REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE Petitioner,	C.T.A. EB No. 1212 (C.T.A. Case No. 8196)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS and RINGPIS-LIBAN, JJ.
OAKWOOD OVERSEAS LIMITED, Respondent.	Promulgated: APR 18 2016 10:00 a.m.

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DECISION

FABON-VICTORINO, J.:

This appeal by petitioner Commissioner of Internal Revenue (CIR) via a Petition for Review[1] assails the Decision dated April 29, 2014[2], which partially cancelled the assessments she issued against respondent Oakwood Overseas Limited, as well as the Resolution dated August 20, 2014[3], which denied her Motion for Reconsideration.

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[1] *En Banc* Docket, pp. 5-19.
[2] *Ibid.*, pp. 26-71.
[3] *Ibid.*, pp. 73-80.

The following facts as found by the Court in Division are undisputed:

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) vested with authority, among others, to abate or cancel tax liability. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Oakwood Overseas Limited is a foreign corporation organized and existing under the laws of the British Virgin Islands with license to do business in the Philippines. It is engaged in the business of leasing condominium units and with office address at the 30th Floor, Citibank Tower, 8741 Paseo de Roxas, Makati City.

On December 22, 2009, petitioner issued a Preliminary Assessment Notice (PAN)[4] against respondent for alleged deficiency income tax (IT) and value-added tax (VAT) for the fiscal year (FY) ended January 31, 2007 to which respondent filed a protest with supporting documents on January 19, 2010[5].

On January 20, 2010, petitioner issued a Formal Assessment Notice (FAN), together with the corresponding Assessment Notices[6], for deficiency IT and VAT for the FY ended January 31, 2007 and increments on late filing/payment of its Monthly VAT Declaration for March 2006. Petitioner also issued to respondent a letter[7] with Assessment Notice saying that respondent failed to file its Monthly Remittance Return of Creditable IT for the taxable year 2005 and to register/keep books of accounts on time. In the same letter, respondent was required to pay a compromise penalty of P33,400.00. Respondent received all these communications on January 21, 2010.

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[4] Exhibit "N".
[5] Exhibit "O".
[6] Exhibits "P", "P-2", "P-3", "P-4" and "P-5".
[7] Exhibit "P-1".

On February 19, 2010,[8] respondent protested the assessments in a letter dated February 18, 2010.

Since respondent already attached to its protest letter to the PAN the documents it deemed would substantiate its position against the assessments, it did not attach any to its protest to the FAN.

Subsequently, petitioner issued a Final Decision on Disputed Assessment (FDDA), which respondent received on November 8, 2010[9].

In the FDDA, petitioner found respondent liable for the following deficiency taxes for the FY ended January 31, 2007:

Income tax	P891,670.83
Value-added tax	179,384.15
Increments on late filing of March 2006 Return	49,670.63
Compromise penalty	33,400.00
TOTAL	**P1,154,125.61**

On December 8, 2010, respondent filed with the Court in Division a Petition for Review[10] praying for the cancellation of the foregoing assessments.

On January 31, 2011, petitioner filed her Answer[11] through registered mail.

On June 20, 2013, the case was submitted for decision.[12]

On April 29, 2014, the Court in Division rendered the assailed Decision, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the instant Petition is hereby PARTIALLY GRANTED. The

[8] Exhibit "Q".
[9] Exhibit "V".
[10] Division docket, pp. 1-13.
[11] *Ibid.*, pp. 135-139.
[12] *Ibid.*, pp. 971-972.

> assessments issued by respondent (petitioner) against petitioner (respondent) covering deficiency income tax, value-added tax and compromise penalty are hereby CANCELLED and SET ASIDE. On the other hand, the assessment for increments for late filing of the VAT Return for March 2006 is hereby UPHELD with modification. Accordingly, petitioner (respondent) is hereby ORDERED to PAY the amount of P25,903.90 representing increments for late filing of the VAT Return for March 2006. Petitioner (respondent) is likewise ORDERED to PAY delinquency interest at the rate of 20% per annum on the amount of P25,903.90, computed from December 10, 2010 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997.
>
> SO ORDERED."

Petitioner moved for the reconsideration[13] of the foregoing Decision, which was denied for lack of merit in the similarly assailed Resolution of August 20, 2014.

Hence, the instant Petition for Review filed on September 23, 2014, with the lone issue, to wit:

> "Whether or not the First Division of this Honorable Court erred in cancelling and setting aside the assessed deficiency Income Tax and Value-Added Tax issued by the BIR to herein respondent for fiscal year ending January 31, 2007."

Petitioner contends that under Section 228 of the NIRC of 1997, as amended, and implemented by Section 3.1.5 of Revenue Regulations (RR) No. 12-99, the taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter protest, otherwise, the assessment shall become final, executory and demandable.

According to petitioner, since respondent failed to submit certain documents in support of its protest against the FAN as shown in the Memorandum Report dated

[13] Division docket, pp. 1023-1034.

September 15, 2010 of Revenue Officer (RO) Ruby S. Munion, the assessed deficiency IT, VAT, increments on late filing/payment of VAT for March 2006 and compromise penalties for FY ending January 31, 2007 became final, executory and demandable, pursuant to Section 228 of the NIRC of 1997, as amended. Consequently, the Court in Division had no jurisdiction to act on the Petition which should have been dismissed.

