Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

***SPECIAL FIRST DIVISION***

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| **NORTHERN MINDANAO SALES CORPORATION,** Petitioner, | **CTA Case No. 8959** For: Assessment |
| | Members: |
| -versus- | **DEL ROSARIO, P.J.,** ***Chairperson*** **UY, and MINDARO-GRULLA, JJ.** |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: |
| | MAR 11 2019 ; 2:05 pm |

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# D E C I S I O N

***MINDARO-GRULLA, J.:***

This is a Petition for Review[1] filed on December 23, 2014 by Northern Mindanao Sales Corporation to seek the reversal and setting aside of the Final Assessment Notice (FAN) dated May 21, 2014, assessing it in the amount of ₱34,402,825.83, allegedly representing its deficiency value-added tax (VAT), inclusive of surcharge, interest and compromise penalty for the period covering January 1, 2012 to June 30, 2012.

Petitioner Northern Mindanao Sales Corporation is a corporation duly organized and existing under Philippine laws, with business address at 114 Legaspi St., Legaspi Village, Makati City. It is principally engaged in the business of buying, selling, distributing, marketing at wholesale and retail of fermented liquor, bottled water and other beverages.[2] Petitioner is registered with the Securities and Exchange Commission (SEC), with duly issued SEC Company Registration No.

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[1] Docket, vol. I, pp. 14-40.
[2] Exhibit "P-8", Docket, vol. II, p. 745; Par. 3, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. I, p. 491.

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AS091-194156.[3] It is also registered with the Bureau of Internal Revenue (BIR), as evidenced by its Certificate of Registration No. OCN 9RC0000100816 issued on June 5, 1996.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On November 22, 2012, petitioner received Letter of Authority (LOA) No. LOA-V08-2012-00000119 dated November 21, 2012, authorizing concerned revenue officers to examine its books of accounts and other accounting records for VAT for the period from January 1, 2012 to June 30, 2012 pursuant to Revenue Memorandum Order (RMO) 20-2012, VAT Audit Program.[5]

On June 27, 2013, petitioner received a Notice for an Informal Conference with the Details of Discrepancies from respondent assessing it for alleged deficiency VAT in the aggregate amount of ₱60,847,208.37, inclusive of surcharge and interest.[6]

On July 10, 2013 and July 12, 2013, petitioner submitted its supporting documents as evidenced by Transmittal Letters dated July 10, 2013[7] and July 11, 2013[8], respectively.[9] On July 30, 2013, petitioner received respondent's Letter informing it of the receipt of the schedules and certificates relative to the Notice for an Informal Conference and requested for the submission of additional documents.[10]

On September 25, 2013, petitioner received another Notice for an Informal Conference together with the Details of Discrepancies[11]

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[3] Exhibit "P-7", Docket, vol. II, p. 744; Par. 4, JSFI, Docket, vol. I, p. 491.
[4] Exhibit "P-9", Docket, vol. II, p. 770; Par. 5, JSFI, Docket, vol. I, p. 491.
[5] Exhibit "P-16", Docket, vol. II, p. 783; Par. 6, JSFI, Docket, vol. I, p. 491.
[6] Exhibits "P-22" and "P23", Docket, vol. II, pp. 788-792; Par. 10, JSFI, Docket, vol. I, p. 491.
[7] Exhibit "P-24", Docket, vol. II, p. 793-794.
[8] Exhibit "P-25", Docket, vol. II, p. 795.
[9] Par. 11, JSFI, Docket, vol. I, p. 491.
[10] Exhibit "P-26", Docket, vol. II, p. 796; Par. 12, JSFI, Docket, vol. I, p. 491.
[11] Exhibits "P-27" and "P-28", Docket, vol. II, pp. 797-801.

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dated September 24, 2013 from respondent, assessing it for deficiency VAT in the aggregate amount of ₱98,209,204.62, inclusive of surcharge and interest.

Petitioner received the Preliminary Assessment Notice (PAN) Part I with Details of Discrepancies and PAN Part II dated April 29, 2014.[12]

On May 21, 2014,[13] petitioner received the Formal Assessment Notice I with Details of Discrepancies and Formal Assessment Part II and Assessment Notices (FAN)[14] of same date.

On May 29, 2014, petitioner filed its administrative protest dated May 28, 2014 against the FAN, praying for the cancellation and withdrawal of the proposed assessments, with the Office of the Regional Director, Revenue Region No. 8 – Makati City.[15]

On November 5, 2014, petitioner received respondent's Letter[16] dated October 21, 2014, acknowledging receipt of the Protest Letter dated May 28, 2014 together with the schedules and documents, relative to the FAN dated May 21, 2014 covering deficiency VAT in the amount of ₱34,402,825.83, inclusive of increments for the period from January 1, 2012 to June 30, 2012.[17]

Petitioner filed the present Petition for Review on December 23, 2014. Thereafter, respondent filed his Answer, through registered mail on March 6, 2015 and received by the Court on March 23, 2015, interposing the following Special and Affirmative Defenses:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

> 1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses.

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[12] Exhibits "R-6" and submarkings, BIR Records, pp. 1083-1088; Par. 14, JSFI, Docket, vol. I, p. 492.
[13] As culled from Exhibit "P-6", BIR Records, p. 1365.
[14] Exhibits "P-1" to "P-5", BIR Records, pp. 1089-1096 and Exhibits "R-7" and submarkings, BIR Records, pp. 1097-1102.
[15] Exhibit "P-6", BIR Records, pp. 1357-1365; Par. 15, JSFI, Docket, vol. I, p. 492.
[16] Exhibit "P-29", BIR Records, p. 1367.
[17] Par. 16, JSFI, Docket, vol. I, p. 492.

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2. The Preliminary Assessment Notice (PAN) was received by petitioner.

3. Assessment is prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. (*Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109*);

4. Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (*Commissioner vs. Algue, Inc. L-28896, 17 February 1988*). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another - *Non videtur quisquam id capere quod ei necesse est alii restitutere.*"

The pre-trial conference[18] was set on June 4, 2015. Respondent's Pre-Trial Brief[19] was filed on May 27, 2015; while petitioner's Pre-Trial Brief[20] was filed on May 29, 2015.

The parties filed their Joint Stipulation of Facts and Issues[21] on June 24, 2015. The Court then issued the Pre-Trial Order[22] on July 13, 2015.

Petitioner presented, Rommel R. Malit[23] and Independent Certified Public Accountant (ICPA) Danilo Y. Ponay as its witnesses.[24]

The Formal Offer of Evidence for the Petitioner[25] was filed on October 21, 2016, offering Exhibits "P-7", "P-8", "P-9", "P-10", "P-10-A", "P-11", "P-11-A", "P-12", "P-12-A", "P-13", "P-13-A", "P-14", "P-14-A", "P-15", "P-15-A", "P-16", "P-16-A", "P-19", "P-20", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-1", "P-2", "P-3", "P-4",

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[18] Notice of Pre-Trial Conference dated March 25, 2015, Docket, vol. I, pp. 326-327.
[19] Docket, vol. I, pp. 333-337.
[20] Docket, vol. I, pp. 373-380.
[21] Docket, vol. I, pp. 490-498.
[22] Docket, vol. II, pp. 506-516.
[23] Minutes of the hearing dated October 6, 2015, Docket, vol. II, pp. 565-566.
[24] Minutes of the hearing dated September 13, 2016, Docket, vol. II, pp. 706-708.
[25] Docket, vol. II, pp. 727-743.

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"P-5", "P-6", "P-29", "P-31", "P-31-A", "P-33", "P-33-a", "P-32", "P-32-a", "P-32-b", "P-34 and series", "P-35 and series", "P-36 and series", "P-37 and series", "P-38 and series", "P-39 and series", "P-32-c", "P-32-d", "P-32-e", "P-32-f", "P-32-g", "P-32-h", "P-34-A- and numerical series", "P-34-B- and numerical series", "P-34-C- and numerical series", "P-34-D- and numerical series", "P-35-A- and numerical series", "P-35-B- and numerical series", "P-35-C- and numerical series", "P-35-D- and numerical series", "P-36-A- and numerical series", "P-36-B- and numerical series", "P-36-C- and numerical series", "P-36-D- and numerical series", "P-37-A- and numerical series", "P-37-B- and numerical series", "P-37-C- and numerical series", "P-37-D- and numerical series", "P-38-A- and numerical series", "P-38-B- and numerical series", "P-38-C- and numerical series", "P-38-D- and numerical series", "P-39-A- and numerical series", "P-39-B- and numerical series", "P-39-C- and numerical series", "P-39-D- and numerical series", "P-40- and numerical series", "P-41- and numerical series", "P-42- and numerical series", "P-43- and numerical series", "P-44- and numerical series" and "P-45- and numerical series", as its documentary evidence. Respondent filed his Comment (To: Petitioner's Formal Offer of Evidence)[26] through registered mail on October 25, 2016 and received by the Court on November 16, 2016.

In the Resolution[27] dated April 4, 2017, the Court admitted all of the formally offered exhibits of petitioner, but denied the admission of Exhibit "P-38-B and numerical series".

Petitioner's admitted documentary exhibits are as follows:

| Exhibit: | Description: |
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| P-1 | Formal Assessment Notice (Part I) consisting of two (2) pages dated May 21, 2014 |
| P-2 | Details of Discrepancies attached to the Formal Assessment Notice (Part I) consisting of three (3) pages dated May 21, 2014 |
| P-3 | Formal Assessment Notice (Part II) consisting of one (1) page dated May 21, 2014 |
| P-4 | Assessment Notice (No. VT-ELA16492-12-14-509) dated May 21, 2014 |
| P-5 | Assessment Notice (No. MC-ELA16492-12-14-509) dated May 21, 2014 |

[26] Docket, vol. II, pp. 822-823.
[27] Docket, vol. II, pp. 830-831.

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| P-6 | Administrative Protest dated May 28, 2014 and stamped received by BIR Reg. No. 8 Makati on May 29, 2014 |
| P-7 | Petitioner's Certificate of Registration issued by Securities and Exchange Commission (SEC) bearing Registration No. AS091-194156 |
| P-8 | Petitioner's Articles of Incorporation |
| P-9 | Petitioner's Certificate of Registration issued by Bureau of Internal Revenue bearing Registration No. 000-079-592-000 |
| P-10 to P-10-A | Petitioner's Monthly Value-Added Tax Declaration (BIR Form 2550M) for the month of January 2012 with BTR-BIR Deposit Slip for the amount of Php170,214.68 |
| P-11; P-11-A | Petitioner's Monthly Value-Added Tax Declaration (BIR Form 2550M) for the month of February 2012 with BTR-BIR Deposit Slip for the amount of Php202,169.60 |
| P-12; P-12-A | Petitioner's Quarterly Value-Added Tax Declaration (BIR Form 2550Q) for the First Quarter of CY 2012 with BTR-BIR Deposit Slip for the amount of Php297,051.69 |
| P-13; P-13-A | Petitioner's Monthly Value-Added Tax Declaration (BIR Form 2550M) for the month of April 2012 with BTR-BIR Deposit Slip for the amount of Php735,872.11 |
| P-14; P-14-A | Petitioner's Monthly Value-Added Tax Declaration (BIR Form 2550M) for the month of May 2012 with BTR-BIR Deposit Slip for the amount of Php815,002.50 |
| P-15; P-15-A | Petitioner's Quarterly Value-Added Tax Declaration (BIR Form 2550Q) for the Second Quarter of CY 2012 with BTR-BIR Deposit Slip for the amount of Php229,811.15 |
| P-16; P-16-A | Letter of Authority (SN:eLA201100016492/LOA-V08-2012-00000119 dated November 21, 2012 with Checklist of Requirements |
| P-19 | Transmittal Letter dated December 21, 2012, duly received by Bureau of Internal Revenue (BIR)-Makati on January 2, 2013 |
| P-20 | Transmittal Letter dated February 18, 2013, duly received by Bureau of Internal Revenue (BIR) – Makati on February 18, 2013 |
| P-22; P-23 | Notice for an Informal Conference dated June 27, 2013 with Details of Discrepancies for the amount of Php60,847,208.37 |
| P-24 | Transmittal Letter dated July 10, 2013, duly received by Bureau of Internal Revenue (BIR) – Makati on the same date, July 10, 2013, consisting of two (2) pages |

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| P-25 | Transmittal Letter dated July 11, 2013, duly received by Bureau of Internal Revenue (BIR) – Makati on July 12, 2013 |
| P-26 | Letter dated July 30, 2013, from BIR – Revenue Region No. 8, Makati City, signed by then Regional Director Nestor S. Valeroso |
| P-27; P-28 | Notice for an Informal Conference dated June 27, 2013 with Details of Discrepancies for the amount of Php98,209,204.62 |
| P-29 | BIR Letter signed by Regional Director Jonas DP Jamora addressed to Villanueva & Capitan Law Office, dated October 21, 2014, acknowledging receipt of Protest Letter on May 29, 2014 in relation to Formal Assessment Notice (FAN) dated May 21, 2014 (LOA-V08-20112-00000 dated November 13, 2012) |
| P-31 | Judicial Affidavit of Romel R. Malit |
| P-31-A | Signature of Romel R. Malit |
| P-33 | Amended Judicial Affidavit of Danilo Y. Ponay, consisting of seventeen (17) pages, filed on August 1, 2016 |
| P-33-a | Signature of ICPA Danilo Y. Ponay found on page 16 |
| P-32 | Amended ICPA Report for CTA Case No. 8959: Northern Mindanao Sales Corporation vs. The Commissioner of Internal Revenue, consisting of six (6) pages, submitted on July 18, 2016 |
| P-32-a | Signature of ICPA Danilo Y. Ponay found on page 6 |
| P-32-b | Top Sheet of monthly totals of Sales for all of the four Sales Offices – Bukidnon, Butuan, Cagayan de Oro and Surigao), consisting of three (3) pages |
| P-32-c | Petitioners Schedule of Input Tax of Minor Suppliers and Contractors, January 2012, consisting of three (3) pages |
| P-32-d | Petitioners Schedule of Input Tax of Minor Suppliers and Contractors, February 2012, consisting of two (2) pages |
| P-32-e | Petitioners Schedule of Input Tax of Minor Suppliers and Contractors, March 2012, consisting of two (2) pages |
| P-32-f | Petitioners Schedule of Input Tax of Minor Suppliers and Contractors, April 2012, consisting of three (3) pages |
| P-32-h | Petitioners Schedule of Input Tax of Minor Suppliers and Contractors, June 2012, consisting of three (3) pages |
| P-34 and series | "Northern Mindanao Sales Corp. ICPA Book 1: January, 2012, CTA Case No. 8959, Northern Mindanao Sales Corporation vs. The Commissioner of Internal Revenue" (Schedule of Petitioner's Sales Invoices for January CY 2012) |

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| P-34-A and numerical series | Sales Invoices for January 2012 for Bukidnon (Box 1) |
| P-34-B and numerical series | Sales Invoices for January 2012 for Butuan (Box 2) |
| P-34-C and numerical series | Sales Invoices for January 2012 for Cagayan De Oro (Boxes 3 & 4) |
| P-34-D and numerical series | Sales Invoices for January 2012 for Surigao (Box 5) |
| P-35 and series | "Northern Mindanao Sales Corp. ICPA Book 2: February, 2012, CTA Case No. 8959, Northern Mindanao Sales Corporation vs. The Commissioner of Internal Revenue" (Schedule of Petitioner's Sales Invoices for February CY 2012) |
| P-35-A and numerical series | Sales Invoices for February 2012 for Bukidnon (Box 6) |
| P-35-B and numerical series | Sales Invoices for February 2012 for Butuan (Box 7) |
| P-35-C and numerical series | Sales Invoices for February 2012 for Cagayan De Oro (Boxes 8 & 9) |
| P-35-D and numerical series | Sales Invoices for February 2012 for Surigao (Box 10) |
| P-36 and series | "Northern Mindanao Sales Corp. ICPA Book 3: March, 2012, CTA Case No. 8959, Northern Mindanao Sales Corporation vs. The Commissioner of Internal Revenue" (Schedule of Petitioner's Sales Invoices for March CY 2012) |
| P-36-A and numerical series | Sales Invoices for March 2012 for Bukidnon (Box 11) |
| P-36-B and numerical series | Sales Invoices for March 2012 for Butuan (Box 12) |
| P-36-C and numerical series | Sales Invoices for March 2012 for Cagayan De Oro (Boxes 13 & 14) |
| P-36-D and numerical series | Sales Invoices for March 2012 for Surigao (Box 15) |
| P-37 and series | "Northern Mindanao Sales Corp. ICPA Book 4: April, 2012, CTA Case No. 8959, Northern Mindanao Sales Corporation vs. The Commissioner of Internal Revenue" (Schedule of Petitioner's Sales Invoices for April CY 2012) |
| P-37-A and numerical series | Sales Invoices for April 2012 for Bukidnon (Box 16) |
| P-37-B and numerical series | Sales Invoices for April 2012 for Butuan (Box 17) |
| P-37-C and numerical series | Sales Invoices for April 2012 for Cagayan De Oro (Boxes 18 & 19) |
| P-37-D and numerical series | Sales Invoices for April 2012 for Surigao (Box 20) |
| P-38 and series | "Northern Mindanao Sales Corp. ICPA Book 5: May, 2012, CTA Case No. 8959, Northern Mindanao Sales Corporation vs. The Commissioner of Internal |

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| | Revenue" (Schedule of Petitioner's Sales Invoices for May CY 2012) |
| P-38-A and numerical series | Sales Invoices for May 2012 for Bukidnon (Box 21) |
| P-38-C and numerical series | Sales Invoices for May 2012 for Cagayan De Oro (Boxes 23 & 24) |
| P-38-D and numerical series | Sales Invoices for May 2012 for Surigao (Box 25) |
| P-39 and series | "Northern Mindanao Sales Corp. ICPA Book 6: June, 2012, CTA Case No. 8959, Northern Mindanao Sales Corporation vs. The Commissioner of Internal Revenue" (Schedule of Petitioner's Sales Invoices for June CY 2012) |
| P-39-A and numerical series | Sales Invoices for June 2012 for Bukidnon (Box 26) |
| P-39-B and numerical series | Sales Invoices for June 2012 for Butuan (Box 27) |
| P-39-C and numerical series | Sales Invoices for June 2012 for Cagayan De Oro (Boxes 28 & 29) |
| P-39-D and numerical series | Sales Invoices for June 2012 for Surigao (Box 30) |
| P-40 and numerical series | Purchase Invoices for January 2012 (Box 31) |
| P-41 and numerical series | Purchase Invoices for February 2012 (Box 31) |
| P-42 and numerical series | Purchase Invoices for March 2012 (Box 31) |
| P-43 and numerical series | Purchase Invoices for April 2012 (Box 31) |
| P-44 and numerical series | Purchase Invoices for May 2012 (Box 31) |
| P-45 and numerical series | Purchase Invoices for June 2012 (Box 31) |

Petitioner filed its Motion for Reconsideration (Resolution dated April 4, 2017)[28] on April 26, 2017. Respondent failed to file his comment thereto.[29] The Court still denied the admission of Exhibit "P-38-B and numerical series" in the Resolution[30] dated August 18, 2017.

Respondent presented Revenue Officer Jasmine Joy B. Oasay as his only witness.[31]

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[28] Docket, vol. II, pp. 837-839.
[29] Records Verification dated July 5, 2017, Docket, vol. II, p. 854.
[30] Docket, vol. II, pp. 859-860.
[31] Minutes of the hearing dated August 22, 2017, Docket, vol. II, pp. 861-863.

Respondent filed his Formal Offer of Evidence[32] through registered mail on September 6, 2017 and received by the Court on September 14, 2017, offering Exhibits "R-1", "R-1-a", "R-1-b", "R-1-c", "R-2", "R-2-a", "R-3", "R-3-a", "R-4", "R-4-a", "R-5", "R-5-a", "R-5-b", "R-5-c", "R-5-d", "R-6", "R-6-b", "R-6-e", "R-6-g", "R-6-i", "R-6-l", "R-6-c", "R-6-j", "R-6-m", "R-6-a", "R-6-d", "R-6-f", "R-6-h", "R-6-k", "R-6-n", "R-7-f", "R-7-h", "R-7-k", "R-7-m", "R-7-o", "R-7-r", "R-7-a", "R-7-d", "R-7-i", "R-7-p", "R-7-s", "R-7-b", "R-7-e", "R-7-g", "R-7-j", "R-7-l", "R-7-n", "R-7-q", "R-7-t", "R-8", and "R-8-a". Petitioner filed its Comment (To the Respondent's Formal Offer of Evidence)[33] on September 18, 2017.

In the Resolution[34] dated December 18, 2017, the Court admitted all of respondent's formally offered evidence, but denied the admission of Exhibits "R-1", "R-1-a", "R-1-b", "R-1-c", "R-2", "R-2-a", "R-3", "R-3-a", "R-4", and "R-4-a".

The admitted documentary exhibits of the respondent are as follows:

| Exhibit: | Description: |
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| R-5, R-5-a and R-5-b | Memorandum Report |
| R-5-c | Name and signature of Jasmine Joy B. Oasay |
| R-5-d | Name and Signature of Cherry Flor C. Dela Cruz |
| R-6, R-6-b, R-6-e, R-6-g and R-6-i | Preliminary Assessment Notice (Part I) dated April 29, 2014 with Details of Discrepancies |
| R-6-l | Preliminary Assessment Notice (Part II) dated April 29, 2014 |
| R-6-c and R-6-j | Name and signature of Nestor S. Valeroso |
| R-6-m | Name and signature of Nestor S. Valeroso |
| R-6-a, R-6-d, R-6-f, R-6-h, R-6-k and R-6-n | Stamp Receipt bearing the name and signature of petitioner's employee/receptionist, Mhe-Ann Alberto dated April 29, 2014 |
| R-7-f, R-7-h, R-7-k, R-7-m, R-7-o | Formal Assessment Notice (Part I) dated May 21, 2014 with Details of Discrepancies |
| R-7-r | Formal Assessment Notice (Part II) dated May 21, 2014 |

[32] Docket, vol. II, pp. 867-870.
[33] Docket, vol. II, pp. 904-910.
[34] Docket, vol. II, pp. 914-915.

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| R-7-a, R-7-d, R-7-I, R-7-p and R-7-s | Name and signature of Nestor S. Valeroso |
| R-7-b, R-7-e, R-7-g, R-7-j, R-7-l, R-7-n, R-7-q and R-7-t | Stamp Receipt bearing the name and signature of petitioner's employee/Executive Secretary, Rachel Anne Pen, dated May 22, 2014 |
| R-8 | Judicial Affidavit of Revenue Officer Jasmine Joy Oasay |
| R-8-a | Name and signature of Jasmine Joy Oasay |

The Court declared the case submitted for decision on March 14, 2018,[35] considering the Memorandum for the Petitioner[36] filed on February 26, 2018 and respondent's Memorandum[37] filed through registered mail on February 23, 2018 and received by the Court on March 5, 2018.

The parties submitted the following issue for the Court's resolution:[38]

> "Whether or not Petitioner is liable for deficiency Value-Added Tax in the aggregate amount of ₱34,402,825.83, inclusive of surcharge and interest for the Taxable Period of January 1 to June 30, 2012."

Before addressing the stipulated issue, the Court shall first determine the timeliness of the filing of the Petition for Review.

Pertinent to the resolution of this matter is Section 228 of the NIRC of 1997, as amended, which states:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx

[35] Resolution dated March 14, 2018, Docket, vol. II, p. 970.
[36] Docket, vol. II, pp. 931-961.
[37] Docket, vol. II, pp. 962-967.
[38] Docket, vol. I, p. 492.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Pursuant to Section 228 of the NIRC of 1997, petitioner has thirty (30) days from receipt of the FAN within which to file its administrative protest and another thirty (30) days from receipt of respondent's decision, or in case of inaction, from the lapse of one hundred eighty (180)-day period within which to file its Petition for Review with the Court.

Petitioner received the FAN on May 21, 2014. It had thirty (30) days from May 21, 2014 or until June 20, 2014 within which to file it protest. Records show that petitioner filed its administrative protest together with its supporting documents[39] on May 29, 2014.

Respondent failed to act on petitioner's protest within 180 days from the filing of protest and submission of documents. Counting 30

[39] As culled from Exhibit "P-29", BIR Records, p. 1367.

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days from the lapse of the 180-day period on November 25, 2014, petitioner had until December 25, 2014 within which to file its Petition for Review. Hence, the Petition for Review filed by petitioner on December 23, 2014 was clearly within the 30-day prescriptive period.

The Court shall now resolve the stipulated issue.

## I. DEFICIENCY VAT – ₱34,402,825.83

Respondent computed the subject deficiency VAT assessment as follows:[40]

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| VATable Sales per VAT returns | | | ₱ 368,297,808.49 |
| Add: | Undeclared Sales (Schedule 1) | ₱ 1,536,917.50 | |
| | Undeclared Sales based on Benchmark (Schedule 2) | 75,332,536.46 | |
| | Undeclared Sales from Unaccounted Purchases (Schedule 3) | 42,503.07 | |
| | Unexplained Debits to Sales | 47,769,106.50 | 124,681,063.53 |
| Gross Receipts subject to VAT | | | ₱ 492,978,872.02 |
| | | | |
| Output tax due | | | ₱ 59,157,464.64 |
| Less: | Input tax from Current Purchases | ₱ 41,745,615.38 | |
| | Less: Unsupported Input Tax (Schedule 4) | 3,308,360.22 | 38,437,255.16 |
| VAT Payable | | | ₱ 20,720,209.48 |
| Less: | Payments Made | | 2,450,121.56 |
| Basic tax due | | | ₱ 18,270,087.92 |
| Add: | Surcharge 50% | ₱ 9,135,043.96 | |
| | Interest (07.26.12 to 06.25.14) | 6,997,693.95 | 16,132,737.91 |
| **Total Amount Due** | | | **₱ 34,402,825.83** |

In order to determine whether or not the assessment is correct, the Court shall look into the propriety of each of the following items:

| | |
|---|---|
| A. Undeclared Sales | ₱ 1,536,917.50 |
| B. Undeclared Sales based on Benchmark | 75,332,536.46 |
| C. Undeclared Sales from Unaccounted Purchases | 42,503.07 |
| D. Unexplained Debits to Sales | 47,769,106.50 |

[40] Exhibit "P-1", BIR Records, p. 1094.

| | |
|---|---|
| E. Unsupported Input Tax | 3,308,360.22 |
| F. 50% Surcharge | ₱ 9,135,043.96 |

**A. *Undeclared Sales – ₱1,536,917.50***

Respondent's comparison of sales declared in petitioner's VAT return and third-party information (TPI) disclosed a discrepancy of ₱1,536,917.50. Hence, respondent assessed petitioner of the corresponding deficiency VAT pursuant to Section 106 of the NIRC of 1997, as amended, which states: "There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged."

Schedule 1 of the Details of Discrepancies[41] attached to the FAN breaks down the following alleged undeclared sales of petitioner:

| | SALES | | |
|---|---|---|---|
| **Customer** | **Per TPI** | **Per SLS** | **Undeclared** |
| AGOT VICENTE A | ₱ 12,053.57 | - | ₱ 12,053.57 |
| AK AND KJ HOLDING CORPORATION | 34,750.00 | - | 34,750.00 |
| AMPAYON AGRO INDUSTRIAL CORPORATION | 25,938.22 | - | 25,938.22 |
| ANTIPASADO ANGELA MINOSA | 74,238.40 | - | 74,238.40 |
| BONNE BUSINESS CORPORATION | 8,571.43 | - | 8,571.43 |
| BUTUAN DOCTORS HOSPITAL AND COLLEGE, INC. | 1,082.21 | - | 1,082.21 |
| CASINO JIMMY HUBAHIB | 653.57 | - | 653.57 |
| CENTRO SUPERSALES INCORPORATED | 19,953.38 | - | 19,953.38 |
| CHIKARA REALTY INC | 2,142.86 | - | 2,142.86 |
| DDD HABITAT INC | 9,698.21 | - | 9,698.21 |
| ELIOT LOURDES TULDANES | 5,343.75 | - | 5,343.75 |
| ESTATE OF TERESITA B BUREROS | 52,561.16 | - | 52,561.16 |
| GAW WILSON C | 593,000.53 | 285,975.00 | 307,025.53 |
| L.T. SONS INCORPORATED | 38,792.29 | - | 38,792.29 |
| LIM JENNIFER LAGUA | 2,446.43 | - | 2,446.43 |
| LIM WILLY SIAO | 6,385.71 | - | 6,385.71 |
| LIMBROS ENTERPRISES INC | - | - | - |
| OPITZ HOTELS AND RESTAURANTS OPERATOR DEVT CORP | 37,500.00 | - | 37,500.00 |
| PACANAN KIRBY ROMMEL LANUTAN | 137,833.04 | - | 137,833.04 |
| PILIPINAS VER-TEX CORPORATION | 19,788.84 | 8,312.50 | 11,476.34 |
| SAJULGA GLORIO DAGACDAC | 1,866.07 | - | 1,866.07 |
| SOLOMON JUAN J | 314,803.57 | 301,516.07 | 13,287.50 |

[41] Exhibit "P-1", BIR Records, p. 1092.

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| | | | |
|---|---|---|---|
| SANTIAGO JUANITA J | 6,964.29 | - | 6,964.29 |
| TAIPAN DEVELOPMENT INC | 125,303.21 | 33,640.00 | 91,663.21 |
| TANDUAY DISTILLERS INC | 244,535.71 | - | 244,535.71 |
| WING-ON INC | 2,286,051.76 | 1,895,897.14 | 390,154.62 |
| **Total** | **₱4,062,258.21** | **₱2,525,340.71** | **₱1,536,917.50** |
| **Note:**<br>Subject taxpayer prepared a schedule of sales containing trade names used when posting transaction with said customers. Said names were then verified and matched with [BIR's] ITS and was then considered in the above schedule to compute for the [undeclared sales]. | | | |

Petitioner contends that respondent's findings lack factual basis. Based on its own review of its January 1 to June 30, 2012 sales transactions per customer as reported in the Summary List of Sales (SLS), petitioner found the following explanations:

> (1) *Discrepancies in the reporting of business or trade name (Inconsistent reporting of Name)* – petitioner submits that it has a database of customers based on represented business names which petitioner used when issuing invoices. On the other hand, it is very likely that the customers use trade names for their business which are not necessarily their own names.
>
> (2) *Some customers did not provide their Tax Identification Number (TIN) (Inconsistent or wrong reporting of TIN)* – petitioner claims that some of their customers did not provide TIN numbers. On other occasions, the TIN provided by the customer is wrong. Petitioner submits that it does not have the means to check the accuracy of the supplied data, and instead relied on, as a matter of mutual business trust, what its customers provide is true and correct information of their business.
>
> (3) Third parties, who possibly are not purchasers, may have indicated petitioner's TIN when submitting their SLPs to respondent.

Moreover, petitioner points out that based on the table below, the amounts of sales reported in the SLS for the noted customers were much higher than the amounts of sales noted in the TPI records which allegedly proves that it properly reported its sales for VAT purposes and that the differences noted by respondent can be explained.

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| Customer | Per TPI | Per SLS | Undeclared | Per Review of NM/SLS | Difference |
|---|---|---|---|---|---|
| AGOT VICENTE A | ₱ 12,053.57 | - | ₱ 12,053.57 | ₱ 91,209.82 | (₱ 79,156.25) |
| CENTRO SUPERSALES INCORPORATED | 19,953.38 | - | 19,953.38 | 42,964.29 | (23,010.91) |
| GAW WILSON C | 593,000.53 | 285,975.00 | 307,025.53 | 1,199,099.48 | (892,073.95) |
| L.T. SONS INCORPORATED | 38,792.29 | - | 38,792.29 | 105,963.57 | (67,171.28) |
| LIM JENNIFER LAGUA | 2,446.43 | - | 2,446.43 | 31,153.57 | (28,707.14) |
| PILIPINAS VER-TEX CORPORATION | 19,788.84 | 8,312.50 | 11,476.34 | 12,857.14 | (1,380.80) |
| SOLOMON JUAN J | 314,803.57 | 301,516.07 | 13,287.50 | 759,678.57 | (746,391.07) |
| TAIPAN DEVELOPMENT INC | 125,303.21 | 33,640.00 | 91,663.21 | 185,796.07 | (94,132.86) |
| **Total** | **₱1,126,141.82** | **₱629,443.57** | **₱496,698.25** | **₱2,428,722.51** | **(₱1,932,024.26)** |

Further, petitioner states that due to the unverifiable nature of the deficiency assessment, founded on unsupported third-party information, the situation hardly gives petitioner a chance to refute the assessment, hence, an abject denial of due process.

Citing the case of *Keansburg Marketing Corporation vs. Commissioner of Internal Revenue*[42], petitioner asserts that any assessment arising from comparison of taxpayer's data with TPI, which is not accompanied by third-party certifications as to the amounts per TPI, should be void pursuant to Section 228 of the NIRC of 1997, as amended.

The Court agrees with petitioner.

A perusal of the records reveals that while respondent used the VAT Relief System to match the TPI with petitioner's SLS, however, respondent failed to verify the amounts per TPI with the relevant customers. Without the confirmation from third parties, the finding casts doubts as to the reliability and correctness of the assessment on the alleged undeclared sales.

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

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[42] CTA Case No. 9076, January 5, 2018.

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how reasonable or logical the presumption might be.[43] This was highlighted in the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*[44], the pertinent portions of which are quoted as follows:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, 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. Where the BIR has come out with a 'naked assessment,' *i.e.,* without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*"

Accordingly, the assessment cannot be sustained since it was based merely on unverified amounts extracted from respondent's own database.

Note that Revenue Memorandum Order (RMO) No. 04-03 requires the verification of the amounts reflected in the quarterly

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[43] *Commissioner of Internal Revenue vs. Fax N Parcel, Incorporated,* CTA EB No. 883, February 14, 2013.

[44] G.R. No. 136975, March 31, 2005.

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report with other externally sourced data in ascertaining the taxpayer's under-declaration of revenues or overstatement of costs and expenses, if any. The applicable portions of RMO No. 04-03 state as follows:

> "The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.
>
> The RELIEF System was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.
>
> The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information **with other externally sourced data** will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential." (*Emphasis supplied*)

Instead of exerting his best effort in gathering information from other sources to verify the alleged sales discrepancy, respondent chose to resort to presumptions and heavily relied on the results of the unverified third-party information in determining petitioner's deficiency VAT liability. Thus, respondent's assessment on the alleged undeclared sales of ₱1,536,917.50 shall be cancelled for lack of factual and legal bases.

**B. *Undeclared Sales based on Benchmark (Schedule 2) – ₱75,332,536.46***

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Based on the Details of Discrepancies, respondent explains that since there is no means by which the correctness and accuracy of petitioner's receipts can be ascertained, assessment based on estimate was used pursuant to Section 2.4(a) of RMC No. 23-2000 which states that "In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment."[45]

Respondent's comparison of petitioner's gross sales based on industry benchmark rate, pursuant to RMO No. 05-2012, against the gross sales reported per VAT Returns disclosed that petitioner failed to pay the corresponding VAT on the portion of its gross receipts as shown below:

| | |
|---|---|
| Benchmark VAT Rate for Other Wholesaling | 2.59% |
| Computed % of Input VAT against Output VAT (1 - Benchmark Rate) | 97.41% |
| | |
| Actual Input VAT Claimed for the First 2 Quarters of 2012 | ₱ 41,745,615.76 |
| Divided by Percentage of Input over Output VAT | 97.41% |
| Computed Output VAT based on Benchmark Rate | ₱ 42,855,575.16 |
| | |
| Computed VATable Receipts based on Benchmark Rate | ₱ 443,630,344.95 |
| Less: Total VATable Receipts per VAT Returns | 368,297,808.49 |
| **Sales Receipts not subjected to VAT** | **₱75,332,536.46** |

$$\text{Benchmark Sales/Receipts} = \frac{\text{Current Input Tax Claimed}}{\text{VAT Rate} - \text{Benchmark VAT Rate}}$$

**GIVEN:**

| | |
|---|---|
| Current Input VAT Claimed for the First 2 Quarter of 2012 = | 41,745,615.46 |
| Benchmark VAT Rate for Other Wholesaling = | 2.59% |

$$\text{Benchmark Sales/Receipts} = \frac{41{,}745{,}615.46}{12\% - 2.59\%}$$

$$\text{Benchmark Sales/Receipts} = \frac{41{,}745{,}615.46}{9.41\%}$$

$$\text{Benchmark Sales/Receipts} = 443{,}630{,}344.95$$

[45] Exhibit "P-1", BIR Records, p. 1091.

Petitioner disagrees with the computation of the assessed deficiency VAT based on benchmark formula applied by respondent, claiming that its sales were properly reported in its ITR and VAT returns for the covered period. The details of its sales for the taxable period under audit were submitted to respondent via its SLS. As stated in its administrative protest, (1) the formula used by respondent assumed that all purchases inventory in the first semester of 2012 were sold in the same period, however, petitioner alleges that in reality, the said inventory came from its previous year's inventory and during the quarter purchases; and (2) petitioner raises the issue on the validity of the benchmarking computation done by respondent premised on a) how the benchmark VAT rate of 2.59% was derived, b) inconsistencies of the use of the said benchmark VAT rate, c) assessment must not be based on estimates and mere presumptions, and d) other than mere extrapolations, respondent did not present any concrete and sufficient documentary evidence to prove his allegation that indeed petitioner is liable to pay VAT.

Petitioner submits that the purpose of "benchmarking" is clear under RMO No. 04-06 – monitoring and evaluation of tax payments through the use of performance benchmarking will determine/identify taxpayer within industry groups who are paying below the minimum amount or set benchmarks for tax compliance purposes and it was issued (1) To enhance taxpayer's compliance with regard to Income Tax Due and Net VAT Due of taxpayers engaged in the same line of industry; (2) To prescribe policies, guideline and procedures in accordance with Sections 5(E) and 6(C) of the NIRC; and (3) To effectively monitor the accomplishments of the Regional and Revenue District Offices regarding benchmarking activities.

Petitioner further explains that "benchmarking method" is a strategy adopted by the BIR as a means of monitoring tax payments for the purpose of increasing tax collection. The intention is to conduct taxpayer profiling and benchmarking activities that will serve as an effective tool in addressing tax collection problems plugging tax leakages and implementing a risk-to-revenue based audit and enforcement activities.

Furthermore, petitioner cited the case of *Wellform Trading Corporation vs. Commissioner of Internal Revenue*[46], where

[46] CTA Case No. 9086, November 27, 2017.

benchmarking method was used by respondent in the imposition of deficiency VAT and the Court held that the use of the benchmark rate in making an assessment of petitioner's alleged tax deficiency has no support in law, to wit:

> "A perusal of the foregoing shows that the purpose of the benchmarking program and of deriving the benchmarking rate is mainly to establish measurement or a set of standards to be used to measure and monitor the performance/compliance of taxpayers in a particular industry and improve voluntary tax compliance. There is nothing in the foregoing which would show that the benchmark rate should be used in computing the tax liability of the taxpayer.
>
> At best, the benchmarking program may be used in recommending enforcement actions such as immediate issuance of Letter of Authority, if none has been issued yet, conduct of Post Evaluation on CRM/POS Machines, placing establishment under surveillance, or conduct of inventory stock taking. Moreover, it is important to stress that while the enforcement actions, such as the conduct of Oplan Kandado or Inventory Stock Taking, as the case may be, will almost always trigger the issuance of Letters of Authority, the same RMO requires that the audit activities and the processes embodied under Revenue Regulations No. 12-99 should still be complied with in coming up with assessment notice.
>
> Clearly, in this case, respondent should have assessed petitioner based on its own investigation pursuant to the electronic Letter of Authority (eLA) issued and in compliance with Revenue Regulations No. 12-99, and not by merely using the benchmark rate in arriving at the alleged computed VATable sales of petitioner.
>
> Thus, the use of the benchmark rate in computing petitioner's tax liability has no legal basis."

The Court agrees with petitioner.

The present case is no different from the aforecited *Wellform* case. Respondent computed the alleged undeclared sales of ₱75,332,536.46 based on benchmark rate less total VATable sales per VAT returns. Apparently, respondent made no determination of the

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actual VATable sales of petitioner since the benchmark rate used by respondent pertains to the sales of other wholesaling companies as reflected in the computation. There was also no indication as to how the benchmark rate was derived by respondent or that it can at least be used to approximate the actual VATable sales of petitioner. Respondent merely assumed that the amount of VATable sales of other wholesaling companies is the same with the VATable sales of petitioner.

To reiterate, 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.[47] 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.[48] Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.

Consequently, while there is a presumption of correctness of assessment issued by respondent, being a mere presumption, the same cannot be made to rest on another presumption, which is respondent's presumption that the amount of VATable sales of other wholesaling companies is the same with the VATable sales of petitioner.

In fine, the Court cancels respondent's assessment of ₱75,332,536.46 undeclared sales based on industry benchmark rate for lack of merit.

## C. *Undeclared Sales from Unaccounted Purchases – ₱42,503.07*

Respondent's verification disclosed that purchases amounting to ₱37,095.27 were not reported in the Summary List of Purchases (SLP) submitted to the BIR as well as VAT returns, therefore said discrepancy was grossed up by respondent using petitioner's gross profit rate of 14.58% (based on 2012 Financial Statements) to arrive at the alleged

[47] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.
[48] *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals,* G.R. No. L-46644, September 11, 1987.

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undeclared sales of ₱42,503.07. The alleged undeclared sales amount was assessed pursuant to Section 106 of the NIRC of 1997, as amended.

Schedule 3 of the Details of Discrepancies shows respondent's computation, to wit:[49]

| | Purchases | | |
|---|---|---|---|
| | **Per TPI** | **Per SLS** | **Undeclared** |
| ANGELES ELECTRIC CORPORATION | 1,823.59 | - | 1,823.59 |
| GRAND CAPRICE RESTAURANT INC | 336.86 | - | 336.86 |
| LAWRIAN PRESS CORPORATION | 33,928.57 | - | 33,928.57 |
| M MONTECLAROS ENTERPRISE INC | 1,006.25 | - | 1,006.25 |
| Total | 37,095.27 | - | 37,095.27 |
| Gross Profit Rate Available | | | 114.58% |
| **Undeclared Sales from Unaccounted Purchases** | | | **42,503.76** |

Petitioner contradicts respondent's finding arguing that respondent failed to obtain third-party certifications as to the amounts per TPI; that respondent failed to consider its purchase from Lawrian Press Corporation in February 2012 amounting to ₱33,928.57; and that even if there were undeclared purchases, such do not necessarily result in undeclared sales.

The Court cancels the assessment.

It must be remembered that under Section 106(A) of the NIRC of 1997, as amended, VAT is imposed on 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".

Also, under Section 108 of the NIRC of 1997, as amended, VAT is imposed on the "gross receipts derived from the sale or exchange of services". Significantly, the law defines "gross receipts" as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

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[49] Exhibit "P-1", BIR Records, p. 1091.

Clearly, VAT can be imposed only when it is shown that the taxpayer received an amount of money or its equivalent from its sale, barter or exchange of goods or properties, or from sale or exchange of services, and not when there are under-declared purchases.

**D. *Unexplained debits to Sales – ₱47,769,106.50***

Respondent found that there were total debits to petitioner's Sales amounting to ₱47,769,106.50 with no explanation as to the nature of these debits and thus subjected the same to 12% VAT pursuant to Section 106 of the NIRC of 1997, as amended.[50]

On the other hand, petitioner claims that as early as the filing of its administrative protest, it explained that the alleged "Unexplained Debits to Sales" amounting to ₱47,769,405.50 represents sales discounts given to customers at the point of sales and reflected in the invoices issued to customers. Allegedly, all the requisites on sales (reduction) adjustments related to discount were fully met by petitioner's documentation and recording processes and that petitioner provided respondent with sample sales invoices to serve as reference.

Petitioner also explains that the sales discounts granted to its customers are not reflected in the sales reported for VAT purposes (per VAT Returns and SLS), instead it is reported net of discount because the VAT Relief System does not provide for a column for discounts/sales adjustments.

The Court partially upholds the assessment.

Under Section 106(D) of the NIRC of 1997, as amended, sales discounts that are granted and indicated in the invoices at the time of sale – and that do not depend upon the happening of any future event – may be excluded from the gross sales within the same quarter they were given, to wit:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

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[50] Exhibit 'P-1", BIR Records, p. 1091.

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xxx xxx xxx

(D) *Sales Returns, Allowances and Sales Discounts.* - The value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. **Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given.**" (*Emphasis supplied*)

Clearly, a sales discount is allowed to be excluded from reporting in the Sales/Receipts portion of the return, provided that the amount is indicated in the sales invoice and does not depend upon the happening of a future event.

Petitioner needs to prove that these debits to the Sales account really are composed of sales discounts to customers. In its protest letter[51] dated May 28, 2014, petitioner showed how these debits to Sales were recorded in its books for the period January to June 2015:

| | Sales per Ledger | | |
|---|---|---|---|
| **Period** | **DR (Discounts)** | **CR (Gross Sales)** | **Net Sales** |
| January | ₱ 8,439,204.77 | ₱ 67,462,002.68 | ₱ 59,022,797.91 |
| February | 7,080,375.10 | 54,420,567.86 | 47,340,192.76 |
| March | 7,052,387.03 | 69,650,058.88 | 62,597,671.85 |
| April | 7,550,205.24 | 72,705,145.56 | 65,154,940.32 |
| May | 9,081,342.91 | 82,211,913.71 | 73,130,570.80 |
| June | 8,565,591.45 | 69,617,226.30 | 61,051,634.85 |
| **TOTAL** | **₱47,769,106.50** | **₱416,066,914.99** | **₱368,297,808.49** |

Moreover, petitioner submitted its Schedules of Sales for the months of January to June 2012 with the related sales invoices, which were marked as Exhibits "P-34-A" to "P-34-D", "P-35-A" to "P-35-D", "P-36-A" to "P-36-D", "P-37-A" to "P-37-D", "P-38-A" to "P-38-D", and "P-39-A" to "P-39-D", with numerical series. Out of these pieces of

[51] Exhibit "P-6", BIR Records, pp. 1357-1365.

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evidence, the Court disallowed "P-38-B and numerical series" for not being found in the records.[52]

According to the report of the Court-commissioned ICPA, the net sales in petitioner's VAT returns for the period January 2012 to June 2012 do not tie up with the supporting documents that were examined due to the passing of time. Nevertheless, the ICPA verified a total of ₱40,071,875.80[53] worth of sales discounts provided to merchants, without VAT.

Upon examination of petitioner's supporting documents, the Court finds the ICPA report to be correct and in order. The Court also finds that petitioner recorded discounts as reflected in the sales invoices, as net of VAT. However, considering that the assessed amount of ₱47,769,106.50 is higher than the ICPA verified sales discounts of ₱40,071,875.80, the unaccounted/unsupported difference of ₱7,697,230.70 shall be upheld.

Moreover, as earlier mentioned, Exhibit "P-38-B and numerical series" was denied admission by the Court for not having been found in the records of the case. Exhibit "P-38-B and numerical series" pertains to sales invoices from Butuan Branch for the month of May 2012. The sales discounts represented by these sales invoices from the said denied exhibits sum up to the amount of ₱3,317,286.47, which should also be assessed of corresponding deficiency VAT.

In fine, the Court upholds the assessment for unexplained debits to sales in the total amount of ₱11,014,517.17 (₱7,697,230.70 + ₱3,317,286.47).

**E. *Unsupported Input Tax – ₱3,308,360.14***

Respondent disallowed petitioner's claimed input taxes in the amount of ₱3,308,360.14 for the latter's alleged failure to submit the required VAT invoices or official receipts pursuant to Section 110(A)(1) of the NIRC of 1997, as amended, which provides that: "Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 ... shall be creditable against the output tax."

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[52] Resolution on the Formal Evidence for the Petitioner, Docket, vol. II, p. 860.
[53] Exhibit "P-32-b", Docket, vol. II, p. 802.

Schedule 4 of the Details of Discrepancies shows the computation of the disallowed input taxes of ₱3,308,360.14 as follows:

| | | |
|---|---|---|
| **Unsupported Input Tax** | | |
| Total Input Tax claimed per Return | | ₱ 41,745,615.38 |
| Less: Adjustments (Supported) | | |
| Asia Brewery | ₱15,876,134.22 | |
| Interbev | ₱22,561,121.02 | 38,437,255.24 |
| **Total** | | **₱3,308,360.14** |

On the other hand, petitioner accounted for the alleged unsupported input tax, as follows:

| | **Summary List of Purchases - Others** | | | |
|---|---|---|---|---|
| **Period** | **Purchases Total** | **Purchases of Services** | **Purchases of Goods** | **Input Taxes** |
| January | ₱ 4,485,136.10 | ₱ 2,705,976.46 | ₱ 1,779,159.64 | ₱ 538,216.33 |
| February | 4,579,613.16 | 3,107,903.38 | 1,471,709.78 | 549,553.58 |
| March | 4,020,527.80 | 3,126,218.01 | 894,309.79 | 482,463.34 |
| April | 5,111,458.57 | 3,354,670.39 | 1,756,788.18 | 613,375.03 |
| May | 5,760,049.33 | 2,886,954.82 | 2,873,094.51 | 691,205.92 |
| June | 3,612,886.11 | 2,693,087.84 | 919,798.27 | 433,546.33 |
| **Total** | **₱27,569,671.07** | **₱17,874,810.90** | **₱9,694,860.17** | **₱3,308,360.53** |

According to petitioner, the foregoing purchases pertain to purchases that are not from their major suppliers, Asia Brewery and Interbev.

To support these purchases, petitioner submitted Exhibits "P-40" to "P-45", with sub-markings for the period from January 2012 to June 2012.

According to the ICPA, he was able to verify a total of ₱17,966,995.20 supported purchases with equivalent input tax of ₱1,925,035.20, and presented the same in the schedules attached to the Amended ICPA Report. He then recommended that unsupported input tax in the amount of ₱1,383,325.02 should be upheld by the Court.[54]

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[54] Exhibit "P-32", Docket, vol. II, pp. 655 and 661-677.

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It is worthy to note that Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-8 and 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005, explicitly state that any input tax may be creditable against the output tax provided that the same is supported by VAT invoice (for purchases of goods) or VAT official receipts (for purchases of services) containing the required information under the Tax Code, to wit:

> "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**:"
>
> "SEC. 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:**
>
> xxx xxx xxx

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(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;

xxx xxx xxx

(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 (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client." (*Emphases supplied*)

Upon verification of petitioner's supporting documents, the Court finds that aside from the ICPA recommended input VAT disallowance of ₱1,383,325.02, the amount of ₱1,742,637.93, detailed below, should be disallowed for failure to meet the substantiation requirements under the afore-mentioned VAT law and regulations:

| **Supplier** | **Voucher No.** | **Purchases (Net of VAT)** | **Input VAT** |
|---|---|---|---|
| | | | |
| **Period: January 2012 (Exhibit P-40)** | | | |
| | | | |
| ***Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and TIN and/or with incomplete petitioner's name and/or address*** | | | |
| Lorenzo Shipping Corporation | 01-12-0002 | ₱ 206,896.80 | ₱ 24,827.62 |
| Lorenzo Shipping Corporation | 01-12-0003 | 49,019.54 | 5,882.34 |
| Lorenzo Shipping Corporation | 01-12-0004 | 133,367.50 | 16,004.10 |
| Lorenzo Shipping Corporation | 01-12-0029 | 114,315.00 | 13,717.80 |
| Lorenzo Shipping Corporation | 01-12-0052 | 38,105.00 | 4,572.60 |
| Lorenzo Shipping Corporation | 01-12-0053 | 19,052.50 | 2,286.30 |
| T. Biraogo Trucking Services, Inc. | 01-12-0006 | 75,399.74 | 9,047.97 |
| Royal Master Services, Inc. | 01-12-0014 | 53,769.32 | 6,452.32 |
| T. Biraogo Trucking Services, Inc. | 01-12-0018 | 118,301.92 | 14,196.23 |

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|---|---|---|---|
| Topkick Movers Corporation | 01-12-0007 | 148,117.50 | 17,774.10 |
| Dennis Trucking Services | 01-12-0013 | 95,448.21 | 11,453.79 |
| Topkick Movers Corporation | 01-12-0023 | 28,694.64 | 3,443.36 |
| Aboitiz Transport System Corporation | 01-12-0026 | 26,353.75 | 3,162.45 |
| Royal Master Services, Inc. | 01-12-0051 | 35,846.23 | 4,301.55 |
| Dennis Trucking Services | 01-12-0035 | 119,951.75 | 14,394.21 |
| Aboitiz Transport System Corporation | 01-12-0027 | 381,477.93 | 45,777.35 |
| ***Domestic purchases of services without supporting VAT OR*** | | | |
| P.N.A. Freight Services | 01-12-0015 | 59,575.09 | 7,149.01 |
| .N.A. Freight Services | 01-12-0016 | 28,805.95 | 3,456.71 |
| P.N.A. Freight Services | 01-12-0017 | 47,660.07 | 5,719.21 |
| Friends Trucking | 01-12-0019 | 15,946.43 | 1,913.57 |
| Friends Trucking | 01-12-0020 | 42,608.04 | 5,112.96 |
| Friends Trucking | 01-12-0021 | 30,221.79 | 3,626.61 |
| Friends Trucking | 01-12-0022 | 91,947.02 | 11,033.64 |
| GCT and Sons Agricultural Devt Corp | 01-12-0011 | 32,979.31 | 3,957.52 |
| GCT and Sons Agricultural Devt Corp | 01-12-0012 | 15,686.83 | 1,882.42 |
| GCT and Sons Agricultural Devt Corp | 01-12-0028 | 8,770.54 | 1,052.46 |
| GCT and Sons Agricultural Devt Corp | 01-12-0034 | 18,529.46 | 2,223.54 |
| Topkick Movers Corporation | 01-12-0024 | 193,063.50 | 23,167.62 |
| Topkick Movers Corporation | 01-12-0041 | 141,860.81 | 17,023.30 |
| ***Domestic purchases of services supported by VAT OR issued under the name of "Northern Mindanao Marketing Corp"*** | | | |
| F.A. Freight Services | 01-12-0032 | 12,016.20 | 1,441.94 |
| **Subtotal-January 2012** | | **₱ 2,383,788.37** | **₱ 286,054.60** |
| | | | |
| **Period: February 2012 (Exhibit P-41)** | | | |
| | | | |
| ***Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and TIN and/or with incomplete petitioner's name and/or address*** | | | |
| T. Biraogo Trucking Services, Inc. | 02-12-0002 | ₱ 36,451.79 | ₱ 4,374.21 |
| T. Biraogo Trucking Services, Inc. | 02-12-0003 | 58,996.43 | 7,079.57 |
| T. Biraogo Trucking Services, Inc. | 02-12-0025 | 211,991.96 | 25,439.04 |
| Coren Commercial Co., Inc. | 02-12-0027 | 84,821.43 | 10,178.57 |
| Topkick Movers Corporation | 02-12-0004 | 194,648.35 | 23,357.80 |
| Royal Master Services, Inc. | 02-12-0010 | 113,243.26 | 13,589.19 |
| Royal Master Services, Inc. | 02-12-0011 | 166,810.25 | 20,017.23 |
| Topkick Movers Corporation | 02-12-0016 | 150,926.63 | 18,111.19 |
| Topkick Movers Corporation | 02-12-0037 | 44,361.75 | 5,323.41 |
| Topkick Movers Corporation | 02-12-0039 | 168,547.50 | 20,225.70 |
| Dennis Trucking Services | 02-12-0013 | 136,652.21 | 16,398.27 |
| Dennis Trucking Services | 02-12-0033 | 58,996.43 | 7,079.57 |

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|---|---|---|---|
| YM Cargo Transport Corp | 02-12-0024 | 28,397.14 | 3,407.66 |
| Lorenzo Shipping Corporation | 02-12-0038 | 24,509.77 | 2,941.17 |
| Lorenzo Shipping Corporation | 02-12-0040 | 106,177.04 | 12,741.24 |
| Lorenzo Shipping Corporation | 02-12-0052 | 43,562.27 | 5,227.47 |
| Lorenzo Shipping Corporation | 02-12-0053 | 73,529.30 | 8,823.52 |
| ATS Consolidated, Inc. | 02-12-0009 | 210,830.00 | 25,299.60 |
| ATS Consolidated, Inc. | 02-12-0046 | 316,245.00 | 37,949.40 |
| ***Domestic purchases of services without supporting VAT OR*** | | | |
| Friend's Trucking | 02-12-0020 | 61,522.78 | 7,382.73 |
| Friend's Trucking | 02-12-0021 | 25,144.40 | 3,017.33 |
| P.N.A. Freight Services | 02-12-0026 | 11,915.02 | 1,429.80 |
| GCT and Sons Agricultural Devt Corp | 02-12-0028 | 18,529.46 | 2,223.54 |
| GCT and Sons Agricultural Devt Corp | 02-12-0029 | 41,484.82 | 4,978.18 |
| GCT and Sons Agricultural Devt Corp | 02-12-0030 | 27,286.61 | 3,274.39 |
| GCT and Sons Agricultural Devt Corp | 02-12-0031 | 3,126.81 | 375.22 |
| Lawrian Press Corporation | 02-12-0014 | 33,928.57 | 4,071.43 |
| GCT and Sons Agricultural Devt Corp | 02-12-0032 | 27,286.61 | 3,274.39 |
| Square One Realty Corporation | | 1,375.00 | 165.00 |
| Kheri Lines Inc | | 10,218.31 | 1,226.20 |
| ***Domestic purchases of services supported by VAT OR issued under the name of "Northern Mindanao Marketing Corp."*** | | | |
| F.A. Freight Sevices | 02-12-0045 | 107,151.29 | 12,858.15 |
| **Subtotal-February 2012** | | **₱ 2,598,668.19** | **₱ 311,840.17** |
| | | | |
| | | | |
| **Period: March 2012 (Exhibit P-42)** | | | |
| | | | |
| ***Domestic purchases of services without supporting VAT OR*** | | | |
| Dennis Trucking Services | | ₱ 58,996.43 | ₱ 7,079.57 |
| Square One Realty Corporation | | 1,375.00 | 165.00 |
| GCT and Sons and Agricultural Devp Corp | 03-12-0005 | 58,531.91 | 7,023.83 |
| GCT and Sons and Agricultural Devp Corp | 03-12-0007 | 5,211.37 | 625.36 |
| Friends Trucking | 03-12-0018 | 29,393.30 | 3,527.20 |
| Friends Trucking | 03-12-0019 | 9,775.07 | 1,173.01 |
| Friends Trucking | 03-12-0041 | 18,529.46 | 2,223.54 |
| Actuarial Advisers, Inc. | 03-12-0047 | 4,500.00 | 540.00 |
| ***Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and TIN and/or with incomplete name and/or address of petitioner*** | | | |
| Royal Master Services, Inc. | 03-12-0012 | 65,684.37 | 7,882.12 |
| P.N.A. Freight Services | 03-12-0021 | 29,838.13 | 3,580.58 |
| T. Biraogo Trucking Services, Inc. | 03-12-0036 | 58,996.43 | 7,079.57 |

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|---|---|---|---|
| Royal Master Services, Inc. | 03-12-0043 | 23,931.21 | 2,871.75 |
| Ocean Transport Group of Companies, Inc. | 03-12-0045 | 455,357.14 | 54,642.86 |
| Ocean Transport Group of Companies, Inc. | 03-12-0046 | 452,678.57 | 54,321.43 |
| Topkick Movers Corporation | 03-12-0016 | 28,694.64 | 3,443.36 |
| Topkick Movers Corporation | 03-12-0022 | 148,117.50 | 17,774.10 |
| Topkick Movers Corporation | 03-12-0040 | 143,010.00 | 17,161.20 |
| Dennis Trucking Services | 03-12-0006 | 83,062.84 | 9,967.54 |
| YM Cargo Transport Corp. | 03-12-0039 | 11,915.02 | 1,429.80 |
| Lorenzo Shipping Corporation | 03-12-0017 | 23,616.91 | 2,834.03 |
| Lorenzo Shipping Corporation | 03-12-0027 | 73,529.30 | 8,823.52 |
| Lorenzo Shipping Corporation | 03-12-0037 | 24,509.77 | 2,941.17 |
| Lorenzo Shipping Corporation | 03-12-0044 | 76,210.00 | 9,145.20 |
| **Subtotal-March 2012** | | **₱ 1,885,464.37** | **₱ 226,255.74** |
| | | | |
| **Period: April 2012 (Exhibit P-43)** | | | |
| | | | |
| ***Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and/or TIN and/or with incomplete petitioner's name and/or address*** | | | |
| P.N.A.Freight Services | 04-12-0007 | ₱ 11,915.02 | ₱ 1,429.80 |
| T. Biraogo Trucking Services, Inc. | 04-12-0008 | 121,036.38 | 14,524.37 |
| Coren Commercial Co., Inc. | 04-12-0031 | 85,937.50 | 10,312.50 |
| T. Biraogo Trucking Services, Inc. | 04-12-0037 | 60,518.19 | 7,262.18 |
| Royal Master Services, Inc. | 04-12-0048 | 11,915.02 | 1,429.80 |
| Friends Trucking | 04-12-0049 | 19,933.04 | 2,391.96 |
| Friends Trucking | 04-12-0050 | 22,955.36 | 2,754.64 |
| P.N.A.Freight Services | 04-12-0051 | 11,915.02 | 1,429.80 |
| Ocean Transport Group of Companies, Inc. | 04-12-0052 | 104,464.29 | 12,535.71 |
| LBC Express Inc. | 04-12-1010 | 1,616.07 | 193.93 |
| Topkick Movers Corporation | 04-12-0009 | 108,193.42 | 12,983.21 |
| Ocean Transport Group of Companies, Inc. | 04-12-0010 | 236,607.14 | 28,392.86 |
| Topkick Movers Corporation | 04-12-0017 | 57,389.29 | 6,886.71 |
| Dennis Trucking Services | 04-12-0011 | 41,538.52 | 4,984.62 |
| Dennis Trucking Services | 04-12-0019 | 96,969.97 | 11,636.40 |
| Topkick Movers Corporation | 04-12-0022 | 188,977.50 | 22,677.30 |
| Topkick Movers Corporation | 04-12-0030 | 7,329.04 | 879.48 |
| EDM Caltex Service Station | 04-12-1011 | 2,876.79 | 345.21 |
| EDM Caltex Service Station | 04-12-1012 | 4,201.07 | 504.13 |
| Laser Tech Copier Services (OR Nos 1106 & 27186) | 04-12-1009 | 76.00 | 8.14 |
| Leyson Printing and Services | 04-12-1009 | 350.00 | 42.00 |
| Laser Tech Copier Services | 04-12-1011 | 75.00 | 9.00 |
| Leyson Printing and Services | 04-12-1012 | 312.50 | 37.50 |
| Lorenzo Shipping Corporation | 04-12-0029 | 100,279.07 | 12,033.49 |

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|---|---|---|---|
| Lorenzo Shipping Corporation | 04-12-0045 | 94,821.80 | 11,378.62 |
| Shacene Pension House Restaurant (OR Nos. 9471 & 9436) | 04-12-1012 | 4,241.07 | 508.93 |
| ***Domestic purchases of services without supporting VAT OR*** | | | - |
| Lorenzo Shipping Corporation | 04-12-0013 | 24,509.77 | 2,941.17 |
| GCT & Sons Agricultural Devt Corp | 04-12-0014 | 28,720.67 | 3,446.48 |
| GCT & Sons Agricultural Devt Corp | 04-12-0015 | 29,865.88 | 3,583.90 |
| GCT & Sons Agricultural Devt Corp | 04-12-0016 | 18,529.46 | 2,223.54 |
| Value Care Health Systems Inc. | 04-12-0025 | 1,746.58 | 209.59 |
| Topkick Movers Corporation | 04-12-0039 | 212,727.38 | 25,527.28 |
| GCT & Sons Agricultural Devt Corp | 04-12-0041 | 18,529.46 | 2,223.54 |
| GCT & Sons Agricultural Devt Corp | 04-12-0042 | 3,102.59 | 372.31 |
| GCT & Sons Agricultural Devt Corp | 04-12-0043 | 25,721.50 | 3,086.58 |
| GCT & Sons Agricultural Devt Corp | 04-12-0044 | 74,506.25 | 8,940.75 |
| Shacene Pension House Restaurant (OR Nos. 9463 & 9437) | 04-12-1012 | 2,547.64 | 305.72 |
| Smart Broadband Inc - Butuan | 04-12-1012 | 8,203.20 | 984.38 |
| Square One Realty Corporation | 04-12-0021 | 1,375.00 | 165.00 |
| ***Domestic purchases of goods without supporting VAT sales invoice*** | | | |
| Tandag Auto Parts and Brake Bonding Center | 04-12-1012 | 254.47 | 30.53 |
| JSL Petron Service Station | 04-12-1009 | 4,196.75 | 503.61 |
| Lavender Shell Service Station (Inv. 188180) | 04-12-1012 | 651.79 | 78.21 |
| Metro Surigao Shopping Center | 04-12-1012 | 212.68 | 25.52 |
| Tandag Auto Parts and Brake Bonding Center | 04-12-1009 | 486.61 | 58.39 |
| Tandag Petron Service Station | 04-12-1010 | 2,062.50 | 247.50 |
| Detan Shell Service Station | 04-12-1012 | 2,519.81 | 302.38 |
| ***Domestic purchases of services supported by VAT OR issued not under the name of petitioner*** | | | |
| Surigao Del Norte Electric Cooperative, Inc. | 04-12-1009 | 3,703.58 | 444.43 |
| ***Domestic purchases of goods supported by VAT sales invoice issued not under the name of petitioner*** | | | |
| Pilipinas Shell Petroleum Corporation | 04-12-1024 | 25,215.28 | 3,025.83 |
| Pilipinas Shell Petroleum Corporation | 04-12-1033 | 27,618.45 | 3,314.21 |
| Pilipinas Shell Petroleum Corporation | 04-12-1025 | 35,390.30 | 4,246.84 |
| Pilipinas Shell Petroleum Corporation | 04-12-1036 | 28,680.07 | 3,441.61 |
| ***Domestic purchases of goods supported by VAT sales invoices but without petitioner's address and TIN*** | | | |
| Detan Shell Service Station | 04-12-1009 | 2,754.02 | 330.48 |
| Diatagon Caltex Filling Station | 04-12-1009 | 4,220.45 | 506.45 |
| Tandag Petron Service Station | 04-12-1011 | 2,287.50 | 274.50 |
| Diatagon Caltex Filling Station | 04-12-1012 | 4,371.45 | 524.57 |

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|---|---|---|---|
| Diatagon Caltex Filling Station | 04-12-1011 | 3,499.54 | 419.94 |
| ***Input VAT claim does not tie-up with the amount shown in the supporting VAT sales invoice*** | | | |
| Pilipinas Shell Petroleum Corp. | | | |
| Amount per Claim | 04-12-1013 | 148,345.86 | 17,801.48 |
| Amount per Invoice No. 366790 | | (22,415.71) | (2,689.88) |
| Amount per Claim | 04-12-1031 | 254,480.41 | 30,537.65 |
| Amount per Inv. No. 369923 | | (38,799.32) | (4,655.94) |
| Amount per Claim | 04-12-1032 | 36,802.31 | 4,416.28 |
| Amount per Inv. No. 369923 | | (11,825.16) | (1,419.02) |
| Amount per Claim | 04-12-1034 | 231,876.21 | 27,825.14 |
| Amount per Inv. No. 373012 | | (37,991.98) | (4,559.05) |
| Amount per Claim | 04-12-1035 | 44,173.65 | 5,300.84 |
| Amount per Inv. No. 373012 | | (13,102.32) | (1,572.28) |
| **Subtotal-April 2012** | | **₱ 2,586,198.65** | **₱ 310,342.75** |
| | | | |
| **Period: May 2012 (Exhibit P-44)** | | | |
| | | | |
| ***Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and/or TIN and/or with incomplete name and/or address of petitioner*** | | | |
| Laser Tech Copier Services | 05-12-1005 | ₱ 143.75 | ₱ 17.25 |
| Leyson Printing and Services | 05-12-1005 | 2,410.71 | 289.29 |
| Lavender Shell Service Station | 05-12-1005 | 3,839.28 | 460.72 |
| Laser Tech Copier Services (OR No. 28692) | 05-12-1052 | 8.93 | 1.07 |
| Shacene Pension House Restaurant | 05-12-1052 | 4,241.06 | 508.94 |
| Smart Broadband, Inc. | 05-12-1052 | 12,455.40 | 1,494.65 |
| Bayan Telecommunications, Inc. | 05-12-1055 | 16,254.11 | 1,950.49 |
| JRS Express | 05-12-1055 | 3,131.25 | 375.75 |
| Smart Broadband, Inc. | 05-12-1057 | 474.20 | 56.90 |
| Commando Security Service Agency | 05-12-1057 | 562.50 | 67.50 |
| Dennis Trucking Services | 05-12-0002 | 40,770.54 | 4,892.46 |
| Topkick Movers Corporation | 05-12-0009 | 78,623.32 | 9,434.80 |
| Royal Master Services, Inc. | 05-12-0010 | 51,704.96 | 6,204.60 |
| Royal Master Services, Inc. | 05-12-0011 | 59,777.45 | 7,173.29 |
| Topkick Movers Corporation | 05-12-0012 | 117,472.50 | 14,096.70 |
| Topkick Movers Corporation | 05-12-0026 | 211,705.88 | 25,404.70 |
| Topkick Movers Corporation | 05-12-0030 | 34,015.18 | 4,081.82 |
| Topkick Movers Corporation | 05-12-0031 | 112,686.61 | 13,522.39 |
| Topkick Movers Corporation | 05-12-0032 | 178,762.50 | 21,451.50 |
| Topkick Movers Corporation | 05-12-0033 | 127,687.50 | 15,322.50 |
| Lorenzo Shipping Corporation | 05-12-0003 | 58,837.50 | 7,060.50 |
| T. Biraogo Trucking Services, Inc. | 05-12-0016 | 101,288.72 | 12,154.65 |

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|---|---|---|---|
| P.N.A. Freight Services | 05-12-0023 | 65,583.19 | 7,869.98 |
| T. Biraogo Trucking Services, Inc. | 05-12-0047 | 122,311.61 | 14,677.39 |
| LBC Express, Inc. | 05-12-1005 | 3,209.82 | 385.18 |
| ATS Consolidated, Inc. | 05-12-0018 | 292,604.38 | 35,112.53 |
| Dennis Trucking Services | 05-12-0019 | 40,770.54 | 4,892.46 |
| ***Domestic purchases of services supported by VAT OR but issued not under the name of petitioner*** | | | |
| Surigao Del Norte Electric Cooperative, Inc. | 05-12-1005 | 3,628.67 | 435.44 |
| Pilipinas Shell Petroleum Corp | 05-12-1036 | 24,523.85 | 2,942.86 |
| Surigao Del Norte Electric Cooperative, Inc. | 05-12-1052 | 486.17 | 58.34 |
| F.A. Freight Services | 05-12-0014 | 45,696.87 | 5,483.62 |
| F.A. Freight Services | 05-12-0040 | 110,993.82 | 13,319.26 |
| ***Domestic purchases of goods supported by VAT sales invoice but the amount of VAT was not separately shown and/or without petitioner's address and/or TIN*** | | | |
| EDM Caltex Service Station (Inv. 45909) | 05-12-1005 | 4,017.86 | 482.14 |
| JSL Petron Service Station | 05-12-1005 | 3,238.59 | 388.63 |
| Detan Shell Service Station | 05-12-1005 | 4,803.64 | 576.44 |
| Diatagon Caltex Filling Station | 05-12-1005 | 3,156.06 | 378.73 |
| EDM Caltex Service Station (Inv. 45909) | 05-12-1052 | 3,839.29 | 460.71 |
| Detan Shell Service Station | 05-12-1052 | 2,791.07 | 334.93 |
| Diatagon Caltex Filling Station | 05-12-1052 | 2,995.89 | 359.51 |
| Searcher's Spareparts Specialist | 05-12-1052 | 848.21 | 101.79 |
| JSL Petron Service Station | 05-12-1052 | 2,678.57 | 321.43 |
| Kumander Enterprises | 05-12-1055 | 89.29 | 10.71 |
| Butuan Express Hardware Workshop Inc. | 05-12-1057 | 775.00 | 93.00 |
| Kumander Enterprises | 05-12-1057 | 669.64 | 80.36 |
| ***Domestic purchases of goods without supporting VAT sales invoice*** | | | |
| EDM Caltex Service Station | 05-12-1005 | 357.14 | 42.86 |
| Mercury Drug Corporation | 05-12-1057 | 736.92 | 88.43 |
| Petron Corporation | 05-12-1057 | 329,855.89 | 39,582.71 |
| Palma Superstore | 05-12-1007 | 2,097.99 | 251.76 |
| Pilipinas Shell Petroleum Corp | 05-12-1008 | 154,788.12 | 18,574.57 |
| Pilipinas Shell Petroleum Corp | 05-12-1050 | 26,871.69 | 3,224.60 |
| A.Y. Butuan Auto Supply | 05-12-1056 | 2,321.42 | 278.57 |
| Kumander Enterprises | 05-12-1056 | 75.89 | 9.11 |
| Life Auto Supply and Hardware | 05-12-1056 | 2,017.85 | 242.14 |
| ***Domestic purchases of services without supporting VAT OR*** | | | |
| PHILCOM | 05-12-1057 | 4,205.26 | 504.63 |
| Agusan Del Norte Electric Cooperative | 05-12-1057 | 4,628.42 | 555.41 |
| Friends Trucking | 05-12-0021 | 13,624.11 | 1,634.89 |
| Friends Trucking | 05-12-0022 | 44,702.54 | 5,364.31 |

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|---|---|---|---|
| Lorenzo Shipping Corporation | 05-12-0048 | 207,039.54 | 24,844.74 |
| Square One Realty Corporation | 05-12-0004 | 1,375.00 | 165.00 |
| Sign Head Graphics | 05-12-1053 | 33,750.00 | 4,050.00 |
| ***Input VAT claim does not tie-up with the amount shown in the supporting VAT sales invoice*** | | | |
| Pilipinas Shell Petroleum Corp | | | |
| Amount of claim | 05-12-1048 | 289,076.94 | 34,689.23 |
| Less: Amount per Inv. No. 376122 | | (32,396.69) | (3,887.62) |
| Amount of claim | 05-12-1049 | 32,960.12 | 3,955.22 |
| Less: Amount per Inv. No. 376122 | | (17,490.35) | (2,098.85) |
| ***With unreadable supporting document*** | | | |
| UN City Gen Mdse Inc. | 05-12-1005 | 49.11 | 5.89 |
| **Subtotal-May 2012** | | **₱ 3,057,212.79** | **₱ 366,865.51** |
| | | | |
| **Period: June 2012 (Exhibit P-45)** | | | |
| | | | |
| ***Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and/or TIN and/or with incomplete name and/or address of petitioner*** | | | |
| Royal Master Services Inc. | 06-12-0003 | ₱ 23,830.04 | ₱ 2,859.60 |
| Topkick Movers Corporation | 06-12-0011 | 62,709.82 | 7,525.18 |
| Topkick Movers Corporation | 06-12-0016 | 194,085.00 | 23,290.20 |
| Dennis Trucking Services | 06-12-0031 | 121,218.05 | 14,546.17 |
| Royal Master Services Inc. | 06-12-0045 | 53,668.17 | 6,440.18 |
| P.N.A. Freight Services | 06-12-0004 | 11,915.02 | 1,429.80 |
| T. Biraogo Trucking Services, Inc. | 06-12-0005 | 203,634.76 | 24,436.17 |
| Friends Trucking | 06-12-0021 | 15,946.43 | 1,913.57 |
| Friends Trucking | 06-12-0022 | 55,981.25 | 6,717.75 |
| T. Biraogo Trucking Services, Inc. | 06-12-0028 | 139,079.44 | 16,689.53 |
| Dennis Trucking Services | 06-12-0006 | 19,456.13 | 2,334.74 |
| Lorenzo Shipping Corporation | 06-12-0014 | 42,397.27 | 5,087.67 |
| Lorenzo Shipping Corporation | 06-12-0046 | 64,294.77 | 7,715.37 |
| Lorenzo Shipping Corporation | 06-12-0048 | 44,682.27 | 5,361.87 |
| ATS Consolidated, Inc. | 06-12-0047 | 414,334.34 | 49,720.12 |
| LBC Express Min Inc | 06-12-1044 | 2,950.89 | 354.11 |
| Laser Tech Copier Services (OR 29183) | 06-12-1044 | 17.86 | 2.14 |
| St. Augustine Shell Service Center | 06-12-1044 | 3,799.11 | 455.89 |
| Laser Tech Copier Services | 06-12-1045 | 78.57 | 9.43 |
| Leyson Printing Services | 06-12-1045 | 3,750.00 | 450.00 |
| Lifeworks Print Hub | 06-12-1049 | 61,794.64 | 7,415.36 |
| ***Domestic purchases of goods supported by VAT sales invoice but the amount of VAT was not*** | | | |

| | | | |
|---|---|---|---|
| ***separately shown and/or without petitioner's address and/or TIN*** | | | |
| EDM Caltex Service station | 06-12-1044 | 7,358.83 | 883.06 |
| Searchers Spareparts Specialist | 06-12-1045 | 178.57 | 21.43 |
| EDM Caltex Service station | 06-12-1045 | 5,899.93 | 707.99 |
| Tandag Petron Service Station (Inv. 21906) | 06-12-1045 | 2,487.77 | 298.53 |
| Kumander Enterprises | 06-12-1047 | 281.25 | 33.75 |
| Kumander Enterprises | | 466.07 | 55.93 |
| Pilipinas Shell Petroleum Corp | 06-12-1042 | 44,287.34 | 5,314.48 |
| ***Domestic purchases of services without supporting VAT OR*** | | | |
| Value Care Health Systems, Inc. | 06-12-0020 | 244.01 | 29.28 |
| Square One Realty Corp | 06-12-0026 | 1,375.00 | 165.00 |
| Commando Security Service Agency | 06-12-1044 | 375.00 | 45.00 |
| ***Domestic purchases of goods supported by VAT sales invoice issued not under the name of petitioner*** | | | |
| Pilipinas Shell Petroleum Corp | 06-12-1043 | 42,989.96 | 5,158.79 |
| ***Domestic purchases of services supported by VAT OR issued not under the name of petitioner*** | | | |
| Surigao Del Norte Electric Cooperative, Inc. | 06-12-1045 | 3,737.42 | 448.49 |
| ***Input VAT claim does not tie-up with the amount shown in the supporting VAT sales invoice*** | | | |
| Pilipinas Shell Petroleum Corp | | | - |
| Amount of Claim | 06-12-1046 | 148,811.20 | 17,857.34 |
| Less: Amount per Inv. 376079 | | (31,840.25) | (3,820.83) |
| Amount of Claim | 06-12-1051 | 277,745.69 | 33,329.48 |
| Less: Amount per Inv. 379216 | | (37,798.16) | (4,535.78) |
| ***Domestic purchases of goods without supporting VAT sales invoice*** | | | - |
| A&M Commercial and General Merch | 06-12-1047 | 160.71 | 19.29 |
| A.Y. Butuan Auto Supply | 06-12-1047 | 107.14 | 12.86 |
| Diatagon Caltex Filling Station | 06-12-1045 | 4,168.53 | 500.22 |
| **Subtotal-June 2012** | | **₱ 2,010,659.84** | **₱ 241,279.16** |
| | | | |
| **Total Disallowances - January to June 2012** | | **₱ 14,521,992.21** | **₱ 1,742,637.93** |

Considering the foregoing, the Court upholds the disallowance of the input tax of ₱3,125,962.95 (the sum of ₱1,383,325.02 and ₱1,742,637.93).

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**F. *50% Surcharge – ₱9,135,043.96***

Petitioner assails respondent's imposition of fifty percent (50%) surcharge upon its basic deficiency VAT due, which is the kind of surcharge imposed under Section 248(B) of the NIRC of 1997, which provides:

> "(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That a substantial underdeclaration of taxable sales, receipts, or income, or a substantial overstatement of deduction, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided*, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein."

According to petitioner, the *prima facie* evidence of a false return by reason of the allegation that there was "failure to report receipt in an amount exceeding thirty percent (30%) of that declared per return"[55] is not present in this case. The term "receipts" as defined under Section 108 of the NIRC of 1997, as amended, pertains to "the total amount of money or its equivalent" from sale of services whereas petitioner is engaged in the "sale of goods". Further, the imposition allegedly lacks factual and legal bases as petitioner truthfully reported its sales in January to June 2012 and dutifully filed its VAT returns and SLS.

Petitioner points out that in order to impose surcharge of such rate of 50%, there must be a showing of "willful neglect to file the return" on the part of petitioner. However, respondent failed to lay

[55] Exhibit "P-1", BIR Records, p. 1094.

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out the presence of circumstances to warrant the imposition of the surcharge and as to why.

Petitioner cites the Supreme Court's ruling in the case of *Commissioner of Internal Revenue vs. Japan Airlines, Inc. and the Court of Tax Appeals*[56], to wit:

> "Nowhere in the records of the case can be found that JAL deliberately failed to file its income tax returns for the years covered by the assessment. There was not even an attempt by petitioner to prove the same or justify the imposition of the 50% surcharge. All that petitioner did was to cite the provision of law upon which the surcharge was based without explaining why it was applicable to respondent's case. Such cannot be countenanced for mere allegations are definitely not acceptable. The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed *(CIR v. Air India, supra).* The fraud contemplated by law is actual and constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrongdoing with the sole object of evading the tax (*Aznar v. Court of Tax Appeals*, G.R. No. L-20569, August 23, 1974, 58 SCRA 519). This was not proven to be so in the case of JAL as it believed in good faith that it need not file the tax return for it had no taxable income then. The element of fraud is lacking. At most, only negligence may be imputed to JAL for not ascertaining the dispensability of filing the tax returns. As such, JAL may be subjected only to the 25% surcharge prescribed by the aforequoted law."

The Court agrees with petitioner.

Section 248(B) of the NIRC of 1997, as amended, imposes the surcharge of 50% only in two instances. First, in case of willful neglect to file the return within the period prescribed, and second, in case a false or fraudulent return is willfully made. Thus, it is not enough that the taxpayer failed to file the required tax return or that the return is

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[56] G.R. No. 60714, October 4, 1991.

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false to justify the imposition of the 50% for fraud. The law is clear that "a false or fraudulent return is willfully made".[57]

Based on the supporting documents submitted by petitioner, as well as the foregoing findings of the Court, there was no sign of willful intention on the part of petitioner to evade payment of taxes. Moreover, there was also no understatement of revenues exceeding 30%. Therefore, a surcharge rate of twenty-five percent (25%) instead of 50% is to be applied on the basic deficiency VAT of petitioner pursuant to Section 248(A)(3) of the NIRC of 1997, as amended.

## II. COMPROMISE PENALTY – ₱25,000.00

Part II of the FAN[58] provides an additional compromise penalty payable in the amount of ₱25,000.00 for petitioner's alleged failure to file Summary Lists of Sales and Purchases and failure to declare zero-rated sales for the 2nd quarter in violation of RR No. 16-05.

There being no mutual agreement between the parties, the Court cancels the above compromise penalty. Settled is the rule that the imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[59] RMO No. 1-90 expressly provides that compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalty. Considering petitioner did not pay the compromise penalty imposed by respondent, it clearly did not agree to settle the same.

In fine, petitioner is liable to pay basic deficiency VAT for the period covering January 1, 2012 to June 30, 2012 in the amount of ₱4,447,705.09, computed as follows:

| | | |
|---|---|---|
| VATable Sales per VAT returns | | ₱ 368,297,808.49 |
| Add: Unexplained Debits to Sales | | 11,014,517.17 |

[57] *Estate of Fidel F. Reyes and Estate of Teresita R. Reyes vs. Commissioner of Internal Revenue*, CTA EB No. 189 (CTA Case No. 6747), March 21, 2007.
[58] Exhibit "P-3", BIR Records, p. 1089.
[59] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals*, G.R. No. L-35266, January 21, 1991.

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| | | |
|---|---|---|
| Gross Receipts subject to VAT | | ₱ 379,312,325.66 |
| | | |
| Output tax due | | ₱ 45,517,479.08 |
| Less: Input tax from Current Purchases | ₱ 41,745,615.38 | |
| Less: Disallowed Input Tax | ₱ 3,125,962.95 | 38,619,652.43 |
| VAT Payable | | ₱ 6,897,826.65 |
| Less: Payments Made | | 2,450,121.56 |
| **Basic Deficiency VAT** | | **₱ 4,447,705.09** |

**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The deficiency VAT assessment issued by respondent against petitioner covering the period January 1, 2012 to June 30, 2012 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of **FIFTEEN MILLION FIVE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED SEVENTY-SIX PESOS AND SEVENTEEN CENTAVOS (₱15,517,576.17)**, 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 follows:

| | |
|---|---|
| Basic Deficiency VAT | ₱ 4,447,705.09 |
| Add: 25% Surcharge | 1,111,926.27 |
| 20% Deficiency Interest from July 26, 2012 to June 23, 2014 *(₱4,447,705.09 x 20% x 698/365 days)* | 1,701,094.88 |
| **Total Amount Due, June 23, 2014** | **₱ 7,260,726.24** |
| Add: 20% Deficiency Interest from June 24, 2014 to December 31, 2017 *(₱4,447,705.09 x 20% x 1287/365 days)* | 3,136,546.00 |
| 20% Delinquency Interest from June 24, 2014 to December 31, 2017 *(₱7,260,726.24 x 20% x 1287/365 days)* | 5,120,303.93 |
| **Total Amount Due, December 31, 2017** | **₱15,517,576.17** |

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the aggregate amount due as of June 23, 2014 of **₱7,260,726.24**, 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 No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

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**SO ORDERED.**

**CIELITO N. MINDARO-GRULLA**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

**ERLINDA P. UY**
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 case was assigned to the writer of the opinion of the Court's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice
Chairperson, Special First Division