REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BASF PHILIPPINES, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10221**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
APR 28 2023 8:20 AM

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution are:

1) Petitioner BASF Philippines, Inc.'s (**petitioner**'s/**BASF**'s) "Motion for Partial Reconsideration (Re: Decision dated 3 November 2022)"[1] (**petitioner's MPR**) filed on 18 November 2022, without respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) comment[2]; and,

2) Respondent's "Motion for Partial Reconsideration"[3] (**respondent's MPR**) filed *via* registered mail on 23 November 2022[4], with petitioner's Comment to Respondent's Motion for Partial Reconsideration dated 18 November 2022 (Re: Decision dated 3 November 2022)[5] (**Comment**) filed on 18 January 2023.

---

[1] Division Docket, Volume III, pp. 1254-1331, including attached Supplemental Judicial Affidavit of Leonardo B. Aldueza, Jr. with attached annexes.
[2] *Per* Records Verification dated 20 January 2023; id., p. 1370.
[3] Id., pp. 1346-1352.
[4] Received by the Court on 06 December 2022.
[5] Division Docket, Volume III, pp. 1358-1367.

Both petitioner's MPR and respondent's MPR assail the Decision[6] promulgated on 03 November 2022 (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed on 05 December 2019 by petitioner BASF Philippines, Inc. is hereby **PARTIALLY GRANTED**. The deficiency value-added tax (VAT) assessment shall be adjusted as a result. Accordingly, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of **₱1,321,651.68**, representing basic deficiency VAT, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until 31 December 2017, as determined below:

Basic Deficiency VAT	₱697,063.60
Surcharge (25%)	174,265.90
Total Amount Due	**₱871,329.50**
Deficiency Interest (20%) from July 26, 2016 to December 31, 2017	
VAT - 7/26/16 to 12/31/17 (₱697,063.60 x 20% x 524 days/ 365 days)	200,143.19
Delinquency Interest (20%) from July 26, 2016 to December 31, 2017	
VAT - 7/26/16 to 12/31/17 (₱871,329.50 x 20% x 524 days/ 365 days)	250,178.99
Total Amount Due as of December 31, 2017	**₱1,321,651.68**

> In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from 01 January 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (**TRAIN**) and as implemented by Revenue Regulations No. 21-2018, on basic deficiency VAT, inclusive of the 25% surcharge, amounting to **₱871,329.50**.
>
> **SO ORDERED.**
>
> ...

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION.

[6] Id., pp. 1206-1253; Citations omitted.

In its MPR, petitioner insists that it was not accorded due process because respondent disregarded the arguments raised in the protest against the Preliminary Assessment Notice (**PAN**). It avers that respondent violated the principle laid down in the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[7] (**Avon Products**) wherein the Supreme Court ruled that respondent should observed due process in each assessment stage. In its case, petitioner claims that respondent had waited the issuance of the Final Decision on Disputed Assessment (**FFDA**) before he or she considered the submissions against the deficiency assessment.

Likewise, petitioner alleges that in the *En Banc* case of *Commissioner of Internal Revenue v. First Philippine Industrial Corporation*[8], the Court of Tax Appeals (**CTA**) *En Banc* declared a tax assessment void because the Final Assessment Notice (**FAN**) replicated the exact findings in the PAN. Moreover, petitioner contends that the FAN and FDDA are invalid because it failed to demand the payment of the definite amount of tax liabilities. Petitioner points out that the FAN does not have a statement of amount due, a demand for payment, and a specific period within which payment must be made.

Petitioner also counters that the strict application of invoicing requirements is limited to refund cases. Thus, as the petition at bar involves a deficiency value-added tax (**VAT**) assessment, the invoicing requirement is inapplicable.

Lastly, petitioner asserts that the government will not be prejudiced if the disallowed input tax credit of ₱697,063.60 will be offset against its available input tax carried over from the previous period in the amount of ₱60,317,215.30. It submits that it is unfair and unjust for the Court to order the payment of the deficiency taxes when it has a substantial amount of excess and unused input tax. To strengthen its claim, petitioner prays that it be allowed to present a supplemental evidence to prove that the excess input tax has not been used or exhausted in the succeeding periods.

Respondent failed to interpose an objection to petitioner's MPR.

---

[7] G.R. Nos. 201398-99, 03 October 2018.

[8] CTA EB No. 2376, 29 September 2022.

RESPONDENT'S MOTION FOR PARTIAL RECONSIDERATION.

On the other hand, in his or her MPR, respondent claims that the Third Party Information (**TPI**) is valid since the certifications, confirmations or sworn statements from third party sources are not required under Revenue Memorandum Order (**RMO**) Nos. 4-2003[9] and 46-2004.[10] Respondent avers that the undeclared sales resulting from the TPI can stand independently and can be a valid basis for the deficiency assessment.

Also, respondent maintains that the assessment arising from unaccounted importation must be sustained. Citing the CTA case of *Tridharma Marketing v. Commissioner of Internal Revenue*[11], respondent alleges that petitioner failed to prove that the unaccounted importation did not translate to unaccounted sales. Thus, the assessment is valid.

Meanwhile, in its Comment, petitioner counters that respondent initially filed an unsigned MPR before this Court. Although, it subsequently filed a signed MPR, the said MPR was already filed beyond the prescriptive period of fifteen (15) days from respondent's receipt of the assailed Decision. Hence, the MPR should be denied outright.

Additionally, petitioner asserts that the Honorable Court did not err when it ruled that the assessment from unverified TPI should be considered null and void for lack of factual basis. Respondent glaringly violated its own guidelines under the related RMOs.

Petitioner further avers that it presented numerous supporting documents to contest the unaccounted importations, namely: (1) Reconciliation of Listing for Enforcement; (2) BASF 2016 Schedule of Imported Inventory Goods; (3) BASF 2016 Undeclared Importations Schedule; and, (4) Import Entry Declarations and invoices. Thus, respondent's argument that it failed to prove that the unaccounted importation did not result to undeclared sales, must fail.

---

9 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.

10 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.

11 CTA Case No. 8833, 15 February 2018.

Before resolving the incidents, We deem it proper to first determine the effects of respondent's filing of an unsigned MPR. Petitioner argues that respondent's MPR must be denied outright for non-compliance with Section 3(a) and (b), Rule 7 of the 2019 Amendments to the 1997 Rules of Civil Procedure (*A.M. No. 19-10-20-SC*).[12] However, it must be remembered that the Court, in its discretion, may allow a deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay.[13] In the instant case, We accepted and admitted respondent's "Manifestation with Motion to Admit Motion for Partial Reconsideration" as the latter immediately filed a signed copy after he or she noticed that the one filed on 18 November 2022 was an unsigned one. From the actions, We cannot infer that respondent intended to delay the proceeding. Thus, We admit the MPR and resolve it based on the merits.

We resolve.

After a thorough and careful review of the parties' arguments, petitioner and respondent's MPRs still fail to convince this Court that it should deviate from its earlier ruling. For emphasis, the Court will elaborate further on the reasons for upholding the assailed Decision, as will be essayed below.

THE FINAL ASSESSMENT NOTICE AND THE FINAL DECISION ON DISPUTED ASSESSMENT ARE VALID.

---

12 **Sec. 3.** *Signature and address.* — (a) Every pleading and other written submissions to the court must be signed by the party or counsel representing him or her.

(b) The signature of counsel constitutes a certificate by him or her that he or she has read the pleading and document; that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) The claims, defenses, and other legal contentions are warranted by existing law or jurisprudence, or by a non-frivolous argument for extending, modifying, or reversing existing jurisprudence;

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after availment of the modes of discovery under these rules; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

13 *Carmelita V. Dizon v. Jose Luis K. Matti, Jr.*, G.R. No. 215614 (Resolution), 27 March 2019.

Petitioner claims that respondent ought to observe due process in every stage of the assessment. Thus, when respondent disregarded the arguments raised in petitioner's initial protest to the PAN, it then makes the resulting assessment void for lack of due process. Also, petitioner alleges that the FDDA failed to state the definite amount of the tax liabilities.

Petitioner' claims are wrong.

As ruled in the assailed Decision, an examination of the FAN reveals that the amount indicated therein is definite. The relevant portion provides:

> ...
>
> On the contrary, the pertinent portion of the FAN in the case at bar reads:
>
> > ...
> > *Please take note that the interest and the total amount due will have to be adjusted if paid beyond the date specified therein.*
> > ...
>
> In herein case, the FAN clearly indicates that the *interest*, which forms part of the *total amount due*, will only be adjusted if the taxpayer pays *beyond* the deadline or due date provided (which is 21 January 2019). Insofar as the total amount indicated in the FAN is concerned, it is undeniable that **the amount of deficiency VAT plus interest is definite and certain on the due date provided therein**. This remains to be the fact despite a warning from the BIR that additional interest (consequently affecting the total amount due) shall continue to accrue *beyond* the due date. It is then not fair to fault the BIR for reminding the taxpayer of the consequences of a delayed settlement.
>
> In determining the validity of the assessment, what is crucial is the definiteness of the amount indicated in the FAN with respect to the deadline or due date provided. If the FDDA satisfies substantially both requirements, then the FDDA could not be wanting nor can the assessment be deemed as void. While it is true that the computation of interest may not yet appear definite, the same is only logical as BIR could not reasonably be expected to know or foresee when the taxpayer will actually settle the tax obligation. Therefore, to set aside the entire assessment on the basis of the indefiniteness not of the amount of deficiency taxes *but of the interest* that may accrue (*beyond*

> the deadline of payment) is in discord with the wisdom behind the Supreme Court's pronouncement in *Fitness by Design*.[14]
>
> ...

On the supposed violation of due process, petitioner's reliance on *Avon Products* is misplaced. Respondent therein wholly ignored the defenses in petitioner's two (2) filed protests which consequently resulted in the same assessment shown in the PAN, FAN and Collection letter (except the computed interests). Such circumstances are not present here. In the assailed Decision, We have determined that respondent took into account and evaluated the pieces of evidence that petitioner submitted. We reiterate:

> ...
>
> ... In fact, in the FDDA dated 28 October 2019, Regional Director (**RD**) Glen A. Geraldino (**Geraldino**), after taking into account the pieces of evidence submitted by petitioner, reduced the basic deficiency VAT from ₱54,167,076.57 *per* PAN and FAN to ₱6,270,658.84. ...[15]
>
> ...

Also, it is worth reiterating that the assailed Decision highlighted the parts of the FDDA that prove that respondent considered petitioner's arguments. With this, the Court thus could not agree with petitioner that it was not afforded due process when, clearly, it was duly informed of the legal and factual bases of the reduced tax assessment against it in writing.

THE INVOICING REQUIREMENT MUST BE STRICTLY COMPLIED WITH IN ASSESSMENT CASES.

Petitioner likewise contends that strict compliance with the invoicing requirement applies only to refund cases and not to assessment case.

Again, We disagree.

---

[14] Division Docket, Volume III, pp. 1221-1222; Citations omitted, emphasis, italics and underscoring in the original text.

[15] Id., p. 1225; Citation omitted and emphasis in the original text.

In the case of *Pilmico-Mauri Foods Corp. v. Commissioner of Internal Revenue*[16], the Supreme Court finds the applicability of the substantiation and invoicing requirement under Section 237 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, to an assessment case. In the said case, the High Court sustained the disallowance of the claimed deductions from gross income for failure of petitioner therein to substantiate the same in accordance to Section 238 of the 1977 NIRC (**now Section 237 of the NIRC of 1997, as amended**). In ruling so, the Supreme Court stated that the CTA cannot be faulted for disallowing the deduction when upon examination of the presented official receipts, We doubted their veracity. The pertinent part provides:

> ...
>
> **It is undisputed that among the evidence adduced by PMFC on its behalf are the official receipts of alleged purchases of raw materials. Thus, the CTA cannot be faulted for making references to the same, and for applying Section 238 of the 1977 NIRC in rendering its judgment.** Required or not, the official receipts were submitted by PMFC as evidence. **Inevitably, the said receipts were subjected to scrutiny, and the CTA exhaustively explained why it had found them wanting.**
>
> PMFC cites *Atlas* to contend that the *statutory test*, as provided in Section 29 of the 1977 NIRC, is sufficient to allow the deductibility of a business expense from the gross income. As long as the expense is: (a) both ordinary and necessary; (b) incurred in carrying a business or trade; and (c) paid or incurred within the taxable year, then, it shall be allowed as a deduction from the gross income.
>
> Let it, however, be noted that in *Atlas*, the Court likewise declared that:
>
> > In addition, not only must the taxpayer meet the business test, *he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed.* The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction. (Citation omitted and italics ours)
>
> **It is, thus, clear that Section 29 of the 1977 NIRC does not exempt the taxpayer from substantiating claims for deductions.** While official receipts are not the only pieces of evidence which can prove deductible expenses, if presented, **they shall be subjected to examination. PMFC submitted official receipts as among its evidence, and the CTA doubted their veracity. PMFC was, however, unable to persuasively explain and prove through**

---

[16] G.R. No. 175651 (Resolution), 14 September 2016.

> **other documents the discrepancies in the said receipts. Consequently, the CTA disallowed the deductions claimed, and in its ruling, invoked Section 238 of the 1977 NIRC considering that official receipts are matters provided for in the said section.**[17]
>
> ...

Based on the foregoing, We cannot now limit the applicability of the invoicing requirement to refund cases as petitioner so insists.

PETITIONER CANNOT OFF-SET THE DEFICIENCY TAXES AGAINST THE EXCESS INPUT TAX CARRIED OVER FROM THE PREVIOUS PERIODS.

Petitioner alleges that assuming the deficiency taxes are valid, they should be deducted from its excess input tax carried over from the previous period. To support its claim, it prays that it be allowed to present supplemental evidence to prove that the said input taxes are not exhausted until the present period.

We do not agree.

Taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity. We find no cogent reason to deviate from the aforementioned distinction.[18]

In the case of *Philex Mining Corporation v. Commissioner of Internal Revenue*[19] citing *Francia v. Intermediate Appellate Court*[20], the Supreme Court ruled that taxes cannot be subject to set-off or compensation, to wit:

---

[17] Id.; Citations omitted, emphasis supplied and italics in the original text.

[18] *Philex Mining Corporation v. Commissioner of Internal Revenue, et al.*, G.R. No. 125704, 28 August 1998.

[19] Id.

[20] G.R. No. 67649, 28 June 1988.

> ...
>
> Prescinding from this premise, in *Francia v. Intermediate Appellate Court*, we categorically held that taxes cannot be subject to set-off or compensation, thus:
>
> > "We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government."
>
> The ruling in *Francia* has been applied to the subsequent case of *Caltex Philippines, Inc. v. Commission on Audit*, which reiterated that:
>
> > ". . . a taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off."[21]
>
> ...

Even if petitioner proves that its excess input tax from prior period is not exhausted, We still cannot allow its position. To do so would violate and disregard the basic principle in tax law that taxes are the lifeblood of the government and should be collected without unnecessary hindrance. Evidently, to countenance petitioner's reason would render ineffective our tax collection system.[22]

UNDECLARED SALES ALLEGEDLY ARISING FROM UNDECLARED IMPORTATION IS VOID.

We are also not persuaded by respondent's argument that petitioner has undeclared sales from its undeclared importation. He or she claims that in CTA Case No. 8833[23], the Second Division upheld the deficiency assessment for (therein) petitioner's failure to prove that the undeclared purchases did not translate to taxable sales.

---

21 Citations omitted and italics in the original text.
22 Supra at note 18.
23 Supra at note 11.

A complete reading of the cited CTA case would show that therein petitioner failed to reconcile or provide supporting documents to corroborate its claims. However, such incident is unavailing here.

As petitioner correctly argued, the case records are replete with numerous supporting documents[24] to prove that it did not derive income from the said importation.

THIRD PARTY INFORMATION MUST BE CONFIRMED; OTHERWISE, IT IS VOID.

This Court does not also share respondent's view that the absence of the confirmation for TPI sources should not affect the related deficiency assessment as the latter can stand on its own.

In the Resolution dated 28 June 2021 for *Commissioner of Internal Revenue v. MCC Transport Singapore Pte. Ltd.*[25], it was held therein that the CTA *En Banc* did not err in disregarding an unverified TPI, *viz*:

> ...
>
> Even assuming that the said RMO is applicable, the **same likewise provides that the Confirmation Requests sent out to third parties by registered mail must be supported by registered return cards, which were not submitted as evidence in this case. Consequently, the CTA *EB* was correct in not relying on the**

24

Exhibits	Description	Purpose
P-35	BASF 2016 Imports Transaction – Reconciliation of Listing for Enforcement. Summary List of Imports (SLI)	To prove that the alleged undeclared importations in the amount of Php26,650,299.00 were imported in January 2016, but reported in October 2016.
P-36	BASF 2016 Schedule of Imported Inventory Goods	To prove that the importations in January 2016 in the total amount of Php23,010,400.01 which became part of petitioner's inventory were reported in 2016 October SLI.
P-36-1 to P-36-10	Various Import Entry Declarations (IEDs)	Same as Exhibit P-36
P-37	BASF 2016 Undeclared Importations Schedule	To prove that the alleged undeclared importations in the amount of Php26,650,299.00 are not part of Petitioner's inventory, but classified as capital goods, laboratory equipment and samples, which will not result in sales for Petitioner.
P-37-1 to P-37-105	Various IEDs	Same as Exhibit P-37

25 G.R. No. 255382 (Notice).

> **third-party information since unverified data cannot be considered as proper factual bases for the assessment against respondent.** In order to be valid, an assessment must be based on actual facts supported by credible evidence.[26]
>
> ...

WHEREFORE, in view of the foregoing, petitioner BASF Philippines, Inc.'s "Motion for Partial Reconsideration (Re: Decision dated 3 November 2022)" filed on 18 November 2022 and respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration" filed on 23 November 2022 are hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

[26] Citation omitted and emphasis supplied.