Assuming *arguendo* that the subject assessments were not yet final, executory and demandable, the 50% disallowance of respondent's claimed expenses in the total amount of P4,041,789.50 should have been sustained. Contrary to the Court's findings, she correctly based the deficiency IT assessment on respondent's Tentative ITRs and Tentative Financial Statement for FY ending January 31, 2007 since respondent failed to submit supporting document to substantiate its claimed deduction or expenses as provided under Section 34(A)(1)(b) of the NIRC, as amended, thus, she had no means to ascertain the correctness and accuracy of the said claimed expenses. Further, respondent could no longer amend or withdraw its Tentative ITRs and Tentative Financial Statement for FY ending January 31, 2007 without violating Section 6(A)(B) of the NIRC, as amended, for she already issued TVN No. 00050797 dated September 24, 2007 for the examination of respondents records.

Likewise proper is her disallowance of respondent's claimed Share in Home Office Expenses in the amount of P1,467,064.00 since respondent also failed to substantiate the said claim through official receipts or equivalent documents. Further, she properly disallowed respondent's application of prior year's excess tax credits in the amount of P186,819.00 for FY ending January 31, 2007 as the said amount was already carried over to the succeeding year, pursuant to Section 2.58.3 of RR No. 2-98.

Petitioner also questions the cancellation of the deficiency VAT assessment as she allegedly based it on respondent's Tentative Tax Returns and Tentative Financial Statement for FY ending January 31, 2007. And since there was under remittance of VAT, she correctly issued the assessment for deficiency VAT for FY ending January 31, 2007.

Finally, there is a prima facie presumption that the assessment is correct and made in good faith. Unless proven otherwise and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

In rejecting petitioner's arguments, respondent submits the following arguments:

I.

Respondent submitted the relevant supporting documents to support its Protest Letter in accordance with Section 228 of the Tax Code and existing jurisprudence.

II.

The issuance of TVN No. 00050797 dated 24 September 2007 – <u>which expressly states that it covers taxable year 2006, not taxable year ending 31 January 2007</u> – does not preclude respondent from filing its Amended Income Tax Return and Audited Financial Statements.

III.

Petitioner does not dispute the alternative finding of the Honorable First Division that, assuming petitioner can no longer amend or withdraw its tentative Annual Income Tax Return and tentative Financial Statements for Fiscal Year ending 31 January 2007, there is still no basis to hold respondent liable for deficiency Income Tax and deficiency Value-Added Tax.

In compliance with the Court's directive in its Resolution of January 5, 2015[14], respondent filed its Memorandum on February 23, 2015[15], while petitioner filed her Manifestation & Motion on February 23, 2015[16], adopting all her arguments in her Petition for Review dated September 22, 2014.

RULING OF THE COURT *EN BANC*

Petitioner's arguments were obviously truncated from her Answer and Motion for Reconsideration filed before the Court in Division, which have been exhaustively considered and discussed in the assailed Decision of April 29, 2014 and in the similarly assailed Resolution of August 20, 2014.

Notwithstanding the foregoing observation and if only to disabuse petitioner's mind, let it be stressed at this instance that relevant documents to substantiate respondent's Protest both against the PAN and the FAN were timely submitted.

The BIR record shows that respondent attached to its protest to the PAN the documents it deemed relevant to bolster its stance against the assessment issued against it by petitioner, namely, the Final or the 2007 Audited Statements of Revenues and Expenses or Financial Statements, and a copy of the Summary of Taxes and Licenses and Condominium Dues. Respondent cited and relied on these very same documents in protesting the FAN. Precisely, it no longer attached to the letter protest to the FAN the same documents for they were already submitted and formed part of the BIR docket. Note that respondent never disputed petitioner's finding that it did not attach documents to its Protest to the FAN. To require submission of the same set of documents to substantiate the FAN is superfluous if not a waste of resources.

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[14] *En Banc* docket, p. 100.
[15] *Ibid.,* pp. 104-118.
[16] *Ibid.,* p. 102.

It is worth to note that the term "relevant supporting documents "should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. In fine, it is the taxpayer who determines the documents relevant to its position. The BIR can only require submission of additional documents from the taxpayer concerned. It cannot demand the type of supporting documents that should be submitted by the taxpayer, lest the latter will be at the mercy of the former which may require the production of documents that a taxpayer cannot submit or produce.

Also as ruled in the case of *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*[17], the most appropriate remedy when the CIR feels that the documents submitted by the taxpayer are insufficient is to deny the protest, stating the grounds therefor, so that the taxpayer would have the opportunity to elevate the matter to Court, if warranted.

Anent the alleged erroneous cancellation and setting aside of the assessments for deficiency IT, VAT and compromise penalty, suffice it to say that the Court *En Banc* finds no grounds or reasons to deviate from the findings and conclusions made by the Court in Division.

The Court *En Banc* finds correct the ruling of the Court in Division that petitioner erroneously disallowed 50% of respondent's claimed expenses, which includes its depreciation expense in the total amount of P6,028,384.00; condominium dues and expenses in the total amount of P1,652,451.00; and taxes, licenses and miscellaneous expenses in the total amount of P402,117.00.

Anent respondent's claimed depreciation expense, the same should be deducted from its gross expense pursuant to Section 34 of the NIRC of 1997, as amended, which allows deduction of depreciation of property used in the business. Undeniably, respondent during the relevant period was in the business of leasing condominium units, thus, its claimed depreciation expense was a valid deduction as an ordinary

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[17] CTA Case No. 6238, October 8, 2004, citing Standard Chartered Bank-Philippine Branches v. Commissioner of Internal Revenue, CTA Case No. 5696, May 27, 1999.

business expense. In fact, the claimed deduction was close to the actual depreciation expense in the amount of P6,026,035.20, as reflected in respondent's notes to Financial Statements as of January 31, 2007[18]. In coming up with the said depreciation value, respondent used the straight line depreciation method, which is the result of dividing the total Condominium cost of P150,650,880.00[19] by twenty five (25) years[20], the estimated life of the condominium.

As to the alleged claimed condominium dues and expenses, note that respondent did not claim the same as a deductible expense. Nevertheless, even assuming that they were claimed, respondent submitted a Summary of condominium dues and billing statements[21] to support the item.

Respondent is also correct in claiming as deduction the real property taxes, licenses and miscellaneous expenses it incurred in connection with the operation of its business, as provided under Sections 34(A)(1) and 34(C)(1) of the NIRC of 1997, as amended. The Tax Code also allows deduction of ordinary and necessary expenses and taxes paid or incurred in connection with the taxpayer's conduct of business. Besides, the said claimed deductions were duly supported by documents.

With regard to respondent's claimed Share in Home Office Expenses in the amount of P1,467,064.00, suffice it to say that even if respondent failed to substantiate said claim, as alleged by petitioner, hence, the disallowance, respondent is still not liable for deficiency income tax. Even if the amount of P1,467,064.00 is added back to respondent's net loss, respondent's financial standing would still yield a net loss. Since, the net loss position of respondent would not be affected, even with its validated discrepancies being added back, respondent would not be liable for any deficiency income tax for FY ending January 31, 2007.

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[18] Exhibit "O-2".
[19] Exhibit "O-2-f".
[20] Exhibit "O-2-g".
[21] Exhibits "O-3-a" to "O-3-l".

The Court *En Banc* is also not convinced with petitioner's assertion that it properly disallowed respondent's application of prior year's excess tax credits in the amount of P186,819.00 for FY ending January 31, 2007 because it was already carried over to the succeeding year. As borne by the record, respondent had no taxable income for the FY ending January 31, 2007, hence, it is impossible for it to utilize its prior years excess tax credits in 2007. In fine, respondent was correct to carry over its prior years excess tax credits in the amount of P186,819.00 to succeeding taxable periods.

On respondent's liability for deficiency VAT assessment due to its alleged under remittance of VAT payable amounting to P102,049.90, the Court finds that it was merely due to timing difference in reporting income or sales in the VAT returns filed vis-à-vis reporting its income or sales in its accounting books or financial statements. Evident from the record and as reflected in its Notes to Financial Statements, respondent used accrual basis method of accounting in reporting its income. Thus, its service and other income were recognized when service was rendered and earned, regardless of whether the payments for such services were received or not. Thus, it was the right to receive and not the actual receipt, which determined when to include the amount in gross income.[22] On the other hand, in computing VAT, respondent used the cash basis method of accounting, wherein income or sale was recognized upon collection or upon actual or constructive receipt of payment.

Accordingly, the revenue or income per respondent's Financial Statement might not coincide with that of its VAT returns. Respondent's adoption of the accrual basis method of accounting (i.e., the income was reported in the period it was earned regardless of whether it had been received or not) for income tax purposes and the cash basis method of accounting (i.e., the income was reported based on gross receipts/collection) for VAT purposes, resulted to a timing difference in the recognition of its income. Hence, given the timing difference between the use of cash basis method of accounting and accrual basis method of accounting, it was possible that respondent reported a higher rental income in

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[22] Filipinas Synthetic Fiber Corporation v. Court of Appeals, et al., G.R. Nos. 118498 and 124377, October 12, 1999.

its Financial Statement than that reflected in its VAT Return. It was therefore erroneous for petitioner to compute the deficiency VAT based solely on the rental income per Tentative Financial Statement for such findings were not based on actual facts but merely on presumptions and inferences.

Finally, 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.[23]

In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[24]

Finding no ground to modify much more change the ruling of the Court in Division, the same must be sustained and not disturbed.

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue on September 23, 2014, is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution promulgated on April 29, 2014 and August 20, 2014, respectively, are **AFFIRMED *in toto***.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[23] Commissioner of Internal Revenue v. Hantex Trading Co., *Inc.*, G.R. No. 136975, March 31, 2005.
[24] Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation and the Court of Tax Appeals, G.R. No. L-46644, September 11, 1987, citing Commissioner of Internal Revenue v. Alberto D. Benipayo, G.R. No. L-13656, January 31, 1962.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice