REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TYCO INFORMATION SOLUTIONS CORP., Petitioner,	CTA CASE NO. 8592
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated:
	OCT 2 2015 2:15 p.m.

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DECISION

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

This Petition for Review dated December 21, 2012 filed by petitioner Tyco Information Solutions Corporation assails the Final Decision on Disputed Assessment (FDDA) dated November 16, 2012 issued by respondent Bureau of Internal Revenue (BIR) finding it liable for deficiency income tax (IT) and value-added taxes (VAT) for the year 2006 in the amounts of ₱15,680,443.17 and ₱4,948,142.75, respectively, exclusive of increments.[1]

Petitioner is a domestic corporation, with principal office at 4th floor Philcox Bldg., 172 Salcedo St., Legaspi Village, Makati City.[2]

Respondent, represented by the Commissioner of Internal Revenue (CIR), is a government agency under the Department of Finance with main office at the BIR National Office Building, Diliman, Quezon City.

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[1] Pre-Trial Order, docket, p. 157.
[2] Petition for Review, docket, p. 6.

On September 26, 2007, petitioner received Letter of Authority No. LOA 2001 00069487[3] dated September 25, 2007, authorizing the examination of its books of account and other accounting records covering taxable year 2006.

Petitioner also received on the same day respondent's First Request for Presentation of Records[4] dated September 25, 2007. This was followed by the Second Request for Presentation of Records[5] and the Final Notice[6] which petitioner received on October 15, 2007[7] and on November 20, 2007[8], respectively.

Respondent later issued a Notice of Informal Conference dated April 27, 2009 indicating that petitioner was liable for deficiency IT and VAT.[9]

On December 18, 2009, respondent issued the Preliminary Assessment Notice (PAN)[10], assessing petitioner deficiency IT and VAT, as follows:

I. INCOME TAX			
Taxable Income			₱ 1,118,741.84
Add:	Adjustments per Audit		
	Disallowed Purchases (Cost of Sales)		
	a. United Global Stylus Trading, Inc. (Schedule 1)	₱29,884,445.61	
	b. Eurosales Corporation (Schedule 2)	8,661,194.61	
	c. ERRB Buy and Sell Trading, Inc. (Schedule 3)	6,255,625.00	44,801,265.26
Adjusted Taxable Income			₱ 45,920,007.10
Income Tax Due			₱ 16,072,002.49
Less:	Tax Credits:		
	Tax Payments	₱ 227,528.16	
	Creditable Tax Withheld at Source	164,031.16	391,559.32
Basic Deficiency Income Tax Due			₱ 15,680,443.17
Add:	50% Surcharge		7,840,221.58
	Interest (04.16.07 – 01.12.10)		8,609,207.70
TOTAL AMOUNT DUE			**₱32,129,872.45**
II. VALUE ADDED TAX			
Taxable Receipts per VAT Returns			₱ 52,255,906.11
Output Tax Due			₱ 5,832,444.59

[3] Exhibit "R-1", BIR records, p. 1.
[4] Exhibits "R-2" and "R-2-b", BIR records, pp. 14 to 15.
[5] Exhibit "R-3", BIR records, p. 16.
[6] Exhibit "R-4", BIR records, p. 17.
[7] Exhibit "R-3-B", BIR records, p. 16
[8] Exhibit "R-4-B", BIR records, p. 17.
[9] Exhibit "R-5", BIR records, pp. 193 to 197.
[10] BIR records, pp. 220 to 224.

Less:	Input Tax		
	Input Tax for the period	₱5,686,277.83	
	Less: Disallowed Input Tax (Schedule 4)	4,948,142.75[11]	738,135.08
VAT Due			₱ 5,094,309.51
Less: VAT Payments			146,166.76
VAT Due			₱ 4,948,142.75
Add: 50% Surcharge			2,474,071.38
Interest (01.26.07-01.12.10)			2,933,638.61
TOTAL AMOUNT DUE			**₱10,355,852.74**

On January 21, 2010[12], petitioner received Assessment Notices dated January 19, 2010 together with the Formal Assessment Notice (FAN)[13] with the corresponding Details of Discrepancies, reiterating petitioner's deficiency IT and VAT.

On February 18, 2010, petitioner sent its protest letter dated February 16, 2010[14] to Regional Director Jaime B. Santiago.

On November 26, 2012, petitioner received from respondent a Letter dated November 16, 2012[15], reiterating its alleged tax deficiency of ₱15,680,443.17 and ₱4,948,142.75 for IT and VAT, respectively, exclusive of increments.

This prompted petitioner to file the instant Petition for Review on December 21, 2012.

On April 10, 2013, the Court received respondent's Answer with Motion to Dismiss filed through registered mail on April 4, 2013.

In the Resolution dated July 3, 2013,[16] the Court denied respondent's Motion ruling that petitioner's administrative protest was valid and the decision issued by RDO Gerry O. Dumayas through the Letter dated November 16, 2012 is appealable to the CTA. This ruling was affirmed in the Resolution of September 11, 2013[17] which denied respondent's Motion for Reconsideration[18].

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[11] ₱4,948,142.74 in the FAN's Details of Discrepancies.
[12] Exhibit "R-7", BIR records, p. 257.
[13] Exhibit "R-6", BIR records, pp. 240 to 243.
[14] Par. 3, Summary of Admitted Facts, JSF, docket, p. 144.
[15] Exhibit "P-8", docket, pp. 196 to 197; Par. 4, Summary of Admitted Facts, JSF, docket, pp. 144 to 145.
[16] Docket, pp. 86 to 98.
[17] Resolution dated September 11, 2013, docket, pp. 113 to 116.
[18] Docket, pp. 99 to 105.

On November 25, 2013, the parties submitted their Joint Stipulation of Facts[19] on the basis of which a Pre-Trial Order[20] was issued on December 19, 2013.

During trial, petitioner presented its President **Jerick Co.**[21] He testified that petitioner is engaged in the business of supplying IT products and services to its customers obtained from its suppliers.

The filing of the instant case was triggered by respondent's denial of petitioner's protest against its Formal Assessments. In October, 2007, petitioner received an LOA from respondent for the examination of its books of account and other accounting records for the year 2006. After the examination, petitioner was assessed deficiency taxes due to the disallowance of purchases the supporting invoices of which failed to comply with the NIRC requirements. The purchases also appeared to be excessive, implausible, and fictitious as the suppliers were found to be fictitious.

To dispute such findings, the witness presented the respective BIR Certificates of Registration and Secretary's Certificates of its suppliers to show their existence and that they had business dealings with petitioner for the supply of IT products and services. He likewise presented delivery receipts allegedly to prove that these suppliers delivered goods and services to petitioner. The addresses of these suppliers are indicated in the invoices or delivery receipts. These suppliers were referred by other players in the industry and were able to deliver the goods as required indicating that they are legitimate.

He further testified that petitioner's suppliers themselves submitted letters-reply to the BIR examiner contesting the finding that their companies were fictitious. It is highly improbable that petitioner will be able to sell computer products and services amounting to more than fifty million pesos without making any purchases from such suppliers.

As to the respondent's finding that the subject purchases were excessively priced hence implausible, the

[19] Docket, pp. 144 to 148.
[20] Docket, pp. 157 to 162.
[21] See Judicial Affidavit of Jerick Co, docket pp. 133-137

witness admitted that petitioner has no evidence to show the prices of other suppliers in the market. He explained that petitioner's requirements are unique and can only be supplied by the three (3) suppliers.

He is intrigued by the fact that the very same examiner who disallowed the purchases of goods and services for the year 2006 allowed similar purchases from the same three (3) suppliers for the subsequent years and held they were legitimate transactions.

As authorized in the Secretary's Certificate, he caused the filing of the instant Petition.

Petitioner's second witness **Chong Bernard Lu**, claimed that he is a businessman and Director of various businesses including World Balance Inc., Ultrasonic Broadcasting Corp., certain restaurants in Makati, and an animation studio in Timog Avenue, Quezon City.

He testified that in 2006, he worked as a freelance middleman or one who scouts persons in need of certain products and looks for suppliers for that product. He earned a commission from the suppliers for every successful transaction. Petitioner was one of his clients, who, in 2006, needed IT products. Thus, he referred to it three (3) suppliers, namely, Euro Sales Corporation, United Global Stylus Corporation, and ERRV Buy and Sell Trading. He is familiar with these three (3) companies and vouched as to their existence but not as to their legitimacy.

He presumed that petitioner and the three (3) suppliers had several transactions because he was paid his referral commissions. However, being a mere middleman, he could not identify any documents pertaining to their transactions.

After petitioner rested, respondent presented Revenue Officer II **Dominador A. Callangan**, presently assigned at the National Investigation Division of the BIR but has been working in the said agency since 2003.

He was previously assigned at BIR RDO 47, East Makati. His duties included tax verification and post-audit examination of books of accounts and other accounting records of taxpayers to determine if any tax liability exists, and to report his findings and recommendations.

Pursuant to a Letter of Authority (LOA) with Request for presentation of records, received by petitioner on September 26, 2007, he conducted an investigation of the latter's internal revenue taxes for 2006. On October 15, 2007, petitioner received from respondent a Second Request for Presentation of Records. Despite receipt of the LOA, and the two (2) requests for presentation of records, petitioner failed to comply. Thus, a Final Notice dated September 25, 2007 was sent to petitioner which it received on November 20, 2007.

On April 27, 2009, a Notice of Informal Conference, detailing the bases of the finding for deficiency taxes was issued to petitioner.

On December 18, 2009, a Preliminary Assessment Notice (PAN) was issued to petitioner. This was followed by a Formal Assessment Notice (FAN) dated January 19, 2010, with Assessment Notices which petitioner received on January 21, 2010. Petitioner filed an unsigned 2-page protest on February 18, 2010.

After its formal offer of exhibits, respondent rested.[22]

The following are the issues submitted by the parties for the resolution of the Court.

> 1. Whether or not the income tax and VAT assessments in the amount of ₱15,680,443.17 and ₱4,948,142.75, respectively, are valid;
>
> 2. Whether or not the assessment has become final and executory; and
>
> 3. Whether or not the instant Petition for Review is already barred by prescription.

[22] Docket, p. 145.

DISCUSSION/RULING

Under Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA.[23]

Perusal of the record shows that petitioner received the letter-decision with finality from RDO Gerry Dumayas on November 26, 2012.[24]

In the Resolution[25] dated July 3, 2013, this Court already ruled that the said letter dated November 16, 2012 issued by RDO Gerry Dumayas, is appealable to the CTA. The Court explained in this wise:

> "There is no doubt that a Regional Director of the BIR, as a duly authorized representative of the CIR, may authorize the assessment of taxpayers for deficiency tax.
>
> The record reveals that Regional Director Jaime B. Santiago caused the issuance of the Final Assessment Notice (FAN) dated January 19, 2010. He also informed petitioner that the entire docket, together with the protest letter dated February 16, 2010, would be forwarded to RDO No. 47 East Makati headed by RDO Gerry Dumayas for further verification, evaluation and necessary action. Clearly, RDO Gerry Dumayas merely exercised his delegated authority to rule upon the protest letter in compliance to the directive of his superior.
>
> Significantly, the decision denying petitioner's protest clearly and categorically states that the same is final and appealable to the CTA within 30-days from date of receipt; otherwise, the subject deficiency assessment becomes final, executory and demandable.
>
> Finally, in the absence of any clear repudiation of authority by Regional Director Jaime B. Santiago, it is

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[23] Fishwealth Canning Corporation vs. Commissioner of Internal Revenue, G.R. No. 179343, January 21, 2010

[24] Exhibit "P-8", docket, pp. 196 to 197; Par. 4, Summary of Admitted Facts, JSF, docket, pp. 144 to 145.

[25] Docket, pp. 86 to 98.

safe to conclude that RDO Gerry Dumayas was duly authorized to issue the assailed decision."[26]

Accordingly, petitioner had thirty (30) days from November 26, 2012 or until December 26, 2012 to appeal to the CTA the adverse decision of respondent. Thus, the instant Petition for Review was seasonably filed on December 21, 2012.

We now determine the merit of petitioner's repudiation of his alleged liability for deficiency income tax and deficiency VAT in the amount of ₱15,680,443.17 and ₱4,948,142.75, respectively, for the year 2006.

Respondent assessed petitioner for alleged deficiency income tax and VAT, inclusive of surcharge and interest, in the aggregate amount of ₱42,949,161.91, computed as follows:

Deficiency income tax	₱ 32,482,145.42
Deficiency VAT	10,467,016.49
TOTAL	**₱42,949,161.91**

I. Deficiency Income Tax - ₱32,482,145.42

The alleged deficiency income tax in the amount of ₱32,482,145.42[27], inclusive of interest is broken down as follows:

Taxable Income		₱ 1,118,741.84
Add: Adjustments per Audit		
Disallowed Purchases (Cost of Sales)		
a. United Global Stylus Trading, Inc. (Schedule 1)	₱29,884,445.61	
b. Eurosales Corporation (Schedule 2)	8,661,194.65	
c. ERRB Buy and Sell Trading, Inc. (Schedule 3)	6,255,625.00	44,801,265.26
Adjusted Taxable Income		**₱45,920,007.10**
Income Tax Due		**₱16,072,002.49**
Less: Tax Credits		
Tax Payments	₱ 227,528.16	
Creditable Tax Withheld at Source	164,031.16	391,559.32
Basic Deficiency Income Tax Due		₱ 15,680,443.17

[26] Docket, p. 97.
[27] Exhibit "R-6", BIR records, pp. 240 to 243.

Add: 50% Surcharge		7,840,221.58
Interest (04.16.07 – 02.22.10)		8,961,480.67
TOTAL AMOUNT DUE		**₱32,482,145.42**

Pursuant to Section 34 of the NIRC of 1997, as amended, and the invoicing requirements under existing tax laws and implementing guidelines, respondent disallowed as expense deductions the purchases made by petitioner from the following suppliers:

Disallowed Purchases	₱44,801,265.26
a. United Global Stylus Trading, Inc.	29,884,445.61
b. Eurosales Corporation	8,661,194.65
c. ERRB Buy and Sell Trading, Inc.	6,255,625.00

The disallowance was based on the finding that petitioner failed to substantiate its alleged several purchases from United Global Stylus Trading, Inc., Eurosales Corporation, and ERRB Buy and Sell Trading Inc. The sales invoices it presented were unsigned by the alleged suppliers and there were no official receipts (ORs), delivery receipts (DRs), etc. evidencing transactions to justify the claimed expense deduction.

As to respondent's theory that some of petitioner's purchases from United Global Stylus Trading, Inc. were made before the issuance of the Permit to Print, and the cost of *Ecquaria SOP and ERS Software Licenses and four CPU Licenses* in the amount of ₱19,180,500.00 was excessive and implausible, thus, the conclusion that the afore-mentioned suppliers were fictitious and non-existent entities, suffice it to say that he who alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and that private transactions have been fair and regular.[28] Fraud is never presumed but must be proved by clear and convincing evidence, mere preponderance of evidence not even being adequate.[29] Intentional acts to deceive and deprive another of his right, or in some manner injure him must be specifically alleged and proved by the

[28] Spouses Ramos vs. Raul Obispo and Far East Bank and Trust Company, G.R. No. 193804, February 27, 2013
[29] Francisco Alonso (Deceased), Substituted By Mercedes V. Alonso, Tomas V. Alonso And Asuncion V. Alonso vs. Cebu Country Club, Inc., G.R. No. 130876, December 05, 2003

plaintiff by clear and convincing evidence.[30] In this regard, respondent utterly failed.

Respondent's contention that the BIR's investigating officers visited the business address of United Global Stylus Trading, Inc. and discovered that no such business entity in the given address; that verification, particularly from the Securities and Exchange Commission (SEC) showed that such entities/suppliers were bogus or fictitious, likewise failed to convince the Court that petitioner's transactions with the three suppliers were clothed with fraud or deceit.

Neither testimonial nor documentary evidence was presented by respondent to prove the existence of fraud in the purchases made by petitioner, except its self-serving claim in the Formal Assessment Notice with Details of Discrepancies[31] and the Notice of Informal Conference.[32] Notably, respondent did not present the BIR investigating officers who allegedly visited the suppliers' given addresses to verify their existence. Further, not a single document was adduced to support the contention that the BIR investigating officer gathered information from the SEC showing that petitioner's suppliers were bogus.

In fine, there are no factual and legal bases to hold that petitioner's subject transactions with its suppliers during the pertinent period are fraudulent.

On the issue of whether the purchases made by petitioner from its suppliers are allowable deductions, Section 34(A)(1)(b) of the NIRC of 1997, as amended, is instructive, to wit:

> "SEC. 34. *Deductions from Gross Income*. – xxx
>
> (A) *Expenses*. –
>
> (1) *Ordinary and Necessary Trade, Business or Professional Expenses*.

[30] Heirs of Salvador Hermosilla, Namely: Adelaida H. Dolleton, Ruben Hermosilla, Lolita H. De La Vega, Erlinda H. Inovio, Celia H. Vivit, Zenaida H. Achoy, Precilla H. Limpiahoy, and Edgardo Hermosilla vs. Spouses Jaime Remoquillo and Luz Remoquillo, G.R. NO. 167320, January 30, 2007
[31] Exhibit "R-6", docket, pp. 237 to 239.
[32] Exhibit "R-5", docket, pp. 193 to 197.

xxx xxx xxx

> (b) *Substantiation Requirements.* - **No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records**: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer." *(Emphasis supplied)*

For purposes of deduction of ordinary and necessary trade, business, or professional expenses, the following requisites must concur: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) it must be supported by receipts, records or other pertinent papers.[33]

Thus, to meet the requirements of the law, the taxpayer seeking allowance of such deduction, such as petitioner, must present official receipts or invoices of its transactions.[34] Moreover, no deduction from gross income shall be allowed unless the taxpayer can substantiate with sufficient evidence the amount of expense being deducted, and the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

A revisit of the evidence presented shows that some of petitioner's purchases were sufficiently substantiated by sales invoices and delivery receipts, [35] as shown below:

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[33] Commissioner of Internal Revenue vs. Isabela Cultural Corporation, G.R. No. 172231, February 12, 2007.
[34] H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue, G.R. No. 173373, July 29, 2013.
[35] Exhibits "P-12" to "P-32", docket, pp. 201 to 221.

Description	Sales Invoice No.	Delivery Receipt No.	Exhibit No.[36]	Amount
Purchases made from Eurosales Corporation				
106 units of Wyse Terminal S30 with keyboard, mouse and rapport enterprise upgrade	0582[37]	0203	P-12	₱ 2,221,064.29
2 Units Wyse Terminal S30 with keyboard and mouse	0608[38]	0213	P-13	40,219.64
1 lot Online Local Chief Executive System Software	2258[39]	0224	P-14	1,138,392.86
1 lot DILG Uniformed and Non-Uniformed Personnel Information System	2263[40]	0233	P-15	3,776,785.71
1 lot Thin Client System Solution with implementation configuration on site support and software maintenance	2279[41]	0243	P-16	761,517.86
1 lot Project Management Tools, Materials and Services	2289[42]	0250	P-17	723,214.29
			Subtotal	**₱ 8,661,194.65**
Purchases made from United Global Stylus Trading, Inc.				
44 Units Wyse Terminals S30 with keyboard and mouse, powercord with rapport software licenses	6448[43]	1517	P-21	₱ 926,383.93
100 Units Wyse Terminals S30 with keyboard and mouse, powercord with rapport software licenses	6551[44]	1522	P-22	2,112,098.21
5 Users Prepalms Software including installation and software maintenance	9350[45]	1537	P-23	291,385.71
100 Units Wyse Terminals 3150SE with keyboard, mouse and power cord with Propalms Software License for 30 Users Hewlett Packard, ML 150 servers, 1 CPU 1 GB Ram with Samsung monitors	6556[46]	1527	P-24	1,379,464.29
1 Lot Aware DMA Document Management and Document Imaging software and high speed scanner mode 1260 including software maintenance for two years, technical support, professional services and training	9342[47]	1532	P-25	3,013,656.25
2 Units Sony Vaio laptop notebooks intel	9357[48]	1542	P-26	229,004.46

[36] Docket, pp. 201 to 221.
[37] BIR records, p. 145.
[38] BIR records, p. 144.
[39] BIR records, p. 122.
[40] BIR records, p. 121.
[41] BIR records, p. 120.
[42] BIR records, p. 119.
[43] BIR records, p. 148.
[44] BIR records, p. 147.
[45] BIR records, p. 130.
[46] BIR records, p. 146.
[47] BIR records, p. 131.
[48] BIR records, p. 129.

2 core duo 2 GB ram with bag, dvd writer				
3 Units AMD workstation w/ 17 inch monitor, 1 GB memory external dvd writer, 1 Unit external dvd writer, 3 Units Intel Pentium D. duo core, 1 GB ram, 80 GB hard disk drive and 5 Users Microsoft Windows Server 2003 with CAL and TS CAL and Oracle Database Software	9363[49]	1549	P-27	531,998.21
			Subtotal	**₱ 8,483,991.06**
Purchases made from ERRB Buy & Sell Trading, Inc.				
1 Lot Statement of Assets and Liabilities Software	8305[50]	1810	P-28	₱ 3,044,642.86
1 Lot DILG Legal Service System Software	8313[51]	1818	P-29	1,665,178.57
1 Lot LGEMIS, Local Government Executive Management Information System Software	8316[52]	1825	P-30	1,392,857.14
4 Units Wyse Terminal S90 with keyboard, mouse, powercord and mounting bracket	8323[53]	1834	P-31	85,267.86
5 Units Wyse Terminal S30 with keyboard, mouse and powercord	8334[54]	1843	P-32	67,678.57
			Subtotal	**₱ 6,255,625.00**
			Total	***₱23,400,810.71***

However, some of the purchases were made before the BIR Authority to Print was issued, hence, shall be disallowed, detailed as follows:

Date of transaction	Date of issuance of the BIR Authority to Print	Sales Invoice	Amount
January 3, 2006	January 25, 2006	6416[55]	₱ 17,436,818.18
January 15, 2006	January 25, 2006	6423[56]	3,928,181.82
January 20, 2006	January 25, 2006	6430[57]	35,454.55
		Total	**₱21,400,454.55**

[49] BIR records, p. 128.
[50] BIR records, p. 127.
[51] BIR records, p. 126.
[52] BIR records, p. 125.
[53] BIR records, p. 124.
[54] BIR records, p. 123.
[55] BIR records, p. 151.
[56] BIR records, p. 150.
[57] BIR records, p. 149.

With the disallowed purchases in the amount of ₱21,400,454.55, together with the declared taxable income, petitioner shall be held liable for basic deficiency income tax, computed as follows:

Taxable income		₱ 1,118,741.84
Add: Adjustments per investigation		
Disallowed Purchases		21,400,454.55
Taxable income per investigation		**₱22,519,196.39**
Income tax due thereon		**₱ 7,881,718.73**
Less: Allowable tax credits/payments		
Payments	₱227,528.16	
Creditable Tax Withheld at Source	164,031.16	391,559.32
Deficiency Income Tax		**₱ 7,490,159.41**

II. Deficiency Value-added Tax - ₱10,467,016.49

Respondent computed the deficiency VAT assessment of ₱10,467,016.49 as follows:[58]

Taxable Receipts per VAT Returns		₱ 52,255,906.11
Output Tax Due		₱ 5,832,444.59
Less: Input Tax		
Input Tax for the period	₱ 5,686,277.83	
Less: Disallowed Input Tax	4,948,142.75[59]	738,135.08
VAT Due		₱ 5,094,309.51
Less: VAT Payments		146,166.76
VAT Due		₱ 4,948,142.75
Add: 50% Surcharge		2,474,071.38
Interest (01.26.07-02.22.10)		3,044,802.36
Total Amount Due		**₱10,467,016.49**

Respondent disallowed petitioner's claimed input taxes for purchases of goods from fictitious suppliers in the amount of ₱4,948,142.75, pursuant to Sections 110 and 113(A) and (B) of the NIRC of 1997, as amended.

However, respondent failed to prove the presence of fraud in the purchases made by petitioner from its suppliers, thus, the input tax claimed by petitioner should be allowed, broken down as follows:

[58] Exhibit "R-7", BIR records, p. 255.
[59] ₱4,948,142.74 in the FAN's Details of Discrepancies.

Description	Sales Invoice No.	Delivery Receipt No.	Exhibit No.[60]	Input Tax
Purchases made from Eurosales Corporation				
106 units of Wyse Terminal S30 with keyboard, mouse and rapport enterprise upgrade	0582	0203	P-12	₱ 266,527.71
2 Units Wyse Terminal S30 with keyboard and mouse	0608	0213	P-13	4,826.36
1 lot Online Local Chief Executive System Software	2258	0224	P-14	136,607.14
1 lot DILG Uniformed and Non-Uniformed Personnel Information System	2263	0233	P-15	453,214.29
1 lot Thin Client System Solution with implementation configuration on site support and software maintenance	2279	0243	P-16	91,382.14
1 lot Project Management Tools, Materials and Services	2289	0250	P-17	86,785.71
			Subtotal	₱ 1,039,343.35
Purchases made from United Global Stylus Trading, Inc.				
Ecquaria SOP and ERS Software Licenses, 4 CPU License	6416			₱ 1,743,681.82
Tarantella Software License for 250 users	6423			392,818.18
Tarantella Software License for 10 users	6430			3,545,45
44 Units Wyse Terminals S30 with keyboard and mouse, powercord with rapport software licenses	6448	1517	P-21	111,166.07
100 Units Wyse Terminals S30 with keyboard and mouse, powercord with rapport software licenses	6551	1522	P-22	253,451.79
5 Users Prepalms Software including installation and software maintenance	9350	1537	P-23	34,966.29
100 Units Wyse Terminals 3150SE with keyboard, mouse and power cord with Propalms Software License for 30 Users Hewlett Packard, ML 150 servers, 1 CPU 1 GB Ram with Samsung monitors	6556	1527	P-24	165,535.71
1 Lot Aware DMA Document Management and Document Imaging software and high speed scanner mode 1260 including software maintenance for two years, technical support, professional services and training	9342	1532	P-25	361,638.75
2 Units Sony Vaio laptop notebooks intel 2 core duo 2 GB ram with bag, dvd writer	9357	1542	P-26	27,480.54
3 Units AMD workstation w/ 17 inch monitor, 1 GB memory external dvd writer, 1 Unit external dvd writer, 3 Units Intel Pentium D. duo core, 1 GB ram, 80 GB hard disk drive and 5 Users Microsoft	9363	1549	P-27	63,839.79

[60] Docket, pp. 201 to 221.

Windows Server 2003 with CAL and TS CAL and Oracle Database Software				
			Subtotal	₱ 3,158,124.39
Purchases made from ERRB Buy & Sell Trading, Inc.				
1 Lot Statement of Assets and Liabilities Software	8305	1810	P-28	₱ 365,357.14
1 Lot DILG Legal Service System Software	8313	1818	P-29	199,821.43
1 Lot LGEMIS, Local Government Executive Management Information System Software	8316	1825	P-30	167,142.86
4 Units Wyse Terminal S90 with keyboard, mouse, powercord and mounting bracket	8323	1834	P-31	10,232.14
5 Units Wyse Terminal S30 with keyboard, mouse and powercord	8334	1843	P-32	8,121.43
			Subtotal	₱ 750,675.00
			Total	***₱4,948,142.74***

The Court however disallowed certain transactions between petitioner and United Global Stylus Trading, Inc. on January 3, 2006, January 15, 2006 and January 20, 2006 for inability to substantiate them, the disallowance of input VAT in the amount of ₱2,140,045.45 should be upheld, as shown below:

Purchases made from United Global Stylus Trading, Inc.		
Ecquaria SOP and ERS Software Licenses, 4 CPU License	6416[61]	₱ 1,743,681.82
Tarantella Software License for 250 users	6423[62]	392,818.18
Tarantella Software License for 10 users	6430	3,545.45
Total Disallowed input VAT		**₱2,140,045.45**

Also, input VAT in the amount of ₱1,531,558.61 from purchases of services by petitioner shall be disallowed, pursuant to Section 110(A)(1)(b) in relation to 113(A)(2) of the NIRC of 1997, as amended, for failure of petitioner to submit the corresponding official receipts, as follows:

Description	Sales Invoice No.	Input Tax
Purchases made from Eurosales Corporation		
1 lot Online Local Chief Executive System	2258	₱ 136,607.14

[61] BIR records, p. 151.
[62] BIR records, p. 150

Software		
1 lot DILG Uniformed and Non-Uniformed Personnel Information System	2263	453,214.29
1 lot Thin Client System Solution with implementation configuration on site support and software maintenance	2279	91,382.14
1 lot Project Management Tools, Materials and Services	2289	86,785.71
	Subtotal	**₱ 767,989.28**
Purchases made from United Global Stylus Trading, Inc.		
5 Users Prepalms Software including installation and software maintenance	9350	₱ 34,966.29
1 Lot Aware DMA Document Management and Document Imaging software and high speed scanner mode 1260 including software maintenance for two years, technical support, professional services and training	9342	361,638.75
	Subtotal	**₱ 396,605.04**
Purchases made from ERRB Buy & Sell Trading, Inc.		
1 Lot DILG Legal Service System Software	8313	₱ 199,821.43
1 Lot LGEMIS, Local Government Executive Management Information System Software	8316	167,142.86
	Subtotal	**₱ 366,964.29**
	Total	**₱1,531,558.61**

Accordingly, the total amount of ₱4,948,142.74 input tax disallowed by respondent shall be reduced to ₱3,671,604.06.[63] The remaining amount of ₱1,276,538.68 represents petitioner's valid input tax creditable against its output tax due for year 2006.

Thus, petitioner is liable to pay basic deficiency VAT in the amount of ₱3,671,604.06, computed as follows:

Taxable Receipts per VAT Returns		₱ 52,255,906.11
Output Tax Due		₱ 5,832,444.59
Less: Input Tax		
Input Tax Claimed per Return	₱ 5,686,277.83	
Less: Disallowed Input Tax	3,671,604.06	2,014,673.77
Output Tax Payable		₱ 3,817,770.82
Less: Payments per return		146,166.76
Deficiency VAT		**₱ 3,671,604.06**

[63] Sum of ₱1,531,558.61 and ₱2,140,045.45.

Finally, in the absence of fraud, the imposition of fifty percent (50%) surcharge on the alleged deficiency income tax and VAT is deemed unfounded and without legal basis pursuant to Section 248(B) of the NIRC of 1997, as amended.

WHEREFORE, the Petition for Review dated December 21, 2012 filed by Tyco Information Solutions Corp. is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for taxable year 2006 covering deficiency income tax and value-added tax is hereby **MODIFIED**. Accordingly, petitioner is **ORDERED TO PAY** the amount of THIRTEEN MILLION NINE HUNDRED FIFTY-TWO THOUSAND TWO HUNDRED FOUR PESOS AND THIRTY-FOUR CENTAVOS (₱13,952,204.34) representing deficiency income tax and value-added tax for taxable year 2006, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	Basic Tax	25% Surcharge	Total
Income Tax	₱ 7,490,159.41	₱ 1,872,539.85	₱ 9,362,699.26
Value-added Tax	3,671,604.06	917,901.02	4,589,505.08
Total	**₱11,161,763.47**	**₱2,790,440.87**	**₱13,952,204.34**

In addition, petitioner is hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax and value-added tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

	Basic Tax	20% Deficiency Interest Computed from
Income Tax	₱7,490,159.41	April 15, 2007
Value-added Tax	₱3,671,604.06	January 25, 2007

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱13,952,204.34 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 26, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

(With Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

TYCO INFORMATION SOLUTIONS CORP.,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8592

Members:
BAUTISTA, ***Chairperson***
FABON-VICTORINO,
and
RINGPIS-LIBAN, ***JJ.***

Promulgated:

OCT 2 2015
2:15 p.m.

x---x

CONCURRING & DISSENTING OPINION

RINGPIS-LIBAN, ***J.***:

With all due respect to the ponencia of my esteemed colleague, the Honorable Associate Justice Esperanza R. Fabon-Victorino, I concur with the majority decision partially granting the Petition for Review. However, on the point of imposing deficiency interest under Section 249(B), I am of the opinion tbat this should extend only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof; and that the imposition of the delinquency interest under Section 249(B) shall commence from the time when the concerned taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand. Otherwise, the deficiency interest would be allowed to accrue at the same time that the delinquency interest begins to accrue, which will result in an unduly harsh, even usurious, 40% interest rate per annum, and be an absurd application of law.

Furthermore, a perusal of the NIRC of 1997, as amended shows that the term "deficiency" was defined in only three (3) types of internal revenue taxes: namely, income tax, estate tax and donor's tax, pursuant to Sections 56(B), 93 and 104 of the NIRC of 1997, as amended. Therefore, deficiency interest under Section 249(B) of the NIRC of 1997, as amended, should be applied only where there is a deficiency income tax, deficiency estate tax and deficiency donor's tax.

In the case at bar, except for deficiency income tax, no deficiency interest may be imposed on the deficiency VAT.

Based on the foregoing, I vote to **PARTIALLY GRANT** the Petition for Review in CTA Case No. 8592, however, that petitioner be **ORDERED TO PAY** deficiency interest only on its deficiency income tax, and not on its deficiency VAT, and only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof. Further, that the imposition of delinquency interest under Section 249(B) shall commence from the time when petitioner failed to pay the assessed tax within the time allowed as stated in the formal letter of demand.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice