REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AYALA PROPERTY MANAGEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9298

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:
APR 05 2019 10:25 Am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is respondent's **Motion for Reconsideration [Decision dated January 21, 2019]**, filed on February 6, 2019, with petitioner's **Comment/Opposition (to Motion for Reconsideration dated 04 February 2019)**, filed on March 6, 2019.

Respondent moves for the reconsideration of the Decision promulgated on January 21, 2019, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment issued by respondent against petitioner for alleged deficiency income tax in the amount of **₱6,929,516.89** and deficiency value-added tax in the amount of **₱770,492.81** or in the aggregate amount of

₱7,700,009.70 for taxable year 2009 is **CANCELLED** and **SET ASIDE.**

SO ORDERED."

Respondent asserts that the Court erred in ruling on matters that were never substantiated in the administrative level. He claims that since respondent rendered a Final Decision on Disputed Assessment (FDDA), the jurisdiction of the Court shifts from a trial court to a court exercising judicial review. He further argues that a judicial review is not a de novo trial. It is an inquiry into whether the findings of the administrative body are consistent with law, supported by evidence and fraud-free. Thus, respondent contends that it was erroneous for the Court to rule on matters that were never substantiated in the administrative level. He states that the Court should have confined itself to the issues and documents raised in petitioner's protest to respondent's assessment. In this regard, respondent claims that the Court erred in ruling on the disallowance of excess tax credit in the amount of ₱68,437,216.00 as it was never raised as an issue by petitioner in its protest to the Final Letter of Demand (FLD) and even on its Petition for Review.

Respondent also claims that petitioner is liable for the payment of deficiency Income Tax and Value Added Tax (VAT) based on the unaccounted income resulting from matching of SLP of Third Parties vs. SLS.

On the other hand, petitioner alleges that the Court did not commit any error in its ruling because the deficiency tax assessments are invalid. It further contends that respondent's motion is a mere repetition of his Memorandum dated February 6, 2018.

Respondent's motion lacks merit.

Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such **it is required to conduct a formal trial *(trial de novo)*** where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[1]

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[1] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.[2]

Thus, it is well within the Court's jurisdiction to declare the assessment void upon finding of respondent's failure to indicate in the Details of Discrepancies the basis for the disallowed excess tax credits in the amount of ₱68,437,216.00 in violation of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent argues that the assessment is in accordance with law. He claims that the assessments are the result of the comparison of data based on petitioner's Summary List of Purchases (SLP) vs. Monthly Alphalist of Payees (MAP) vs. Reconciliation of Listing for Enforcement (RELIEF). Moreover, he contends that the unaccounted income was found on data found through comparison of SLP of Third Parties and the Summary List of Sales (SLS) submitted by petitioner. Respondent asserts that he based the assessments for undeclared purchases on actual reported sales and purchases of petitioner and third parties in consonance with the clear mandate of Section 5(B) of the NIRC of 1997. Thus, he concludes that petitioner is liable for the payment of deficiency income tax and VAT based on the unaccounted income resulting from matching of SLP of Third Parties vs. SLS.

It is worthy to reiterate that the third-party information was not verified with externally sourced data to check its correctness, as testified by respondent's witness Revenue Officer Roberto Castro.[3] Without confirmation from third parties, the assessment on the alleged unaccounted becomes unreliable. The assessment deficiency income tax and VAT was therefore based merely on unverified amounts extracted from respondent's own database.

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[2] *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue, Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL)*, G.R. Nos. 206079-80 and G.R. No. 206309, January 17, 2018.

[3] TSN dated June 14, 2017, pp. 5-6; Assailed Decision dated January 21, 2019, p. 12.

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.[4] In order to withstand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[5]

WHEREFORE, premises considered, respondent's **Motion for Reconsideration [Decision dated January 21, 2019]** is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[4] *Commissioner of Internal Revenue vs. Fax N Parcel, Incorporated,* CTA EB No. 883, February 14, 2013.
[5] *Collector of Internal Revenue vs. Benipayo,* G.R. No. 13656, January 31, 1962.