REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 1743
(CTA Case No. 8490)

-versus-

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

PORT BARTON DEVELOPMENT CORPORATION,
Respondent.

Promulgated:

JAN 21 2019
3:52 p.m.

x- x

D E C I S I O N

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] filed on November 8, 2017 via registered mail, seeking the reversal of the Decision dated July 20, 2017 and the Resolution dated October 19, 2017, promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 8490 entitled, *"Port Barton Development Corporation vs.*

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[1] EB Docket, pp.1-7.

Commissioner of Internal Revenue, the dispositive portions of which read as follows:

Decision dated July 20, 2017

"**WHEREFORE,** the Petition for Review filed by petitioner Port Barton Development Corporation on May 11, 2012, is hereby **PARTIALLY GRANTED**. Accordingly, the deficiency Value Added Tax assessment issued by respondent against petitioner for taxable year 2007 is **CANCELLED.** On the other hand, the deficiency Income Tax, Expanded Withholding Tax and Withholding Tax on Compensation Assessment, are **AFFIRMED WITH MODIFICATIONS.**

Petitioner is **ORDERED TO PAY** respondent the amount of **₱1,236,895.86** representing basic deficiency Income Tax, Expanded Withholding Tax, and Withholding Tax on Compensation, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	Surcharge	Total
Income Tax (MCIT)	₱ 195,067.35	₱ 48,766.84	₱ 243,834.19
Expanded Withholding Tax	31,426.98	7,856.75	39,283.73
Withholding Tax on Compensation	763,022.35	190,755.59	953,777.94
Total	**₱989,516.68**	**₱247,379.18**	**₱1,236,895.86**

In addition, petitioner is **ORDERED TO PAY**:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, expanded withholding tax and withholding tax on compensation computed from the following dates until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	Basic	Deficiency Interest computed from
Income Tax (MCIT)	₱195,067.35	15-Apr-08
Expanded Withholding Tax	₱ 31,426.98	15-Jan-08
Withholding Tax on Compensation	₱763,022.35	15-Jan-08

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,236,895.86 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from May 10, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Resolution dated October 19, 2017

"**WHEREFORE**, the Motion for Reconsideration dated August 9, 2017 filed by respondent Commissioner of Internal Revenue is **DENIED**, for lack of merit."

THE FACTS

The facts, as found by the Court in Division, are as follows:

"Petitioner is a domestic corporation with principal office at 3F Karrivin Plaza Building, 2316 Pasong Tamo Extension, Makati City.

It is registered with the Securities and Exchange Commission (SEC) with Company Registration No. AS09-00009309 and authorized to engage in "the general business of marine and pearl culture and fishing in any form with the use of any equipment, instrument, machinery, vehicle and appliance, whether deep sea, fresh water or pearl culture or inland fishing in the culture of fish in fishponds or otherwise; to acquire by purchase or lease or otherwise pearl rights, fishery rights, fishpens, fishponds and salt beds; to own, hold, improve, develop and operate any marine and pearl rights, fishery right, fishponds, fishpens, salt beds and any other form of ponds or banks for any other form of fish fry and all kinds of marine life; to acquire, operate and/or lease, own and use fishing equipment for pearl culture and for catching fish and to purchase, lease, own, and use motor boats, fish nets, trucks, vans or other equipment, materials, supplies or other parts as may be necessary for the catching, culturing of pearls or breeding of fish and other fish products; to engage in the general marine and pearl culturing, fish culturing and salt production business and in the marketing of all products thus produced; to catch, gather, store, handle, purchase and sell pearls, fish and other fish products and export the production thereof; to acquire, own, build, operate and maintain marine and pearl plants, fish meal plants, shipways, drydocks, machine and repair shops; to enter into any contract in relation thereto; maintain, alter, repair and restore works of all descriptions including warehouses, factories, engines, machineries, barges, fishing equipment and vessels necessary for the business of the corporation.

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) who has the power to authorize the examination and assessment of the correct amount of tax of any taxpayer. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 15, 2010, petitioner received from the BIR a Preliminary Assessment Notice (PAN) dated October 13, 2010 with Details of Discrepancy, assessing it for deficiency IT, VAT, EWT and WTC for taxable year 2007.

At its instance, petitioner was granted an extension of until November 14, 2010 to file its formal protest against the PAN but was required to submit on or before November 15, 2010 a duly executed Waiver of the Statute of Limitations under Sections 203 and 222 of the NIRC of 1997, as amended.

On November 15, 2010, petitioner executed its first Waiver of the Defense of Prescription and filed its protest to the PAN.

On May 9, 2011, petitioner executed its Second Waiver.

On August 17, 2011, petitioner received from respondent a Formal Assessment Notice (FAN) with Details of Discrepancies, finding it liable to pay deficiency IT, VAT, EWT and WTC for taxable year 2007.

On September 16, 2011, petitioner filed its protest to the FAN dated September 15, 2011.

On April 13, 2012, petitioner received the assailed FDDA dated April 10, 2012, directing it to either pay the assessments or elevate the matter to the Court within thirty (30) days from notice.

Hence, the instant Petition for Review filed on May 11, 2012.

In his Answer (with Motion to Dismiss) posted on July 4, 2012, respondent argues that the Petition for Review fails to state a cause of action. Allegedly, petitioner failed to show that the subject assessments lack legal and factual basis. Petitioner also failed to substantiate its self-serving allegations. And with its failure to present evidence in support of its protest in the administrative level, petitioner should no longer be heard by the Court on the matter. Moreover, the questioned assessments are legally presumed correct. On the foregoing grounds, the Petition for Review should be dismissed pursuant to Section 1(g), Rule 16 of the Rules of Court, says respondent.

On November 7, 2012, the Court denied respondent's Motion to Dismiss for lack of merit.

On September 18, 2013, the Court dismissed the case without prejudice as petitioner failed to submit the judicial affidavits of its witnesses at least five (5) days before the scheduled pre-trial conference as ordered by the Court.

On December 4, 2013, the Court granted petitioner's Motion for Reconsideration and accordingly reinstated the case.

After pre-trial, petitioner presented its witnesses namely: 1) Roberto B. Bidana, 2) Lourdes B. Pantola and 3) Emmanuel Mendoza.

Petitioner's General Manager, Roberto B. Bidana, testified that as part of his duties to supervise petitioner's operational and financial matters, he regularly meets with its personnel-in-charge of finance and tax matters.

He further testified that upon receipt of the PAN dated October 13, 2010, petitioner immediately engaged the services of counsel for the preparation of its formal protest to the PAN. Within the extended period granted, or on November 15, 2010, petitioner filed its protest to the PAN which the BIR Revenue Region No. 8 received on the same day.

The PAN was followed by the FAN dated August 17, 2011, to which petitioner filed a protest on September 16, 2011. Thereafter, it received the assailed FDDA dated April 10, 2012. Hence, the present action filed on May 11, 2012.

The witness further declared that petitioner is engaged in the business of farming, harvesting, sales and exportation of pearls produced from its farm located at the Municipality of San Vicente, Province of Palawan. Petitioner exports 100% of its pearls directly to buyers in Hongkong and Japan, hence, the sales are subject to zero percent (0%) VAT. To prove such 0% VAT export sales, petitioner submitted to the BIR its sales invoices issued to its buyers, airway bills, export declarations and the BPAD of the Bureau of Fisheries and Aquatic Resources. He stressed that although the pearls farmed and harvested by petitioner are 100% exported, he could not present any document showing the actual number of pearls produced from the farm. But he is certain that petitioner has an inventory of the pearls and only those determined to be valuable are recorded and sold while those not valuable are thrown away.

Witness Lourdes B. Pantola declared that as an Accountant of Valley Sports Corporation and Naglayan Incorporated, which basically have the same stockholders as petitioner, she is assigned to supervise petitioner's bookkeeping and accounting, and tax compliance. Petitioner is registered with the BIR. It timely files its tax returns and pays the corresponding taxes.

In this case, petitioner seeks the cancellation and/or withdrawal of respondent's FDDA dated April 10 2010 in the amount of P13,348,339.64.

She believes that petitioner is not liable to pay any deficiency taxes as the BIR examiners neither conducted any field investigation nor validated their report against the source documents, i.e., official receipts, invoices, books of accounts, withholding tax certificates and adjusting entries. Therefore, the subject assessments are void as they have no factual basis.

For the income tax assessment, the BIR, in violation of petitioner's right to due process, did not explain the legal basis of the 50% sharing or disallowance of the selected expenses even with her presentation of the Schedules with receipts and invoices to account for the corresponding expenses. On the other hand, the Rental Expense is supported by the official receipts issued by the Office of the Municipal Treasurer and is not subject to withholding tax under Section 2.57.5 of Revenue Regulation No. 02-98. Petitioner is also not liable to pay the alleged undeclared sales of P158,186.56 as the said amount corresponds to freight charges for the account of the foreign buyers.

Anent the deficiency assessment for EWT, the witness refuted the BIR's contention that petitioner is on the BIR list of top 10,000 corporations for it did not receive any notice to that effect. Nonetheless, she prepared a Schedule of EWT enumerating the transactions which were subjected to EWT. Moreover, petitioner voluntarily paid the deficiency tax assessment on Professional and Brokerage Fees of P4,474.60 as evidenced by Payment Form 0605 received by BIR Revenue Region No. 8 on October 14, 2011, which amount is still included in the questioned assessments.

Further, the witness believed that petitioner is not liable to pay the alleged deficiency VAT assessment since it s a 100% exporter and therefore its sales are zero-rated. On this regard, she prepared the Schedule of Export Sales summarizing petitioner's export sales for 2007, and presented it together with Certificates of Inward Remittances, Certification from BPI and a Certification from the Philippine Exporters Confederation, Inc. dated July 23, 2013, to the effect that the Export Declarations were processed at the One-Stop Documentation Center (OSEDC)- Manila for 2007.

Petitioner is likewise not liable for deficiency WTC on the following grounds: 1) it hires local itinerant workers; 2) it has employees with income not exceeding P60,000.00 per annum, hence are not subject to withholding tax; 3) the salaries of employees terminated before December 31 were already subjected to withholding tax; 4) it has employees with no previous employer during the year whose compensation income was still subjected to personal exemption; 5) its employees with previous employers during the year and were already subjected to withholding tax by their previous employers were proportionately subjected to withholding tax. In any event, petitioner submitted all the relevant documents together with its protest letter to the BIR.

Finally, the witness admitted that petitioner did not secure any BIR Ruling that its pearl exports and sales are subject to 0% VAT based on Section 106 of the NIRC of 1997, as amended. Aside from the fact that petitioner exports all its pearls, as evidenced by the corresponding export documents, petitioner does not have any proof that 100% of the pearls produced are actually exported, to justify the claim that it is 100% VAT free.

Court-commissioned Independent Certified Public Accountant (ICPA) Emmanuel V. Mendoza testified that he examined and verified the documents in relation to petitioner's prayer for cancellation of the deficiency IT, VAT, EWT and WTC assessments for 2007 in the total amount of P13,348,339.64.

In his ICPA Report dated November 19, 2014, he indicated that out of P19,374,885.72, representing 50% of petitioner's total cost of sales disallowed by respondent, only P9,993,868.38 total cost of sales is unsupported, hence should be paid by petitioner. With respect to petitioner's alleged total undeclared sales in the total amount of P158,186.56, P59,833.92 is supported by invoices while P98, 352.64 is unaccounted.

Xxx xxx xxx

By virtue of LOA No. 00043432 dated June 23, 2008 issued by respondent, she conducted an investigation relative to petitioner's internal revenue tax liabilities for taxable year 2007. She served the said LOA to petitioner and requested for its presentation of accounting records for verification and examination. She also prepared a Post Reporting Notice, and Amended Post Reporting Notice and Memorandum Report, all containing her findings on the deficiency tax assessed against petitioner.

On October 15, 2010, she served a copy of the PAN dated October 13, 2010 with Details of Discrepancies to petitioner informing it of its deficiency IT of P290,011.06, deficiency VAT of P9,418,167.10, deficiency EWT of P222,176.24 and deficiency WTC of P1,426,555.67.

In its Reply-letter dated November 15,2010, petitioner asked and was granted a reinvestigation of its case after it executed a Waiver of the Defense of Prescription on November 25, 2010 and May 9, 2011. Thereafter, she prepared a Memorandum Report dated June 24, 2011 finding petitioner liable for deficiency IT in the amount of P320,125.87, VAT in the amount of P10,237,700.03, EWT in the amount of P240,658.44 and WTC in the amount of P1,365518.75 for taxable year 2007.

The witness further testified that on August 17, 2011, she served to petitioner a copy of the FAN with Details of Discrepancies, informing it that it is liable for deficiency IT in the amount of P329,209.56, VAT in the amount of P10,519,256.20, EWT in the amount of P247,287.07 and WTC in the amount of P1,325,777.46 for taxable year 2007.

RO Nonito A. Divino testified that he has been with RDO No. 48-West Makati since May 2008. On the strength of a Memorandum of Assignment dated October 26, 2011 issued by respondent pursuant to LOA No. 00043432 dated June 23, 2008, he conducted petitioner's requested reinvestigation of its internal revenue taxes for taxable year 2007. Thereafter, he prepared a Memorandum Report.

On April 13, 2013, he served to petitioner a copy of the FDDA dated April 10, 2010 with Details of Discrepancies informing it of its liability for deficiency IT in the amount of P354,541.59, VAT in the amount of P1,424,865.85 for taxable year 2007.

RO Divino further testified that the case was assigned to him after petitioner protested the FAN. He affirmed the findings of the first reviewing RO since petitioner failed to submit supporting documents pertaining to the 50% disallowance of expenses indicated in its protest, despite his clear request.

After the parties filed their respective memoranda, the case was submitted for decision on July 21, 2016.

In the assailed Decision[2], promulgated on July 20, 2017, the Court in Division partially granted the Petition for Review and consequently cancelled the assessment for VAT deficiencies for taxable year 2007 and modified the assessments for income tax, expanded withholding taxes and withholding tax on compensation for the same taxable year.

Aggrieved, herein petitioner Commissioner of Internal Revenue filed on August 9, 2017, a Motion for Reconsideration, which was denied by the Court in a Resolution dated October 19, 2017.

On November 8, 2017, petitioner filed a Petition for Review with the Court *En Banc.*

On December 13, 2017, the Court issued a Resolution ordering respondent to file its Comment on the Petition for Review within ten (10) days from receipt thereof, after which the parties were directed to submit their respective memoranda.

The respondent failed to file its Comment to the Petition for Review which prompted the Court *En Banc* to submit this case for decision on March 14, 2018.[3]

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[2] EB Docket, pp.12-46.
[3] Resolution of the Court *En Banc* dated March 14, 2018, EB Docket, pp. 64-65. *cn*

Hence this Decision.

THE ISSUE

Based on this Court's analysis of the averments in the Petition for Review, the sole issue for our determination is as follows:

> Whether or not herein respondent is liable to pay the assessed Value-Added Tax for taxable year 2007.

Petitioner's Arguments:

Petitioner focuses its opposition to the portion of the assailed Decision which cancelled the VAT assessment for taxable year 2007 which he insists must be upheld by the Court *En Banc* contrary to the position of the Court in Division. Petitioner maintains that respondent failed to submit proof of its claimed export sales in the amount of Php50,452,491.96, hence such sales should be subjected to VAT. Petitioner avers that the quarterly VAT returns of respondent failed to identify the type and nature of its sales transactions as can be seen from the unfilled portions of "Line 17" of its VAT returns contravening the position of respondent that it generated zero-rated sales transactions in taxable year 2007. Further, petitioner argues that in order for the export sales to qualify as zero-rated, there must be a sale and actual shipment of goods from the Philippines to a foreign country and that aside from the sales invoices, export declarations issued by the Department of Trade and Industry (DTI) and other documents, respondent should have presented documents to prove that the cultured pearls were indeed received by the consignee.

Petitioner further contends that the alleged input tax carried over and claimed by respondent in the total amount of Php2,078,103.96 should have been properly substantiated. In the instant case, petitioner claims that the input tax was deducted outright against the output VAT liability of respondent without any evidence or proof that it has complied with the substantiation requirements.

Lastly, petitioner cites the oft-repeated principle that assessments are *prima facie* presumed correct and made in good faith and that the taxpayer has the duty of proving otherwise.

Respondent no longer filed any Comment nor Memorandum to rebut the arguments propounded by the petitioner in its Petition for Review with the Court *En Banc.*

RULING OF THE COURT EN BANC

We shall first resolve the timeliness of the filing of the Petition for Review with the Court *En Banc.*

On July 25, 2017, petitioner CIR received a copy of the Decision of the Court in Division dated July 20, 2018.

On August 9, 2017, petitioner CIR filed a Motion for Reconsideration of the said Decision.

On October 19, 2017, the Court issued the assailed Resolution denying petitioner CIR's Motion for Reconsideration. Said Resolution was received by petitioner CIR on October 24, 2017. From receipt of the said Resolution of the Court, petitioner CIR had fifteen (15) days within which to file his Petition for Review with the Court *En Banc.*

On November 8, 2017, petitioner filed its Petition for Review with the Court *En Banc* which is within fifteen (15) days from receipt of the Court's Resolution denying his Motion for Reconsideration, hence said Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

Petitioner's main argument is respondent's lack of substantive evidence to prove its zero-rated sales for taxable year 2007 in the total amount of P50,452,491.96, hence the recorded sales were correctly subjected to VAT. Also, petitioner challenges the ruling of the Court in Division when it allowed the outright deduction of the input tax against the output VAT liability of respondent without a determination on whether the latter has complied with the substantiation requirements to prove the existence and amount of the input VAT.

We find no merit in the Petition for Review.

The law and its implementing regulations coupled with relevant jurisprudence are clear cut as regards the requirements to prove VAT zero-rated sales.

Section 106(A)(2)(a)(1) of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* –
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* – The term *'export sales'* means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Based on the afore-quoted provision of Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended, in order for an export sale to qualify as zero-rated, the following conditions must be present:

1. that there was sale and actual shipment of goods from the Philippines to a foreign country;
2. that the sale was made by a VAT-registered person;
3. that the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. that the payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary thereto, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, as implemented by Sections 4.113-

1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, provide that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*
>
> "SEC. 4.113-1. ***Invoicing Requirements***. –
>
> (A) **A VAT-registered person shall issue:** –
>
> (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
>
> xxx xxx xxx

> Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.
>
> VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.
>
> **(B) Information contained in VAT invoice or VAT official receipt**. – The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

Pursuant to the foregoing provisions of Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended, in relation to Sections 113(A)(1), (B)(1) and (2)(c) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit:

1. sales invoice as proof of sale of goods;
2. export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Based on the foregoing, only export sales supported by the aforementioned documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Further, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

It is worthy to note that the un-filled portions of "Line 17" of the Quarterly VAT returns of respondent are insignificant insofar as proving the fact that respondent generated export sales in 2007. From the above discussion, it is clear that there are specific documentary requirements to prove the fact that the taxpayer generated export sales and filling up "Line 17" in the quarterly VAT returns is not one of the said conditions, hence it cannot be a basis for concluding that no export sales have been made by herein respondent.

In the assailed Decision dated July 20, 2017, the Court in Division found that petitioner offered in evidence sales invoices, export declarations issued by the Department of Trade and Industry (DTI), clearance certificates from the Bureau of Fisheries and Aquatic Resources (BFAR), airway bills, and certificates of inward remittances, detailed as follows:

Sales Invoice	Export Declaration	Commodity Clearance	Air Waybill	Certificate of Inward Remittance	Sales (US$)	Exchange Rate	Peso Value
P-305	P-314	P-323	P-332	P-341	195,000.00	48.18	9,395,100.00
P-306	P-315	P-324	P-333	P-341	106,075.58	48.15	5,107,539.18
P-307	P-316	P-325	P-334	P-341	53,869.00	45.93	2,474,203.17
P-308	P-317	P-326	P-335	P-341	54,438.31	44.80	2,438,836.29
P-309	P-318	P-327	P-336	P-342	230,000.00	45.31	10,421,300.00
P-310	P-319	P-328	P-337	P-341	27,794.70	46.20	1,284,115.14
P-311	P-320	P-329	P-338		136,030.27	43.13	5,866,985.55
P-312	P-321	P-330	P-339	P-342	161,195.25	43.90	7,076,471.48
P-313	P-322	P-331	P-340	P-342	136,710.00	41.50	5,673,465.00
TOTAL					**1,101,113.11**		**49,738,015.81**

In its appreciation of the evidence offered by respondent to prove its export sales, the Court in Division made the following observations, and we quote:

> "A close scrutiny of the above documents reveals that **petitioner's cultured pearls were indeed sold and shipped abroad, except for the purported sales amounting to US$195,000.00 with peso equivalent of ₱9,395,100.00, as**

> **the sales invoice supporting the same was not imprinted with the word "zero-rated sales", and the amount of US$136,030.27 with peso equivalent of ₱5,866,985.55 as no record would show that petitioner was indeed paid in foreign currency which was duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas.***
>
> "As such, only the amount of US$770,082.84 with peso equivalent of ₱34,475,930.26 [₱49,738,015.81 - (₱9,395,100.00 + ₱5,866,985.55)] properly falls within the export sales transactions subject to zero percent VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, while the amount of ₱15,262,085.55 shall be subjected to 12% VAT."(emphasis supplied)

As regards the sale of dead shells in the amount of P704,497.89 which was not subjected by respondent to VAT based on its theory that said transaction is exempt because it represents agricultural and marine products in its original state, we agree with the Court in Division that it is not exempt and should have been subjected to VAT. We quote, with approval, the ruling of the Court in Division, thus:

> "The type of agricultural and marine products which the law exempts from VAT are "food products" as clearly stated in Section 109(1)(A) of the Tax Code, to wit:
>
>> "SEC. 109. *Exempt Transactions.* – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>>
>> (A) **Sale or importation of agricultural and marine <u>food products</u> in their original state**, livestock and poultry of a kind generally used as, or yielding or producing foods **for human consumption**; and breeding stock and genetic materials therefor.
>>
>> Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, raw cane sugar and molasses, ordinary salt, and copra shall be considered in their original state;" (*Emphasis and underscoring supplied*)
>
> Further, as clarified under Section 4.109-1(B)(1)(a) of RR No. 16-2005, marine food products shall include fish and crustaceans, such as, but not limited to, eels, trout, lobster, shrimps, prawns, oysters, mussels and clams.

Clearly, dead shells cannot be considered marine food products exempted from the imposition of VAT. As such, the assessment shall be sustained."

Still related to the alleged VAT deficiency of respondent is the finding of petitioner that the former has undeclared sales in the total amount of P158,186,56 which was sustained by the Court in Division and declared the same to be subject to VAT. However, in spite of the VAT liabilities of respondent as found by the Court in Division, the VAT assessment for taxable year 2007 was nevertheless cancelled because respondent had sufficient VAT credits to cover its VAT output VAT liability for taxable year 2007. We again quote the relevant portions of the assailed Decision:

" C. Disallowed Excess Input Tax to be Carried Over to the Next Period - ₱2,078,103.96

Respondent deducted petitioner's excess input tax which it carried over to succeeding quarters from its total creditable input tax explaining that the said amount has been credited against the estimated quarterly tax liabilities for the taxable quarter of the succeeding taxable years as provided under Section 110(B) of 1997 NIRC, as amended.

It must be stressed that it is improper for respondent to disallow the said excess input tax given that any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2008. Since the tax benefit would be in the succeeding year, assessment should be made in the succeeding year.

In view of the foregoing, **the Court finds that petitioner has no deficiency VAT liability for taxable year 2007 since it has sufficient tax credits to cover its output VAT liability for the same year,** computed as follows:

Sales subjected to VAT		₱ -
Add/(Deduct) adjustments		
Sales not Subjected to VAT	₱15,976,561.70	
Undeclared Sales	158,186.56	16,134,748.26
Total Sales subject to VAT		**₱16,134,748.26**
Output tax		₱ 1,936,169.79
Less: Input Tax Carry Over	₱ 1,951,552.96	
Input Tax Claimed	126,551.00	2,078,103.96

Excess Input Tax		**₱ (141,934.17)**

> Accordingly, respondent's deficiency VAT assessment should be cancelled." (emphasis supplied)

As regards petitioner's contention that the Court erred in outrightly deducting the input tax against the output VAT liability without requiring respondent to substantiate the said input tax, we find this without merit and even contradictory to his findings in the administrative level.

We look back at the records of the case.

In the Formal Assessment Notice issued by petitioner with Details of Discrepancies[4] and attached as Annexes to the Final Decision on Disputed Assessment (FDDA)[5], respondent clearly admits the existence of said input tax and precisely puts into issue the fact that respondent carried over this excess input tax to the next quarter, and we quote:

DETAILS OF DISCREPANCIES

xxx xxx xxx

> "Excess Input Tax carried over to the next quarter, P2,078,103.96 – **Excess input tax carried over to the succeeding quarters was deducted from total creditable input tax considering that said amount has been credited against the estimated quarterly tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 110 (9) (B) of the 1997 NIRC."** (emphasis supplied)

xxx xxx xxx

To now dispute the existence of the excess input tax at the *En Banc* level and claim that it is unsubstantiated is to skirt around the issue and contradict earlier statements which herein petitioner used to form a conclusion that respondent has VAT liabilities for taxable year 2007. It must be recalled that one of the issues resolved by petitioner in the administrative level and appealed to the judicial level (Court in Division) is whether or not respondent rightfully deducted its generated

[4] Exhibit "P-5", Court Docket, Volume I, pp. 254-262.
[5] Exhibit "P-6", Court Docket, Volume I ,pp.263-267.

input tax in 2007 to its output VAT liability for that same year and this was clear in the Details of Discrepancies which accompanied the Assessment Notices issued against the taxpayer. It was obvious that petitioner admitted the existence of the input tax, otherwise it could not have completed its theory that respondent had VAT deficiencies in 2007. Petitioner cannot now turn around and say that the input tax was not properly substantiated after the Court in Division allowed the excess input tax to be applied against the output tax for that same year. Surely, respondent in the Division level could not have submitted evidence to prove the existence and amount of the input tax, precisely because it was never put in issue.

It must be pointed out that this case is not a claim for refund of excess input tax but an assessment case where the taxpayer (herein respondent) is obligated to rebut the findings of the Commissioner of Internal Revenue (herein petitioner) as embodied in the FDDA upholding the Assessment Notices and Details of Discrepancies issued, otherwise it runs the risk of paying the amount assessed. It would be unfair to require the taxpayer to prove the existence of the input tax which was already admitted by the Commissioner of Internal Revenue who used its existence to prop up his findings of VAT deficiency.

The above conclusions of the Court in Division as regards the VAT assessment are duly supported by the evidence on record and based on the relevant provisions of law and prevailing jurisprudence, thus we find no justifiable reason to reverse nor modify its findings embodied in the assailed Decision dated July 20, 2017.

As regards, the other taxes covered by the subject assessments, we take note of the fact that petitioner no longer disputed the findings of the Court in Division but we would like to take note that these are likewise solidly backed up by the evidence presented during trial in the Division level.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated July 20, 2017 rendered by the Third Division of this Court in CTA Case No.

8490, and its Resolution dated October 19, 2017, are hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS -LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice