REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ALPHA 245, INC., (formerly ARC WORLDWIDE PHILIPPINES CO., INC.), Petitioner,	**CTA CASE NO. 9225**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 04 2018 4:20 pm

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RESOLUTION

CASTAÑEDA, JR., ***J.***:

For resolution of the Court is respondent's **Motion for Partial Reconsideration** filed through registered mail on April 26, 2018, with petitioner's **Opposition (To Respondent's Motion for Partial Reconsideration dated April 25, 2018)** filed on May 7, 2018.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the deficiency income tax, expanded withholding tax (EWT) and documentary stamp tax (DST) assessments are

CANCELLED. However, petitioner is liable to pay for deficiency VAT for the taxable year 2009 in the aggregate amount of ₱10,470,069.30, inclusive of 50% surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, and deficiency and delinquency interest imposed under Section 249(B) and (C) of the NIRC of 1997, as amended, until December 31, 2017, computed as follows:

Basic tax due	₱ 2,415,687.68
Surcharge (50%)	1,207,843.84
Subtotal	₱ 3,623,531.53
Deficiency Interest - 1/25/2010 to 12/31/2017	
(₱2,415,687.68 x 20% x 7.94 yrs)	3,834,656.01
Subtotal	₱ 7,458,187.54
Delinquency Interest – 12/25/2015 to 12/31/2017	
(₱7,458,187.54 x 20% x 2.02 yrs)	3,011,881.76
TOTAL	**₱10,470,069.30**

In addition, petitioner is liable to pay delinquency interest at the rate of 12%, which is double the legal interest rate for loans or forbearance of any money, on the total unpaid amount including basic deficiency value-added tax, surcharge, deficiency and delinquency interest as computed above in the aggregate amount of ₱7,458,187.54, computed from January 1, 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 Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED."

In the instant motion, respondent asserts that this Court's conclusion is misplaced, erroneous and bereft of factual and legal basis. Respondent contends that his assessments are presumed correct and made in good faith. Further, he found that the following disallowances are proper because: (1) petitioner's operation showed a taxable income instead of net operating loss as previously claimed in its income tax return for taxable year 2009; (2) the minimum corporate income tax was not allowed as tax credit against the computed deficiency income tax; and (3) the excess tax credit carried over to succeeding period was deducted from the total allowable tax credit considering that the amount has been credited against the estimated quarterly income tax liabilities of petitioner for the taxable quarter of the succeeding taxable years. Finally, respondent asserts that this Court merely assumed that petitioner suffered a net operating loss for taxable years 2009, 2010, 2011 and 2012.

Upon evaluation of the instant motion, the Court finds that the same is unmeritorious.

Prefatorily, respondent merely rehashed his arguments in his pleadings. Hence, he failed to raise new matters which warrant the attention of this Court.

At any rate, to enlighten respondent, the Court reiterates its findings based on the pieces of evidence submitted by petitioner and lack thereof by respondent, as follows:

> **"D. Net Operating Loss Carry-Over (NOLCO) in the amount of ₱22,688,614.00, Minimum Corporate Income Tax (MCIT) in the amount of ₱125,366.00, and Excess Credits Carried Forward to Succeeding Year in the amount of ₱5,929,429.00**
>
> As a result of respondent's investigation, petitioner's operation showed taxable income instead of net operating loss as claimed in petitioner's 2009 Annual ITR. Respondent added back petitioner's net operating loss of ₱22,688,614.00 under the presumption that the tax benefit of this amount has already been forwarded to succeeding periods as provided for under Section 34(D)(3) of the NIRC of 1997, as amended.
>
> For the same reason, respondent likewise disallowed petitioner's Minimum Corporate Income Tax (MCIT) and the excess creditable withholding taxes at the end of taxable year 2009.
>
> The Court finds respondent's argument untenable.

> Respondent failed to present the factual basis of the claim that the 2009 net loss was carried over and applied by petitioner as NOLCO and deducted from the gross income of the succeeding taxable periods and that the MCIT and excess credits were carried over and credited by petitioner against its regular corporate income tax.
>
> Moreover, the application of the said NOLCO, MCIT and excess credits in the subsequent taxable periods is beyond the scope of the present assessment. The same can only be the subject of assessment on the taxable year when they are claimed as deductions.
>
> On the other hand, petitioner submitted its annual income tax returns for the years 2010, 2011 and 2012, which showed that petitioner suffered net operating losses for each of the taxable period following the year 2009. In 2011, it applied NOLCO from the year 2008 in the amount of ₱6,859,010.00, but as shown in the ITR for the year 2012, the net operating loss from the year 2009 in the amount of ₱22,688,614.00 remained unapplied and has expired.
>
> The ICPA likewise reached the same findings.
>
> Thus, adding the net loss back to the taxable income per investigation and the disallowance of petitioner's MCIT and excess tax credits, are erroneous.
>
> In sum, the Court finds it appropriate to cancel the deficiency income tax assessment for the taxable year 2009 in the amount of ₱4,603,454.53 for lack of basis, considering that the computation of petitioner's taxable income per investigation results to a net loss of ₱7,811,985.76, xxx"

Thus, respondent failed to present evidence to support the subject assessments. In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,*[1] the Supreme Court emphasized the concept of naked assessment *vis-à-vis* the *prima facie* correctness of a tax assessment, as follows: *gr*

[1] G.R. No. 136975, March 31, 2005.

> "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 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."*[2]

Considering that respondent failed to adduce evidence to support the subject assessments, this case, therefore, is a textbook scenario of a naked assessment as explained by the Supreme Court in *Hantex*. Hence, the denial of the instant motion is in order.

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[2] *Id.*, citing *United States v. Rindskopf,* 105 U.S. 418 (1881); *United States v. Rexach,* 482 F.2d 10 (1973). The certiorari was denied by the United States Supreme Court on November 19, 1973; *United States v. Janis,* 49 L. Ed. 2d 1046 (1976); 428 US 433 (1976); and *Clark and Clark v. Commissioner of Internal Revenue,* 266 F.2d 698 (1959).

WHEREFORE, the instant Motion for Partial Reconsideration is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice