REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MARIONNAUD PHILIPPINES, INC., *Petitioner*,	**CTA Case No. 9615**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson, and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 10 2020 1:46pm

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RESOLUTION

MANAHAN, *J.*:

This resolves respondent's *Motion for Partial Reconsideration [re: Decision dated May 29, 2020]* posted on June 15, 2020, with petitioner's *Comment [On the Respondent's Motion for Partial Reconsideration]* filed via email on July 24, 2020.

Respondent assails the Court's Decision dated May 29, 2020, which disposed of the case, as follows:

> **WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the subject tax assessment and the Amended FDDA dated May 9, 2017, holding petitioner liable for deficiency income tax and compromise penalty in the aggregate amount of Php99,528,707.37, for calendar year 2011, are **CANCELLED AND SET ASIDE**.
>
> **SO ORDERED.**

In its *Motion*, respondent argues that it was erroneous for the Court to rule on matters that were never substantiated in the administrative level. It is also contended that consigned goods amounting to Php141,020,508.74 and purchases of capital and non-capital goods amounting to Php9,314,722.69 were recorded by petitioner as purchases in the year 2011 of which the corresponding input tax and withholding taxes were recognized and reported per Summary List of Purchases (SLP) and Alphalist for the same year. The income payments per EWT should have been greater than the amount of purchases reported per SLP in the year 2011 if these income payments were indeed accrued and recognized as purchases/expenses for the year 2010, and the corresponding EWT was remitted in 2011. Thus, there was factual basis for the assessment for undeclared revenue. As to shrinkages and losses of inventories, respondent argues that while ordinary losses are deductible from gross income, there should be proof that it was actually sustained during the taxable year and such were not compensated for by insurance. Respondent alleges that there is no proof that the loss was not compensated for by insurance. Finally, respondent reiterates that assessments arising from the BIR's third party information program are not without basis and are not based merely on presumptions considering that these assessments were the product of evaluation of documents submitted by petitioner and data gathered by the BIR from the petitioner and other taxpayers/third parties.

In its *Comment*, petitioner states that while it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also true that it should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. Petitioner further states that cases are litigated *de novo* before the Court of Tax Appeals (CTA). As to the assessments itself, petitioner reiterates that undeclared purchases is not a source of assessment; that inventory losses from pilferage should be allowed as a deduction, with no need for prior approval or certification from the BIR; and, that the assessments resulting from the comparison of supposed third-party information and petitioner's reports are mere naked assessments absent the sworn statements/declarations from the said third-party sources.

We deny the motion for reconsideration.

The issuance of the Final Decision on Disputed Assessment (FDDA) does not prohibit the Court from examining the validity of the assessment. It is settled that the CTA is a court of record[1] and as such it is bound to conduct a formal

[1] Section 8, Republic Act No. 1125, as amended.

trial (trial *de novo*) where the parties to a case must present their respective evidence in support of their respective cases for the appreciation of the Court.[2] By such reason, there is nothing that stands in the way of the Court to determine on its own the correctness of the BIR's assessment and decision. It may, therefore, scrutinize, one by one, all documents submitted by the parties and can make its own determination of the taxpayer's tax liabilities.[3]

As to the assessments, respondent questions the Court's findings on the unaccounted income payments, disallowed shrinkages and losses of inventories, and unrecorded sales and purchases. Respondent reiterates his position that there is undeclared revenue corresponding to undeclared purchases arising from the discrepancies on petitioner's income payments on goods per its financial statements (FS) as against the Alphalist; that the losses should not have been cancelled instantly by the Court; and, that its Computer Assisted Audit Tools and Techniques (CAATTs) laboratory was created to support the third party information program of the BIR through cross-referencing of third party information with the returns and other documents submitted by the subject taxpayer, and hence does not need confirmation from such third party.

We reiterate that a finding of under-declaration of purchase or expense does not by itself result in the imposition of income tax.[4] The three (3) elements in the imposition of income tax are: (i) there must be gain or profit; (ii) that the gain or profit is realized or received, actually or constructively; and (iii) it is not exempted by law or treaty from income tax. Income tax is assessed on income received from any property, activity or service.[5] These elements were not shown by respondent. Thus, we maintain the cancellation of the deficiency income tax assessment corresponding to the alleged unaccounted income payments.

As to the losses, damages and shrinkages, respondent does not point to any error which the Court committed in its findings which were extensively discussed in the assailed

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[2] *Tyco Information Solutions Corp. v. Bureau of Internal Revenue*, CTA EB Nos. 1426 and 1436, April 3, 2018, citing *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[3] *Tyco Information Solutions Corp. v. Bureau of Internal Revenue*, CTA EB Nos. 1426 and 1436, April 3, 2018.

[4] *Commissioner of Internal Revenue v. Agrinurture, Inc.*, CTA EB No. 1054, January 13, 2015.

[5] *Commissioner of Internal Revenue v. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.

Decision. As to respondent's argument that such losses should not have been compensated by insurance, aside from the fact that the same is being raised only on motion for reconsideration, respondent does not provide any evidence that such losses incurred by petitioner were compensated by insurance. A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence.[6]

Finally, the Court reiterates that third-party information extracted from CAATTs needs to be confirmed and verified with the various suppliers/withholding agents/payors in order to sufficiently inform the taxpayer of the assessment and to provide a reliable basis for the assessment, other than as mere extrapolation or presumption.

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be.[7] In order to withstand 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.[8]

WHEREFORE, the respondent's *Motion for Partial Reconsideration [re: Decision dated May 29, 2020]* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] *Spouses Ramos v. Obispo, et al.*, G.R. No. 193804, February 27, 2013.
[7] *Commissioner of Internal Revenue v. Fax N Parcel, Incorporated*, CTA EB No. 883, February 14, 2013.
[8] *Collector of Internal Revenue v. Benipayo*, G.R. No. 13656, January 31, 1962.