REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2754** *(CTA Case No. 10221)*
- versus-	
BASF PHILIPPINES, INC., *Respondent.*	

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BASF PHILIPPINES, INC., *Petitioner,*	**CTA EB No. 2755** *(CTA Case No. 10221)*
-versus-	Present: **RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** NOV 12 2025 4:47

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DECISION

REYES-FAJARDO, *J.*:

Before the Court *En Banc* are the Petitions for Review, separately filed by the Commissioner of Internal Revenue (CIR) and BASF Philippines, Inc. (BASF Philippines), assailing the Decision dated

November 3, 2022[1] and Resolution dated April 28, 2023,[2] rendered by the Court's Special Second Division (Court in Division) in CTA Case No. 10221, entitled *"BASF Philippines, Inc. v. The Commissioner of Internal Revenue."*

PARTIES

The CIR is the duly appointed Commissioner of Internal Revenue and vested with authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997 (NIRC), as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).

BASF Philippines is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 11/F HHIC Bldg. 1128 University Park, North Bonifacio Global City, Fort Bonifacio, Taguig City. It is primarily engaged in the business of production, manufacture, sale, exportation, importation, marketing, and distribution of basic chemicals and chemical products and the provision of related services.[3]

FACTS

The facts as found by the Court in Division are as follows:

On January 4, 2017, BASF Philippines received a Letter of Authority (LOA) No. eLA201200036456/AUD/R01/008972/2016 dated December 12, 2016 issued by the Officer-in-Charge (OIC) of the BIR Revenue Region No. 8, Clavelina S. Nacar, authorizing Revenue

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1 Assailed Decision, *Rollo* (CTA EB No. 2754), pp. 23 to 70; *Rollo* (CTA EB No. 2755), pp. 43 to 90.

2 Assailed Resolution, *Rollo* (CTA EB No. 2754), pp. 72 to 83; *Rollo* (CTA EB No. 2755), pp. 92 to 103.

3 Paragraph (Par.) 3, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 519.

Officer (RO) Imelda N. Sumagaysay, and Group Supervisor (GS) Ricaredo O. Balderas, to audit and examine BASF Philippines' books of accounts and other accounting records for value-added tax (VAT) for the taxable period of January 1, 2016 to June 30, 2016.[4]

On November 15, 2018, BASF Philippines received the Preliminary Assessment Notice (PAN),[5] finding BASF Philippines liable for deficiency VAT in the aggregate amount of ₱75,602,398.60, inclusive of interest.[6] On November 29, 2018, BASF Philippines filed a reply to the PAN.[7]

On January 3, 2019, BASF Philippines received the Formal Assessment Notice (FAN)[8] and Assessment Notice No. VT-eLA-36456-16-18-841[9] both dated December 20 2018, assessing it for deficiency VAT in the amount of ₱77,222,958.81, inclusive of interest.[10]

On January 29. 2019, BASF Philippines protested the FAN and assessment notice.[11]

On March 14, 2019, or within 60 days from the filing of the FAN Protest, BASF Philippines sent a letter to the CIR,[12] stating that the documents submitted with the protest were sufficient to support its claims.[13] However, the CIR requested additional documents, which BASF Philippines subsequently provided.[14]

In a letter dated May 12 2019,[15] the CIR informed BASF Philippines that: (1) GS Balderas had been transferred to Revenue District Office (RDO) No. 47-East Makati; and (2) the VAT assessment had been assigned to RO Sumagaysay, under the supervision of the

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[4] Par. 4, *id.*, pp. 519-520.
[5] Exhibit "P-2," *id.*, pp. 677-687.
[6] Par. 5, Summary of Admitted Facts, JSFI, *id.*, p. 520.
[7] Exhibit "P-3," *id.*, pp. 688-694. Par. 6, Summary of Admitted Facts, JSFI, id., p. 520.
[8] Exhibit "P-4," *id.*, pp. 695-704.
[9] Exhibit "P-5," *id.*, p. 705.
[10] Par. 7, Summary of Admitted Facts, JSFI, *id.*, p. 520.
[11] Exhibit "P-6," *id.*, pp. 706-715. Par. 8, Summary of Admitted Facts, JSFI, *id.*, p. 520.
[12] Exhibit "P-7," *id.*, p. 716.
[13] Par. 9, Summary of Admitted Facts, JSFI, id., p. 520.
[14] Exhibit "P-8," *id.*, pp. 717-718.
[15] Exhibit "P-11," *id.*, p. 729.

new GS, Rebecca Pandapatan. Pursuant to the reassignment, Regional Director Glen A. Geraldino issued LOA No. LOA-V08-2019-00000245/eLA20160003581 dated April 22, 2019,[16] authorizing RO Sumagaysay and GS Pandapatan, to examine BASF Philippines' books of account and other accounting records for VAT for the period covering January 1, 2016 to June 30, 2016.

On November 7, 2019, BASF Philippines received the CIR's Final Decision on Disputed Assessment (FDDA) [17] and Amended Assessment Notice No. VT-eLA-35811-16-19-082,[18] both dated October 28, 2019, assessing it for deficiency VAT in the amount of ₱9,504,600.81, inclusive of interest, computed as follows:[19]

Value-Added Tax		
Vatable Sales per Return		₱226,978,022.50
Add/(Less): Adjustments		
Undeclared Sales due to TPI (Schedule 1)	6,057,561.18	
Unsupported Zero-Rated Sales (Schedule 2)	-	
Unaccounted Sales due to undeclared importation	40,379,240.91	46,436,802.09
Vatable Sales per Audit		273,414,824.59
Output (12%)		32,809,778.95
Less: Allowable Input Tax per Audit		
Allowable Input Tax per Return	87,554,578.00	
Add/(Less) Adjustments:		
Disallowed input tax (Annex C)	(698,242.59)	
Excess/Deferred input tax to be carried forward per return	(60,317,215.30)	26,539,120.11
VAT Payable/(Excess Input Tax)		6,270,658.84
Less: VAT Paid		-
Basic Deficiency Value-Added Tax		6,270,658.84
Add: Interests (7/26/16 to 12/31/17) 20%	1,797,016.20	
Interests (1/1/2018 to 11/29/2018) 20%	1,436,925.77	3,233,941.97
TOTAL AMOUNT DUE		P9,504,600.81

16 Exhibit "P-12," *id.*, p. 730.
17 Exhibit "P-9," Division Docket, Volume II, pp. 719-727.
18 Exhibit "P-10," Division Docket, Volume II, p. 728.
19 Par. 10, Summary of Admitted Facts, JSFI, *id.*, p. 520.

On December 5, 2019, BASF Philippines filed a Petition for Review, docketed as CTA Case No. 10221, before the Court in Division.

On November 3, 2022, the Court in Division rendered the 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 (P697,063.60 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 (P871,329.50 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.**

Both the CIR and BASF Philippines filed their respective Motion for Partial Reconsideration and Motion for Partial Reconsideration (Re: Decision dated 3 November 2022) with the Court in Division, which were denied in the assailed Resolution of April 28, 2023, the dispositive portion of which states:

> **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.**

On June 2, 2023, the CIR, within the extended period granted,[20] filed a Petition for Review with the Court *En Banc*, docketed as CTA EB No. 2754,[21] to which BASF Philippines posted its Comment to the CIR's Petition for Review.[22] The CIR prays that BASF Philippines be ordered to pay deficiency VAT in the amount of ₱9,504,600.81 for the taxable period January 1, 2016 to June 30, 2016.

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20 *Rollo* CTA EB No. 2755), p.6.

21 *Rollo* (CTA EB No. 2755), pp. 7-21. The CIR had fifteen (15) days from the date of receipt of the resolution on May 4, 2023 or until May 19, 2023 within which to file a petition for review. On May 10, 2023, The CIR filed a Motion for Extension of Time to File Petition for Review. On May 22, 2023, the Court *En Banc* issued a Minute Resolution giving the CIR until June 3, 2023 within which to file a petition for review. Thus, the CIR's Petition for Review was timely filed.

22 *Rollo* (CTA EB No. 2754), pp. 115-126

On the same date, BASF Philippines also filed a Petition for Review with the Court *En Banc*, docketed as CTA EB No. 2755,[23] *sans* comment from the CIR.[24] In its Petition for Review, BASF Philippines prays that the assessment for deficiency VAT in the amount of ₱9,504,600.81, inclusive of interests, be declared void.

In a Minute Resolution dated June 9, 2023, the above-captioned cases were consolidated pursuant to Section 1, Rule 31 of the Revised Rules of Court.[25]

In the Resolution dated October 4, 2023, the Court directed the parties to proceed to the Philippine Mediation Center - Court of Tax Appeals (PMCCTA) for mediation.[26] The parties, however, failed to reach an agreement,[27] despite the extension granted[28] by the Court for the continuation of the mediation proceedings.

On July 17, 2024, the Court promulgated a Resolution, deeming the parties' Joint Manifestation and Motion to Suspend Proceedings moot, and submitting the consolidated cases for decision.[29]

ISSUE

Did the Court in Division err in partly upholding the deficiency VAT assessment and in ordering BASF Philippines to pay deficiency VAT, including surcharge, deficiency interest, and delinquency interest in the reduced amount of ₱1,321,651.68 for the period from January 1, 2016 to June 30, 2016?

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[23] *Rollo* (CTA EB No. 2754), pp. 8-41. BASF Philippines had fifteen (15) days from the date of receipt of the resolution on May 5, 2023 or until March 20, 2023 within which to file a petition for review. On May 18, 2023, BASF Philippines filed a Motion for Extension of Time (to file Petition for Review). On May 22, 2023, the Court *En Banc* issued a Minute Resolution giving BASF Philippines until June 4, 2023 to file its Petition for Review. Thus, BASF Philippines' Petition for Review was timely filed.

[24] Records Verification dated August 9, 2023, Rollo (CTA EB No. 2754), p. 129.

[25] *Rollo* (CTA EB No. 2754), p. 97.

[26] *Rollo* (CTA EB No. 2754), p. 130.

[27] *Rollo* (CTA EB No. 2754), unpaginated.

[28] *Rollo* (CTA EB No. 2754), p. 134.

[29] *Rollo* (CTA EB No. 2754), pp. 170-172.

ARGUMENTS

The CIR's Petition for Review (CTA EB No. 2754)

The CIR asserts that deficiency VAT assessment based on third-party information (TPI) is valid. Since the Summary Lists of Sales and Purchases (SLS/SLP) were submitted under oath, cross-verification with external sources is unnecessary. Revenue Memorandum Orders Nos. 04-2003 and 46-2004 do not require third-party certifications, making TPI sufficient to support assessments of undeclared sales.

The CIR further argues that unreported importations suggest purchases from unknown sources, implying undeclared sales and income, which are subject to VAT under Sections 106 and 108 of the NIRC, as amended. He insists that BASF Philippines' bear the burden of proving that undeclared importations did not result in unreported sales.

BASF Philippines' Petition for Review (CTA EB No. 2755)

BASF Philippines raises the following grounds in support of its petition:

a. The Court in Division erred in failing to apply the due process doctrine established in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon)*,[30] which required the CIR to consider the arguments and supporting documents submitted through BASF Philippines' protest to the PAN prior to issuing the FAN.

b. The Court in Division erred in disregarding the doctrine in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*

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30 G.R. Nos. 201398-99, 201418-19, October 3, 2018.

(Fitness By Design),[31] despite the FAN's failure to include a demand for definite and certain amount payable on a specific date.

c. The Court in Division erred in strictly applying invoicing requirements in a case involving deficiency VAT assessment.

d. The Court in Division committed reversible error in upholding the CIR's refusal to apply BASF Philippines' excess input tax credits, as of June 30, 2016, to reduce or offset the assessed basic deficiency VAT.

RULING

The Petitions for Review are denied.

CIR's Petition for Review (CTA EB No. 2754)

Tax assessments must be anchored on verified facts, not on speculative or unsupported data.

1. Undeclared sales due to TPI.

The Court *En Banc* upholds the Court in Division's cancellation of deficiency VAT assessment, which was based on unverified TPI from the BIR's Reconciliation of Listings for Enforcement (RELIEF) system. It ruled that the failure to validate the TPI underlying the alleged discrepancies rendered the VAT assessment void for lack of factual basis.

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[31] G.R. No. 215957, November 9, 2016.

RMO No. 46-2004,[32] mandates the BIR to verify third-party data used in an assessment due to TPI discrepancy. To do this, the BIR must first send confirmation requests to the third-party sources or coordinate with the RDO, who has jurisdiction over the third-party sources:

> ...
>
> **III. PROCEDURES**
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> ...
>
> 3. **<u>Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.</u>**
>
> 3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:
>
> 3.1.1 **Prepare "Confirmation Requests"** (using the format prescribed in Annex "C" of <u>RMO No. 30-2003</u> to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS[.)
>
> 3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.
>
> 3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:
>
> 3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:
>
> a. **Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source** (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

32 SUBJECT: 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, September 2, 2004.

b. **Secure a sworn statement from the TPI source** thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.

...

In addition, RMO No. 13-2012,[33] sets forth the guidelines and procedures in handling Letter Notices (LNs) generated through TPI data matching programs, including the RELIEF System for Sales Listing Summary (SLS) and Sales Listing Purchases (SLP), as prescribed under RMO No. 30-2003,[34] as amended:

...

IV. GUIDELINES AND PROCEDURES

...

D. Investigating Offices

...

9. Send a Confirmation Request from TPI sources attesting to the veracity of the data included in the LN package (Annexes "I" and "I-1").

If no response from the TPI source after the lapse of five (5) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. **However, if there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO <u>shall</u> send the Confirmation Request to the taxpayer through registered mail with <u>Registered Return Card</u> and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step**. The RO shall recommend the issuance of an eLA and the filing of a perjury case against the TPI source for declaring overstated

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33 SUBJECT: Revised Guidelines and Procedures in Handling Letter Notices Generated Through Third-Party Information Data Matching with Tax Returns, March 29, 2012.

34 SUBJECT: Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes, September 18, 2003.

> purchases/understated sales. In case the TPI source/s is/are located outside of the jurisdiction of the investigating office, the RO shall recommend to the concerned RD/ACIR-LTS the issuance of eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales.
>
> ...[35]

Based on the TPI obtained from the System, the BIR identified a VAT tax base amounting to ₱6,057,561.18. The BIR found that BASF Philippines had undeclared sales and consequently held it liable for deficiency VAT in the amount of ₱726,907.34 for the taxable period covering January 1 to June 30, 2016. Nevertheless, the BIR cannot, under any circumstance, lawfully use the TPI as a sufficient basis for assessing BASF Philippines' VAT liability for said period.

Item IV(E)(3)(B.3) of RMO No. 30-2003, provides that if the taxpayer disputes the accuracy of the figures in the LN, there must be a confirmation request/ s (CR/ s) to the TPI source. For TPI source/s located outside of the jurisdiction of the investigating office, RMO No. 13-2012 further requires that the RO serve the confirmation request/s through registered mail with a registered return card and wait for ten (10) days from mailing before proceeding to the next step.

In the absence of a confirmation request served to the TPI source, or without a registry receipt to substantiate service via registered mail, the TPI remains unverified and, therefore, cannot be considered as accurate and reliable.

On the strength of the foregoing discussion, the Court in Division correctly cancelled the deficiency VAT assessment on undeclared sales to TPI, as the procedures for validating the TPI were not properly observed:

> *First*, confirmation letters were not sent to all customers identified in the FDDA's Details of Discrepancies. Of the seven customers cited,[36] only four were issued confirmation letters.

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[35] Boldfacing supplied.

[36] See Details of Discrepancies, Division Docket, Volume II, p. 721.

> *Second,* of those issued letters, only the confirmation addressed to Everland Agri Corporation, dated 18 September 2018,[37] was allegedly received by the addressee.
>
> *Third,* and most critically, no registered return cards are available in the BIR records to prove receipt of the confirmation letters. This omission is particularly significant, as the customers were located outside the jurisdiction of the investigating office (Revenue Region No. 8-Makati), in direct contravention of RMO No. 13-2012.[38]

Therefore, the TPI remains unverified information. As such, it is insufficient to serve as the basis for the deficiency VAT assessment amounting to ₱726,907.34. To be valid, an assessment must be based on facts supported by credible evidence.[39] The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[40]

2. Unaccounted sales due to undeclared importation.

Here, the CIR asserts that an inconsistency was discovered between the importation figures declared in BASF Philippines' VAT returns and the data provided by the Bureau of Customs. This inconsistency revealed undeclared importations in BASF Philippines' Summary List of Importations (SLI) amounting to ₱26,650,299.00. By applying the Cost Ratio Method, the BIR extrapolated this to estimate undeclared sales totaling ₱40,379,240.91. For the CIR, had BASF Philippines' SLI been properly filed, it would have reflected the actual volume of goods available for sale. These omissions led to the inference of undeclared sales subject to 12% output VAT, which formed the basis for the deficiency VAT assessment amounting to ₱4,845,508.91.

However, BASF Philippines contends that the finding of undeclared importation alone, without further substantiating

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37 BIR Records, p. 237.

38 Pages 29 to 30 of the assailed Decision.

39 *Commissioner of Internal Revenue v. MCC Transport Singapore PTE. LTD.*, G.R. No. 255382. June 28, 2021 citing *Commissioner of Internal Revenue v. Hantex Trading Co.*, Inc., G.R. No. 136975, March 31, 2005.

40 *Commissioner of Internal Revenue v. Hantex Trading Co. Inc.*, G.R. No. 136975, March 31, 2005.

evidence, does not necessarily equate to undeclared sales subject to VAT.

Sections 106 (A) of the NIRC, as amended, imposes 12% VAT on every sale of goods and properties to be paid by seller or transferor. Thus, it is a basic principle that before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required:[41]

> ...
>
> **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to **twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.**
>
> ...[42]

As correctly held by the Court in Division, BASF Philippines is not liable for the alleged deficiency VAT liability in the amount of ₱4,845,508.91. Importation, by itself, does not automatically constitute a sale transaction. Moreover, nonpayment of input VAT does not establish the occurrence of a sale. Without clear and convincing evidence of a sale, duly supported by documentary proof such as invoices or official receipts, the imposition of 12% output VAT against BASF Philippines based solely on presumed undeclared sales inferred from importation data is baseless. Without such documentary proof, the alleged undeclared importation cannot be presumed to have resulted to undeclared sales.

In view of the foregoing, the Court *En Banc* concurs with the Court in Division that the deficiency VAT assessments arising from the alleged undeclared sales due to TPI and the unaccounted sales stemming from undeclared importation shall be cancelled.

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41 *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue,* G.R. No. 228539, June 26, 2019, citing *Commissioner of Internal Revenue v. Sony Philippines, Inc.,* G.R. No. 178697 November 17, 2010.

42 Boldfacing supplied.

BASF Philippines's Petition for Review (CTA EB No. 2755)

There is substantial compliance with due process as BASF Philippines was given a meaningful opportunity to be heard.

For BASF Philippines, due process requires the CIR to evaluate the taxpayer's protest and supporting documents at the earliest possible stage. The FAN was rendered null and void due to the CIR's complete disregard of the protest submissions, an omission not remedied by the CIR's belated consideration of the arguments during the issuance of the FDDA. The CIR only substantially reviewed BASF Philippines' arguments at the FDDA stage, thereby violating the taxpayer's right to due process.

The Court *En Banc* disagrees.

Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. / Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue (Avon), [43]declares:

> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**[44]

In *Avon,* the Supreme Court expounded that administrative due process requires fairness in proceedings. It is satisfied when a party is properly notified of the charge against it, given a reasonable

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[43] G.R. Nos. 201398-99 / G.R. Nos. 201418-19, October 3, 2018.
[44] Boldfacing supplied.

opportunity to respond, and when its defenses are duly considered by the administrative body, which must sufficiently explain the basis for its conclusions.[45]

Here, following BASF Philippines' submission of its protest to the FAN, the CIR issued the FDDA, informing BASF Philippines of how its arguments and defenses were considered in relation to the assessment. The documents and arguments it submitted were duly considered, resulting in a substantial reduction of the basic deficiency VAT from ₱57,167,076.57 to ₱6,270,658.84. Thus, BASF Philippines was not denied due process, as the CIR fulfilled its obligation to evaluate BASF Philippines' defenses and provide a reasoned decision.

The final assessment notice and final decision on disputed assessment contained a definite amount of tax liability with definite due date.

BASF Philippines' insists that the FAN is void for failing to constitute a clear and definitive demand for payment within a specific period, as allegedly required under the Supreme Court's ruling in *Commissioner of Internal Revenue v. Fitness by Design, Inc. (Fitness by Design).*[46]

This assertion is mistaken.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.,*[47] the tax assessment was invalidated due to two key deficiencies: (1) the absence of specific due date for payment in the assessment notices, and (2) the failure to provide a fixed and determinate total amount of taxes due, as the figures remained subject to modification depending on the

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45 G.R. Nos. 201398-99 / G.R. Nos. 201418-19, October 3, 2018 citing *Saunar v. Ermita*, G.R. No. 186502, December 13, 2017, *Gutierrez v. Commission on Audit*, G.R. No. 200628, January 13, 2015.

46 G.R. No. 215957, November 9, 2016.

47 G.R. No. 215957, November 9, 2016.

date of payment. Notably, the FAN stated: "Please note, however, that the interest and total amount due will have to be adjusted **if paid prior to or beyond April 15, 2004.**"

In contrast to *Fitness by Design*, the Assessment Notice dated December 20, 2018, enclosed with the FAN and the Amended Assessment Notice dated October 28, 2019 enclosed with the FDDA, both clearly state the fixed and determinate total amounts due, with specific due dates of January 21, 2019 and November 28, 2019, respectively.[48] While the FAN and the FDDA include the notation, "Please take note that the interest and the total amount due will have to be adjusted if paid beyond the date specified therein," this merely reflects that interest will accrue after the due date, thereby adjusting the total amount due.

The basic deficiency VAT stated in both notices remains definite and unchanged, as shown below:

Assessment Notice dated December 20, 2018		
Basic Deficiency Value-Added Tax		54, 167,076.57
Add: Interests (7/26/16 to 12/31/17) 20%	15,522,948.52	
Interests (1/1/2018 to 2/28/2019) 12%	7,532,933.72	23,055,882.24
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TOTAL AMOUNT DUE		**P77,222,958.81**

Amended Assessment Notice dated October 28, 2019		
Basic Deficiency Value-Added Tax		6,270,658.84
Add: Interests (7/26/16 to 12/31/17) 20%	1,797,016.20	
Interests (1/1/2018 to 11/29/2018) 20%	1,436,925.77	3,233,941.97
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TOTAL AMOUNT DUE		**P9,504,600.81**

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48 Exhibit "P-5," Division Docket, Volume II, p. 705 and Exhibit "P-10," Division Docket, Volume II, p. 728.

Besides, the phrase used in the FAN in *Fitness by Design* and the FAN and FDDA here is different, consider the following:

FAN in Fitness by Design	FAN and FDDA on this case
"... Please note, however, that the interest and total amount due will have to be adjusted **if paid prior or beyond April 15, 2004.**"	"Please take note that the interest and total amount due will have to be adjusted **if paid beyond the date specified therein.**"

As seen above, in Fitness by Design, the tax assessment reflects an indefinite tax liability. In contrast, as previously discussed, BASF Philippines' tax assessments reflect a fixed and determinate amount for the basic deficiency VAT. While this amount remains unchanged, the total amount due is subject to adjustment solely due to interest, which accrues depending on BASF Philippines' actual date of payment.

Invoicing requirements under Sections 113 and 237 of the amended NIRC, as amended apply to assessment cases without exception.

BASF Philippines argues that the strict application of invoicing requirements is limited to tax refund cases and should not extend to assessment cases.

The Court does not agree.

Pursuant to Section 110(A)[49] of the National Internal Revenue Code (NIRC), as amended, a taxpayer may claim creditable input VAT only if substantiated by a VAT invoice or official receipt issued in

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49 SEC. 110. Tax Credits. –
(A) Creditable Input Tax. –
(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax[.]
...

compliance with Sections 113 [50] and 237 [51] of the same Code. Complementing these provisions, Sections 4.113-1(A) and (B) of Revenue Regulations No. 16-2005 [52] enumerate the invoicing

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50 Section 113. Invoicing and Accounting Requirements for VAT Registered Persons. -

(A) Invoicing Requirements. - A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (PhP1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer's Identification Number (TIN) of the purchaser, customer or client.

51 SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

52 Consolidated Value-Added Tax Regulations of 2005.

...

SEC. 4.113-1. Invoicing Requirements. —

(A) A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

requirements, as well as the mandatory information that must appear in the VAT invoice or official receipt to ensure validity and enforceability for tax credit purposes.

It is worth emphasizing that both the law and revenue regulations make no distinction between refund claims and assessment cases regarding the application of invoicing requirements. The law unequivocally states that these requirements apply every time a VAT invoice or official receipt is issued, whether intended for use as a tax credit against output VAT in a VAT assessment or as a basis for claiming a VAT refund. "Ubi lex non distinguit, nec nos distinguere debemus. Where the law does not distinguish, neither should the courts."[53]

Following the invoicing requirements under Section 113 (A) and (B) of the NIRC of 1997, as amended, and as implemented by RR No.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

...

(B) Information Contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT: Provided, That:

...

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt: The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

...

[53] *Taganito Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 216656, April 26, 2021

16-2005, the Court *En Banc* is one with the Court in Division in the disallowance of input VAT credits amounting to ₱403,962.56:[54]

Name of Supplier	Purchase Amount	Unsubstantiated Input VAT	Exhibit	Per Court's verification
ADESSA CORPORATION	P82,062.50	P9,847.50	"P-38-1" and "P-38-1-1"	No TIN and incomplete registered address
BPI MS INSURANCE CORP.	156,235.58	18,748.27	"P-38-2" and "P-38-2-18"	Not under the registered name of petitioner. The name indicated is ORIX RENTAL CORPORATION
BPI MS INSURANCE CORP.	127,189.67	15,262.76	"P-38-3" and "P-38-6"	
CONVERGE INFORMATION AND COMM	10,000.00	21.01	"P-38-4"	Only P1,178.99 amount of input VAT was substantiated
ORCHARD GOLF COUNTRY CLUB, INC.	4,500.00	540.00	"P-38-5"	Not under the registered name of petitioner. The name indicated is Mr. Ronald Panganiban Mercado.
ORCHARD GOLF COUNTRY CLUB, INC.	4,500.00	540.00	"P-38-6"	
STAFF SEARCH ASIA SERVICE	2,991,691.83	359,003.02	"P-38-7"	OR was previously proffered and was already considered by the BIR in the assailed FDDA
TOTAL	P3,376,179.58	P403,962.56		

Absent adequate substantiation, BASF Philippines is precluded from applying excess input VAT credits from prior periods to reduce or offset the assessed deficiency VAT.

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[54] Pages 41 to 42 of the assailed Decision.

The Court in Division correctly disallowed BASF Philippines' application of its alleged excess input tax credit, amounting to ₱60,317,215.30, which it claimed to have carried over to succeeding periods to offset its deficiency VAT of ₱6,270,658.84. This disallowance was warranted because BASF Philippines failed to present sufficient evidence demonstrating that the input tax credit remained unutilized or was still available in the succeeding periods. Accordingly, the Court in Division correctly found BASF Philippines liable for a basic deficiency VAT of ₱697,063.60, computed as follows:

Per FDDA		
Undeclared sales due to TPI	₱726,907.34	
Unaccounted sales due to undeclared importation	4,845,508.91	
Disallowed input tax	698,242.59	₱6,270,658.84
Per Court's Determination		
Less:		
Undeclared sales due to TPI	726,907.34	
Unaccounted sales due to undeclared importation	4,845,508.91	
Substantiated input tax	1,178.99	5,573,595.24
Adjusted Basic Deficiency VAT		**₱697,063.60**

Ultimately, the Court in Division correctly held BASF Philippines liable for the total deficiency VAT in the amount of ₱1,321,651.68.

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 2754, and the Petition for Review filed by BASF Philippines, Inc. in CTA EB No. 2755 are **DENIED** for lack of merit. Accordingly, the Decision dated November 3, 2022 and the Resolution dated April 28, 2023 in CTA Case No. 10221 are **AFFIRMED.**

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

With due respect, please see CDO.
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2754** (CTA Case No. 10221)
- versus -	
BASF PHILIPPINES, INC., Respondent.	

x- x

BASF PHILIPPINES, INC., Petitioner,	**CTA EB NO. 2755** (CTA Case No. 10221)
	Present:
- versus -	**RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 12 2025 4:15 pm

x- x

CONCURRING AND DISSENTING OPINION

FERRER-FLORES, J.:

I concur in the denial of the **Petition for Review** filed by the **Commissioner of Internal Revenue (CIR)** in CTA EB No. 2754 for lack of merit. With due respect, however, I am constrained to withhold my assent to the denial of the **Petition for Review** filed by **BASF Philippines, Inc.** (**BASF**) in CTA EB No. 2755.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. (Avon case)*,[1] the Supreme Court held that the CIR's failure to consider or appreciate the taxpayer's Reply to the Preliminary Assessment Notice (PAN) and Protest to the Final Letter of Demand (FLD), and to provide an explanation why the arguments raised therein were rejected, constitute a violation of the taxpayer's right to due process, thereby rendering the assessments null and void, *viz.*:

> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> First, **despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued.** The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.
>
> xxx xxx xxx
>
> **It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. **The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**
>
> xxx xxx xxx
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.** (*Emphasis added*)

[1] G.R. Nos. 201398-99 & 201418-19, October 03, 2018.

In the *Avon* case, the Supreme Court further explained that the PAN is part of due process as it gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN. This purpose, however, is not served if the CIR fails to act or consider the taxpayer's explanations.

As this Court has aptly explained in *The Residences at Greenbelt Condominium Corporation vs. Commissioner of Internal Revenue*,[2] the defenses posed by a taxpayer in its reply on the PAN, must be answered by the BIR in the FLD /FAN, and not in the Final Decision on Disputed Assessment (FDDA). To subscribe with the BIR's reasoning that the taxpayer's defenses in its reply on the PAN, may still be belatedly addressed in the FDDA would defeat the very purpose for which the mechanism on the PAN and the chance to respond thereto were made — an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of the FAN, much more, the FDDA.

In the instant case, BASF submitted its reply to the PAN, stating therein substantive arguments that go into the validity of the assailed assessments. The CIR, however, disregarded these explanations and merely reiterated the findings in the FLD/FAN, save for minor adjustments in the computation of interest. The CIR did not address or even comment on the matters raised or the documents submitted by BASF. There was no discussion showing how the issues were evaluated or why the defenses were rejected. As a result, BASF was left unaware of how the CIR, or his representative, appreciated the explanations and defenses raised in connection with the assessments.

Thus, I disagree with the finding that there was substantial compliance with due process when the CIR subsequently considered the arguments and defenses raised by BASF in the issuance of the FDDA, resulting in a substantial reduction of the basic deficiency VAT from ₱57,167,076.57 to ₱6,270,658.84.

The filing of a response to the PAN prior to the issuance of the FAN/FLD cannot be a useless exercise. The right to be heard, which includes the right to present evidence, is meaningless if the CIR can simply ignore the evidence without reason.

The CIR's disregard of due process rendered the PAN and FAN null and void, and of no force and effect. Consequently, the FDDA could not have validly affirmed or revised a void issuance.

All told, I vote to: (i) **DENY** the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 2754; (ii) **GRANT** the

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[2] CTA Case No. 9942 (Resolution), September 27, 2023.

Petition for Review filed by BASF Philippines, Inc. in CTA EB No. 2755; (iii) **REVERSE** and **SET ASIDE** the Decision dated November 3, 2022, and the Resolution dated April 28, 2023; and, (iv) **CANCEL** and **WITHDRAW** the assessments for the period January 1, 2016 to June 30, 2016, covering deficiency value-added tax.

CORAZON G. FERRER-FLORES
Associate Justice