**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SPECIAL SECOND DIVISION

**FORT BONIFACIO DEVELOPMENT CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10425**

Members:

**RINGPIS-LIBAN,** *P.J.*,
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:

FEB 1 1 2026

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# AMENDED DECISION

***FERRER-FLORES, J.:***

Before this Court is petitioner's **Motion for Reconsideration (of Decision dated May 06, 2025)** filed on June 11, 2025, with respondent's **Comment and Opposition (Re: Motion for Reconsideration dated 11 June 2025)** filed on August 11, 2025.

On May 6, 2025, the Court promulgated a Decision dismissing the *Petition for Review* for lack of jurisdiction due to petitioner's failure to file a valid protest, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the present *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.
>
> **SO ORDERED.**

In its *Motion*, petitioner primarily assails the Court's finding that petitioner failed to fulfill its undertaking to submit the supporting documents within 60 days from the filing of its *Protest Letter/Request for Reinvestigation* on October 12, 2017. As such, petitioner raises the following grounds for the Court's consideration and prays that the present case be resolved on the merits based thereto, viz.:

I. Records show petitioner submitted supporting documents to the BIR.

II. Petitioner should be allowed to present evidence, including Records submitted by respondent, to prove the existence of supporting documents submitted with the Protest.

III. Dismissal on purely technical grounds is inconsistent with substantial justice.

As to the *first* ground, petitioner contends that, although it did not formally offer specific documentary evidence during trial to show compliance with the 60-day requirement for submission of supporting documents for its request for reinvestigation, respondent's own audit records submitted to the Court contain references that show its submission of supporting documents relative to its request for reinvestigation. Particularly, the Final Decision on Disputed Assessment (FDDA) dated November 20, 2020[1] and the internal memoranda of the Bureau of Internal Revenue (BIR), such as the Memorandum for the CIR dated September 4, 2018,[2] and Memorandum to The Chief, LT Collection and Enforcement Division – Large Taxpayers Service, both dated January 26, 2021, which are found in the BIR Records.[3] Petitioner further avers that it recently found a copy of its Transmittal Letter dated December 12, 2017, stamped "received" by the BIR on December 12, 2017,[4] which, albeit not formally offered in evidence for being misfiled in its records, will further support petitioner's position that it complied with the requirement to submit supporting documents within 60 days from the filing of the protest.

With regard to the *second* ground, petitioner posits that, even if there was a perceived deficiency in the formal presentation of supporting documents during the initial phase of the proceedings, the Court should nonetheless allow petitioner to present, if necessary, the newly discovered transmittal letter, or to rely on the records already submitted by respondent, particularly, the FDDA and accompanying audit reports and memoranda. Petitioner submits that the evidence needed to sufficiently establish the existence of supporting documents for the protest may be derived from BIR's own records. M

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1 Exhibit "P-8", Docket – Vol. II, pp. 651 to 655; Exhibit "R-9", BIR Records, pp. 424 to 428.
2 Exhibit "R-8", BIR Records, pp. 413 to 416.
3 BIR Records, pp. 446 to 447.
4 Attached as Annex "E" in Petitioner's *Motion for Reconsideration (of Decision dated May 06, 2025).*

Lastly, anent the *third* ground, petitioner contends that a dismissal of the entire case on a procedural technicality runs counter to the principle that rules of procedure must yield to the demands of substantial justice. Petitioner further points out that it is well-established principle under Section 6, Rule 1 of the Rules of Court that procedural rules shall be liberally construed to promote substantial justice.

On the other hand, in his *Comment*, respondent maintains that the Court correctly ruled that petitioner's deficiency tax liability assessment for the period July 1, 2014 to December 31, 2014 has already become final and executory since petitioner failed to file a valid protest thereto. For said reason, respondent insists that there is no reason to disturb the conclusions reached in the assailed Decision and that the present *Motion* be denied for lack of merit.

After due consideration, the Court finds petitioner's *Motion for Reconsideration* partly meritorious.

To recall, the relevant facts of the case are as follows:

Petitioner received a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies on August 24, 2017,[5] assessing petitioner for deficiency value-added tax (VAT) and administrative penalty for July 1, 2014 to December 31, 2014, in the aggregate amount of ₱32,037,684.30, inclusive of increments, summarized as follows:

**VALUE ADDED TAX**

| | | |
|---|---|---|
| Receipts subjected to VAT per VAT Returns | | ₱ 3,793,008,062.09 |
| Add: Adjustments/Disallowances | | |
| Undeclared Sales per SLS vs TPI | ₱ 10,675,571.49 | |
| Unaccounted Source of Cash | 53,715,713.32 | 64,391,284.81 |
| | | ₱ 3,857,399,346.90 |
| Output tax thereon | | ₱ 462,887,921.63 |
| Less: Allowable Input Tax | | |
| Allowable Input Tax per VAT Returns | ₱315,199,435.96 | |
| Less: Disallowances/Adjustments | | |
| Disallowed Input Tax - Unsupported Input Tax per SLP vs TPI | 3,913,298.97 | |
| Disallowed input tax per TIN Verification | 522,708.17 | |
| Non-Compliance on Invoicing Requirements | 4,616,372.29 | |
| Overclaimed Input Tax - Sources of Input per FS vs VAT Return | 4,256,331.32 | 301,890,725.21 |
| VAT Due | | ₱ 160,997,196.42 |
| Less: VAT Payments | | 139,961,531.49 |
| Basic Deficiency Value-Added Tax | | ₱ 21,035,664.93 |
| Add: Interest (1.26.15 to 8.31.17) | | 10,927,019.37 |

[5] Exhibit "P-5", Docket – Vol. II, pp. 622 to 631, and Exhibit "R-4", BIR Records, pp. 301 to 310.

| | | | |
|---|---|---|---|
| **TOTAL DEFICIENCY VALUE-ADDED TAX** | | **₱** | **31,962,684.30** |
| **ADMINISTRATIVE PENALTY** | | | |
| Compromise Penalty – Failure to pay any internal revenue tax at the time or times required by law or regulation | ₱ 50,000.00 | | |
| Compromise Penalty – Failure to file, make or submit the complete SLP or supply correct and accurate information therein at the time required | 25,000.00 | | **75,000.00** |
| **TOTAL AMOUNT DUE** | | **₱** | **32,037,684.30** |

On September 14, 2017, petitioner received a Formal Letter of Demand (FLD) with attached Details of Discrepancies and Final Assessment Notice (FAN),[6] assessing petitioner for the same internal revenue tax and administrative penalty for the period July 1, 2014 to December 31, 2014, in the aggregate amount of ₱32,383,476.05, inclusive of increments, summarized as follows:

| | | |
|---|---|---|
| **VALUE ADDED TAX** | | |
| Receipts subjected to VAT per VAT Returns | | ₱ 3,793,008,062.09 |
| Add: Adjustments/Disallowances | | |
| Undeclared Sales per SLS vs TPI | ₱ 10,675,571.49 | |
| Unaccounted Source of Cash | 53,715,713.32 | 64,391,284.81 |
| | | ₱ 3,857,399,346.90 |
| Output tax thereon | | ₱ 462,887,921.63 |
| Less: Allowable Input Tax | | |
| Allowable Input Tax per VAT Returns | ₱315,199,435.96 | |
| Less: Disallowances/Adjustments | | |
| Disallowed Input Tax - Unsupported Input Tax per SLP vs TPI | 3,913,298.97 | |
| Disallowed input tax per TIN Verification | 522,708.17 | |
| Non-Compliance on Invoicing Requirements | 4,616,372.29 | |
| Overclaimed Input Tax - Sources of Input per FS vs VAT Return | 4,256,331.32 | 301,890,725.21 |
| VAT Due | | ₱ 160,997,196.42 |
| Less: VAT Payments | | 139,961,531.49 |
| Basic Deficiency Value-Added Tax | | ₱ 21,035,664.93 |
| Add: Interest (1.26.15 to 9.30.17) | | 11,272,811.12 |
| **TOTAL DEFICIENCY VALUE-ADDED TAX** | | **₱ 32,308,476.05** |
| **ADMINISTRATIVE PENALTY** | | |
| Compromise Penalty – Failure to file and/or pay any internal revenue tax at the time or times required by law or regulation | ₱ 50,000.00 | |
| Compromise Penalty – Failure to file or submit the complete SLP or supply correct and accurate information therein at the time required | 25,000.00 | **75,000.00** |
| **TOTAL AMOUNT DUE** | | **₱ 32,383,476.05** |

6 Exhibit "P-6", Docket – Vol. II, pp. 632 to 643, and Exhibit "R-6", BIR Records, pp. 324 to 335.

On October 13, 2017, petitioner filed a Protest Letter/Request for Reinvestigation.[7]

Thereafter, on November 20, 2020, petitioner received the FDDA,[8] adjusting the deficiency VAT assessment for the period July 1, 2024 to December 31, 2014 in the reduced amount of ₱28,987,923.78, inclusive of increments, summarized as follows:[9]

| | | |
|---|---|---|
| Receipts subjected to VAT per VAT Returns | | ₱ 3,793,008,062.09 |
| Add: Adjustments/Disallowances | | |
| Undeclared Sales per SLS vs TPI | ₱ 10,675,571.49 | |
| Unaccounted Source of Cash | 53,715,713.32 | 64,391,284.81 |
| | | ₱ 3,857,399,346.90 |
| Output tax thereon | | ₱ 462,887,921.63 |
| Less: Allowable Input Tax | | |
| Allowable Input Tax per VAT Returns | ₱315,199,435.96 | |
| Less: Disallowances/Adjustments | | |
| Disallowed Input Tax - Unsupported Input Tax per SLP vs TPI | 3,913,298.97 | |
| Disallowed input tax per TIN Verification | 522,708.17 | |
| Overclaimed Input Tax - Sources of Input per FS vs VAT Return | 4,256,331.32 | 306,507,097.50 |
| VAT Due | | ₱ 156,380,824.13 |
| Less: VAT Payments | | 139,961,531.49 |
| Basic Deficiency Value-Added Tax | | ₱ 16,419,292.64 |
| Add: Interest | | 12,568,631.14 |
| **TOTAL DEFICIENCY VALUE-ADDED TAX** | | **₱ 28,987,923.78** |

Petitioner then filed the present *Petition for Review* on December 21, 2020.[10]

However, respondent subsequently garnished petitioner's Union Bank account in the amount of ₱28,987,923.78 as payment for the subject deficiency VAT assessment covering the third and fourth taxable quarters of 2014, as evidenced by Payment Form 0605 signed by Revenue Officer (RO) Carlo Miguel Narboneta of LT-CED and validated BIR Tax Payment Deposit Slip dated March 25, 2022, covering the said garnished amount of ₱28,987,923.78.[11]

Correspondingly, on July 12, 2022, petitioner filed a *Motion for Leave to Amend Petition for Review*,[12] attaching therewith its *Amended Petition for*

7 Exhibit "P-7", Docket – Vol. II, pp. 644 to 650.
8 Supra Note 1.
9 Exhibit "P-12", Docket – Vol. I, pp. 469 to 470.
10 Docket – Vol. I, pp. 7 to 30.
11 Refer to Par. 7, Stipulation of Facts, JSFI, Docket – Vol. I, pp. 397 to 398.
12 Docket – Vol. I, pp. 347 to 348.

*Review*,[13] with the additional prayer to refund the garnished amount of ₱28,987,923.78 that was collected by respondent by virtue of the warrant of garnishment issued against petitioner's bank accounts.

Hence, this Amended Decision.

***Petitioner's Protest Letter/Request for Reinvestigation dated October 12, 2017 is a valid protest.***

Again, Section 228[14] of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 3 of Revenue Regulations (RR) No. 12-99,[15] as amended by RR No. 18-2013,[16] provides that a tax assessment issued by the BIR may be protested administratively, within 30 days from receipt thereof, by filing either a request for reconsideration or reinvestigation, in such form and manner as may be prescribed by implementing rules and regulations. Moreover, within 60 days from the filing of a protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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[13] Docket – Vol. I, pp. 349 to 373.

[14] **Section 228.** ***Protesting of Assessment.*** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x

> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment <u>in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.</u>**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. *(Emphases and underscoring added)*

[15] 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 TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY", dated on September 6, 1999.

[16] SUBJECT: AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99 RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT", dated November 28, 2013.

In this case, petitioner filed its Protest Letter/Request for Reinvestigation against the subject FLD on October 13, 2017. Petitioner then has 60 days from the said date, or until December 12, 2017, to submit all relevant supporting documents. As correctly pointed out by petitioner, the transmittal letter dated December 12, 2017 that is attached to its *Motion* –duly marked "received" by the BIR– shows that one box of documents (*i.e.* Official Receipts, Contract of Lease, vouchers and invoices) were submitted by petitioner, and received by respondent on even date, in support of its protest.

Moreover, a further re-examination of the BIR records would likewise show that respondent indeed acknowledged the submission of petitioner's supporting documents and their evaluation thereof in the FDDA dated November 20, 2020, Memorandum for the CIR dated September 4, 2018, and Memorandum to The Chief, LT Collection and Enforcement Division – Large Taxpayers Service dated January 26, 2021, as aptly noted by petitioner in its *Motion*.

Thus, having beendeemed to have timely submitted its supporting documents within 60 days from the filing of the protest, petitioner has evidently complied with the requisites in disputing an assessment in accordance with the laws, rules and regulations, and jurisprudence cited herein. **Consequently, the tax assessment cannot be deemed as final** and the Petition for Review filed on December 21, 2020 was timely filed within the 30-day period from petitioner's receipt of the FDDA on November 20, 2020. As such, the Court has jurisdiction over the present case.

***The deficiency tax assessments are valid and contains definite amount of tax due and definite demand for payment thereof.***

Petitioner also argues that the deficiency tax assessments are null and void as they were issued in violation of its right to due process. Petitioner asserts that the FLD and the FDDA should be struck down for being invalid since it failed to indicate a definite demand for payment of tax due.

On the other hand, respondent contends that the FLD and FDDA contain a definite amount of tax and that the assessment issued against petitioner is valid and lawful.

The Court agrees with respondent.

Perforce, an assessment refers to the determination of amounts due from a person obligated to make payments.[17] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a **due tax liability that is there definitely set and fixed**.[18]

Herein, a careful scrutiny of the FLD dated September 8, 2017[19] reveals that it provided the computations of petitioner's tax liabilities. Contrary to petitioner's allegation, the amounts stated therein do not remain indefinite and the due date was specified in the attached Assessment Notices, *i.e.,* "**DUE DATE: September 30, 2017**", to wit:

> In view thereof, you are requested to pay your aforesaid deficiency VAT liability using the BIR Payment Form (BIR Form 0605) through eFPS **within the time shown in the enclosed assessment notice.** Afterwards, submit copy thereof to our Office, located at Room 213, VAT Audit Group, BIR National Office Building, BIR Road, Diliman, Quezon City, for updating of your records and cancellation of the herein FAN, if warranted. *(Emphasis added)*

Furthermore, the FDDA likewise states a demand within which to pay the subject tax liabilities, as follows: "[i]t is requested that the aforesaid deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. **This is our final decision**. x x x."

Clearly, the statement in the FLD that the "*interest and the total amount due will have to be adjusted if paid beyond September 30, 2017,*" does not make the assessments indefinite. The statement merely serves as a reminder to the taxpayer that the interest will have to be adjusted if the assessed tax liability remains unpaid on the stated date in the assessment notices pursuant to Section 249 of the NIRC of 1997, as amended, which imposes interest on unpaid taxes from the time such tax is required to be paid until it is fully paid. Reasonably, the interest in the assessment would be subject to changes, considering that the BIR would not have the foresight to determine when respondent would pay the deficiency taxes. The Court, thus, finds that the FLD and the FDDA with Assessment Notices contain a definite due date and demand for payment of the petitioner's tax liabilities.

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[17] *SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.

[18] *Lucas G. Adamson, et al. v. Court of Appeals, et al., et seq.* G.R. Nos. 120935 and 124557, May 21, 2009.

[19] Supra Note 6; Exhibits "R-6", "R-6-A", and "R-6-B", BIR Records, pp. 330 to 335.

***The deficiency tax assessments for VAT for the third and fourth quarters for taxable year (TY) 2014 have not yet prescribed.***

As a general rule, Section 203[20] of the NIRC of 1997, as amended, provides that internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. While Section 222 of the NIRC of 1997, as amended, provides for the exceptions to the period of limitation of assessment and collection of taxes, none of the enumerations stated therein applies to the present case.

Relative thereto, for the filing of quarterly VAT returns, Section 114(A)[21] of the NIRC of 1997, as amended, requires that quarterly returns be filed within 25 days following the close of each taxable quarter prescribed for each taxpayer. Below is the summary of the filing dates of the relevant quarterly VAT returns and the corresponding dates within which respondent may assess petitioner for deficiency VAT for the period July 1, 2014 to December 31, 2014, to wit:

| **Period Covered** | **Date of Filing of the Return** | **Last Day to File Return** | **Last Day for issuance of BIR's Deficiency VAT Assessment** |
|---|---|---|---|
| Third Quarter | October 23, 2014[22] | October 25, 2014 | October 25, 2017 |
| Fourth Quarter | January 23, 2015[23] | January 25, 2015 | January 25, 2018 |

In this case, respondent sent the FLD to petitioner on September 14, 2017. Clearly, respondent's right to assess petitioner for deficiency VAT for the third and fourth taxable quarters of 2014 falls within the period allotted by law.

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20 SEC. 203. ***Period of Limitation Upon Assessment and Collection.*** — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

21 SEC. 114. *Return and Payment of Value-added Tax.* —

(A) *In General.* – **Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis. *(Emphasis added)*

22 BIR Records, pp. 532 to 535.

23 *Id.* at 528 to 531.

That having been settled, the Court shall now proceed to determine the propriety of the deficiency VAT assessment covering the period July 1, 2014 to December 31, 2014.

***Petitioner is liable for deficiency VAT for the third and fourth quarters of TY 2014.***

To recall, the following items, which are discussed in detail hereafter, comprise the subject assessment:

| | |
|---|---|
| a) Undeclared Sales per SLS vs TPI | ₱10,675,571.49 |
| b) Unaccounted Source of Cash | ₱53,715,713.32 |
| c) Disallowed Input Tax - Unsupported Input Tax per SLP vs TPI | ₱ 3,913,298.97 |
| d) Disallowed input tax per TIN Verification | ₱ 522,708.17 |
| e) Overclaimed Input Tax - Sources of Input per FS vs VAT Return | ₱ 4,256,331.32 |

*a.* *<u>Undeclared Sales per SLS vs TPI – ₱10,675,571.49</u>*

Based on comparison of petitioner's Summary List of Sales (SLS) and third-party information (TPI), respondent found alleged undeclared sales of ₱10,675,571.49:[24]

| | |
|---|---|
| Per SLS | ₱ 96,446,728.69 |
| Per TPI | 107,122,300.18 |
| **Discrepancy – Undeclared Sales** | **₱ 10,675,571.49** |

In its *Protest Letter/Request for Reinvestigation,* petitioner argues the "discrepancy is due to timing differences or errors on the part of reporting third party" and avers that it needs to "verify each and every TPI to validate and reconcile the same xxx". Respondent, however, allegedly failed to provide copies or details of the confirmation letters to petitioner to validate the TPI.

The Court agrees with petitioner.

Indeed, Revenue Memorandum Order (RMO) No. 46-2004,[25] provides that the revenue officer assigned to handle the Letter Notice shall,

[24] Schedule 1, "Annex – A", Exhibit "P-6", Docket – Vol. II, pp. 634 and 638, and Exhibit "R-6-A", BIR Records, pp. 329 and 333.
[25] SUBJECT: Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order

among others, obtain Sworn Statements from TPI sources attesting to the veracity of the data provided, to wit:

> III. Procedures
>
> **Action on Protested LNs due to TPI discrepancy**
>
> x x x
>
> 3. **Obtain Sworn Statements from TPI sources (Annexes 'B' and 'C') attesting to the veracity of the data provided.** x x x
>
> 4. Provide the taxpayer a brief 'grace period' (no more than ten [10] days) to reconcile the figures in his Sworn Statement against those of the TPI source. *(Emphasis added)*

Based on the above, the BIR is required to verify the amounts it obtained from its computerized/third-party matching by securing confirmation or certification from the TPI source.

In the present case, records show that respondent sent confirmation letters to the TPI sources.[26] Examination of the subject documents, however, reveals that only Philgear International Inc. certified its purchases in the amount of ₱1,375,360.83.[27] The rest of the confirmation letters are not certified by the TPI sources. Consequently, for failure to obtain sworn statements from TPI sources, data gathered from the computerized/third-party matching were left unverified, and the resulting assessment is therefore void for lack of factual and legal basis.

The Supreme Court has consistently ruled that, in order to be valid, an assessment must be based on actual facts supported by credible evidence.[28] From respondent's schedule of undeclared sales, only petitioner's sales to Philgear International Inc. has a certified amount of ₱1,375,360.83 as opposed to petitioner's declared sales from the same customer of ₱828,753.08, showing a discrepancy of ₱546,607.75.[29]

On the other hand, the Court-commissioned Independent Certified Public Accountant (ICPA) Mr. Joel M. Ganalon of Reyes Tacandong & Co., reports that, upon examination of petitioner's books, particularly the

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(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, dated September 2, 2004.

[26] BIR Records, pp. 351 to 369.
[27] *Id.* at pp. 357 to 363.
[28] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.
[29] Schedule 1, "Annex – A", Exhibit "P-6", Docket – Vol. II, p. 638, and Exhibit "R-6", BIR Records, p. 329.

equivalent gross taxable sales in its general ledger account for "Taxes Payable – Output VAT", petitioner reported the same in its VAT Returns:[30]

| Particulars | Reference | Gross Taxable Sales | Output Tax |
|---|---|---|---|
| Company's Books/Output General Ledger (GL) Account No. 21304301 - "Taxes Payable - Output VAT" | *Annex 1-13* | ₱3,793,008,062.33 | ₱455,158,073.65 |
| Per Quarterly VAT Returns (3rd Quarter and 4th Quarter) | *Annex 1-13* | 3,793,008,062.09 | 455,160,967.45 |
| **Discrepancy** | | **₱0.24** | **(₱2,893.80)** |

Furthermore, tracing the foregoing to petitioner's cash receipts schedule based on the related VAT supporting documents of various customers identified in respondent's assessment, revealed a discrepancy of ₱1,095,771.42, as follows:

| Particulars | Reference | Per VAT supporting document [A] | Recorded in the Company's Books/Cash Receipts Schedule (2014) [B] | Recorded in the Company's Books/Cash Receipts Schedule (2013) [C] | Difference [A]-[B]-[C] |
|---|---|---|---|---|---|
| Gross Taxable Sales | *Annex 1-5* | ₱993,024,268.33 | ₱978,993,330.58 | ₱12,935,166.33 | ₱1,095,771.42 |

The subject discrepancy is broken down as follows:

| Customer | Reference | Per VAT supporting document [A] | Recorded in the Company's Books/Cash Receipts Schedule (2014) [B] | Recorded in the Company's Books/Cash Receipts Schedule (2013) [C] | Difference [A]-[B]-[C] |
|---|---|---|---|---|---|
| BAYAN TELECOMMUNICATIONS INC | *Annex 1-5* | ₱9,859,577.67 | ₱9,470,089.00 | ₱105,061.92 | ₱284,426.75 |
| BCUT INCORPORATED | *Annex 1-5* | 10,765,515.92 | 10,767,483.08 | - | (1,967.17)* |
| FOODPARKS BY RAINTREE INC. | *Annex 1-5* | 25,600,080.17 | 24,782,598.08 | - | 817,482.08** |
| GEAR HEAD INC | *Annex 1-5* | 21,454,751.33 | 21,458,921.58 | - | (4,170.25) |
| **Discrepancy** | | **₱67,679,925.09** | **₱66,479,091.74** | **₱105,061.92** | **₱1,095,771.41*** ** |

** Should be 1,967.16*
*** Should be 817,482.09*
**** Should be 1,095,771.43*

Petitioner also argues that "the difference favored VAT reporting since the declared gross taxable sales declared in related VAT supporting

[30] Exhibit "P-12", Docket – Vol. I, p. 474.

documents are higher than those recorded in the books/cash receipts schedules of petitioner".[31]

Nonetheless, be that as it may, petitioner and the ICPA still failed to reconcile the discrepancy found by respondent on its sale to Philgear International Inc. Correspondingly, this assessment item should be adjusted to the amount of **₱546,607.75** representing the discrepancy between petitioner's SLS and the amount certified by its customer Philgear International Inc. per confirmation letter sent by respondent.

*b. Unaccounted source of cash – ₱53,715,713.32*

Upon comparing petitioner's Summary List of Purchases (SLP) against the sales declarations per third parties, respondent found that the amounts per TPI are larger than those in petitioner's SLP. Respondent then assessed petitioner of an alleged unaccounted source of cash in the amount of ₱53,715,713.32, as follows:[32]

| | |
|---|---|
| Per TPI | ₱ 123,341,925.16 |
| Per SLP | 187,168,219.06 |
| **Discrepancy–Unaccounted source of cash** | **₱ 53,715,713.32** |

As previously discussed, when TPI is used, respondent is required to verify the amounts it obtained from its computerized/third-party matching by securing confirmation or certification from TPI source. If unverified, the resulting assessment shall be considered void for lack of factual and legal basis.

Herein, respondent found, in essence, a mere under-declaration of purchases. The Court has repeatedly ruled that the same is of no consequence as a finding of under-declaration of purchase does not by itself necessarily result in the imposition of VAT. What is critical to be shown in the imposition or assessment of VAT is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, **the VAT is imposed when one sells, not when one purchases.**[33] Moreover, even if these alleged unaccounted purchases are to be treated as unaccounted sources of cash, which are subject to output VAT, the same will be offset by recording the equivalent payments as expenses or purchases from which input tax credits

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[31] Petitioner's *Memorandum*, Docket – Vol. II, p. 785.

[32] Schedule 2, "Annex – A", Exhibit "P-6", Docket – Vol. II, pp. 634 and 639, and Exhibit "R-6-A", BIR Records, pp. 328 and 333.

[33] *Commissioner of Internal Revenue v. Agrinurture, Inc.*, CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.

may be claimed. Hence, no additional VAT will result from the said transactions.

Settled is the rule that, while 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 correctness of assessment being a mere presumption cannot be made to rest on another presumption.[34]

Correspondingly, the deficiency VAT assessment arising from petitioner's alleged unaccounted source of cash of **₱53,715,713.32** shall be cancelled for lack of factual basis.

c. *Disallowed Input Tax - Unsupported Input Tax per SLP vs TPI – ₱3,913,298.97*

As per respondent's verification of petitioner's SLP, he found that it exceeds the declared sales of the suppliers as reflected in the gathered TPI, consequently disallowing the discrepancy as over claimed input taxes. Respondent likewise found purchases with no corresponding TPI, computed below as follows:[35]

| | |
|---|---|
| Purchases per SLP | ₱ 104,078,279.52 |
| Per TPI | 71,467,454.74 |
| Overclaimed purchases | ₱ 32,610,824.78 |
| | x 0.12 |
| **Unsupported input tax** | **₱ 3,913,298.97** |

Here, the BIR Records show that respondent sent confirmation letters to the TPI sources.[36] An examination of the subject documents reveals, however, that only one supplier certified the amounts of sales to petitioner, The Turf Company, in the amount of ₱81,249.99.[37] Again, since the rest of the confirmation letters were not certified by the TPI sources, thus, leaving them unverified, the resulting assessment is void for lack of factual and legal basis.

Correspondingly, from respondent's schedule of unsupported purchases and computation of unsupported input tax, only the amount of

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[34] *The Collector of Internal Revenue v. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962.
[35] Schedule 3, "Annex – A", Exhibit "P-6", Docket – Vol. II, pp. 634 and 640, and Exhibit "R-6-A", BIR Records, pp. 327 and 333.
[36] BIR Records, pp. 370 to 397.
[37] *Id.* at 370 to 372.

₱2,934,056.93, pertaining to the difference in purchases from The Turf Company Inc. with corresponding output tax of ₱352,086.83, should be retained as an assessment item, as follows:

| | SLP | TPI | Difference |
|---|---|---|---|
| The Turf Company Inc. | ₱ 3,015,306.92 | ₱ 81,249.99 | ₱ 2,934,056.93 |
| x VAT rate | | | x 0.12 |
| **Unsupported input tax** | | | **₱ 352,086.83** |

*d. Disallowed input tax per TIN Verification – ₱522,708.17*

Respondent found that petitioner claimed input tax on purchases from non-VAT registered and unregistered taxpayer amounting to ₱522,708.17, broken down as follows:[38]

| Registered Name | Taxable Purchase | Input Tax |
|---|---|---|
| Rollstar General Contractor | ₱ 2,665,000.00 | ₱ 319,800.00 |
| Poblador Bautista and Reyes | 1,548,307.09 | 185,796.85 |
| Sampaloc Refrigeration and Airconditioning Supply | 93,500.00 | 11,220.00 |
| Kapisanan ng mga Brodkaster ng Pilipinas | 31,237.25 | 3,748.47 |
| Maui Travel and Tours | 13,392.83 | 1,607.14 |
| Shutter and Reel Photo and Video Services | 4,464.25 | 535.71 |
| **Total** | **₱ 4,355,901.42** | **₱ 522,708.17** |

More so, petitioner submitted official receipts (ORs) of the foregoing purchases of services,[39] which were examined by the ICPA. A closer scrutiny by the Court, however, shows that the two of the transactions are supported by non-VAT ORs and another transaction is not duly supported at all, to wit:

| Exhsibit No. | Registered Name | Input Tax | Remarks |
|---|---|---|---|
| "P-11-K-1" | Maui Travel and Tours | ₱ 1,607.14 | OR issued by Creatif Foire Pro, Inc. for a different transaction |
| "P-11-K-2" | Kapisanan ng mga Brodkaster ng Pilipinas | 3,748.47 | non-VAT OR |
| "P-11-K-14" | Shutter and Reel Photo and Video Services | 535.71 | non-VAT OR |
| | **Total** | **₱5,891.32** | |

Correspondingly, only input taxes in the adjusted amount of ₱5,891.32 should be disallowed. M

[38] Schedule 4, "Annex – A", Exhibit "P-6", Docket – Vol. II, pp. 634 and 641, and Exhibit "R-6-A", BIR Records, pp. 326 and 333.

[39] Exhibits "P-11-K-1" to "P-11-K-14", USB (Exhibit "P-12-b").

### e. *Overclaimed Input Tax – Source of Input per FS vs VAT Return – ₱4,256,331.32*

Respondent compared petitioner's Audited Financial Statements (AFS) with VAT returns and found an alleged overclaimed input tax of ₱4,256,331.32, as follows:[40]

| Particulars | | | Tax Base |
|---|---|---|---|
| Real Estate for sale, beg. (2013) | | | |
| Note 8 Land held for sale: | | | |
| Land | | ₱2,015,476,000.00 | |
| Development Cost | | 1,116,634,000.00 | |
| | | ₱3,132,110,000.00 | |
| Add: Reclassification | | | |
| Note 11 Investment property to land | | 1,529,752,000.00 | |
| Total | | ₱4,661,862,000.00 | |
| **Add: Purchase** | | **493,232,000.00** | ₱ 493,232,000.00 |
| Land Available for Sale | | ₱5,155,094,000.00 | |
| Less: Real Estate End | | | |
| Land | | 1,973,050,000.00 | |
| Development Cost | | 953,271,000.00 | |
| | | 2,926,321,000.00 | |
| **Cost of Real Estate Sold, net of returns** | | **₱2,228,773,000.00** | |
| **Cost of Services:** | | | |
| Technical services and project management | | ₱ 39,956,000.00 | |
| Repairs and maintenance | | 20,370,000.00 | |
| Miscellaneous | | 5,289,000.00 | 65,615,000.00 |
| **Marketing and Selling Expenses** | | | |
| Management fees | | ₱ 397,212,000.00 | |
| Marketing fees | | 72,318,000.00 | |
| | | ₱ 469,530,000.00 | |
| Per Note 16 | | | |
| Management & Marketing fees unpaid | | (368,577.00) | 469,161,423.00 |
| **General and Administrative Expenses** | | | |
| Professional fees | | ₱ 67,424,000.00 | |
| Estate Management fees | | 16,193,000.00 | |
| Director's fees | | - | |
| Utilities and water subsidy | 3,362,000.00 | | |
| Insurance | | 2,505,000.00 | |
| Communications | | 1,595,000.00 | |
| Security | 1,549,000.00 | | |
| Janitorial | 1,353,000.00 | | |
| Repairs and maintenance | | 1,274,000.00 | |
| Transportation | | 1,112,000.00 | |
| Supplies | | 507,000.00 | |

[40] Schedule 6, "Annex – A", Exhibit "P-6", Docket – Vol. II, pp. 634 and 643, and Exhibit "R-6-A", BIR Records, pp. 324 and 333.

| | | | |
|---|---|---|---|
| Entertainment, amusement and rec. | | 320,000.00 | |
| Others | | 9,943,000.00 | 100,873,000.00 |
| Additions: | | | |
| Property and Equipment | | | 12,263,000.00 |
| Investment Property | Equipment | ₱ 38,580,000.00 | |
| | Construction in progress | 3,472,819,000.00 | 3,511,399,000.00 |
| | | | ₱ 4,652,543,423.00 |
| | | | 0.12 |
| **Input tax per FS** | | | **₱558,305,210.76** |
| Less: Input tax claimed per VAT Return | | | |
| | July to December | ₱(307,949,837.86) | |
| | January to June | (258,868,035.54) | (566,817,873.41)* |
| **Overclaimed input tax - FS vs VAT Return** | | | **₱ ( 8,512,662.65)** |
| | 1st Sem | | ( 4,256,331.32) |
| | **2nd Sem** | | **₱ ( 4,256,331.32)** |

* *Should be 566,817,873.40*

Petitioner argues that the foregoing assessment is arbitrary and relies heavily on presumption and inferences, as it was quite probable that certain items in the AFS were left out by the examiners resulting in a discrepancy when compared to the VAT Returns. Petitioner continues that this is evident by respondent's examiners not considering Note 29 of petitioner's 2014 AFS, the supplemental information required by the BIR per RR No. 15-2010, which shows that petitioner's total input taxes for the year 2014 amount to ₱1,350,129,000.00.[41] Petitioner further cites the standard enunciated in the case of *Collector of Internal Revenue vs. Albert D. Benipayo*,[42] in assailing the apportionment of the amounts per periods covered by the LOA by simple division instead of actually determining which amounts pertain to which periods.

Petitioner also emphasizes the comparison made by the ICPA regarding the total input taxes per Note 29 with the quarterly VAT returns[43] and revealed the following:[44]

| Particulars | Reference | Input Tax |
|---|---|---|
| Per Quarterly VAT Returns | Annex 5-1 | ₱1,339,222,971.92 |
| Per Supplemental Information Required by the Bureau of Internal Revenue under RR No. 15-2010 in the 2014 AFS | Exhibit P-10 | 1,350,129,000.00 |
| **Discrepancy** | | **(₱ 10,906,028.08)** |

ly

41 Exhibit "P-10", Docket – Vol. II, p. 732.
42 G.R. No. L-13656, January 31, 1962.
43 Exhibits "P-9-a" to "P-9-l", Docket – Vol. II, pp. 656 to 672.
44 Exhibit "P-12", Docket – Vol. I, p. 488.

Petitioner, thus, asserts that it is apparent from the foregoing that the input taxes declared in its quarterly VAT returns exceed the amount reported in its AFS for TY 2014.

The Court agrees with petitioner.

Pursuant to Section 5(A) of the NIRC of 1997, as amended, respondent has the power to obtain information in determining the liability of any person for any internal revenue tax by examining any book, paper, record, or other data which may be relevant or material to such inquiry. This means that all of petitioner's books and records and supporting documents can and should be examined by respondent so that the deficiency tax liability determined by the audit is said to be based on facts, not on assumptions.

Herein, respondent failed to ascertain the portion of petitioner's input taxes per AFS that pertain to the period July to December 2014. This information could have been obtained by examining petitioner's records and supporting documents. However, under the assumption that petitioner's purchases are distributed equally during the year, respondent divided the amounts taken out from the AFS by two to estimate the portion pertaining to the period July to December 2014. Correspondingly, the resulting disallowance of overclaimed input taxes lacks factual basis and should be cancelled.

In view of the above disquisitions, petitioner is liable for deficiency VAT for the period July to December 2014 in the total amount of ₱423,571.08, summarized as follows:

| | | |
|---|---|---|
| Receipts subjected to VAT per VAT Returns | | ₱3,793,008,062.09 |
| Add: Adjustments/Disallowances | | |
| Undeclared Sales per SLS vs TPI | | 546,607.75 |
| | | ₱3,793,554,669.84 |
| Output tax thereon | | ₱ 455,226,560.38 |
| Less: Allowable Input Tax | | |
| Allowable Input Tax per VAT Returns | ₱315,199,435.96 | |
| Less: Disallowances/Adjustments | | |
| Disallowed Input Tax - Unsupported Input Tax per SLP vs TPI | 352,086.83 | |
| Disallowed input tax per TIN Verification | 5,891.32 | 314,841,457.81 |
| VAT Due | | ₱ 140,385,102.57 |
| Less: VAT Payments | | 139,961,531.49 |
| **Basic Deficiency Value-Added Tax** | | **₱ 423,571.08** |

In addition to the foregoing basic deficiency taxes, petitioner is also liable to a penalty of 25% surcharge imposed on the basic deficiency taxes pursuant to Section 248(A)(3) of the NIRC of 1997, as amended, which provides:

> SEC. 248. *Civil Penalties.—*
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> x x x
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; xxx.

Moreover, in accordance with Section 249(B) of the NIRC of 1997, as amended, petitioner is liable to pay deficiency interest at the rate of 20% per annum computed from the date prescribed for its payment until the full payment thereof. With the effectivity of Republic Act (R.A.) No. 10963 or the *Tax Reform for Acceleration and Inclusion (TRAIN) Law* on January 1, 2018, however, the 20% deficiency interest shall be computed until December 31, 2017 only.

Likewise, pursuant to Section 249(C) of the NIRC of 1997, as amended, petitioner is liable to pay delinquency interest at the rate of 20% (until December 31, 2017) and 12% (starting January 1, 2018) per annum computed from October 1, 2017 until full payment thereof.

In the present case, the FLD/FAN bears the date September 30, 2017 as the due date to pay the deficiency taxes. Accordingly, for the period July to December 2014, petitioner is liable to pay the aggregate amount of ₱1,031,088.50, consisting of basic deficiency VAT, surcharge, deficiency and delinquency interest computed as of March 25, 2022 as follows:

| | | |
|---|---|---|
| Basic deficiency VAT | ₱ | 423,571.08 |
| Add: 25% Surcharge | | 105,892.77 |
| 20% Deficiency Interest | | |
| (27-Jan-15[45] to 30-Sep-17) | | |
| [₱423,571.08 x 20% x (978/365days)] | | 226,987.68 |
| **Total Amount Due – September 30, 2017** | **₱** | **756,451.53** |
| 20% Deficiency Interest: | | |
| (01-Oct-17 to 31-Dec-17) | | |
| [₱423,571.08 x 20% x (92/365days)] | | 21,352.62 |
| 20% Delinquency Interest: | | |
| (01-Oct-17 to 31-Dec-17) | | |
| [₱756,683.62 x 20% x (92/365days)] | | 38,133.45 |
| **Total Amount Due – December 31, 2017** | **₱** | **815,937.60** |

[45] January 25, 2015 fell on a Sunday, thus payment due date was on January 26, 2015.

| | |
|---|---|
| 12% Delinquency Interest: | |
| (01-Jan-18 to 25-Mar-22) | |
| [₱756,451.53 x 12% x (1,545/365days)] | 215,150.90 |
| **Total Amount Due – March 25, 2022** | **₱ 1,200,173.53** |

However, since respondent already garnished petitioner's funds to satisfy the alleged deficiency tax liability per FDDA amounting to ₱28,987,923.78, and that on March 25, 2022, payment thereof was made,[46] and considering further that the garnished amount exceeds the total deficiency tax liability of petitioner, inclusive of increments, respondent should refund the amount of ₱27,956,835.28 to petitioner, computed as follows:[47]

| | |
|---|---|
| Garnished amount | ₱ 28,987,923.78 |
| Less: Deficiency VAT Liability, including increments | 1,200,173.53 |
| Amount to be refunded | **₱ 27,787,750.25** |

**ACCORDINGLY**, petitioner's *Motion for Reconsideration (of the Decision Dated May 6, 2025)* is **PARTIALLY GRANTED**. The assailed Decision dated May 6, 2025 is **REVERSED** and **SET ASIDE**. The dispositive portion of the Decision dated May 6, 2025 is, thus, amended to read as follows:

> **ACCORDINGLY**, premises considered, the *Petition for Review* is **PARTIALLY GRANTED**.
>
> Consequently, respondent's deficiency VAT assessment for the period July to December 2014 is **PARTLY UPHELD** but in the adjusted amount of **₱1,200,173.53.** Inasmuch as respondent has garnished petitioner's funds amounting to **₱28,987,923.78,** respondent should return to petitioner the amount of **₱27,787,750.25** computed as follows:

| | |
|---|---|
| Garnished amount | ₱ 28,987,923.78 |
| Less: Deficiency VAT Liability, including increments | 1,200,173.53 |
| Amount to be refunded | **₱ 27,787,750.25** |

> **SO ORDERED.**

46 Exhibits "P-23" to "P-25-b", Docket – Vol. I, p. 312 and Vol. II, pp. 734 to 735, and BIR Records (Exhibit "R-11"), pp. 631, 638, 644 to 647.

47 This is pursuant to the ruling in *Commissioner of Internal Revenue v. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals*, (G.R. No. 106611, July 21, 1994) that - "Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable."

**SO ORDERED.**

**CORAZON G. FERRER-FLORES**
Associate Justice

We Concur:

**MA. BELEN M. RINGPIS-LIBAN**
Presiding Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
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.

**MA. BELEN M. RINGPIS-LIBAN**
Presiding Justice