REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MERCURY GROUP OF COMPANIES, INC.,
Respondent.

CTA EB NO. 2215
(CTA Case No. 9531)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 3 0 2021 11:55 am

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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals

[1] Filed on 22 January 2020, *Rollo*, pp. 1-91, with annexes.

[2] **SEC 3**. *Who may appeal; period to file petition.* —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

(**RRCTA**) filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**). He seeks the reversal and setting aside of the Decision dated 06 September 2019[3] (**assailed Decision**) and Resolution dated 02 January 2020[4] (**assailed Resolution**), respectively, of the Court's Special Second Division[5] in CTA Case No. 9531, entitled *Mercury Group of Companies, Inc. v. Commissioner of Internal Revenue.*

PARTIES OF THE CASE

Petitioner is the duly appointed CIR vested with authority to carry out the functions, duties, and responsibilities of the said office including, among others, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (**BIR**).

Respondent Mercury Group of Companies, Inc. (**respondent/ MGCI**), on the other hand, is a domestic corporation under Philippine laws with principal office at No. 7, Mercury Avenue, Bagumbayan, Quezon City and is primarily a holding and investment company.[6] It is registered with the BIR with Tax Identification Number (**TIN**) 000-389-266-000, as evidenced by BIR Certificate of Registration No. OCN 8RC0000017125.[7]

FACTS OF THE CASE

On 19 May 2010, respondent received the BIR's Letter of Authority (**LOA**) No. LOA-116-2010-00000071 dated 14 May 2010[8], authorizing Revenue Officers (**ROs**) Olivia Sison (**Sison**), Walter Batoon (**Batoon**), Reynoso Bravo (**Bravo**), Daniella Gabaon (**Gabaon**), Julieta Tubilla (**Tubilla**) and Maribel Serafica (**Serafica**) and Group

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3 Division Docket, Volume III, pp. 1258-1321; Penned by Hon. Associate Justice Catherine T. Manahan with Hon. Associate Justice Juanito C. Castañeda, Jr. concurring.

4 Id., pp. 1369-1375.

5 The Second Division was reconstituted after the passage of CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court".

6 Exhibits "P-1" and "P-2", Division Docket, Volume III, pp. 1041-1073.

7 Exhibit "P-3", id., Volume II, p. 529.

8 Exhibit "R-1", BIR Records, p. 1.

Supervisor Erlinda Ulgado (**GS Ulgado**) of the Large Taxpayers Audit Division I (**LTAD I**) to conduct a tax audit investigation of respondent's books of accounts and other accounting records for taxable year (**TY**) 2009.

Petitioner and respondent successively executed four (4) Waivers of the Defense of Prescription under the Statute of Limitations of the NIRC of 1997, as amended, detailed as follows:

Waiver	Date of Execution	Extension of Period to Assess	Date of Acceptance by the BIR
1st Waiver[9]	14 June 2012	30 June 2013	26 June 2012
2nd Waiver[10]	22 March 2013	31 December 2013	03 April 2013
3rd Waiver[11]	16 October 2013	30 June 2014	29 October 2013
4th Waiver[12]	12 March 2014	31 December 2014	21 March 2014

On 31 July 2013, the BIR, through RO Sison, received respondent's documents which were submitted in relation to the audit investigation for TY 2009.[13]

On 27 February 2014, respondent received a copy of the Preliminary Assessment Notice[14] (**PAN**) of even date, with attached Details of Discrepancies[15], assessing it for deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), withholding tax on compensation (**WTC**), documentary stamp tax (**DST**) and improperly accumulated earnings tax (**IAET**) in the aggregate amount of ₱981,482,971.93, inclusive of penalties, interest and surcharges for TY 2009.

On 02 April 2014, respondent received a copy of the Formal Letter of Demand[16] (**FLD**) of even date, with attached Details of Discrepancies[17] and Assessment Notices[18], finding it liable for

9 Exhibit "R-11", id., p. 717.
10 Exhibit "R-12", id., p. 718.
11 Exhibit "R-13", id., p. 719.
12 Annex "P" attached to the original Petition for Review, Division Docket, Volume I, p. 146.
13 Exhibit "P-47", id., Volume II, p. 736.
14 Exhibit "P-48", id., pp. 737-740.
15 Exhibit "P-48-a", id., pp. 741-744.
16 Exhibit "P-49", id., pp. 745-748.
17 Exhibit "P-49-a", id., pp. 749-752.

deficiency IT, VAT, EWT, WTC, DST, IAET and other miscellaneous tax in the total amount of ₱999,385,542.40, broken down as follows:

Tax Type	Amount
IT	₱570,294,505.13
VAT	163,283,304.39
EWT	1,234,462.74
WTC	3,804,913.25
DST	12,058,652.72
IAET	248,699,704.17
Other miscellaneous tax	10,000.00
Total	**₱999,385,542.40**

Then BIR Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**) signed both the PAN and the FLD.

On 10 April 2014, respondent filed its Protest dated 07 April 2014[19] against the FLD. Thereafter, on 30 April 2014, respondent filed its Supplemental Protest.[20] Through a Letter dated 30 June 2014[21], it also submitted the last batch of documents in support of its Protest.

On 04 June 2014, respondent, in a Letter dated 03 June 2014[22], informed petitioner that it partially paid the deficiency IT, VAT, EWT, WTC, DST, and other miscellaneous tax on the following dates as shown in the respective BIR Forms No. 0605[23]:

Tax Type	Date Paid	Basic Tax	Surcharge	Interest	Compromise	Total
IT	30 April 2014	₱34,418.40	₱-	₱27,817.61	₱8,500.00	₱70,736.01
VAT	30 April 2014	268,830.24	-	229,205.40	16,000.00	514,035.64
EWT	30 April 2014	237,005.83	-	231,476.28	16,000.00	484,482.11
WTC	30 April 2014	100,939.43	-	86,614.33	16,000.00	203,553.76
DST	07 April 2014	148,325.96	37,081.49	126,056.75	-	311,464.20
	30 April 2014	-	-	-	16,000.00	16,000.00
Other	30 April 2014	-	-	-	10,000.00	10,000.00

18 Annex "Q" attached to the original Petition for Review, id., Volume I, pp. 155-161.
19 Exhibit "P-50", id., Volume II, p. 753.
20 Exhibit "P-51", id., p. 786.
21 Exhibit "P-53", id., p. 886.
22 Exhibit "P-52", id., p. 857.
23 Exhibit "P-52-a" to "P-52-u", id., pp. 858-885.

Tax Type	Date Paid	Basic Tax	Surcharge	Interest	Compromise	Total
miscellaneous tax						
Total		**₱789,519.86**	**37,081.49**	**₱701,170.37**	**₱82,500.00**	**₱1,610,271.72**

On 30 June 2014, respondent, in a Letter[24] of even date, submitted reconciliations and schedules to further dispute the deficiency taxes assessed under the FLD.

Subsequently, on 05 January 2017, respondent received a copy of petitioner's Final Decision on Disputed Assessment (**FDDA**) dated 04 January 2017[25], with attached Details of Discrepancies and Assessment Notices. The FDDA stated that after considering respondent's Protest, petitioner still found respondent liable to pay deficiency IT, VAT and EWT in the total amount of ₱230,361,451.14, inclusive of interest, surcharges and compromise penalties, broken down as follows:

Tax Type	Amount
IT	₱220,882,888.62
VAT	9,174,355.64
EWT	304,206.88
Total	**₱230,361,451.14**

BIR Commissioner Caesar R. Dulay (**Commissioner Dulay**) signed the FDDA, which no longer included the assessments for deficiency WTC, DST, IAET and other miscellaneous tax.

On 27 January 2017, respondent paid the remaining assessment for deficiency EWT amounting to ₱304,206.88 as evidenced by BIR Form No. 0605[26], broken down as follows:

Basic tax	₱118,022.69
Interest	183,184.19
Compromise penalty	3,000.00
Total	**₱304,206.88**

24 Annex "V" attached to the original Petition for Review, id., Volume I, pp. 295-347.
25 Exhibits "P-54" and "P-54-a", id., Volume II, pp. 887-896.
26 Exhibits "P-56-a" to "P-56-c", id., pp. 923-925.

PROCEEDINGS BEFORE THE COURT

On 02 February 2017, and within thirty (30) days from receipt of the FDDA, petitioner filed a Petition for Review[27] before the Second Division docketed as CTA Case No. 9531, praying for the cancellation and setting aside of the assessments *per* FDDA but in the increased amount of ₱231,430,451.14, inclusive of ₱1,069,253.77 (which amount pertains to the basic tax, interest and compromise penalties paid by respondent on 30 April 2014 and already credited by petitioner to arrive at the deficiency tax still due *per* FDDA), detailed as follows:

	Assessed Amount *Per* FDDA	**Less: 30 April 2014 Payment[28]**	**Deficiency Tax Still Due**
IT:			
Basic tax	₱97,811,112.78	₱34,418.40	₱97,776,694.38
Interest up to 30 April 2014	79,052,817.18	27,817.61	79,024,999.57
Interest from 01 May 2014 to 31 July 2016	44,039,694.67	-	44,039,694.67
Compromise	50,000.00	8,500.00	41,500.00
Subtotal	***₱220,953,624.63***	***₱70,736.01***	***₱220,882,888.62***
VAT:			
Basic tax	₱4,311,122.06	₱268,830.24	₱4,042,291.82
Interest up to 30 April 2014	3,531,576.70	229,205.40	3,302,371.30
Interest from 01 May 2014 to 31 July 2016	1,820,692.53	-	1,820,692.53
Compromise	25,000.00	16,000.00	9,000.00
Subtotal	***₱9,688,391.29***	***₱514,035.64***	***₱9,174,355.65***
EWT:			
Basic tax	₱355,028.52	₱237,005.83	₱118,022.69
Interest up to 30 April 2014	304,643.65	231,476.28	73,167.37
Interest on late remittance	72,858.10	-	72,858.10
Interest from 01 May 2014 to 31 July 2016	53,158.72	-	53,158.72
Compromise	3,000.00	16,000.00	(13,000.00)
Subtotal	***₱788,688.99***	***₱484,482.11***	***₱304,206.88***
Grand Total	**₱231,430,704.91**	**₱1,069,253.76[29]**	**₱230,361,451.15[30]**

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[27] Id., Volume I, pp. 10-376, with annexes.
[28] Supra at note 22.
[29] Minimal difference of ₱0.01.
[30] Minimal difference of ₱0.01.

Petitioner then filed his Answer to respondent's original Petition for Review on 01 March 2017.[31] In response thereto, respondent filed its Reply on 16 March 2017.[32]

The Second Division issued a Notice of Pre-Trial Conference[33] on 06 March 2017 and set the case for pre-trial conference on 16 March 2017. Accordingly, petitioner filed his Pre-Trial Brief[34] on 09 March 2017, while respondent filed its Pre-Trial Brief[35] on 25 April 2017.

Meanwhile, on 09 March 2017, respondent filed an Omnibus Motion[36], requesting the Second Division to deny petitioner's Motion to Defer Transmittal of BIR Records[37] (**Motion to Defer**) and to defer the previously scheduled pre-trial conference. The Second Division, however, had already granted petitioner's Motion to Defer in an Order dated 06 March 2017.[38]

During the pre-trial on 16 March 2017, respondent moved to reset the pre-trial to 11 May 2017 considering that petitioner has yet to transmit to the Second Division the pertinent BIR Records.[39] The Second Division granted the same, without objection from petitioner's counsels.[40] However, it likewise ordered that should the parties file a Joint Stipulation of Facts and Issues (**JSFI**) on or before 17 April 2017, the pre-trial scheduled on 11 May 2017 will be cancelled and the initial presentation of respondent's evidence will proceed on 24 May 2017.

On 03 May 2017, the parties submitted their JSFI.[41] After the Second Division cancelled the 11 May 2017 schedule for continuation of the pre-trial conference, it instead issued the Pre-Trial Order on 09 May 2017.[42]

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31 Division Docket, Volume I, pp. 384-401.
32 Id., pp. 425-440.
33 Id., pp. 402-403.
34 Id., pp. 410-415.
35 Id., pp. 454-461.
36 Id., pp. 416-420.
37 Id., pp. 404-408.
38 Id., p. 409.
39 Minutes of the Hearing dated 16 March 2017, id., p. 423.
40 See Order dated 16 March 2017, id., p. 424.
41 Id., Volume II, pp. 464-471.
42 Id., pp. 474-480.

In a motion filed on 16 May 2017, respondent requested the Second Division to reset the initial presentation of its evidence to the next scheduled hearing (on 26 June 2017) and to grant respondent's four (4) commissioner's hearings to complete the comparison and marking of its documentary exhibits.[43] In an Order dated 18 May 2017[44], the said motion was granted.

Thereafter, trial ensued where respondent presented the testimony of its lone witness, Mario L. Montellano (**Montellano**), the Treasurer and Vice-President for Finance of MGCI.[45] After the presentation of its evidence, respondent filed its Formal Offer of Evidence (**FOE**) on 07 August 2017.[46]

In the Resolution dated 19 September 2017[47], the Second Division admitted all of respondent's exhibits except for Exhibits "P-33-b"[48], for not being found in the records, "P-35-b"[49], for failure to identify, "P-50-i", "P-51-j-31", "P-51-j-32", "P-51-j-33", "P-51-j-34", "P-51-j-36", "P-51-j-37", "P-51-j-38", "P-51-j-39", "P-51-j-40", "P-51-j-41", "P-51-j-42", "P-51-j-43", "P-51-j-44", "P-51-j-45", "P-51-j-46", "P-51-j-47", "P-51-j-48", "P-51-j-49", "P-51-j-50", "P-51-j-51", "P-51-j-52", "P-51-j-53", "P-51-j-54", "P-51-j-55", "P-51-j-56", "P-51-j-57" and "P-59"[50], for failure to submit the originals

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43 Id., pp. 485-487.
44 Id., Volume III, p. 933.
45 Minutes of the Hearing dated 24 July 2017 and Order dated 24 July 2017, id., pp. 987-988.
46 Id., pp. 992-1040.
47 Id., pp. 1094-1096.
48 Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601C) for the month of January 2009, with eFPS Filing Reference No. 010900002763742 filed on 11 February 2009.
49 eFPS Payment Details for Filing Reference No. 010900002872627 in the amount of ₱1,243,474.84 with Acknowledgment Receipt No. ELY04082009000198573.
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Exhibit No.	Description
P-50-i"	Reconciliation of BIR Findings for the Year 2009, Page 2, Annex C-2 attached to Protest
"P-51-j-31"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 01/01/09 to 03/31/09 with MGCI as Payee and Mercury Drug Corporation as Payor with a total income payment of [₱]10,242,195.59 and total creditable tax withheld of [₱]1,536,329.34.
"P-51-j-32"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 07/01/09 to 09/30/09 with MGCI as Payee and Mercury Drug Corporation as Payor with a total income payment of [₱]13,919,307.47 and total creditable tax withheld of [₱]2,087,896.12.

"P-51-j-33"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 04/01/09 to 06/30/09 with MGCI as Payee and Mercury Drug Corporation as Payor with a total income payment of [₱]13,616,602.80 and total creditable tax withheld of [₱]2,042,490.42.
"P-51-j-34"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 10/01/09 to 12/31/09 with MGCI as Payee and Mercury Drug Corporation as Payor with a total income payment of PhP16,694,079.46 and total creditable tax withheld of [₱]2,504,111.92.
"P-51-j-36"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of [01/01/09 to 03/31/09] with MGCI as Payee and Trinity Franchising & Mngt. Corp. as Payor with a total income payment of PhP2,982,900.00 and total creditable tax withheld of [₱]447,435.00.
"P-51-j-37"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued [for the period of [04/01/09 to 06/30/09] with MGCI as Payee and Trinity Franchising & Mngt. Corp. as Payor with a total income payment of PhP3,725,100.00 and total creditable tax withheld of [₱]558,765.00.
"P-51-j-38"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 10/01/09 to 12/31/09 with MGCI as Payee and Trinity Franchising & Mngt. Corp. as Payor with a total income payment of PhP3,354,000.00 and total creditable tax withheld of [₱]503,100.00.
"P-51-j-39"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 01/01/08 to 12/31/08 with Mercury Group of Insurance as Payee and Malayan Insurance Co., Inc. as Payor with a total income payment of PhP1,035,463.93 and total creditable tax withheld of [₱]155,319.59.
"P-51-j-40"	Official Receipt No. 48772 dated January 7, 2009 issued by MGCI to Malayan Insurance Co., Inc. in the sum of [₱]784,859.95.
"P-51-j-41"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 01/01/09 to 03/31/09 with Mercury Group Insurance Agency as Payee and Federal Phoenix Assurance Co., Inc. as Payor with a total income payment of PhP1,718,693.33 and total creditable tax withheld of [₱]217,661.19.
"P-51-j-42"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 04/01/09 to 06/30/09 with Mercury Group Insurance Agency as Payee and Federal Phoenix Assurance Co., Inc. as Payor with a total income payment of PhP18,237,018.50 and total creditable tax withheld of [₱]1,991,515.36.
"P-51-j-43"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 07/01/09 to 09/30/09 with Mercury Group Insurance Agency as Payee and Federal Phoenix Assurance Co., Inc. as Payor with a total income payment of PhP3,848,628.50 and total creditable tax withheld of [₱]384,862.85.
"P-51-j-44"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 10/01/09 to 12/31/09 with Mercury Group Insurance Agency as Payee and Federal Phoenix Assurance Co., Inc. as Payor with a total income payment of PhP3,153,553.53 and total creditable tax withheld of [₱]325,797.84.
"P-51-j-45"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 10/01/09 to 12/31/09 with Mercury Group Insurance Agency as Payee and Fortune Medicare Inc. as Payor with a total income payment of PhP2,365,368.56 and total creditable tax withheld of [₱]236,536.86.

"P-51-j-46"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 12/01/09 to 12/31/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,306,000.00 and total creditable tax withheld of [₱]195,900.00.
"P-51-j-47"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 11/01/09 to 11/30/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,306,000.00 and total creditable tax withheld of [₱]195,900.00.
"P-51-j-48"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 10/01/09 to 10/31/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,306,000.00 and total creditable tax withheld of [₱]195,900.00.
"P-51-j-49"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 09/01/09 to 09/30/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,306,000.00 and total creditable tax withheld of [₱]195,900.00.
"P-51-j-50"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 08/01/09 to 08/31/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,306,000.00 and total creditable tax withheld of [₱]195,900.00
"P-51-j-51"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 07/01/09 to 07/31/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,306,000.00 and total creditable tax withheld of [₱]195,900.00.
"P-51-j-52"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 06/01/09 to 06/30/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,306,000.00 and total creditable tax withheld of [₱]195,900.00.
"P-51-j-53"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 05/01/09 to 05/31/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,306,000.00 and total creditable tax withheld of [₱]195,900.00.
"P-51-j-54"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 04/01/09 to 04/30/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,578,400.00 and total creditable tax withheld of [₱]236,760.00.
"P-51-j-55"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 03/01/09 to 03/31/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,215,200.00 and total creditable tax withheld of [₱]182,280.00.
"P-51-j-56"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 02/01/09 to 02/28/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,215,200.00 and total creditable tax withheld of [₱]182,280.00.
"P-51-j-57"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued for the period of 01/01/09 to 01/31/09 with MGCI as Payee and Medical Center Trading Corporation as Payor with a total income payment of PhP1,215,200.00 and total creditable tax withheld of [₱]182,280.00.
"P-52"	Letter dated June 3, 2014, consisting of one (1) page.

for comparison, and Exhibit "P-58"[51], for failure to identify and submit the original for comparison.

At the hearing held on 20 September 2017, petitioner presented his lone witness, RO Sison.[52] Thereafter, he filed his FOE[53] on 10 October 2017. On the other hand, on 03 October 2017, respondent filed a Manifestation with Motion for Partial Reconsideration[54] asking mainly for the approval of its tender of excluded evidence and later, on 27 October 2017, a Comment[55] to petitioner's FOE.

On 04 July 2018[56], the Second Division admitted Exhibits "P-50-i", "P-52", "P-55-c" and "P-55-d", but still denied admission of Exhibits "P-58"[57], for failure to identify and submit the original for comparison, and "P-59"[58], for failure to submit the original for comparison. It, however, noted respondent's tender of excluded evidence and granted both parties a period of 30 days from notice within which to file their respective memoranda.

Petitioner filed his Memorandum[59] on 07 August 2018 while respondent filed its Memorandum[60] through registered mail on 15 August 2018.

On 29 August 2018, respondent filed a Motion to File and Admit Attached Reply-Memorandum.[61]

"P-55-c"	Annex B-1 attached to Motion for Reconsideration dated January 16, 2017
"P-55-d"	Annex B-2 attached to Motion for Reconsideration dated January 16, 2017
"P-59"	Deed of Absolute Assignment notarized November 13, 2007 between Carmen O. Garcia and MGCI.

51 Income Statement with Schedule of Operating Expenses for the period ended 31 December 2009, which was offered to prove that no income attributable to the cost-sharing scheme of respondent's Trinity and Insurance Divisions.
52 Minutes of the Hearing dated 20 September 2017, Division Docket, Volume III, p. 1097.
53 Id., pp. 1112-1118.
54 Id., pp. 1104-1109.
55 Id., pp. 1120-1122.
56 See Resolution, id., pp. 1156-1159.
57 Supra at note 51.
58 Deed of Absolute Assignment notarized November 13, 2007 between Carmen O. Garcia and MGCI.
59 Division Docket, Volume III, pp. 1160-1178.
60 Id., pp. 1182-1230.
61 Id., pp. 1232-1234.

In view of the filing of petitioner's Memorandum[62] and respondent's Memorandum[63] and Reply-Memorandum[64], the case was deemed submitted for decision.[65]

In the assailed Decision dated 06 September 2019[66], the newly constituted Special Second Division[67] partially granted respondent's Petition for Review. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for the taxable year ended December 31, 2009 covering deficiency income tax, VAT, and EWT are **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **ONE MILLION THREE HUNDRED NINETY-SEVEN THOUSAND FOUR HUNDRED SIXTY PESOS AND NINETY-SEVEN CENTAVOS (₱1,397,460.97)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A) (3), 249(B) and (C) of the 1997 NIRC, as amended, respectively, computed until December 31, 2017, as follows:

	Income Tax	**VAT**	**EWT**	**Total**
Basic tax due	₱93,158.40	₱306,466.79	₱614,399.43	₱1,014,024.62
Surcharge (25%)	23,289.60	76,616.70	153,599.86	253,506.15
Deficiency interest:				
IT — (04/15/2010 to 04/30/2014 to 07/31/2016)				
(P93,158.40 x 20% x 1,476/365 days)	75,343.45			75,343.45
[(P93,158.40 – P34,418.40) x 20% x 823/365days]	26,489.33			26,489.33
VAT — (01/25/2010 to 04/30/2014 to 07/31/2016)				
(P306,466.79 x 20% x 1,556/365 days)		261,294.42		261,294.42
[(P306,466.79 – P268,830.24) x 20% x 823/365days]		16,972.54		16,972.54
EWT — (01/15/2010 to 04/30/2014 to 07/31/2016)				
(P614,399.43 x 20% x 1,566/365 days)			527,205.21	527,205.21
[(P614,399.43 – P237,005.83) x 20% x 823/365days]			170,189.00	170,189.00
Amount due as of July 31, 2016	***₱218,280.78***	***₱661,350.44***	***₱1,465,393.50***	***₱2,345,024.72***

[62] Supra at note 59.
[63] Supra at note 60.
[64] Division Docket, Volume III, pp. 1235-1249.
[65] See Resolution dated 07 September 2018, id., p. 1251.
[66] Supra at note 3.
[67] Supra at note 5.

	Income Tax	VAT	EWT	Total
Deficiency interest from 08/01/2016 to 12/31/2017:				
IT [P93,158.40 – P34,418.40) x 20% x 518/365 days]	16,672.50			16,672.50
VAT [P306,466.79 – P268,830.24) x 20% x 518/365 days]		10,682.59		10,682.59
Deficiency interest on EWT from 08/01/2016 to 01/27/2017:				
[(P614,399.43 – P237,005.83) x 20% x 180/365 days]			37,222.38	37,222.38
Delinquency interest from 08/01/2016 to 12/31/2017:				
IT [(P218,280.78 – P34,418.40 – 27,817.61) x 20% x 518/365 days]	44,291.06			44,291.06
VAT [P661,350.44 – P268,830.24 – P229,205.40) x 20% x 518/365 days]		46,354.56		46,354.56
Delinquency interest on EWT from 08/01/2016 to 01/27/2017				
[(P1,465,393.50 – 237,005.83 – P231,476.28) x 20% x 180/365days]			98,325.51	98,325.51
Delinquency interest on EWT from 01/27/2017 to 12/31/2017				
[(P1,465,393.50 – P237,005.83 – P118,022.69 – P231,476.28 – P183,184.19) x 20% x 180/365days]			128,848.29	128,848.29
Total amount due	**₱279,244.34**	**₱718,387.59**	**₱1,729,789.68**	**₱2,727,421.61**
Less: Payments on April 30, 2014				
Basic tax	34,418.40	268,830.24	237,005.83	540,254.47
Interest	27,817.61	229,205.40	231,476.28	488,499.29
Less: Payments on January 27, 2017				
Basic tax	-	-	118,022.69	118,022.69
Interest	-	-	183,184.19	183,184.19
Remaining deficiency tax due on December 31, 2017	**₱217,008.33**	**₱220,351.95**	**₱960,100.69**	**₱1,397,460.97**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total unpaid income tax, VAT, and EWT of ₱156,044.77, ₱163,314.80, and ₱996,911.39, respectively, representing basic deficiency tax, surcharge, and deficiency interest until July 31, 2016, net of payments made on April 30, 2014, as shown below, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) Law, and as implemented by RR No. 21-2018.

	Income Tax	VAT	EWT	Total
Amount due as of July 31, 2016	₱218,280.78	₱661,350.44	₱1,465,393.50	₱2,345,024.72
Less: Payments on April 30, 2014				
Basic tax	34,418.40	268,830.24	237,005.83	540,254.47
Interest	27,817.61	229,205.40	231,476.28	488,499.29

	Income Tax	VAT	EWT	Total
Total unpaid tax as of July 31, 2016	**₱156,044.77**	**₱163,314.80**	**₱996,911.39**	**₱1,316,270.96**

SO ORDERED.[68]

...

Aggrieved, on 24 September 2019, petitioner filed his Motion for Partial Reconsideration[69] (**MPR**) on the assailed Decision. Pursuant to the Special Second Division's order[70], respondent filed its Comment/ Opposition[71] to petitioner's MPR on 14 October 2019.

Later, respondent filed on 13 November 2019 a Manifestation[72], informing the Special Second Division that: (1) it opted not to file a motion for reconsideration; and, (2) it has already paid on 30 October 2019 the tax liabilities stated under the assailed Decision but based on its own computation in the total amount of ₱1,686,102.98 as evidenced by BIR Form No. 0605[73] and the eFPS Payment Details[74], detailed as follows:

	IT	VAT	EWT	Total
Remaining deficiency tax due on 31 December 2017	₱217,008.33	₱220,351.95	₱960,100.69	₱1,397,460.97
Delinquency interest of 12% from 01 January 2018 to 30 October 2019	34,218.69	35,812.92	218,610.38	288,641.99
Total payment	**₱251,227.02**[75]	**₱256,164.87**[76]	**₱1,178,711.07**[77]	**₱1,686,102.96**[78]

The Special Second Division thereafter noted respondent's Manifestation.[79]

68 Citation omitted; Emphasis and italics in the original text.
69 Division Docket, Volume III, pp. 1322-1334.
70 See Resolution dated 26 September 2019, id., p. 1336.
71 Id., pp. 1337-1350.
72 Id., pp. 1354-1367.
73 Annexes "A", "B" and "C" attached to the Manifestation dated 13 November 2019, id., pp. 1359, 1362 and 1365.
74 Annexes "A-1", "A-2", "B-1", "B-2", "C-1" and "C-2" attached to the Manifestation dated 13 November 2019, id., pp. 1360-1361, 1363-1364, and 1366-1367.
75 Minimal difference of ₱0.01 (₱251,227.03 *per* BIR Form No. 0605 and eFPS Payment Details).
76 Minimal difference of ₱0.02 (₱256,164.89 *per* BIR Form No. 0605 and eFPS Payment Details).
77 Minimal difference of ₱0.01 (₱1,178,711.06 *per* BIR Form No. 0605 and eFPS Payment Details).
78 Minimal difference of ₱0.02.
79 See Resolution dated 02 December 2019, Division Docket, Volume III, pp. 1352-1353.

In the assailed Resolution dated 02 January 2020[80], the Special Second Division denied petitioner's MPR, the dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 6 September 2019)* filed on September 24, 2019, is **DENIED** for lack of merit.
>
> **SO ORDERED.**[81]
>
> ...

Undeterred, on 22 January 2020, petitioner filed the present Petition for Review[82] before the Court *En Banc* docketed as CTA EB No. 2215.

In compliance with the Court *En Banc*'s order, respondent filed on 02 March 2020 its Comment[83] on the present Petition for Review. Pursuant to Section II[84] of A.M. No. 11-1-5-SC-PHILJA or the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals, the Court *En Banc* referred the case to the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation.[85] However, the parties decided not to have their case mediated by the PMC-CTA.[86]

On 08 October 2020, the Court *En Banc* submitted the case for decision.[87]

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80 Supra at note 4.
81 Emphasis and italics in the original text.
82 Supra at note 1.
83 *Rollo*, Volume I, pp. 95-494, with annexes.
84 II. REFERRAL TO MEDIATION

The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Special Second Division.

...

A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center — Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

85 See Resolution dated 15 July 2020, *Rollo*, pp. 496-497.
86 See No Agreement to Mediate dated 01 September 2020, id., p. 498.
87 See Resolution, id., pp. 500-501.

ISSUE

Before Us, petitioner raises the lone issue of whether —

> THE SPECIAL SECOND DIVISION ERRED WHEN IT CANCELLED THE DEFICIENCY INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) FOR UNDECLARED SERVICE INCOME, UNDECLARED PURCHASES AND UNACCOUNTED SOURCE OF CASH ON THE GROUND THAT THE SAME IS MERELY BASED ON PRESUMPTION.

In support of his petition, petitioner reiterates his argument in his MPR that the Court should only rule on matters that were raised in the administrative level and should be limited only to issues raised therein. Citing once again the ruling in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[88] that a judicial review of the findings of an administrative body such as the BIR is not a *de novo* trial, petitioner argues that the Court cannot rule on matters that were never substantiated at the said level and should confine itself to the issues raised and the documents submitted in support of respondent's protests filed against the subject assessment.

Petitioner further insists that respondent's undeclared service income, undeclared purchases and unaccounted source of cash constitute undeclared revenue which should give rise to deficiency IT and VAT for TY 2009.

Conversely, respondent argues that the Special Second Division properly considered its evidence mainly because the CTA is a court of record and thereby authorized to conduct trial *de novo*. Additionally, as opposed to petitioner's contention, the pieces of evidence submitted to the Special Second Division are the same pieces of evidence submitted to the BIR during the administrative stage of the proceedings.

Respondent also points out that the subject deficiency tax assessments based on third-party information are void for being based on mere presumptions and unverified data. While tax assessments are

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[88] G.R. No. 207112, 08 December 2015.

presumed correct and regularly issued, it should not be based on mere presumptions. Thus, failure to validate such third-party information on which the alleged discrepancies were based rendered the assessment void for lack of factual basis.

Lastly, respondent no longer disputes the Special Second Division's computation of its deficiency tax liabilities. As mentioned in its 13 November 2019 Manifestation, respondent adds that it has, in fact, fully paid its remaining deficiency tax liabilities under the assailed Decision, including the 12% delinquency interest from 01 January 2018 to the payment date or on 30 October 2019.

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the present petition.

THE PETITION FOR REVIEW WAS TIMELY FILED.

The Court's Special Second Division issued the assailed Resolution denying petitioner's MPR on 02 January 2020. Petitioner received the said assailed Resolution on 10 January 2020.[89]

Under Section 2(a)(1)[90], Rule 4 in relation to Section 3(b)[91], Rule 8 of the RRCTA, petitioner had fifteen (15) days from 10 January 2020 or until 25 January 2020 within which to file an appeal before this Court. Accordingly, petitioner filed the present petition on time on 22 January 2020.

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89 See Notice of Resolution dated 02 January 2020, Division Docket, Volume III, p. 1368.

90 **SEC 2.** *Cases Within the Jurisdiction of the Court En Banc.* — The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Special Second Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied.)

91 Supra at note 2.

NO COMPELLING GROUND TO REVERSE OR MODIFY THE ASSAILED DECISION AND RESOLUTION.

This Court finds that the present Petition for Review is a mere rehash of the issue already presented, duly resolved and passed upon by the Special Second Division in their 02 January 2020 Resolution.

It is worth mentioning that petitioner's discussion in this petition is almost a *word for word* replication of his discussion in his MPR as he merely replaced the word "respondent" with "petitioner". Regrettably, petitioner did not make any attempt to make a reference to the Special Second Division's discussion of the legal basis and relevant jurisprudence used to arrive at the conclusion in the assailed Resolution.

There being no new matters or issues raised in the present Petition for Review and there being no reversible error committed by the Special Second Division, the Court *En Banc* finds no cogent reason to deviate from the assailed Decision and Resolution.

Nevertheless, for emphasis, the Court *En Banc* shall pass upon petitioner's arguments.

(1) THE COURT OF TAX APPEALS IS AUTHORIZED TO CONDUCT TRIAL *DE NOVO*.

We find no merit in petitioner's contention that the Special Second Division erred in allowing respondent to present evidence which were not introduced in the administrative level as this goes against the nature of the Court as a "court of record" pursuant to Section 8[92] of Republic Act (**RA**) No. 1125[93], as amended by RA 9282.[94]

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92 **Sec. 8.** ***Court of record; seal; proceedings.*** — **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence. (Emphasis supplied.)

93 AN ACT CREATING THE COURT OF TAX APPEALS.

As a "court of record", the CTA is authorized to conduct trial *de novo*, and consistent with this principle, parties who come to court are required to prove every aspect of their case if they want the Court to take such evidence into consideration.[95] Accordingly, the Special Second Division properly considered the pieces of evidence formally offered by respondent.

(2) TAX ASSESSMENTS CANNOT BE BASED ON MERE PRESUMPTIONS AND UNVERIFIED DATA.

We likewise agree with the Special Second Division's cancellation of the deficiency tax assessments derived from discrepancies found using unverified third-party information gathered through the BIR's Reconciliation of Listing for Enforcement (**RELIEF**) system.

In line with the implementation of the RELIEF system, the pertinent portions of Revenue Memorandum Order (**RMO**) Nos. 04-2003[96] and 46-2004[97] state:

> ...
> **I. BACKGROUND**
>
> 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

94 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

95 *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, G.R. Nos. 206079-80, 17 January 2018; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, 29 September 2014; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

96 *Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002*; Emphasis and underscoring supplied.

97 *Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers*; Emphasis and underscoring supplied.

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 <u>with other externally sourced data</u> will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential.**

...

III. PROCEDURES

...

Action on Protested LNs due to TPI discrepancy

The **<u>Revenue Officer</u>** assigned to handle the Letter Notice **<u>shall</u>**:

1. Evaluate the merits of the taxpayer's Protest by:

   1.1 Requiring the taxpayer to submit the necessary schedules and supporting documents to substantiate his claims.

   1.2 Reconciling the Schedule of Sales/Local Purchases submitted by the taxpayer against the Details of Taxpayer's Customers/Suppliers' Records (DTCS) culled from the Quarterly Summary List of Sales/Purchases submitted by taxpayer's suppliers and customers, respectively.

   1.3 Reconciling the Schedule of Importation submitted by the taxpayer against the Details of Importation with Return Information Matching (DIRIM) culled from data provided by the Bureau of Customs (BOC).

   1.4 Checking for the propriety of the transactions reflected in the schedules submitted by the taxpayer by validating against source documents (e.g. sales invoice, official receipts, import entry declarations, etc.).

2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.

3. **<u>Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.</u>**

3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:

3.1.1 **Prepare "Confirmation Requests"** (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS

3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

a. Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

b. **Secure a sworn statement from the TPI source** thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.

...

While the foregoing RMOs do not explicitly state that unverified third-party information renders the assessment void, the abovementioned provisions confirm that the BIR is required to verify the amounts it obtained from its computerized/third-party matching by securing a confirmation or verification from the third-party information source, or from externally sourced data. Without conducting such confirmation or verification, the data gathered from the computerized/third party matching are left unsubstantiated, and the resulting assessment is void for lack of factual and legal basis.[98]

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[99], the Supreme Court has ruled that, in order for an assessment to stand judicial scrutiny, it must be based on facts supported by credible evidence. We quote the relevant portions of the said case:

> ...
>
> 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.**
>
> ...

98 *Commissioner of Internal Revenue v. MCC Transport Singapore Pte. Ltd.*, CTA EB No. 1961 (CTA Case No. 9045), 14 July 2020.

99 G.R. No. 136975, 31 March 2005; Citations omitted, italics in the original text, emphasis and underscoring supplied.

> Thus, the computations of the EIIB and the BIR on the quantity and costs of the importations of the respondent in the amount of P105,761,527.00 for 1987 have no factual basis, hence, arbitrary and capricious. **The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*, in order to stand judicial scrutiny, <u>the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.</u>**
>
> ...

In this case, as correctly found by the Special Second Division, the records disclose that the BIR derived the subject deficiency tax assessments (corresponding to the alleged undeclared service income, undeclared purchases and unaccounted source of cash) only from the discrepancies found in the working papers summarizing the comparison between respondent's Summary List of Sales (**SLS**) and Summary List of Purchases (**SLP**) *vis-à-vis* third-party SLS and SLP. It is undisputed that petitioner failed to verify the amounts reflected in the third-party SLS and SLP with the relevant customers and suppliers. Thus, the same casts doubts as to the reliability and correctness of the findings of deficiency taxes assessed by petitioner.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[100]

For lack of factual and legal basis, the deficiency tax assessments corresponding to the alleged undeclared service income, undeclared purchases and unaccounted source of cash should then be cancelled.

On a final note. An examination of the records confirms that respondent has already paid in full the remaining deficiency tax due on 31 December 2017 amounting to ₱1,397,460.97 and the 12% delinquency

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[100] *The Collector of Internal Revenue (now Commissioner) v. Benipayo*, G.R. No. L-13656, 31 January 1962.

interest of ₱288,641.99 (computed from 01 January 2018 until full payment on 30 October 2019), in accordance with the assailed Decision. Thus, upon the finality of this decision, respondent has no more deficiency tax liability for TY 2009.

WHEREFORE, premises considered, the present Petition for Review filed on 22 January 2020 by petitioner Commissioner of Internal Revenue, is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated 06 September 2019 and Resolution dated 02 January 2020 of the Court's Special Second Division in CTA Case No. 9531, entitled *Mercury Group of Companies, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

Consequently, petitioner or any person duly acting on his behalf is hereby **ENJOINED** from proceeding with the collection of additional deficiency taxes arising from the Final Decision on Disputed Assessment dated 04 January 2017 for taxable year 2009.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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