REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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GREEN VALLEY MARKETING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1801
(CTA Case No. 8988)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

GREEN VALLEY MARKETING CORPORATION,
Respondent.

CTA EB No. 1808
(CTA Case No. 8988)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 0 2 2020

x- 3:56 p.m. - x

RESOLUTION

***Fabon-Victorino, J.*:**

On October 14, 2019, the Court rendered a Decision,[1] disposing the instant case as follows:

> **WHEREFORE**, the Petition for Review filed by Green Valley Marketing Corporation on March 23, 2018, and the Petition for Review filed by the Commissioner of Internal Revenue on March 26, 2018 are **DENIED**, for lack of merit.
>
> Considering the amendments introduced by Republic Act (RA) No. 10963, or TRAIN Law relative to imposition of deficiency and delinquency interests, the *fallo* of the assailed Decision shall be **MODIFIED** as follows:
>
> "**WHEREFORE,** the Petition for Review is **PARTIALLY GRANTED**. The deficiency VAT and miscellaneous tax assessments, as well as the compromise penalties, issued by respondent against petitioner for taxable year 2010 are **CANCELLED.** On the other hand, the deficiency income tax and expanded withholding tax assessments are **PARTIALLY UPHELD**. Accordingly, petitioner is ordered to pay the amount of **ONE HUNDRED FIFTEEN MILLION TWO HUNDRED FIFTEEN THOUSAND SEVEN HUNDRED EIGHTY-EIGHT PESOS AND TWENTY-ONE CENTAVOS (₱115,215,788.21)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as summarized below:

	Income Tax	**Expanded Withholding Tax**	**Total**
Basic Tax	₱ 28,294,209.73	₱ 1,295,214.73	₱ 29,589,424.46
25% Surcharge	7,073,552.43	323,803.68	7,397,356.11
20% Deficiency Interest from April 16, 2011 to August 15, 2014 *(₱28,294,209.73 x 20% x 1218/365 days)*	18,883,478.06		18,883,478.06
20% Deficiency Interest from Jan. 12, 2011 to August 15, 2014 *(₱1,295,214.73 x 20% x 1312/365 days)*		931,135.19	931,135.19
Total Amount Due as of August 15, 2014	**₱54,251,240.22**	**₱2,550,153.60**	**₱56,801,393.82**
20% Deficiency Interest from August 16, 2014 to December 31, 2017			
(₱28,294,209.73 x 20% x 1234/365 days)	19,131,536.88		19,131,536.88
(₱1,295,214.73 x 20% x 1234/365		875,778.07	875,778.07

[1] *Rollo* (CTA EB No. 1801), pp. 152-183.

days)			
20% Delinquency Interest from August 16, 2014 to December 31, 2017			
(₱54,251,240.22 x 20% x 1234/365 days)	36,682,756.40		36,682,756.40
(₱2,550,153.60 x 20% x 1234/365 days)		1,724,323.04	1,724,323.04
Total Amount Due as of Dec. 31, 2017	**₱110,065,533.50**	**₱5,150,254.71**	**₱115,215,788.21**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due as of August 15, 2014 of **₱56,801,393.82**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations (RR) No. 21-2018.

SO ORDERED."

SO ORDERED.

Both unconvinced, Green Valley Marketing Corporation (Corporation) and the Commissioner of Internal Revenue (CIR) separately filed their Motions for Partial Reconsideration dated October 24, 2019 and October 30, 2019, respectively.

The Corporation's Motion for Partial Reconsideration:[2]

Invoking Decisions of the High Tribunal,[3] as well as of this Court,[4] the Corporation argues that a valid Letter of Authority (LOA) must be issued in favor of the CIR's agents for them to legally conduct audit or examination of a particular taxpayer for potential deficiency taxes, under the pain that the questioned assessment be declared a patent nullity. Since the persons[5] who recommended the issuance of the Formal Assessment Notice and Formal Letter of

2 *Rollo* (CTA EB No. 1801), pp. 191-210.
3 *Medicard Philippines vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.
4 *Opulent Landowners vs. Commissioner of Internal Revenue,* CTA EB Nos. 1802-1803, July 5, 2019.
5 Revenue Officers (ROs) C. Mendoza, R. Arriola, R. Martinez, S. Samaniego, and Group Supervisor (GS) Rolando M. Balbido.

Demand (FAN/FLD) were allegedly not named in the LOA[6] dated September 23, 2011, the resultant deficiency taxes assessment and increments thereon were fruits of the BIR's unlawful examination, hence, void and without any legal consequence.

Further, while the validity of the LOA was not raised as an issue in its Petition for Review before the Court in Division, nevertheless, Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) and relevant case-law[7] allow the Court to address it to determine the propriety of the assessment issued against it by the BIR.

The Corporation also complains as erroneous the matching of its Summary list of Purchases (SLP) in the amount of ₱396,320,243.95, with its Monthly Alphalist of Payees (MAP) totalling ₱370,607,375.02 which led to the conclusion that it failed to subject its purchases to withholding tax in the sum of ₱25,712,868.93.[8] Allegedly, the SLP-MAP matching yielded inaccurate results as it pertained to paid and unpaid purchases. For the Corporation, accurate results could only be obtained by comparing its income payments with its Withholding Tax (WT) Returns as this method pertained to purchases actually paid from which taxes were withheld and remitted to the BIR.

Also flawed was the Court's disallowance of a portion of expenses in the sum of ₱14,461,555.95, in relation to its transactions with Pilipinas Shell Petroleum Corporation and Petron Fleet Card. According to the Corporation, such commercial dealings were not supply of services, but rather of goods from which it deducted the corresponding withholding taxes due thereon. Besides, there was no agreement to purchase and sell goods between the Corporation, as the Fleet Card holder, and Petron Corporation, since its supplier was the retail dealer of Petron Corporation and not Petron Corporation itself. Thus, there was no need for it to withhold taxes on purchases coming from the Petron Fleet Card.

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[6] Exhibit R-2.
[7] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[8] ₱396,320,243.95 less ₱370,607,375.02.

It was likewise illogical to disallow expenses for non-withholding of taxes either in the amount of ₱370,607,375.02 per MAP, or ₱396,320,243.95, per SLP, as the foregoing sums were obviously higher than its claimed expenses of ₱79,067,382.28 as reflected in its 2010 Annual Income tax Return (AITR).

The Corporation also questions the Court's disallowance of the amount of ₱63,254,568.05. The income payments per global reconciliation amounting to ₱63,254,568.05 were allegedly subjected to withholding taxes bunking on the Amended ICPA Report dated December 8, 2015.

On the finding of over-stated cost of sales Freight-In in the sum of ₱6,880,450.84, such item was not a deductible expense from gross income. Freight-In was a part of its cost of sales subtracted from the gross sales to arrive at the gross income of the taxpayer. Hence, substantiation requirements on *expenses* under Section 34(A)(1) of the NIRC, as amended, is unavailing on cost of sales like Freight-In.

Even granting that such Freight-In costs of ₱6,880,450.84 were unsubstantiated, subtraction of such costs was not possible as the amount from which it might be deducted, i.e., ₱47,384,410.00,[9] was not declared as an item of deduction in its AITR, for which reason, the nullification of deficiency income tax stemming therefrom is warranted.

Finally, the Corporation believes that since the deficiency IT assessments were without basis, the concomitant deficiency EWT assessment in the amount of ₱1,295,214.73 should likewise be invalidated.

In rejecting the motion, the CIR claims that contrary to the Corporation's proposition, his agents, by virtue of a Memorandum of Assignment issued in their favor, were duly clothed with the requisite competence to validate the Corporation's books of account, and other accounting records which led to a finding of deficiency taxes against it

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[9] Freight-In costs per the Corporation's AFS and AITR.

for TY 2010. Under Revenue Memorandum Order (RMO) No. 8-2006, a Memorandum of Assignment (MOA) may be issued in favor of a new handling RO, in case the former handling RO's resigns or retires as obtaining in the present case. RMO No. 36-2000 which provides that only one (1) LOA per TY may be issued to a taxpayer fortifies his stance that a MOA was sufficient to vest authority upon the ROs named therein to continue the tax audit.

On the Corporation's undeclared income of ₱15,819,843.57, the CIR explains that it was determined after matching the Corporation's purchases with: a) the SLP of third parties with the BIR tax reconciliation system (TRS); and b) summary alphalist of tax withheld (SAWT) with the Corporation's Summary List of Sales (SLS). Being unaccounted income of the Corporation, it is subject to income tax.

The CIR also believes that the discrepancies in the sum of ₱232,857.18, purportedly arrived at after comparing the Corporation's rental expense per FS with its EWT Return constitutes unaccounted source of cash subject to income taxes.

On his finding of over-claimed costs and/or expenses amounting to ₱30,667,979.09,[10] the same must be treated as unreported gain subject to income tax in the absence of any convincing proof to the contrary as required under Section 32 of the NIRC, as amended.

For failure to withhold taxes on certain income payments, the purchases of the Corporation must be disallowed as deduction to its gross income pursuant to Section 6 of the Revenue Regulations (RR) No. 14-2002.

Finally, the Court also erred when it reduced the deficiency EWT assessment from ₱1,311,498.67 to ₱1,295,214.73 given that the Corporation failed to pay

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10 The CIR initially disallowed alleged overstated expenses of ₱37,230,901.04 and added it to the Corporation's taxable income. However, the Court in Division only upheld the disallowance of ₱6,880,450.84, leaving the remainder of ₱30,667,979.09 (₱37,230,901.04 less ₱6,880,450.84) as the questioned portion by the CIR.

withholding taxes on certain income payments. On this account the entire amount of ₱1,311,498.67 deficiency EWT must be upheld.

The CIR's Motion for Partial Reconsideration:[11]

Save for the issue of premature filing of the Petition for Review before the Court in Division, the CIR merely mirrors in his Motion for Reconsideration the above-enumerated justification for his imposition of the alleged deficiency tax liabilities of the Corporation.

Citing Section 228 of the NIRC, as amended, the CIR states that the taxpayer has 30 days from receipt of the assessment within which to file a protest and 60 days thereafter to submit supporting documents to substantiate it. After the lapse of the said 60-day period, he has 180 days to act on the protest. In case of his inaction within the allowable 180-day period, the taxpayer has 30 days to elevate its case to the Court in Division. Since the Corporation filed its protest on July 25, 2014, it had 60 days or until September 23, 2014 to submit supporting documents. From the lapse of the said 60-day period, he had 180 days or until March 22, 2015 to act on the protest. After the said date, the Corporation had 30 days to seek judicial intervention. In this case however, the Corporation sprinted to the Court in Division and in haste lodged its Petition for Review on February 20, 2015, or before his 180-day period lapsed, justifying the outright dismissal of the case.

In refutation, [12] the Corporation counters that its Petition for Review was timely instituted before the Court in Division. It explains that its request for reconsideration was lodged with the BIR on July 25, 2014, thus, the 180-day period for the CIR to rule commenced on even date. Since the CIR failed to act on its protest within the 180-day period, which lapsed on January 25, 2015, it had until February 20,

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11 *Rollo* (CTA EB No. 1801), pp. 211-224.

12 The Corporation's Comment on the CIR's Motion for Reconsideration dated December 12, 2019.

2015 to institute its appeal. In fine, its Petition for Review was seasonably filed on February 20, 2015.

As to the unaccounted purchases treated as undeclared income per Audit Information Tax Exemption and Incentives Division (AITEID)-SLP matching in the sum of ₱84,819,343.96, suffice it to say that it lacks factual basis, hence, void for being offensive to due process on assessment. Cancellation thereof is warranted.

Insofar as the amount of ₱57,559,248.13, the Corporation adopts the Court's observation that it had successfully reconciled the unaccounted income from undeclared purchases per SLP-MAP comparison.

The Corporation likewise agrees with the Court's finding that the income payments in the sum of ₱813,253.16, representing the difference between MAP-SLP matching was the amount of the income payments which the CIR erroneously imputed to it for non-withholding of taxes.

For lack of legal mooring, the alleged unaccounted costs/expenses totalling ₱30,667,979.09 must be cancelled.

Citing portions of the impugned Decision, the Corporation subscribes with conclusion of Court in Division that the reason given by the CIR to justify his disallowance of its excess MCIT in the amount ₱460,156.61 was not contained in the subject assessment. Thus, invalidation thereof on ground of transgression of due process on assessment was in order.

It also believes that it may not be held liable for deficiency VAT originating from unaccounted income due to: a) unaccounted expenses in the amount of ₱84,671.41; and b) rental expense, amounting to ₱232,857.18, as it had successfully reconciled the same.

Deficiency VAT should not be imposed on the alleged undeclared sales of ₱158,198,435.66 given that the claimed undeclared purchases per AITEID-SLP and SLP-MAP

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matching from which the foregoing sum arose was duly accounted for, and reconciled by it, says the Corporation.

The Corporation further states that the CIR's attribution of deficiency VAT to disallowed creditable taxes amounting to ₱784,032,567.01 per comparison of its VAT Returns and SLP was erroneous given that no *actual* inconsistency exists on its purchases per VAT Returns vis-à-vis SLP, as found by the Court.

The Corporation also rejects liability for additional deficiency EWT of ₱16,283.94,[13] as the income payments from which it was based were subjected to withholding taxes.

Finally, the CIR may not impose compromise penalties corresponding to deficiency IT, VAT and EWT without its consent.

THE RULING OF THE COURT

The Motions for Partial Reconsideration filed by the Corporation and the CIR should be denied.

Except for the legality by the CIR's agents to conduct examination or validation of the Corporation's books of account and other accounting records for TY 2010, the arguments advanced by the parties in their respective Motions for Partial Reconsideration were exhaustively addressed and passed upon by the Court in the impugned Decision of October 14, 2019. A repeat of the discussion on the matter is certainly a waste of time and resources of the Court.

On the propriety of the audit performed by the CIR's tax agents on the Corporation, Section 6(A) of the NIRC, as amended, limits the authority to examine any taxpayer to the CIR or his authorized representative. The same

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[13] This represents the difference between the CIR's deficiency EWT assessment of ₱1,311,498.67 vis-à-vis the deficiency EWT as found by the Court amounting to ₱1,295,214.73. The Corporation contests the latter sum in its own Motion for Partial Reconsideration.

provision however allows BIR personnel to examine or audit a taxpayer on condition that they are armed with a valid LOA issued in their favor by the CIR or his authorized representative for that purpose, thus:

> SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.**
>
> (A) Examination of Returns and Determination of tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: xxx.

Relevantly, Section 13 of the NIRC, as amended, mandates that a valid LOA must be issued by the CIR or his authorized representative in favor of revenue officers performing assessment functions to clothe them with legal competence to audit or examine any taxpayer, *viz.*:

> SEC. 13. **Authority of a Revenue Officer**.- Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

A validly issued LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and other accounting records, in relation to internal revenue tax liabilities for a *particular period,*[14] the absence of which will render the assessment or examination a patent nullity.[15]

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14 *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017. Italics in the original.

15 See *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,* G.R. No. 178697, November 17, 2010.

Evidence shows that on September 23, 2011, OIC Assistant Commissioner - Large Taxpayer's Service Alfredo M. Misajon issued a LOA,[16] authorizing RO - Zenaida Paz, Myrna Ramirez, Ma Salud Maddela, Cletofel Parungao, Allan Maniego, Joel Aguila / **GS - Glorializa Samoy** of LT Regular Audit Division 1 to examine the Corporation's books of account and other accounting records for TY 2010.

Relevantly, the CIR's witness Revenue Officer Carolyn V. Mendoza declared in open court that the Final Assessment Notices, Formal Letter of Demand with Details of Discrepancy dated June 25, 2014 (FAN/FLD) were predicated upon the Memorandum dated June 19, 2014 prepared by their audit team, recommending the issuance thereof against the Corporation. She testified:

> 38Q After the Preliminary Assessment Notice (PAN) was issued and served upon (the Corporation), what happened next if any?
>
> 38A I continued the audit examination and ascertained that (the Corporation) is liable for deficiency taxes. Hence, on 19 June 2014 **we** recommended through a Memorandum the issuance of the Formal Letter of Demand (FLD) and the Final Assessment Notice (FAN). (boldfacing supplied)[17]

On the other hand, the Memorandum dated June 19, 2014[18] submitted by the team of RO Carolyn Mendoza, recommending the issuance of the FAN/FLD, was reviewed by among others, **Gloria Liza G. Samoy**, Assistant Division Chief - RLTAD I,[19] which was among the individuals named in the LOA dated September 23, 2011. On the ground that the validation of the Corporation's books of account and other accounting record which resulted in the issuance of the subject assessment was reviewed and oversaw by a person specifically named in the LOA, the Corporation's contention that the CIR's agents illegally conducted a tax examination against it must perforce fail.

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16 Exhibit R-2, BIR Record, Folder 1, p. 2.

17 Answer to Question No. 38, Judicial Affidavit (JA) of Carolyn V. Mendoza, Exhibit R-13, docket (CTA Case No. 8988), pp. 1254-1255.

18 Exhibit R-10, BIR Record, Folder 1, pp. 510-518.

19 Ibid. at p. 510.

WHEREFORE, the Motions for Partial Reconsideration dated October 24, 2019 and October 30, 2019 respectively, filed by Green Valley Marketing Corporation and the Commissioner of Internal Revenue are **DENIED**, for lack of merit. The impugned Decision dated October 14, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice