioner's sales as reflected in the latter's SLS and SAWT in the amount of ₱32,967,778.02 and that between petitioner's SLS and the BIR's RELIEF System in the amount of ₱85,619,410.72. Based on petitioner's gross profit rate of 9.539%, respondent determined that petitioner's gross profit on the said sales discrepancies amounted to ₱3,097,974.93 and ₱8,045,637.37, respectively, totalling ₱11,143,612.30 as shown below:[49]

1	Difference btw SLS and SAWT	₱ 32,967,778.02
	Multiply by Gross Profit Rate	9.539%
	Gross Profit component of the Difference in Sales per SAWT and SLS	₱ 3,097,974.93

[46] Should be ₱2,818,961.00.
[47] Should be ₱7,475,563.59.
[48] Should be ₱10,639,501.79.
[49] BIR Records, p. 650.

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2	Difference b/w SLS and RELIEF	₱ 85,619,410.72
	Multiply by Gross Profit Rate	9.539%
	Gross Profit component of the Difference in Sales per RELIEF and SLS	₱ 8,045,637.37
	TOTAL	**₱ 11,143,612.30**

Petitioner insists it had no unreported gross income as claimed by respondent whose finding was based merely on the discrepancies existing in the SLS, SAWT and RELIEF.

Petitioner points out that the Supreme Court has unequivocally held that fundamentally, income connotes gain or profit. In this wise, the High Court recognized three (3) essential elements before income tax may be imposed upon a taxpayer, *i.e.*, 1) there must be gain or profit, 2) that gain or profit is realized or received, actually or constructively, and 3) it is not exempted by law or treaty from income tax.

Petitioner also cites the case of *Philippine Daily Inquirer, Inc. vs. the Commissioner of Internal Revenue*[50], where this Court had the occasion to rule that in assessing income tax it must be shown that income was actually received by the taxpayer and cannot be implied when there is an under declaration of purchases, to wit:

> "xxx Income tax is assessed on income received from any property, activity or service. Such being the case, in the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, not when there is an underdeclaration of purchases.
>
> Furthermore, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein. Hence, even when there is underdeclaration of input tax, which means that there is also a corresponding underdeclaration of purchases or expenses, the same is not prohibited by law. Consequently, respondent's imposition or

[50] CTA Case No. 7853, February 16, 2012.

> assessment of the subject income tax does not hold water, for it simply relies on the fact that there is underdeclared input tax."

In this regard, petitioner asserts that in the absence of any basis to establish with clear and convincing evidence that the difference between the SLS and SAWT, and SLS and RELIEF is income, the same may not be subject to income tax deficiency.

Moreover, petitioner, through its witness, Mr. Christopher C. Apsay, argues in the Judicial Affidavit that:[51]

> 64. Q: Can you please elaborate on the timing difference relative to the alleged discrepancy?
>
> A: The figures BIR used in coming up with HCKI's alleged undeclared sales merely provided the total amount of the purchases from the third party. Such figures did not provide accurate and specific details on the breakdown and how these were realized. There is a possibility that there exists a discrepancy due to the customers recording transaction in a different taxable year while HCKI recorded it in 2009. Thus, it would be highly inaccurate to rely on these data as it is based merely on presumptions.

Moreover, in the comparison between SLS and RELIEF, petitioner asserts that it must first be established that aside from the information extracted from the RELIEF program, respondent did confirm these data with the concerned third-parties. Citing the case of *Ale Mart Corporation vs. Commissioner of Internal Revenue*[52], petitioner states that it was discussed therein why Third-Party Information (TPI) not verified with externally sourced data for veracity produces a naked assessment, to wit:

> "Without the confirmation from third parties, the finding casts doubts as to the reliability and correctness of the assessment on the alleged undeclared sales.

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[51] Docket, Vol. II, p. 406.
[52] CTA Case No. 8998, February 14, 2018.

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While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be. This principle was thoroughly discussed by the High Court in the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.,* the pertinent portions of which are quoted as follows:

> '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. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the Petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a 'naked assessment,' i.e., without any foundation character, the determination of the tax due is without rational basis. In such a

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situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.' *(Citations omitted)*

Accordingly, the assessment cannot be sustained since it was based merely on unverified amounts extracted from respondent's own database.

Note that Revenue Memorandum Order (RMO) No. 04-03 requires the verification of the amounts reflected in the quarterly report with other externally sourced data in ascertaining the taxpayer's underdeclaration of revenues or overstatement of costs and expenses, if any. The pertinent portions of RMO No. 04-03 are quoted as follows:

> '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 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.

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> 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 with other externally sourced data will detect underdeclaration of revenues/ overdeclaration of cost and expenses, thus resulting to greater tax potential.' *(Emphasis supplied)*
>
> Considering the foregoing, the assessment on undeclared sales is cancelled." *(Emphasis supplied, citations omitted)*

On the other hand, respondent, in his Decision dated February 22, 2017, points out that the BIR Commissioner is allowed to assess the proper tax on the "best evidence obtainable" when a report required by law as basis for the assessment shall not be forthcoming within the time fixed by laws or rules and regulations. In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.[53]

Petitioner's arguments are partially meritorious.

Respondent assessed petitioner for the discrepancies between its declarations per SLS and SAWT as well as that found between its SLS and BIR's RELIEF which is a system used by respondent to cross-refer petitioner's transactions with its third-party suppliers/clients.

SLS is the list of sales declared for VAT purposes during the quarter, as mandated by Revenue Regulations (RR) No. 16-2005. On the other hand, the SAWT "is a consolidated alphalist of withholding agents from whom income was earned or received and subjected to withholding tax to be submitted by the payee-recipient of income as

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[53] Exhibit "P-14", Docket, Vol. II, p. 704, citing Section 5(B) of the NIRC of 1997, as amended.

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attachment to its duly filed return for a given period which Summary List contains a summary of information showing, among others, total amounts of income/gross sales/gross receipts and claimed tax credits taken from all Certificates of Creditable Withholding Tax at Source (BIR Form No. 2307) issued by the payors of income payment."[54]

Therefore, these records, along with the RELIEF Third-Party Information, tracks down petitioner's Sales through its Output tax declarations, Creditable Withholding Taxes withheld from petitioner's income for the year and the records maintained and reported by its clients.

With regard to the comparison done between the SLS and RELIEF, the Court finds that upon perusal of the records, respondent's RELIEF data were not supported by externally-sourced information. In this case, the externally-sourced data could have taken the form of confirmations from petitioner's clients as to the amounts of their purchases from petitioner.

Moreover, in his Decision, which was supposed to address the points raised by petitioner, one of which is the necessity of third-party confirmation to support RELIEF results, respondent simply alluded to the "best evidence obtainable" rule being the reason for using RELIEF, and the fact that it does find legal basis under Revenue Memorandum Order (RMO) No. 14-2011.

However, as can be gleaned on the ruling of this Court, as previously cited, the use of RELIEF may have legal basis but, the results become bereft of factual basis without any third-party verification.

Therefore, since there is no such external source to support the RELIEF System information used in the assessment, the Court can consider this portion of the assessment as a "naked" one. Hence, the Court cancels the ₱8,045,637.39 additional taxable net income, due to respondent's lack of factual basis.

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[54] Section 2(A) of RR No. 2-2006.

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Consequently, the Court shall now focus on the alleged ₱3,097,974.93 underdeclaration of income resulting from a discrepancy between the SLS and the SAWT.

Respondent computed for the difference between SLS and SAWT amounting to ₱32,967,778.02 which resulted to an additional taxable net income of ₱3,097,974.93 as follows:

Per SAWT	₱ 104,202,048.14
Per SLS	71,234,270.12
Difference in sales per SAWT & SLS	₱ 32,967,778.02
Multiply by Gross Profit Rate	0.09
Gross income on difference in sales per RELIEF & per SLS	**₱ 3,097,974.93**

Petitioner maintains that there is timing difference in recording and reporting of sales for income tax return and VAT purposes, to wit:[55]

> 68. Q: What other reasons, if any, for these timing differences?
>
> A: HCKI uses the accrual method in reporting its income. This means that HCKI recognizes income when it is earned, and not what cash is received. Thus, if HDKI has already earned its income even if it has yet to receive the cash, it will already record this income in the accounting period in which it is earned.
>
> Given the difference in accounting methods, the result would be significant variation between Honda Cars actual reported income (which includes accrued income) as it appears in its ITR and its gross receipts as declared in its SLS (which only pertains to income that has been actually received).
>
> 69. Q: Can you provide for another example of these timing differences?
>
> A: Yes. One example I can provide would be the alleged undeclared sales of HCKI in 2008.

[55] Docket, Vol. II, pp. 407-408.

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This amount was reported in the SLS of HCKI for 2008 but payment was [received] in 2009.

To support this, petitioner submitted its Reconciliation of Vehicle Pull-Outs to Other Honda Dealers for the months of February to December 2008[56], as well as a Certification from Honda Cars Pangasinan, Inc.[57] stating that petitioner withheld 1% of its total net purchases therefrom.

The Certification from Honda Cars Pangasinan certifies that "Honda Cars Kalookan, Inc. withheld 1% of its total net purchases amounting to ₱29,789, 053.57 for the year 2008."

Meanwhile, Exhibits "P-59" to "P-69" are monthly schedules of petitioner representing "Vehicle Pull-out-Other Dealer" and reflect the Base Amount, Sales Discount, Net Amount Other Charges, Input Tax, and the Cost of the vehicle. At the bottom portion of each schedule, the Journal Entry to record the monthly total was likewise reflected.

However, the Court finds that these schedules do not, in any way, explain the difference found by the respondent, especially since the information contained in the schedules pertain to petitioner's purchases and input taxes, whereas, the amounts involved are the sales amount per SLS and the sales from which taxes were withheld by petitioner's clients, which petitioner itself reported through the SAWT.

Moreover, it is to be noted that petitioner did not present any other supporting documents such as sales invoices, official receipts, deed of sales, or any other source document that would explain the discrepancy in petitioner's own declarations in the SLS and SAWT, especially, factoring in the timing difference that petitioner has been alleging.

Considering the foregoing, the Court upholds respondent's deficiency income tax assessment on the ₱3,097,974.93 unreconciled, unsupported discrepancy in petitioner's sales as reflected in its SLS and SAWT.

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[56] Exhibits "P-59" to "P-69", Docket, Vol. II, pp. 837-847.
[57] Exhibit "P-58", Docket, Vol. II, p. 836.

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b) Non-withholding on expenses - ₱2,160,969.07

Finding that petitioner failed to withhold on certain expenses amounting to ₱2,160,969.07, broken down below, pursuant to Section 2.57.2 of RR No. 02-98, as amended[58], respondent disallowed the same as deduction from petitioner's gross income pursuant to Section 34(K)[59] of the NIRC of 1997, as amended.

Nature of Expense	Amount
1. Stationery printing and supplies	₱ 247,764.31
2. Materials Inventory	55,152.56
3. Delivery and Forwarding	33,496.88
4. Parts and Accessories	172,960.02
5. Interest Expense	134,456.47
6. Part and Accessories	112,508.93
7. Cost of Sales-parts	756,339.17
Total	**₱ 2,160,969.07**

According to petitioner, it has correctly paid all of its withholding tax obligations pursuant to the provisions of Section 157 of the NIRC of 1997, as amended, and implemented by RR No. 02-98, as amended by RR No. 14-2008.

Petitioner submits that the assessment on the income payments subject to EWT has no basis in law because respondent merely relied

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[58] Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines: x x x
M) Income payments made by the top twenty thousand (20,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. — Income payments made by any of the top twenty thousand (20,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines:
Supplier of goods — One percent (1%)
Supplier of services — Two percent (2%)

[59] (K) *Additional Requirements for Deductibility of Certain Payments.*-Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, sections 58 and 81 of this Code.

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on computation, ratios, estimates, and comparison based on figures coming from petitioner's financial statement which may or may not show the break down for clearer presentation.

Petitioner further avers that expenses that were subjected to EWT can be traced on the monthly purchase book, cash disbursement and journal vouchers. It is further alleged that these withholding taxes can be compared with the SAWT, which petitioner duly filed with the BIR and which the latter could easily verify bring the repository of these documents.

Moreover, petitioner posits that respondent failed to consider that some of the expenses that were disallowed were not income payments rather these were items that as a matter of industry practice were used to improve customer relations. These include promotional items, which can be traced on the journal vouchers when the accrual or set up of the inventory is made.

Finally, petitioner argues that other small purchases which were obtained from small time vendors and the withholding of which would have been quite difficult because of the immateriality of the amount and the fact that the payment was by way of petty cash or reimbursement scheme.

However, other than these bare statements, petitioner failed to present documents to prove its allegations. It is a basic rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[60] Without the corresponding invoices and/or official receipts, the Court cannot ascertain the actual nature of the assessed expenses and the taxability of the same. Thus, the Court is constrained to uphold the assessment on this item in line with the rule that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[61]

For failure to discharge its burden of proof, petitioner's claimed expenses of ₱2,160,969.07 shall be disallowed pursuant to Section 34(K) of the NIRC of 1997, as amended.

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[60] *Cagatin vs. Magsaysay Maritime Corporation, et al.*, G.R. No. 175795, June 22, 2015.
[61] *Marcos II vs. Court of Appeals, et at.*, G.R. No. 120880, June 5, 1997.

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c) Compromise penalty - ₱25,000.00

Respondent's imposition of compromise penalty in the amount of ₱25,000.00 for petitioner's alleged late payment of tax cannot be sustained there being no mutual agreement between the parties. Settled is the rule that the imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[62] RMO No. 1-90 expressly provides that "compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalty". Considering that petitioner did not pay the compromise penalties imposed by the respondent, it clearly did not agree to settle the same.

In sum, petitioner is liable to pay basic deficiency income tax for TY 2008 in the reduced amount of ₱1,840,629.50, computed as follows:

Sales difference in SLS and SAWT	₱ 3,097,974.93
Non-withholding on expenses	2,160,969.07
Total amount of discrepancies	₱ 5,258,944.00
Add: Taxable income per income tax return	22,696,766.00
Adjusted taxable income	₱ 27,955,710.00
Income tax due, per audit	₱ 9,784,498.50
Less: Income tax payments	7,943,869.00
Basic Deficiency income tax	**₱ 1,840,629.50**

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The deficiency income tax assessment issued by respondent against petitioner covering the taxable year 2008 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **SIX MILLION THREE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED THREE PESOS AND NINETY-EIGHT CENTAVOS (₱6,317,503.98)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, computed until December 31, 2017, as follows:

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Basic Deficiency income tax	₱ 1,840,629.50
Add: 25% surcharge	460,157.38
20% deficiency interest from April 16, 2009 to March 24, 2017 *(₱1,840,629.50 x 20% x 2900/365 days)*	2,924,835.92
Total amount due as of March 24, 2017	**₱5,225,622.80**
Add: 20% deficiency interest from March 25, 2017 to December 31, 2017 *(₱1,840,629.50 x 20% x 282/365 days)*	284,415.08
20% delinquency interest from March 25, 2017 to December 31, 2017 *(₱5,225,622.80 x 282/365 days)*	807,466.10
Total amount due as of December 31, 2017	**₱ 6,317,503.98**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the aggregate amount of, **₱5,225,622.80** due as of March 24, 2017, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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