REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL THIRD DIVISION

BARRIO FIESTA MANUFACTURING CORPORATION,	**CTA CASE NO. 9871**
Petitioner,	*Present:*
vs.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 01 2024 9:40 a.m.

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DECISION

FERRER-FLORES, J.:

Before this Court is a *Petition for Review* filed on July 9, 2018 by Barrio Fiesta Manufacturing Corporation (**Barrio Fiesta/petitioner**) against the Commissioner of Internal Revenue (**CIR/respondent**), praying for the issuance of:

(a) a judgment declaring as null and void the assessments and collection upon which the *Preliminary Collection Letter* (PCL) dated May 18, 2018 and the *Final Notice Before Seizure* (FNBS) dated June 8, 2018 are based for the alleged deficiency value-added tax (VAT), and compromise penalty, in the aggregate amount of ₱20,587,742.46, inclusive of interest, for the period from January 1, 2015 to June 30, 2015; and,

(b) a judgment ordering the said respondent to withdraw and cancel the said PCL dated May 18, 2018 and the FNBS dated June 8, 2018, and the assessments upon which it is based.[1]

THE PARTIES

Petitioner Barrio Fiesta is a corporation duly organized and existing under the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer's Identification Number 000-286-365-0000, with address at 8th Flr The Currency Tower, Don F. Ortigas Jr. Road, Ortigas Center, San Antonio 1605, City of Pasig, NCR, Second District, Philippines.[3]

Respondent CIR is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office. He may be served with summons, notices and other court processes at his office at the BIR National Office Building, Diliman, Quezon City.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On February 17, 2016, petitioner received the Letter of Authority (LOA) No. LOA-V05-2016-00000078 / eLA201100099593, dated February 15, 2016,[5] authorizing Revenue Officer (RO) Georgette Balajadia and Group Supervisor (GS) Albino Jr Salenga, to examine petitioner's books of accounts and other accounting records for VAT, for the period January 1, 2015 to June 30, 2015.

Thereafter, petitioner received an undated letter from Revenue Region (RR) 5 of the BIR, signed by VAT Audit Group Manager Josephine I. Pineda,[6] informing petitioner that ROs Francis John G. Valencia and Melody G. Mendiola, under GS Salenga, are authorized to assist in the audit of petitioner's VAT for the 1st and 2nd quarters of taxable year 2015 under ELA No. 99593-V05-16-00078 dated February 15, 2016 assigned to RO Balajadia.

OIC – Regional Director Myrna S. Leonida then issued the *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies* dated February 27, 2017,[7] informing petitioner that, after investigation, the BIR ascertained that the former has deficiency VAT for the 1st semester of year 2015, totalling

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[1] Prayer, *Petition for Review*, Docket – Vol. 1, p. 30.
[2] Exhibits "P-1" and "P-2", Docket – Vol. 1, pp. 356 to 366.
[3] Exhibit "P-3", Docket – Vol. 3, pp. 1044 to 1045.
[4] Par. 4, Parties, *Petition for Review*, Docket – Vol. 1, p. 11.
[5] Exhibit "P-5", Docket – Vol. 1, p. 368.
[6] Exhibit "P-6", Docket – Vol. 1, p. 369.
[7]

₱17,409,923.78. Petitioner received the said PAN on March 7, 2017,[8] and filed its response thereto on March 22, 2017.[9]

Thereafter, the *Formal Letter of Demand* (FLD) and *Assessment Notice* No. 36138 dated March 28, 2017 were issued by OIC – Regional Director Leonida against petitioner,[10] assessing petitioner of deficiency VAT, in the total amount of ₱19,793,480.38, inclusive of interest. Petitioner received the said FLD on April 4, 2017.[11] Consequently, petitioner filed its *Request for Reinvestigation* against the VAT assessment on May 4, 2017.[12]

On December 7, 2017, OIC – Regional Director Leonida issued the revised FLD and *Assessment Notice* No. 37135,[13] computing anew petitioner's VAT liability at ₱20,537,742.46. In response, petitioner filed with the BIR another *Request for Reinvestigation*[14] on January 8, 2018.

The BIR, through Ms. Alicia DT. Palmaria, OIC Chief of its Collection Division, subsequently issued the PCL dated May 18, 2018,[15] and the FNBS dated June 8, 2018.[16] Petitioner allegedly received the PCL on June 25, 2018. On the other hand, petitioner received the FNBS on June 25, 2018,[17] while the PCL was allegedly received on the same date.[18]

PROCEEDINGS BEFORE THIS COURT

The present *Petition for Review* was then filed on July 9, 2018.[19]

On August 8, 2018, the Court issued summons against the respondent, who was ordered to submit an *Answer* to the said *Petition for Review*.[20] Respondent's counsel filed, on September 26, 2018, a *Formal Entry of Appearance with Manifestation*,[21] stating that he has not been furnished with a copy of the *Petition* so that he requested that all notices, papers, orders and other processes relative to the case be forwarded to the Office of the Legal Division RR 5 Caloocan City.

[8] *Ibid.*, at p. 370.
[9] Exhibits "P-8" and "P-8-1", Docket – Vol. 1, pp. 379 to 383.
[10] Exhibits "P-10" and "P-10-1", Docket – Vol. 1, pp. 404 to 413.
[11] *Ibid.*
[12] Exhibit "P-11" and "P-11-1", Docket – Vol. 1, pp. 414 to 419.
[13] Exhibit "P-12", Docket – Vol. 1, p. 420 to 425.
[14] Exhibits "P-13" and "P-13-1", Docket – Vol. 1, pp. 426 to 431.
[15] Exhibit "P-14", Docket – Vol. 1, p. 451.
[16] Exhibit "P-4", Docket – Vol. 1, p. 367.
[17] Exhibit "P-4-1", Docket – Vol. 1, p. 367.
[18] Par. 16, Facts, *Petition for Review*, Docket – Vol. 1, p. 13.
[19] Docket – Vol. 1, pp. 10 to 36.
[20] Docket – Vol. 1, p. 147.
[21] Docket – Vol. 1, pp. 149 to 150.

On February 12, 2019, petitioner filed a *Motion to Declare Respondent in Default*,[22] praying that respondent be declared in default for failure to file an *Answer* within the reglementary period. Respondent posted his *Comment* thereon on March 5, 2019.[23]

However, the Judicial Records Division of the Court reported that, as of July 12, 2019, respondent still failed to file an *Answer* in this case.[24] Thus, the Court declared respondent in default.[25]

The trial of the case then ensued *ex parte.*

During trial, petitioner's Finance Head, Mr. Crisaldo M. Suni, was presented.[26]

Following several *Motions for Extension of Time to File Motion to Commission Independent Certified Public Accountant* successively filed by petitioner and which were granted by the Court, petitioner later filed its *Manifestation* on March 6, 2020,[27] stating that it will no longer pursue the commissioning of an ICPA.

On September 24, 2020, petitioner filed a *Motion to Refer to Mediation (with Motion to Defer Filing of Formal Offer of Evidence)*,[28] requesting for the Court to: (1) refer the instant case to mediation; and (2) defer the filing of the *Formal Offer of Evidence*. However, in the Resolution dated June 16, 2021,[29] this was denied by the Court for lack of merit.

On June 25, 2021, petitioner filed its *Formal Offer of Evidence (with Motion to Set Additional Commissioner's Hearing)*,[30] praying for the comparison and marking of the replacement document for Exhibit "P-3". Thereafter, petitioner also filed an *Urgent Motion to Suspend Collection of Tax and Dispense with the Payment of Bond* on July 6, 2021.[31]

At the hearing held for the *Urgent Motion to Suspend Collection of Tax and Dispense with the Payment of Bond* of petitioner on October 7, 2021, the

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[22] Docket – Vol. 1, pp. 152 to 156.
[23] Docket – Vol. 1, pp. 160 to 162.
[24] Docket – Vol. 1, p. 164.
[25] Resolution dated July 30, 2019, Docket – Vol. 1, pp. 166 to 169.
[26] Exhibit "P15", Docket – Vol. 1, pp. 179 to 193; Minutes of the hearing held on, and Order dated, October 8, 2019, Docket – Vol. 1, pp. 286 to 288.
[27] Docket – Vol. 1, pp. 323 to 326.
[28] Docket – Vol. 1, pp. 331 to 335.
[29] Docket – Vol. 1, pp. 341 to 344.
[30] Docket – Vol. 1, pp. 345 to 355.
[31] Docket – Vol. 1, pp. 452 to 464.

latter presented the testimony of its Accounting Supervisor, Ms. Liezel V. Bilazon.[32]

On October 21, 2021, petitioner filed via private courier its *Formal Offer of Evidence (with Manifestation)* in relation to its *Urgent Motion to Suspend Collection of Tax and Dispense with the Payment of Bond*, stating, among others, that the pieces of evidence listed therein are likewise being offered in support of the main case.[33] The Court then set an additional commissioner's hearing on March 15, 2022 due to several documents of petitioner being mere photocopies, and held in abeyance the resolution of petitioner's *Formal Offer of Evidence* in relation to its *Urgent Motion to Suspend Collection of Tax and Dispense with the Payment of Bond.*[34]

Thereafter, the Court received petitioner's *Supplemental Formal Offer of Evidence* on April 18, 2022.[35] On May 5, 2022, the Court resolved petitioner's *Formal Offer of Evidence (with Manifestation)* and Exhibits "P-1", "P-2", "P-3", "P-4", "P-4-1", "P-5", "P-6", "P-7", "P-8", "P-8-1", "P-10", "P-10-1", "P-11", "P-11-1", "P-12", "P-13", "P-13-1", "P-14", "P-22", and "P-22-1" were admitted into evidence. The Court, however, denied the admission of (1) Exhibit "P-9", for failure to submit the originals for comparison; and (2) Exhibits "P-16", "P-16-1", "P-17", "P-18", "P-18-1", "P-19", "P-20", and "P-23", for failure to submit duly marked exhibits.[36]

The Court likewise denied petitioner's *Urgent Motion to Suspend Collection of Tax and Dispense with the Payment of Bond* in the Resolution dated May 25, 2022.[37]

Consequently, on June 1, 2022, petitioner filed *Motion for Reconsideration (with Motion to Set Additional Commissioner's Hearing)*,[38] praying for the Court: (1) to reconsider its Resolution dated May 5, 2022, which denied Exhibits "P-16", "P-16-1", "P-17", "P-18", "P-18-1", "P-19", "P-20", and "P-23", and (2) to set a Commissioner's Hearing for the comparison of Exhibit "P-9". The Court granted petitioner's *Motion to Set Additional Commissioner's Hearing* and set the same on July 27, 2022.[39]

Petitioner then filed a *Motion for Reconsideration (Re: Resolution dated May 25, 2022)* on June 15, 2022,[40] seeking for the Court to set aside the

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[32] Exhibit "P-22", Docket – Vol. 2, pp. 617-a to 617-y and 746 to 771(original copy); Minutes of the hearing held on, and Order, dated October 7, 2021, Docket – Vol. 2, pp. 615 to 617.
[33] Docket – Vol. 2, pp. 618 to 630.
[34] Resolution dated February 23, 2022, Docket – Vol. 3, pp. 1021 to 1023.
[35] Docket – Vol. 3, pp. 1037 to 1043.
[36] Resolution dated May 5, 2022, Docket – Vol. 3, pp. 1137 to 1138.
[37] Docket – Vol. 3, pp. 1140 to 1144.
[38] Docket – Vol. 3, pp. 1145 to 1153
[39] Resolution dated July 22, 2022, Docket – Vol. 3, pp. 1183 to 1184.
[40] Docket – Vol. 3, pp. 1163 to 1181.

said Resolution, and instead grant the *Urgent Motion to Suspend Collection of Tax and Dispense with the Payment of Bond.*

In the Resolution dated October 12, 2022,[41] the Court resolved petitioner's *Supplemental Formal Offer of Evidence* filed on April 18, 2022, and partially granted its *Motion for Reconsideration* filed on June 1, 2022, thereby admitting Exhibits "P-3", "P-9", "P-16", "P-16-1", "P-17", "P-18", "P-18-1", "P-19", "P-20", and "P-23". However, petitioner's *Motion for Reconsideration (Re: Resolution dated May 25, 2022)* filed on June 15, 2022 was still denied for lack of merit.

Thus, on November 8, 2022, petitioner filed a *Motion to Reopen Proceedings (with Motion to Defer Filing of Memorandum)*[42] requesting that another trial hearing be set for the purpose of presenting additional pieces of evidence or in the alternative, allow stipulation on the existence, contents, nature and due execution of its Audited Financial Statements for taxable years 2020 and 2021 with the respondent, which the Court denied in a Resolution dated February 16, 2023.[43] In the same Resolution, the Court noted petitioner's filing of *Memorandum* on November 25, 2022,[44] thereby deeming the case submitted for decision.

On May 5, 2023, petitioner furnished the Court with a copy of its *Petition for Certiorari* filed before the Supreme Court, seeking the nullification of this Court's Resolution dated February 16, 2023.[45] This was noted by the Court in the Resolution dated June 23, 2023.[46]

THE ISSUES

Petitioner summarizes the issues for the Court's resolution, to wit:

A. Whether the assessment is void due to Respondent's violation of Petitioner's right to due process.

B. Whether the collection is void since it is anchored on a void assessment.

C. Whether or not the Warrants of Garnishment were [properly] issued even if the assessment has not yet become final and executory.

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[41] Docket – Vol. 3, pp. 1190 to 1195.
[42] Docket – Vol. 3, pp. 1196 to 1209.
[43] Docket – Vol. 3, pp. 1364 to 1366.
[44] Docket – Vol. 3, pp. 1326 to 1362.
[45] Docket – Vol. 3.
[46] *Ibid.*

D. Whether Petitioner is liable for the alleged deficiency VAT and compromise penalty for the 1st and 2nd quarters of taxable year 2015 in the aggregate amount of ₱20,587,742.46, inclusive of interest.[47]

THE ARGUMENTS

Petitioner argues that the assessment is void due to respondent's violation of its right to due process; that the ROs who conducted the audit of its books of accounts were not authorized by a valid LOA; that an unenforceable LOA equals an unenforceable assessment; that the FLD was prematurely issued; that its protest was not resolved by respondent through an FDDA; that the collection is void since it is anchored on a void assessment; that the Warrants of Garnishment were issued even if the assessment has not yet become final and executory; and, that it is not liable for the alleged deficiency VAT and compromise penalty for the 1st and 2nd quarters of taxable year 2015 in the aggregate amount of ₱20,587,742.46, inclusive of interest.

THE RULING OF THE COURT

The present *Petition for Review* is meritorious.

The assessment issued against petitioner is valid and lawful.

At the outset, the basic rule is that he who alleges must prove his case. We must bear in mind the legal dictum that, "he who asserts, not he who denies, must prove."[48] Section 1 of Rule 131 of the Revised Rules of Court defines *burden of proof* as the "duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."

In this case, while petitioner insists that the assessment is void due to respondent's violation of its right to due process, it failed to present evidence other than its self-serving declarations.

[47] *Memorandum*, Docket – Vol. 3, p. 1335.
[48] *Ricardo Portugez vs. GSIS Family Bank (now Comsavings Bank) and The Hon. Court of Appeals*, G.R. No. 169570, March 2, 2007.

a. *Petitioner failed to prove that ROs Valencia and Mendiola, who were not named in the LOA, conducted the audit investigation instead of RO Balajadia, who was named in the LOA.*

Petitioner argues that the subject assessment is void since the ROs who conducted the audit of its books were not authorized by a valid LOA.

The Court is not convinced.

Records reveal that the authority to examine and assess the petitioner's books of accounts emanated from LOA-V05-2016-00000078/ eLA201100099593 dated February 15, 2016,[49] signed by the then Regional Director Jose N. Tan of Revenue Region (RR) 5 – Caloocan City. The said LOA authorized **RO Balajadia** and **GS** Salenga to examine petitioner's books of accounts and other accounting records for VAT for the 1st and 2nd quarters of 2015.

Later on, an undated letter was received by petitioner,[50] stating that **ROs Valencia and Mendiola** are authorized to assist in the audit of petitioner's VAT, the pertinent portion of which reads:

> This is to inform you that Revenue Officers **FRANCIS JOHN G. VALENCIA and MELODY G. MENDIOLA** under Group Supervisor **ALBINO B. SALENGA JR** are authorized to assist in the audit of your Value Added Tax for the **1st and 2nd quarters** of taxable year **2015** under **ELA No. 99593-V05-16-00078** dated **February 15, 2016** assigned to Revenue Officer **GEORGETTE C. BALAJADIA**.

From the foregoing, the Court finds that RO Balajadia, who was named in the LOA, was neither replaced nor transferred. In the absence of evidence to the contrary, RO Balajadia is presumed present during the audit investigation up to the recommendation for the issuance of the assessment notices against petitioner.

This Court notes that even the responses made by petitioner's witness, Ms. Bilazon, to the clarificatory questions posed by the Court, failed to prove that RO Balajadia was not the one who conducted the audit in all its stages from the issuance of the LOA authorizing him up to the recommendation for

[49] Exhibit "P-5", Docket – Vol. 1, p. 368.
[50] Exhibit "P-6", Docket – Vol. 1, p. 369.

the issuance of the assessment against petitioner nor the fact that ROs Valencia and Mendiola participated in the audit, *viz:*[51]

Justice San Pedro:	*xxx. Ms Witness, kasi sinabi mo ang nag-audit sa Barrio Fiesta ay si Valencia and Mendiola, tama?*
A:	*Yes.*
Justice San Pedro:	*Hindi si Balahadja at si Salenga? Kasi si Balahadja and Salenga yung nakalagay sa LOA hindi sila ang nag-audit, tama?*
A:	*Yes, po.*
Justice San Pedro:	*Paano mo nalaman yun eh dun sa PAN, sa Demand Letter, sa Final Letter of Demand, sa Assessment Notice, parehong original at revised ang nakapirma naman ay si OIC Regional Director Myrna Leonida, walang nakapirmang kahit sinong Regional Officer, pano mo nalaman na si Valencia at si Mendiola?*
A:	*Kasi po after na received yung LOA ng petitioner, naka received po yung petitioner ng letter from Josephine Pineda, the manager ng Revenue Region V.*
Justice San Pedro:	*Yung letter na 'yun sinasabi lang na si Valencia at si Mendiola ay additional na taga audit, tama?*
A:	*Yes, po.*
Justice San Pedro:	*Pero anong pruweba nyo na itong si Valencia at si Mendiola nga ang nagaudit at hindi si Balahadja kase doon sa mga BIR na dokumentong ipinakita nyo, yung PAN, yung Demand Letter, yung FLD, yung Assessment Notice, ang nakapirma lang ay si Leonida, yung OIC Regional Director wala namang nakapirma na Valencia at Mendiola?*
A:	*Sa LOA po.*
Justice Uy:	*Sa LOA ang nakalagay Balahadja at Salenga, pero ang sinasabi mo hindi sila nag audit. Ang nag-audit yung sinabi dun sa additional letter na si Valencia at Mendiola, tama? Nagkakaintindihan tayo, tama?*
A:	*Yes, po.*

The presumption that official duty has been regularly performed can only be overcome through clear and convincing evidence, that is, upon presentation by petitioner of evidence showing that the assessment was made by the RO who was not authorized through a valid LOA. Petitioner, however,

[51] Transcript of Stenographic Notes (TSN) dated October 7, 2021, pp. 9 to 11.

did not present any proof to establish that it was RO Valencia or RO Mendiola who recommended the issuance of the PAN and the FLD with the accompanying *Assessment Notices*, respectively. Petitioner also failed to present proof of the extent of their participation in the audit and investigation of petitioner. Hence, the assessment was issued under a valid LOA.

b. The revalidation of the subject LOA is not required. The mere lack of revalidation does not render the assessment invalid.

Petitioner points out that the tax audit/investigation and the resulting assessment are void for having been made in the absence of a revalidated LOA, outside the 120-day validity period of the LOA.

We do not agree with petitioner.

Without doubt, under Revenue Memorandum Order (RMO) No. 28-1983, dated September 12, 1983,[52] the rule on the said 120-day period was established, to wit:

> 8. Reports of investigation on a tax case shall be submitted within **one hundred twenty (120) days** from the date of issuance of the letter of authority. **In case the final report cannot be completed within the required period, a progress report shall be submitted and the letter of authority shall be returned for revalidation.** *(Emphasis and underscoring supplied)*

The foregoing provision, however, in relation to the revalidation of LOAs was already superseded by RMO No. 44-2010, dated May 12, 2010,[53] the pertinent portions of which read:

> 8. **Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the LA even if the prescribed audit period has been exceeded.** However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions. *(Emphasis and underscoring supplied)*

On the basis thereof, it is clear that the rule against the revalidation of LOAs *"for failure of the revenue officials to complete the audit within the prescribed period"* shall begin on June 1, 2010. Considering that, in this case,

[52] SUBJECT: Prescribing the Use of the Revised Letter of Authority Form (BIR Form 19.65) and the Issuance of a Termination Letter in Lieu of the Letter of Confirmation.

[53] SUBJECT: Electronic Issuance of Letters of Authority.

the subject LOA was issued after the said date (*i.e.*, February 15, 2015)[54] the same need not be revalidated even when the above-stated 120-day period was not observed. Such being the case, the failure of the RO to request for revalidation of the LOA or the expiration of the revalidation period does not nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.

c. *<u>The FLD was not prematurely issued.</u>*

Petitioner's theory that the FLD should be issued only after the lapse of the sixty (60) day period from the filing of protest assailing the PAN is certainly unmeritorious.

Section 3 of Revenue Regulations (RR) No. 12-1999,[55] as amended by RR No. 18-2013,[56] lays down the due process requirement in the issuance of deficiency tax assessments, the pertinent provisions thereof read as follows:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1. Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice* (PAN). – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer **a Preliminary Assessment Notice (PAN) for the proposed assessment**. It shall show in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> xxx xxx xxx
>
> **If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response**, calling for payment of the taxpayer's deficiency liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice

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[54] Exhibit "P-5", Docket – Vol. 1, p. 368.

[55] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[56] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

> (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).
>
> 3.1.4 *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid **FLD/FAN** within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*
>
> xxx xxx xxx
>
> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The term *'relevant supporting documents'* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant documents shall not apply to requests for reconsideration. xxx. *(Emphasis supplied)*

Based on the aforequoted provisions, a taxpayer has fifteen (15) days from receipt of the PAN to file a protest thereon. If the taxpayer fails to file protest to the PAN, respondent or his duly authorized representative can cause the issuance of the FLD and assessment notice after the expiration of the said fifteen (15)-day period from taxpayer's receipt of the PAN. On the other hand, if the taxpayer responds to the PAN, an FLD/FAN shall be issued within fifteen (15) days from the filing of petitioner's protest to the PAN.

Furthermore, the same RR provides for the types of protest that a taxpayer may resort to in relation to the FLD/FAN, *i.e.*, a *request for reconsideration* and a *request for reinvestigation.* The distinction between these types of protest to the FLD/FAN is significant for the purpose of identifying which type of protest triggers the application or operation of the sixty (60)-day period, within which to submit all relevant supporting documents, as determined by the concerned taxpayer. It is the protest to the FLD/FAN in the form of a *request for reinvestigation* that triggers the said sixty (60)-day period.

Herein petitioner claims that it had sixty (60) days from the filing of its reply to the PAN, within which to submit relevant supporting documents; that respondent issued the FLD before the lapse of the said sixty (60)-day period required under Section 228 of the Tax Code, as amended; and that such premature issuance of the FLD is a violation of its right to due process.[57] To adopt petitioner's view, however, is to give a distorted interpretation of Section 3 of RR No. 12-1999, as amended by RR No. 18-2013, which provides that the said sixty (60)-day period within which to submit supporting documents applies to the protest to FLD/FAN in the form of a *request for reinvestigation* and not to a reply/protest to PAN.

Moreover, a perusal of the case records indicates that there was no irregularity in the issuance and receipt of the FLD/FAN, as shown in the table below:

Date	Event
March 7, 2017	Petitioner received the PAN dated February 27, 2017.[58]
March 22, 2017	Petitioner filed its Reply to the PAN dated March 21, 2017 within the 15-day period to contest the PAN.[59]
April 4, 2017	Petitioner received the FLD dated March 28, 2017.[60]
May 4, 2017	Petitioner filed its Protest/Request for Reinvestigation addressed to the RD of Revenue Region No. 5 – Caloocan City, within the 30-day reglementary period.[61]
December 7, 2017	Petitioner received the revised FLD of even date.[62]
January 8, 2018	Within the 30-day period, petitioner was able to file its Protest/Request for Reinvestigation to the Revised FLD.[63]

To be clear, the sixty (60)-day period to submit documents pertains to the documents in support of the protest to the FLD/FAN, and not to the PAN.

Considering that twenty-nine (29) days had lapsed from the issuance of the PAN to the issuance of the FLD, the FLD was not prematurely issued. Needless to say, petitioner was given ample opportunity to contest the PAN, the FLD, and the revised FLD.

[57] Pars. 67 and 68, Discussion, *Memorandum*, Docket – Vol. 3, p. 1342.
[58] Exhibit "P-7", Docket – Vol. 1, pp. 370 to 378.
[59] Exhibit "P-8", Docket – Vol. 1, pp. 379 to 403.
[60] Exhibits "P-10" and "P-10-1", Docket – Vol. 1, pp. 404 to 413.
[61] Exhibits "P-11" and "P-11-1", Docket – Vol. 1, pp. 414 to 419.
[62] Par. 15, Statement of Facts and of the Case, *Memorandum*, Docket – Vol. 3, p. 1330; Exhibit "P12", Docket – Vol. 1, pp. 420 to 425.
[63] Exhibits "P-13" and "P-13-1", Docket – Vol. 1, pp. 426 to 450.

d. The absence of an FDDA did not render the assessment void. The PCL/FNBS constitute respondent's final decision.

Notably, in *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation*,[64] the Supreme Court had the occasion to rule that a void FDDA does not *ipso facto* render the assessment void, considering that an assessment is different from a decision. It held:

> In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an 'assessment' from a 'decision.' In *St. Stephen's Association vs. Collector of Internal Revenue*, the Court has long recognized that a 'decision' – differs from an 'assessment', to wit:...
>
> The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. **From the foregoing, it is clear that what is appealable to the CTA is the 'decision' of the CIR on disputed assessment and not the assessment itself.**
>
> xxx xxx xxx
>
> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other – unless the law or regulations otherwise provide.**
>
> xxx xxx xxx
>
> To recapitulate, **a 'decision' differs from an 'assessment' and failure of the FDDA to state the facts and law on which it is based renders the decision void – but not necessarily the assessment.** Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided. *(Emphasis supplied)*

Applying by analogy the above pronouncements in the *Liquigaz* case, it can be said that, while no FDDA was issued by respondent, the same does not result in the automatic declaration that the disputed tax assessments are void.

Petitioner contends that the violation of due process occurred when respondent failed to issue the FDDA supposedly ruling on its protest to the revised FLD/FAN.

We disagree.

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[64] G.R. Nos. 215534 and 215557, April 18, 2016.

The consequence of the lack of FDDA in this case is that the assailed FNBS, dated June 8, 2018, may be considered as the final decision of respondent because it is the last communication received by petitioner from the BIR which conveyed a tenor of finality and unequivocal demand for payment, otherwise, respondent would be constrained to enforce administrative summary remedies.

As held in *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*,[65] the FNBS which indicates that the taxpayer was being given "this LAST OPPORTUNITY" to pay, constitutes respondent's final decision, *viz*:

> Indisputably, respondent received an assessment letter dated February 9, 1990, stating that it had delinquent taxes due; and it subsequently filed its motion for reconsideration on March 23, 1990. In support of its request for reconsideration, it sent to the CIR additional documents on April 18, 1990. The next communication respondent received was already the Final Notice Before Seizure dated November 10, 1994.
>
> In the light of the above facts, **the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a final notice prior to seizure of property. The letter itself clearly stated that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy.** *(Emphasis supplied)*

To repeat, a "decision" differs from an "assessment" and the lack of FDDA, which is supposedly the decision of respondent on a protest to the FLD/FAN, is not violative of a taxpayer's right to due process. Hence, the absence of an FDDA does not render the assessment null and void.

The tax liability sought to be collected is not yet delinquent; thus, the Warrants of Garnishment were prematurely issued.

Petitioner alleges that the Warrants of Garnishment were prematurely issued since the assessment has not become final and executory with the filing of the present *Petition for Review* within the thirty (30)-day reglementary period. Allegedly, it is not yet considered a delinquent taxpayer pending the

[65] G.R. No. 135210, July 11, 2001.

present *Petition* so that its right to due process was violated when respondent issued the warrants.

As a general rule, an appeal to this Court will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided under existing laws, except when in the opinion of the Court, the collection may jeopardize the interest of the Government and/or the taxpayer.[66]

It should be noted, however, that the collection through the civil and summary remedies provided under the NIRC of 1997, as amended, presupposes the delinquency of the taxes sought to be collected. Section 205 of the NIRC of 1997, as amended, provides:

> SECTION 205. ***Remedies for the Collection of Delinquent Taxes.*** – The **civil remedies for the collection** of internal revenue taxes, fees, or charges, and any increment thereto **resulting from delinquency** shall be:
>
> > (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and
> >
> > (b) By civil or criminal action.
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however*, That the remedies of distraint and levy shall not be availed of where the amount of tax involve is not more than One hundred pesos (₱100) xxx *(Emphasis supplied)*

Based on the foregoing provisions, respondent may pursue the collection of a taxpayer's unpaid tax liabilities <u>resulting from delinquency</u> through the summary remedies of distraint and levy and the institution of a civil or criminal action.

The NIRC of 1997, as amended, did not define the term *delinquent taxes*. In this regard, we refer to Revenue Regulations (RR) No. 4-2019,[67] where the Bureau of Internal Revenue (BIR) itself provided for instances when a tax becomes delinquent as follows:

> SECTION 2. Definition of Terms. — For purposes of these Regulations, the words used herein shall be defined as follows:

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[66] Section 11 of R.A. No. 1125, as amended, and Sections 1 and 2, Rule 10 of the Revised Rules of the Court of Tax Appeals.

[67] Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act," Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies

A. **Delinquent Account** — shall pertain to a tax due from a taxpayer arising from the audit of the Bureau of Internal Revenue (BIR) which had been issued **Assessment Notices that have become final and executory due to the following instances:**

1. Failure to pay the tax due on the prescribed due date provided in the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) and for which no valid Protest, whether a request for reconsideration or reinvestigation, has been filed within thirty (30) days from receipt thereof;

2. Failure to file an appeal to the Court of Tax Appeals (CTA) or an administrative appeal before the Commissioner of Internal Revenue (CIR) within thirty (30) days from receipt of the decision denying the request for reinvestigation or reconsideration; or

3. Failure to file an appeal to the CTA within thirty (30) days from receipt of the Decision of the CIR denying the taxpayer's administrative appeal to the Final Decision on Disputed Assessment (FDDA). *(Emphasis supplied)*

While the said RR pertains to the implementing rules for R.A. No. 11213, or the Tax Amnesty Act, the above enumerated instances nonetheless embody tax principles which are also generally applied to tax assessments. In fact, in RR No. 12-99,[68] the same principles are provided for:

SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.5 Disputed Assessment. — xxx

If the protest is denied, in whole or in part, by the Commissioner, the **taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become <u>final, executory and demandable</u>**.

In general, **if the protest is denied, in whole or in part, by the Commissioner or his duly authorized**

[68] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

> **representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable**: xxx
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, **the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable**. *(Emphasis and underscoring supplied)*

From aforecited BIR Regulation, it is evident that, when a taxpayer successfully files a valid appeal before the CIR or the CTA within the applicable reglementary period, the tax assessment does not become final and executory; thus, the related deficiency taxes remain non-demandable or non-delinquent. Consequently, civil remedies for collection are not yet applicable.

In relation thereto, in *Light Rail Transit Authority (LRTA) vs. Bureau of Internal Revenue*[69] (*LRTA* case), the Supreme Court held that the BIR's issuances, including a WDL, which emanated from a non-demandable assessment, were void and should have no force or effect. In said case, the Supreme Court found that the BIR's premise of delinquent taxes was incorrect for the assessment was still pending appeal with the CIR and, thus, deemed the assessment as non-demandable.

Likewise, in *Mannasoft Technology Corp. vs. Commissioner of Internal Revenue,*[70] the Supreme Court held that summary collection remedies, such as the issuance of a WDL, are premised on the existence of delinquent taxes:

> It should also be emphasized that **availing of the summary collection remedies under the Tax Code, such as the issuance of a WDL, are premised first and foremost on the existence of "delinquent taxes."** This premise is lacking when the matter of the taxpayer's civil liability is subject of a valid request for reinvestigation which is still pending resolution by the respondent and its authorized agents, as in the case at bench. *(Emphasis supplied)*

In the above case, the assessment being summarily collected was subject of a valid request for reinvestigation still pending resolution before the

[69] G.R. No. 231238, June 20, 2022.
[70] G.R. No. 244202, July 10, 2023.

CIR. Hence, the premise of "delinquent taxes" was lacking for the summary collection remedy to be valid.

In the present case, on June 25, 2018, petitioner received the FNBS, which was considered as the CIR's final decision on petitioner's protest, as discussed earlier. Counting thirty (30) days therefrom, petitioner had until July 25, 2018 to file its appeal with this Court. Clearly, the present Petition for Review was timely filed on July 9, 2018.

Considering the timely filing and the pendency of the appeal with this Court at that time, the assessment was not yet final and executory. Consequently, the related alleged deficiency taxes were not yet delinquent and ripe for collection then. As such, the subsequent issuance of the Warrants of Garnishment on February 10, 2021, as well as the subsequent actions to summarily collect the alleged deficiency taxes, are indeed premature and not sanctioned by law.

In any event, the correctness of the BIR's findings will be addressed and discussed.

Petitioner is not liable to pay deficiency VAT as per this Court's adjusted computation.

Preliminarily, the BIR issued the revised FLD[71] with the *Details of Discrepancies,* and *Assessment Notice* No. 37135, dated December 7, 2017, finding petitioner liable for VAT, inclusive of interest, and compromise penalty, in the respective amounts of ₱20,537,742.46 and ₱50,000.00, or a total amount of ₱20,587,742.46, computed as follows:

I. VALUE-ADDED TAX			
Vatable Sales per VAT Return			₱ 71,232,463.13
Add:			
Undeclared Sales		₱ 3,124,323.72	
Undeclared Income on undeclared purchases		15,554,991.14	
Unsupported Zero-Rated Sales		72,401,975.99	91,081,290.85
Adjusted Sales			₱ 162,313,753.98
Output Tax Due			₱ 19,477,650.48
Less: Creditable Input Tax			
Input Tax Carry-Over from previous period	₱16,524,715.00		
Deferred Input Tax on Capital Goods			
Input Tax on current purchases	6,899,385.29		
Total Available Input Tax		₱23,424,100.29	
Less: Input Tax Carry-Over on *[sic]* next period	14,735,569.50		
Deferred Input Tax on Capital Goods	140,635.22	14,876,204.72	
Total Available Input Tax		₱ 8,547,895.58	
Less: Disallowed Input Tax		3,040,196.64	
Creditable Input Tax per Audit			5,507,698.64

[71] Exhibit "P-12", Docket – Vol. 1, p. 420 to 425.

VAT Due		**₱ 13,969,951.54**
Less: VAT Paid/Credit		
VAT Payment		
VAT Credit	-	-
Basic Deficiency Value Added Tax		**₱ 13,969,951.54**
Interest		6,567,790.92
TOTAL		**₱ 20,537,742.46**
II. COMPROMISE PENALTY		
Sec. 249 and 250 of the NIRC - for the Basic Tax Due of ₱ 13,969,951.54		₱ 50,000.00
TOTAL AMOUNT DUE		**₱ 20,587,742.46**

Based on the *Details of Discrepancies* attached to the revised FLD, the assessment for deficiency VAT and compromise penalty were based on the following grounds:

> **Undeclared Sales, ₱3,124,323.72** – *Verification of information/data provided by Third Party Sources against petitioner's declaration per return disclosed that there were undeclared sales. Access/Confirmation Letters have been sent to Third Party informants to validate the gathered data. For those who did not respond to the letters, the third-party data were considered true and correct pursuant to RMO No. 13-2012. Hence, you were assessed of deficiency VAT pursuant to Section 106 in relation to Section 105 of the NIRC of 1997.*
>
> **Undeclared Local Purchases, ₱15,554,991.14** – *Verification of information/data provided by Third Party Sources against petitioner's declaration per return disclosed that there were undeclared purchases which is tantamount to undeclared source of income. Further, disbursement that were not fully reported were considered as unaccounted source of cash that led to inference that part of Petitioner's income has not been declared as enunciated by the court in the case of Perez vs. CTA & CIR L-10507 dated May 30, 1958. Access/Confirmation Letters have been sent to Third Party informants to validate the gathered data. Since all of them did not respond to the letters, the third-party data were considered to be true and correct pursuant to RMO No. 13-2012. Hence, petitioner was assessed of deficiency VAT pursuant to Section 106 in relation to Section 105 of the NIRC of 1997.*
>
> **Unsupported Zero-Sales, ₱72,401,975.99** – *Petitioner claimed that zero-rated sales are foreign denominated, however since petitioner failed to submit proof of foreign currency denominated sales to support such assertion, thus assessment thereon remains.*
>
> **Disallowed Input Tax, ₱3,040,196.64** – *Verification disclosed that a portion of petitioner's purchases are not substantiated and/or did not comply with the prescribed invoicing requirements. Hence, input tax on purchases were disallowed pursuant to Sections 110 and 113 of the Tax Code.*
>
> **Compromise Penalty, ₱50,000.00** – *A total compromise penalty of ₱50,000.00 has been imposed. The ₱50,000.00 was imposed against the unpaid basic tax due of ₱13,969,951.54.*

We discuss the propriety of the above findings of the BIR *in seriatim*.

a. *The third-party information relied upon by the BIR is unverified, and thus, has no probative value.*

In the revised FLD dated December 7, 2017, the undeclared sales of ₱3,124,323.72 and undeclared income from undeclared purchases of ₱15,554,991.14 were subjected to VAT under Sections 105 and 106 of the NIRC of 1997. The said assessments were the result of a computerized matching conducted by the BIR from the information/data provided by third party sources for which access/confirmation letters were allegedly sent to third party informants to validate the data gathered. It is further stated therein that third party data were considered to be true and correct even for those with no response, pursuant to RMO No. 13-2012.

As earlier stated, respondent was declared in default and, therefore, the BIR records of this case were not presented. Court records show that, notwithstanding respondent's receipt on August 13, 2019 of the Resolution dated July 30, 2019,[72] declaring him in default and setting petitioner's *ex-parte* presentation of evidence on October 8, 2019, respondent remained passive and did not bother to seek a reconsideration thereof.[73]

As such, without the corroborating certifications or confirmations from related third-party sources to support the TPI's credibility and integrity, doubt is cast on the reliability and correctness of the assessments on the alleged (1) undeclared sales; and (2) undeclared income from undeclared purchases.

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be. This was highlighted in the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*,[74] where the Supreme Court held 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

[72] Notice of Resolution dated August 6, 2019, Docket – Vol. 1, p. 165.
[73] TSN dated October 8, 2019, pp. 8 to 11.
[74] G.R. No. 136975, March 31, 2005.

> 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.** *(Emphasis supplied)*

Here, it is clear that the imposition of VAT on the undeclared sales and undeclared income from undeclared purchases were derived from unverified third-party information; thus, said assessments are based on mere presumptions and not actual facts. Accordingly, the VAT assessment on the alleged undeclared sales of ₱3,124,323.72, and undeclared income from undeclared purchases of ₱15,554,991.14, is without merit and must be cancelled.

b. *Petitioner's alleged zero-rated sales of ₱72,401,975.99 were unsubstantiated.*

Petitioner posits that respondent should not have assessed VAT liability on its transactions which are subject to zero-percent VAT. According to petitioner, the said sales, as summarized in the attached Schedule III[75] of its Letter *Reply* dated March 21, 2017, were transacted using US Dollars so that the same are considered foreign-denominated sales per RR No. 16-2005.[76]

Petitioner continues that such sale transactions are subject to zero-percent VAT pursuant to Section 106(A)(2) of the NIRC of 1997, as amended, considering that the same were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

We are not convinced.

[75] Exhibits "P-8" and "P-8-1", Docket – Vol.1, pp. 392 to 394.
[76] Exhibit "P-22", Docket – Vol. 2, p. 617-p.

Upon perusal of the *Formal Offer of Evidence (with Manifestation)*,[77] and the subsequent *Supplemental Formal Offer of Evidence*,[78] aside from the Schedule of Zero-rated Sales attached to its Letter *Reply* to the PAN,[79] no other evidence was formally offered and presented by petitioner to support the alleged zero-rated sales, such as, among others, the sales invoices and official receipts, as well as the corresponding certificate of inward remittances to prove that indeed such zero-rated-sales were paid for in acceptable foreign currency denominations.

Accordingly, without presenting the necessary documents to support its claim, the Court cannot ascertain whether the said amount of ₱72,401,975.99 is indeed subject to zero-percent VAT.

It must be remembered that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of tax assessments. In other words, the taxpayer contesting the validity or correctness of an assessment must prove not only that respondent is wrong but the taxpayer is right, otherwise, the presumption in favor of the correctness of tax assessment stands.[80]

Mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof.[81] In the absence of proof, the Court is constrained to uphold the assessment of respondent against petitioner. Accordingly, the amount of ₱72,401,975.99 shall be subjected to VAT at twelve percent (12%).

c. *Petitioner's disallowed input taxes of ₱3,040,196.64 were likewise unsubstantiated.*

To recall, upon respondent's verification, it was disclosed that a portion of petitioner's purchases were not substantiated and/or did not comply with the prescribed invoicing requirements; hence, the corresponding input VAT on such purchases amounting to ₱3,040,196.64 were disallowed, pursuant to Section 110 and 113 of the NIRC of 1997, as amended.

Section 110(A) of the NIRC of 1997, as amended, provides as follows:

> SEC. 110. *Tax Credits.* —

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[77] Docket – Vol., pp. 618 to 630.
[78] Docket – Vol. 3, pp. 1037 to 1040.
[79] Exhibits "P-8" and "P-8-1", Docket – Vol.1, pp. 392 to 394.
[80] *Sy Po v. Honorable Court of Tax Appeals, et al.*, G.R. No. 81446, August 18, 1988.
[81] *Martin v. Hon. Court of Appeals and Manila Electric Company*, G.R. No. 82248, January 30, 1992.

(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:

(a) Purchase or importation of goods:

(1) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One Million pesos (₱1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended, which provides as follows:

SECTION 4.110-1. *Credits For Input Tax.* — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale; or

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;

(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

Moreover, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, to wit:

SECTION 4.110-8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.

The aforecited provision states, among others, that the proper VAT document must contain the required information under Section 113 of the NIRC of 1997, as amended. Specifically, Section 113(A) and (B) of the NIRC of 1997, as amended, provides:

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:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(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;

(b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(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.

These provisions of the NIRC of 1997, as amended, are implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended, to wit:

SEC. 4.113-1. *Invoicing Requirements.* —

(A) 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.

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt'. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

In addition to the above requirements, the sales invoices and official receipts must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, to wit:

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx

xxx xxx xxx

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and

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regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

The above provisions categorically state that, in order to be entitled to input tax credits, the same must be evidenced by VAT invoices or official receipts issued in accordance with Sections 110, 237, and 238 of the NIRC of 1997, as amended, containing all the required information provided under Section 113(A) and (B) of the same Code, and its implementing rules and regulations.

In this case, the BIR attached to the PAN, dated February 27, 2017, the schedule of disallowed input taxes of ₱3,536,785.64 for the period January to June 2015[82] enumerating the reasons for the disallowance of the said amount. The said disallowed input taxes were later reduced to an amount of ₱3,040,196.64 in the revised FLD dated December 7, 2017.[83]

Upon scrutiny of the records, the Court observed that petitioner likewise failed to formally offer and present in the *Formal Offer of Evidence (with Manifestation)*,[84] and the subsequent *Supplemental Formal Offer of Evidence,*[85] the pertinent sales invoices and official receipts to substantiate the disputed input VAT.

Although petitioner was able to provide a list of purchases for the subject period, which is attached to its Letter *Reply* to the PAN,[86] indicating the details of its purchases including the sales invoice date and sales invoice numbers, the Court cannot ascertain the validity and veracity of such purchases without further examination of the actual supporting documents pertaining to the said purchases.

Furthermore, while various supporting documents such as receipts and invoices were attached to petitioner's *Protest* to the revised FLD, the same cannot be considered by the Court since the marking and comparison thereof, which was supposed to be conducted by the Independent Certified Public Accountant as manifested by petitioner,[87] did not push through.[88]

In view of the foregoing, for failure to substantiate the input VAT amount of ₱3,040,196.64 with the required supporting documents, the disallowance made by respondent must remain.

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[82] Exhibit "P-7", Docket – Vol., pp. 375 to 378.
[83] Exhibit "P-12", Docket – Vol., p. 424.
[84] Docket – Vol., pp. 618 to 630.
[85] Docket – Vol. 3, pp. 1037 to 1040.
[86] Exhibit "P-8", Schedule III, Docket – Vol., pp. 395 to 403.
[87] TSN dated October 8, 2019, pp. 14 to 17.
[88] Petitioner's *Manifestation*, Docket – Vol., pp. 323 to 326.

d. <u>The disallowances of the "input tax carry-over on the next period" and the "deferred input tax on capital goods" in the respective amounts of ₱14,735,569.50 and ₱140,635.22 lack factual and legal basis.</u>

In the revised FLD,[89] the BIR deducted the amounts of ₱14,735,569.50 and ₱140,635.22 from the available input tax credits of petitioner which effectively disallows the same. The BIR, however, failed to state the legal basis for disallowing the said amount. As such, the same must be cancelled for being violative of Section 228 of the NIRC of 1997, which requires that 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.

In sum, only the amounts of ₱72,401,975.99 and ₱3,040,196.64 corresponding to the <u>unsubstantiated zero-rated sales</u> and <u>unsubstantiated input tax credits</u>, respectively, as found by the BIR, shall be sustained. Taking into account the sustained findings, the Court determines that petitioner is in a VAT overpayment position since the creditable input tax exceeds the output tax due, as computed below:

Vatable Sales per Returns		₱ 71,232,462.13
Add: Unsupported Zero-Rated Sales		72,401,975.99
Adjusted Sales		**₱ 143,634,438.12**
Output Tax Due		₱ 17,236,132.57
Less: Creditable Input Tax		
Input Tax Carry-Over from Previous Period	₱ 16,524,715.00	
Input Tax on Current Purchases	6,899,385.29	
Total Available Input Tax	₱ 23,424,100.29	
Less: Disallowed Input Tax	3,040,196.64	20,383,903.65
VAT Due		**₱ (3,147,771.08)**

Based on the foregoing adjusted computation, this Court finds that the petitioner is not liable to pay deficiency VAT.

Petitioner is not liable to pay the subject compromise penalty.

Finally, petitioner cannot be held liable to the compromise penalty in the amount of ₱50,000.00 as stated in PCL dated May 18, 2018,[90] as well as

[89] Exhibit P-12, Docket, Vol. 1, p. 420.
[90] Exhibit "P-14", Docket – Vol. 1, p. 451.

in the FNBS dated June 8, 2018.[91] It must be stressed that a compromise is, by its nature, mutual in essence.[92] It implies agreement. One party cannot impose it upon the other.[93] Compromise penalties are only amounts suggested to the taxpayer to pay in lieu of criminal prosecution and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[94] Considering that there is no indication that petitioner consented to the subject compromise penalty, the said amount cannot be sustained.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the revised *Formal Letter of Demand* and the *Assessment Notice* No. 37135, both issued on December 7, 2017, holding petitioner liable for deficiency VAT in the amount of ₱20,587,742.46, inclusive of interest and compromise penalty, for the period January 1, 2015 to June 30, 2015, are hereby **CANCELLED** and **WITHDRAWN**.

Consequently, the *Preliminary Collection Letter,* dated May 18, 2018, and the *Final Notice Before Seizure,* dated June 8, 2018, as well as the *Warrants of Garnishment*, both dated February 10, 2021, are likewise **CANCELLED** and **WITHDRAWN**.

Respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency VAT assessed against Barrio Fiesta Manufacturing Corporation arising from the revised *Formal Letter of Demand* and the *Assessment Notice* No. 37135, both issued on December 7, 2017.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[91] Exhibit "P-4", Docket – Vol. 1, p. 367.
[92] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[93] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
[94] *Part III(5)*, RMO No. 7-2015, dated January 22, 2015.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice