REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

<u>*Second Division*</u>

EBAR ABSTRACTING COMPANY INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10681

Members:

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

Promulgated:
JAN 15 2025 1:10 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The petitioner prays to the Court that the instant *Petition for Review* be given due course, and that after due proceedings an Order be issued cancelling and setting aside the assessments contained in the *Final Decision on Disputed Assessment* ("FDDA") dated June 21, 2021.[1]

The Facts

Petitioner Ebar Abstracting Company, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue ("BIR"), under Taxpayer Identification Number 218-765-846-000,[3] with address at 3/F The Exchange

1 Statement of the Case, Pre-Trial Order dated May 19, 2023, Docket – Vol. 4, p. 1966.
2 Exhibit "P-2", Docket – Vol. 4, pp. 1994 to 2002.
3 Par. 7, Stipulated Facts, *Joint Stipulation of Facts and Issue* (JSFI), Docket – Vol. 4, p. 1938.

corner Bldg. 107 V.A. Rufino St cor. Esteban St. Legaspi Village, San Lorenzo, City of Makati.[4]

Respondent Commissioner of Internal Revenue is an officer/Chief of the BIR charged with, among other powers and duties, the responsibility of assessing/collecting all national internal revenue taxes, act on and approve claims for refund and/or tax credits as provided by law.[5]

On November 03, 2016, petitioner received the *Letter of Authority* ("LOA") SN: eLA201200033199 dated October 26, 2016,[6] authorizing Revenue Officer ("RO") Lilia Macatbar under Group Supervisor ("GS") Marivel Bello, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 01, 2015 to December 31, 2015.

Thereafter, on October 03, 2017, petitioner received the *Preliminary Assessment Notice* ("PAN") dated September 29, 2017, with *Details of Discrepancies*.[7]

On November 17, 2017, petitioner received the *Formal Assessment Notice* ("FAN") dated November 08, 2017, with *Details of Discrepancies and Assessment Notices*,[8] for deficiency income tax and value added tax ("VAT"), for taxable year 2015, in the respective amounts of Php10,132,218.93 and Php43,367,270.90, including interests.

Subsequently, on December 13, 2017, petitioner filed its letter of even date *(Subject: Request for Re-investigation on Final Assessment Notice duly received on November 17, 2017, covered by Letter of Authority eLA201200033199)*.[9] On February 09, 2018, petitioner filed its letter of even date *(Subject: Supplemental Letter and Submission of Additional Documents on the Request for Re-investigation On Final Assessment Notice duly submitted on December 13, 2017)*.[10]

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4 Exhibit "P-3", Docket – Vol. I, p. 50.
5 Par. 1, Stipulated Facts, JSFI, Docket – Vol. 4, p. 1937.
6 Par. 3, Stipulated Facts, JSFI, Docket – Vol. 4, p. 1937; Exhibits "P-4" "R-1", "R-1-1", "R-1-2" and "R-2", BIR Records (Exhibit "R-18"), pp. 1 to 2.
7 Par. 4, Stipulated Facts, JSFI, Docket – Vol. 4, p. 1937; Exhibits "P-5" and "R-4", "R-4-1" and "R-5", BIR Records (Exhibit "R-18"), pp. 344 to 347.
8 Par. 5, Stipulated Facts, JSFI, Docket – Vol. 4, pp. 1937 to 1938; Exhibit "P-6", Docket – Vol. I, pp. 57 to 62; and Exhibits "R-7", "R-7-1", "R-8", "R-8-1", "R-9", "R-9-1", "R-10" and "R-10-1", BIR Records (Exhibit "R-18"), pp. 357 to 362.
9 Exhibit "P-7", Docket – Vol. I, pp. 63 to 84.
10 Exhibits "P-8" and "P-8-1", Docket – Vol. 4, pp. 2003 to 2009.

On July 27, 2021, petitioner received the assailed FDDA dated June 21, 2021,[11] which adjusted its deficiency income tax and VAT for taxable year 2015 in the amounts of Php2,506,192.90 and Php52,419,196.96, respectively, both inclusive of interests.

Petitioner filed the present *Petition for Review* on November 19, 2021.[12]

Subsequently, petitioner filed its *Urgent Motion to Suspend Collection of Alleged Deficiency Taxes* on April 12, 2022.[13]

Within the period granted by the Court,[14] respondent posted his *Answer (With Affirmative Defenses)* on June 10, 2022,[15] interposing the following special and affirmative defenses, to wit: (1) this Court has no jurisdiction over the subject matter of this case as it was filed beyond the thirty (30)-day period to appeal the decision of respondent as prescribed by law; (2) the deficiency income tax and VAT assessments issued against petitioner are supported with factual and legal bases, hence valid; (3) petitioner failed to strictly comply with the invoicing requirements; (4) petitioner failed to provide sufficient and/or conclusive evidence to show that Innodata, Inc. and Pactera Technologies NA, Inc. are not doing business in the Philippines; and (5) petitioner should be held liable to pay the assessed deficiency income tax and VAT.

On July 01, 2022, respondent submitted the *BIR Records* for this case consisting of 598 pages contained in one (1) folder.[16]

In the Resolution dated August 03, 2022,[17] the Court: (1) granted petitioner's *Urgent Motion to Suspend Collection of Alleged Deficiency Taxes*, thereby suspending the collection of taxes, subject to the posting of a cash or surety bond, within ten (10) days from receipt thereof; and (2) lifted the *Warrant of Garnishment*.

On September 06, 2022, petitioner filed its *Motion to Refer Case to Mediation*,[18] which was granted in the Resolution dated September 15, 2022.[19]

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[11] Par. 6, Stipulated Facts, JSFI, Docket – Vol. 4, p. 1938; and Exhibits "P-9" and "R-12", BIR Records (Exhibit "R-18"), pp. 475 to 478.
[12] Docket – Vol. I, pp. 1 to 24.
[13] Docket – Vol. I, pp. 347 to 358.
[14] *Motion for Extension of Time to File Answer* dated May 10, 2022, and Resolution dated June 1, 2022, Docket – Vol. I, pp. 506 to 509, and 513, respectively.
[15] Docket – Vol. I, pp. 514 to 537.
[16] *Compliance* dated July 1, 2022, Docket – Vol. I, pp. 593 and 595.
[17] Docket – Vol. I, pp. 597 to 601.
[18] Docket – Vol. 4, pp. 1887 to 1890.
[19] Docket – Vol. 4, p. 1892.

Considering that the parties failed to reach an agreement before the Philippine Mediation Center Unit – Court of Tax Appeals (PMC-CTA) in view of the *No Agreement to Mediate* submitted on December 05, 2022,[20] the Court set the Pre-Trial Conference on March 14, 2023 in the Resolution dated December 15, 2022.[21] The said Conference proceeded as scheduled.[22]

In the Resolution dated February 02, 2023,[23] the Court set aside the Resolution dated August 03, 2022, and the suspension of collection of taxes and lifting of the *Warrant of Garnishment* in view of petitioner's failure to post the cash bond.

In the meantime, petitioner filed its *Pre-Trial Brief* on March 08, 2023,[24] while respondent submitted his *Pre-Trial Brief* on March 09, 2023.[25]

On April 12, 2023, the parties submitted their *Joint Stipulation of Facts and Issue*,[26] which was admitted and approved by the Court per the Minute Resolution dated April 20, 2023,[27] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated May 19, 2023 was then issued.[28]

On May 17, 2023, petitioner filed its *Manifestation and Motion*,[29] stating that it paid the total deficiency tax assessment for income tax, including surcharge, interest, and compromise penalty, in the aggregate mount of Php3,723,966.24, and filed the corresponding tax return, thereby praying that the same be noted, and that the deficiency tax assessment for income tax be dropped as an issue in this case. The same was granted at the hearing held on May 23, 2023.[30]

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

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20 Docket – Vol. 4, p. 1896.
21 Docket – Vol. 4, pp. 1898 to 1899.
22 Minutes of the hearing held on, and Order, dated March 14, 2023, Docket – Vol. 4, pp. 1923, and 1927 to 1928.
23 Docket – Vol. 4, p. 1902.
24 Docket – Vol. 4, pp. 1903 to 1909.
25 Docket – Vol. 4, pp. 1910 to 1920.
26 Docket – Vol. 4, pp. 1937 to 1947.
27 Docket – Vol. 4, p. 1951.
28 Docket – Vol. 4, pp. 1966 to 1974.
29 Docket – Vol. 4, pp. 1957 to 1959.
30 Minutes of the hearing held on, and Order dated, May 23, 2023, Docket – Vol. 4, pp. 1975 and 2088 to 2089, respectively.

Petitioner offered the testimonies of the following witnesses: (1) Mr. Eugenmar P. Morales,[31] Senior Manager of petitioner's Tax Compliance Group; and (2) Ms. Marissa Espeneli,[32] the Interim Chief Financial Officer of Innodata, Inc.

On June 02, 2023, petitioner filed its *Formal Offer of Documentary Exhibits*,[33] to which respondent filed his *Comment/Opposition (To Petitioner's Formal Offer of Evidence dated 1 June 2023)* on June 20, 2023.[34] In the Resolution dated July 13, 2023,[35] the Court admitted all of petitioner's offered exhibits.

For his part, respondent presented the testimony of ROs Tara P. Areopagita[36] and Marivel Bello.[37]

On October 27, 2023, respondent filed *via* accredited courier his *Formal Offer of Evidence*,[38] to which petitioner filed its *Comments/Objections (To the Respondents' Formal Offer of Evidence)* on November 7, 2023.[39] In the Resolution dated January 16, 2024,[40] the Court admitted all of respondent's offered exhibits.

Memorandum (For petitioner EBAR Abstracting Company, Inc.) was submitted on February 20, 2024,[41] while respondent's *Memorandum* was filed via accredited courier on February 21, 2024.[42]

The present case was considered submitted for decision on February 27, 2024.[43]

The Issue

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31 Exhibit "P-1", Docket – Vol. I, pp. 27 to 39; and Minutes of the hearing held on, and Order dated, May 23, 2023, Docket – Vol. 4, pp. 1975 and 2088 to 2089, respectively.
32 Minutes of the hearing held on, and Order dated, May 23, 2023, Docket – Vol. 4, pp. 1975 and 2088 to 2089, respectively.
33 Docket – Vol. 4, pp. 1978 to 1993.
34 Docket – Vol. 4, pp. 2091 to 2094.
35 Docket – Vol. 4, pp. 2098 to 2099.
36 Exhibit "R-17", Docket – Vol. I, pp. 581 to 587; and Minutes of the hearing held on, and Order dated, September 28, 2023, Docket – Vol. 4, pp. 2143 to 2144.
37 Exhibit "R-13", Docket – Vol. 4, pp. 2106 to 2119; and Minutes of the hearing held on, and Order dated, September 28, 2023, Docket – Vol. 4, pp. 2143 to 2144.
38 Docket – Vol. 4, pp. 2145 to 2153.
39 Docket – Vol. 4, pp. 2156 to 2163.
40 Docket – Vol. 4, p. 2166.
41 Docket – Vol. 4, pp. 2167 to 2193.
42 Docket – Vol. 4, pp. 2208 to 2228.
43 Minute Resolution dated February 27, 2024, Docket – Vol. 4, p. 2231.

The parties submitted the following issues for this Court's resolution as follows:

> "1. Whether or not the Court has jurisdiction over the case.
>
> 2. Whether or not petitioner is liable to pay the deficiency income tax, and value added tax for taxable year 2015 in the amount of Fifty-Four Million, Nine Hundred Twenty-Five Thousand, Three Hundred Eighty-Nine Pesos and 86/100 (Php54,925,389.86), inclusive of penalty and interest."[44]

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the *Petition for Review* filed on November 19, 2021; and that petitioner is not liable for deficiency tax assessment for VAT, including interest and penalty amounting to Php52,419,196.96.

Respondent's counter-arguments:

Respondent contends that the instant *Petition* was filed beyond the thirty (30)-day reglementary period to appeal the decision of respondent, hence, the Court has no jurisdiction over the instant case; that petitioner is liable for deficiency VAT for taxable year 2015 amounting to Php52,419,196.96; that petitioner failed to strictly comply with the invoicing requirements; and that petitioner failed to provide sufficient and/or conclusive evidence to show that Innodata, Inc. and Pactera Technologies NA, Inc. are not doing business in the Philippines.

Discussion/Ruling

The present *Petition for Review* is partially meritorious.

At the outset, it must be stated that considering that petitioner already paid the subject income tax assessment, including interest and compromise penalty, in the amount of Php3,723,966.24,[45] and since its prayer that the said assessment be dropped as an issue in this case was granted by this Court, the

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[44] Stipulated Issues, Pre-Trial Order dated May 19, 2023, Docket – Vol. 4, at p. 1967-1968.

[45] Petitioner paid the subject income tax assessment, including interest and compromise penalty, in the amount of Php3,723,966.24. (Refer to petitioner's *Manifestation and Motion* filed on May 17, 2023, Docket – Vol. 4, pp. 1957 to 1964; and Minutes of the hearing held on, and Order dated, May 23, 2023, Docket – Vol. 4, pp. 1975, and 2088 to 2089, respectively.)

following discussion shall only pertain to respondent's assessment for deficiency VAT.[46]

The Court has jurisdiction over the present case.

Respondent argues that the Court has no jurisdiction over the present case as the *Petition for Review* was filed only on November 19, 2021, or beyond the thirty (30)-day reglementary period, to appeal the decision of respondent. He contends that from date of receipt of FDDA on July 27, 2021, petitioner had until August 26, 2021, within which to appeal before the Court.

The Court does not agree.

Sections 7(a)(1) and (2), and 11 of Republic Act ("RA") No. 1125,[47] as amended by RA No. 9282,[48] confers jurisdiction to this Court relative to decisions and inactions of respondent, and states the manner of appealing the same, respectively, to wit:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other

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[46] Docket – Vol. 4, pp. 1957 to 1964; and Minutes of the hearing held on, and Order dated, May 23, 2023, Docket – Vol. 4, pp. 1975 and 2088 to 2089.

[47] An Act Creating The Court Of Tax Appeals, June 16, 1954.

[48] 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, March 30 2004.

laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;"[49]

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction of the Commissioner of Internal Revenue...may file an appeal with the CTA **within thirty (30) days after the receipt of such decision** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[50]

Based on the foregoing provisions, this Court has appellate jurisdiction over decisions, rulings or inactions of respondent. The appeal must be filed within thirty (30) days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

In this case, petitioner received the FDDA dated June 21, 2021 on July 27, 2021.[51] Hence, it has indeed until August 26, 2021 within which to file its *Petition for Review.*

However, the Supreme Court issued the following administrative circulars ordering the physical closure of courts and extending the filing of petitions and appeals, complaints, motions, pleadings, and court submissions in the National Capital Judicial Region and nearby provinces due to the surge of Covid-19 cases, *viz.*:

Administrative Circular (AC) No.	**Date Issued**	**Subject Matter/Content**
AC No. 56-2021	July 30, 2021	Re: Court Operations on 2-20 August 2021 "The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court."
OCA Circular No. 114-2021	August 20, 2021	**Re: Court Operations Starting 23 August 2021**

49 *Emphasis supplied.*
50 *Emphasis supplied.*
51 Par. 6, Stipulated Facts, JSFI, Docket – Vol. 4, p. 1938; and Exhibits "P-9" and "R-12", BIR Records (Exhibit "R-18"), pp. 475 to 478.

		"The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court."
OCA Circular No. 117-2021	August 28, 2021	**Re: Reiteration of OCA Circular No. 114-2021, Dated 20 August 2021** "The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court."
OCA Circular No. 119-2021	September 07, 2021	**Re: Court Operations Beginning 8 September 2021** "The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court, unless otherwise expressly ordered by the relevant court which shall consider the physical closure of the courts and the granular lockdowns."
AC No. 72-2021	September 15, 2021	**Re: Court Operations Beginning 16 September 2021** "The time for filing and service of pleadings and motions during this period is **REMAINS SUSPENDED** and shall resume <u>after</u> seven (7) calendar days counted from the first day of the physical reopening of the relevant court, unless otherwise expressly ordered by the relevant court which shall consider the physical closure of the courts and the granular lockdowns in the different areas."
AC No. 75-2021	October 01, 2021	**Re: Court Operations Beginning 4 October 2021** "The time for filing and service of pleadings and motions during this period shall REMAIN SUSPENDED until further notice."

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AC No. 83-2021	October 18, 2021	**Re: Court Operations Beginning October 20, 2021 Until October 29, 2021** "The suspension of the time for filing ang service of pleadings and motions, regardless of the alert level or community quarantine, is LIFTED. **Pursuant to Administrative Circular No. 72-2021**, the period for filing and service shall resume seven (7) calendar days from October 20, 2021. xxx"
AC No. 85-2021	October 27, 2021	**Re: Court Operations From November 2 Until November 5, 2021** "To reiterate as stated in Administrative Circular No. 83-2021 dated October 18, 2021, the period for filing and service of pleadings and motions shall resume seven (7) seven calendar days from October 20, 2021."

Thus, the thirty (30)-day reglementary period to file petition before this Court was suspended from August 02, 2021, and resumed only after seven (7) days from October 20, 2021 or on October 27, 2021. Such being the case, from the time petitioner received the assailed FDDA on July 27, 2021, five (5) days have elapsed before the period to file the *Petition for Review* was suspended on August 02, 2021, petitioner still has twenty-five (25) days from October 27, 2021 or until November 22, 2021[52] within which to file its *Petition for Review*.

Correspondingly, the *Petition for Review* filed on November 19, 2021[53] was within the reglementary period. Hence, this Court has jurisdiction to entertain the present case.

However, the subject FDDA is void, for violation of petitioner's right to administrative due process.

Petitioner claims that it filed an administrative protest for reinvestigation, with annexes, on December 13, 2017, and a supplemental letter also with annexes, within sixty (60) days from filing of said protest, on February 09, 2018. In this regard, petitioner asserts that it was deprived of due process when the administrative protest for reinvestigation was not properly considered due to alleged irregularities in the handling of the documents submitted, resulting to the

[52] November 21, 2021 fell on Sunday.
[53] Docket – Vol. I, pp. 1 to 24.

reiteration of the finding of deficiency VAT assessment for the supposed zero-rated sales.

Section 228 of the NIRC of 1997 reads, in part, as follows:

> "SEC. 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: xxx
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**"[54]

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[55] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[56] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[57] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[58]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations ("RR") No. 12-99,[59] as amended by RR No. 18-2013,[60] provides, in part, as follows:

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54 *Emphasis supplied.*

55 *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

56 *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

57 *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

58 *Ibid.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).

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

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

"SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***

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

xxx xxx xxx

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, ***otherwise, the assessment shall be void*** (see illustration in ANNEX 'B' hereof).

3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN[61] within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) **Request for reconsideration** – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) **Request for reinvestigation** – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

xxx xxx xxx

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[61] That is, the *"Formal Letter of Demand and Final Assessment Notice".*

> **For <u>requests for reinvestigation</u>, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The term 'relevant supporting documents' refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. **The sixty (60)-day period for the submission of all relevant supporting documents shall <u>not apply</u> to requests for reconsideration.** xxx."
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative **<u>shall state the (i) facts, the applicable law</u>**, rules and regulations, or jurisprudence on which such decision is based, ***<u>otherwise, the decision shall be void</u>*** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision."[62]

The foregoing provisions prescribe, as part of due process in the issuance of tax assessments, that the FDDA, among others, must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FDDA shall be void.

In the instant case, the FDDA dated June 21, 2021[63] shows the result of reinvestigation, as follows:

> "This refers to your protest letter dated **December 13, 2017** which was received by this Office on the same date. Please be informed that your protest against our **taxable year 2015** deficiency tax assessments in the amounts of **[Php]10,132,218.93 and [Php]43,367,270.90** representing **Income Tax** and **Value Added Tax** respectively, the subject matter of our covering ***Letter of Demand*** dated **November 8, 2017**, is hereby ***<u>adjusted</u>*** in accordance with **Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended**, as implemented by *Revenue Regulations (RR) No. 12-99*, as amended by ***RR No. 18-2013*** xxx
>
> xxx xxx xxx
>
> **<u>RESULT OF REINVESTIGATION</u>**

62 *Emphasis and underscoring supplied.*
63 Exhibits "P-9" and "R-12", BIR Records (Exhibit "R-18"), pp. 475 to 478.

During the conduct of reinvestigation, you failed to provide Relevant Documents to support your contentions set forth in the aforesaid Protest Letter within the reglementary period provided by RR 18-2013. Section 3.1.4 of the said RR provides that for requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term 'relevant supporting documents' refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer.

The ***Relevant Documents Rule*** were also discussed by the Supreme Court in the case of ***CIR v. First Express Pawnshop Company Inc., G.R. Nos. 172045-46 dated June 16, 2009, 589 SCRA 253***, where said Court explained that the 'relevant supporting documents' are those documents **necessary to support the legal basis** in disputing assessment, **as determined by the taxpayer**. Considering that no relevant documents have been submitted, the deficiency taxes set forth in our ***Letter of Demand*** dated **November 8, 2017** is hereby **REITERATED** except for the following items, to wit:

I. INCOME TAX

A.) Unaccounted Expenses

The herein assessment amounting to **[Php]20,484,501.50** is hereby **dropped** pursuant to the decision of the Court of Tax Appeals (CTA) in the case of ***Philippine Inquirer vs. CIR, CTA Case No. 7853 dated February 16, 2012***, said Court held that: ***'xxx Income tax is assessed on income received from any property activity or service. Such being the case, the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, not when there is an under declaration of purchases xxx'.***

In addition, said Court further held in the case of ***Agrinurture, Inc. vs. CIR, CTA Case No.***

> *8345*, wherein it was emphasized that: ***'xxx For income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount or not claim any deduction at all. What is prohibited by the tax law is to claim a deduction beyond the amount authorized therein. xxx'***
>
> **II. VALUE ADDED TAX**
>
> *A.) Unaccounted Expenses*
>
> As discussed under Income Tax, the herein assessment amounting to **[Php]20,484,501.50** is hereby **dropped**."

Relative thereto, the *Details of Discrepancies* attached to FAN dated November 08, 2017[64] states that:

> "**II. VALUE ADDED TAX**
>
> xxx xxx xxx
>
> - **Unsupported Zero-Rated Sales, [Php]240,514,276.35** – Verification disclosed that you failed to present evidences to substantiate your claims of having Zero-Rated Sales, hence such sales are now subjected to VAT pursuant to Section 108 of the NIRC."

It is undisputed that petitioner filed its letter *(Subject: Request for Re-investigation on Final Assessment Notice duly received on November 17, 2017, covered by Letter of Authority eLA201200033199)*, stamped as received by respondent, on December 13, 2017,[65] and its letter *(Subject: Supplemental Letter and Submission of Additional Documents on the Request for Re-investigation On Final Assessment Notice duly submitted on December 13, 2017)*, on February 09, 2018.[66] In fact, the fact of filing

[64] Exhibit "P-6", Docket – Vol. I, p. 60.
[65] Exhibit "P-7", Docket – Vol. I, pp. 63 to 84.
[66] Exhibits "P-8" and "P-8-1", Docket – Vol. 4, pp. 2003 to 2009.

of the said letter, and supplemental letter, submitting additional documents, was admitted by respondent's witness.[67]

Apparently, the above FDDA dated June 21, 2021 referred only to the "*protest letter dated December 13, 2017*" received by respondent on the same date. However, despite having admitted to have received both letters with annexes, the FDDA made no mention of the said supplemental letter filed on February 09, 2018.

Apparently, respondent did not consider petitioner's supplemental letter and the additional documents attached to it.

The Court further took note of respondent's lapses in the reinvestigation process prior to the issuance of the FDDA. Notably, although respondent's witness acknowledged the receipt of the said letters with annexes, it was admitted that the same were not found in the BIR Records, *viz.*:

> "ATTY. OMNES:
>
> Thank you, Your Honors, Ms. Witness, I have here a copy of the request for reinvestigation, which was filed by the taxpayer Ebar on December 13, 2017. At the end of this, the body of this request for reinvestigation, there's a summary of Annexes. The Annexes or labelled Annex to Annex X. Kindly look at this summary. There are several documents together with the request for reinvestigation. Now let me ask, Ms. Witness, are the annexes to that request for reinvestigation also included in the BIR records which was transmitted to the Honorable Court?
>
> JUSTICE MODESTO-SAN PEDRO:
>
> Maybe, you can assist her again. So can we stipulate instead that these annexes attached to the request for reinvestigation, including the request itself, are not part of the BIR records?
>
> WITNESS:
>
> Yes.
>
> JUSTICE MODESTO-SAN PEDRO:
>
> So stipulated? Because there's the request for reinvestigation is not there, we can presume that the attachments to that requests are also not there. So stipulate?

---

67 Refer to the Transcript of Stenographic Notes (TSN) at the hearing held on September 28, 2023, pp. 7 to 12.

ATTY. TUICO:
Yes, Your Honors.

xxx

ATTY. OMNES:
Ms. Witness, may we have any idea what happened to that request for reinvestigation as well as the Annexes for that request for reinvestigation.

xxx

WITNESS:
That I cannot answer.

xxx

ATTY. OMNES:
Also Ms. Witness, I have here a copy of the supplemental letter which was filed by the petitioner on February 9, 2018. Also, at the end of this letter, there is a summary of the annexes Annex Y to Annex AN. Again, the question is the annexes to that supplement the letter, where are they in the BIR records that were transmitted to the Honorable Court?

JUSTICE MODESTO-SAN PEDRO:
I think that was already stipulated, the preliminary assessment notice (PAN), that there were no annexes in the BIR records. That's correct?

ATTY. TUICO:
Yes, Your Honors.

JUSTICE MODESTO-SAN PEDRO:
So stipulated."[68]

Further, the undated *Memorandum* signed by RO Lilia Macatbar and noted by GS Marivel Bello and approved by Revenue District Officer ("RDO") Mahinardo G. Mailig and which recommended the issuance of the FDDA,[69] states in part:

[68] TSN at the hearing held on September 28, 2023, pp. 10 to 14.
[69] BIR Records (Exhibit "R-18"), p. 389.

"***VALUE-ADDED TAX:***

a.) ***Unsupported zero-rate, [Php]240,514,276.35*** – Taxpayer submitted documents such as zero-rated official receipts, invoices and bank statements in acceptable foreign currency to prove that sales were really zero-rated sales, Evaluation of documents disclosed that sales were really zero-rated sales, this, assessment of deficiency tax on zero-rated sales was cancelled."

However, as per *Memorandum* dated January 17, 2019 signed by OIC - Chief Assessment Division, James R. Ferrer addressed to RDO and ROs Lilia Macatbar and GS Marivel Bello,[70] it states that there were no documents attached to the docket, to wit:

"1. Discuss/address thoroughly in your Memorandum report and Final Decision on Disputed Assessment all the issues raised by the subject taxpayer in its protest letter dated December 13, 2017, and provide justification and/or legal basis why the said findings be dropped, reiterated, or reduced. **Moreover, attach the Protest Letter of the subject taxpayer which is necessary to validate the reiteration/cancellation of items herein assessment**.

2. Provide justification and legal basis why the Unsupported zero-rated sales amounting to P240,514,276,35 was totally dopped. **There were no document/evidence/proof of zero-rating/PEZA certifications attached to the docket**. In this regard, provide the relevant documents in support of your computations."[71]

Upon inquiry, GS Marivel Bello was not able to explain as to why OIC - Chief Assessment Division, James R. Ferrer was not provided with the documents in support of the memorandum, to wit:

"ATTY. OMNES:

Now, Ms. Witness, it appears from the document that you read, that OIC Chief Assessment Division, Mr. Ferrer, was not able to find the documents to check your

[70] BIR Records (Exhibit "R-18"), p. 417.
[71] *Emphasis supplied.*

recommendation to cancel the assessment for VAT. Why were the documents not forwarded to him?

WITNESS:
That I cannot already answer, Attorney.

ATTY. OMNES:
So Ms. Witness, basically what happened is if you would agree with me, your recommendation to cancel the assessment for VAT was not adopted because Mr. Ferrer was not able to check the documents you mentioned in your Memorandum.

WITNESS:
Maybe."[72]

Thereafter, in an undated *Memorandum* approved by Chief, Assessment Division, Mariza R. Uy and addressed to Regional Director Maridur V. Rosario,[73] it was recommended, which recommendation was adopted in the FDDA, that considering that no relevant documents have been submitted, the deficiency taxes set forth in FAN dated November 08, 2017 be reiterated except for income tax and VAT for unaccounted expenses which should be dropped.

As such, the foregoing circumstances raise doubts as to whether the documents submitted were evaluated and considered prior to the issuance of the FDDA especially because the ground for reiteration of the assessment was due to petitioner's alleged failure to submit documents.

Moreover, the FDDA also shows that the income tax and VAT assessments on unaccounted expenses were cancelled/dropped while the imposition of VAT on unsupported zero-rated sales (with reference to FAN) was reiterated. Notably, while the FDDA shows petitioner's tax liabilities, the *Result of Investigation* does not however state the details on the specific transaction which gave rise to its supposed VAT liability of petitioner on the alleged unsupported zero-rated sales. In fact, the FDDA merely states that "considering that no relevant documents have been submitted, the deficiency taxes set forth in our *Letter of Demand* dated November 8, 2017 is hereby REITERATED". Also, aside from the fact that the FAN dated November 08, 2017 was not appended to the FDDA, the findings in the *Details of Discrepancies* attached to the FAN regarding the imposition of VAT on the alleged unsupported zero-rated sales only states that "*Verification disclosed that you failed to present evidences to substantiate*

[72] TSN at the hearing held on September 28, 2023, pp. 16 to 17.
[73] BIR Records (Exhibit "R-18"), p. 472 to 473.

your claims of having Zero-Rated Sales, hence such sales are now subjected to VAT pursuant to Section 108 of the NIRC."

Based on the foregoing, it is clear that respondent fell short in informing petitioner of factual bases of the assessment in the FDDA as required in Section 228 of the NIRC of 1997, in relation to Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

From the foregoing, the Court finds the FDDA void.

However, a void FDDA does not render the assessment void. To stress, a "decision" differs from an "assessment" and failure of the FDDA to state the facts and law on which it is based renders the decision void, but not necessarily the assessment. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[74]

Thus, considering that the FDDA is void for violation of petitioner's right to due process, We shall look into the subject FAN, concerning the VAT imposition.

Based on the FAN[75] issued by the BIR, petitioner is liable to pay deficiency VAT amounting to Php43,367,270.90,[76] to wit:

Taxable Sales per Return		Php 835,702.42
Add: Unaccounted Expenses	Php20,484,501.50	
Unsupported Zero-rated Sales	240,514,276.35	260,998,777.85
Adjusted Taxable Sales		Php261,834,480.27
Output Tax Due		Php 31,420,137.63
Less: Input Tax Carried Over from Previous Period	Php 1,027,153.20	
Less: Input Tax Carried Forward to Succeeding Period	926,868.91	100,284.29
VAT Payable		Php 31,319,853.34
Less: Payments per Returns		-
Basic Tax Due		Php 31,319,853.34
Add: Interest (January 26, 2016 – December 28, 2017)		12,047,417.56
TOTAL AMOUNT STILL DUE		**Php43,367,270.90**

74 *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation*, G.R. Nos. 215534 and 215557, April 18, 2016.

75 Exhibit "P-6", Docket – Vol. I, pp. 57 to 62.

76 Refer also to par. 4.6, *Petition for Review*, vis-à-vis par. 11, *Answer (With Affirmative Defenses)*, Docket – Vol. I, pp. 6 and 516, respectively.

Based on the foregoing, the following items comprised the deficiency VAT assessment:

A. Unaccounted Expenses	Php 20,484,501.50
B. Unsupported Zero-rated Sales	240,514,276.35
C. Disallowed Input Tax Carried Forward to Succeeding Period	926,868.91

A. Unaccounted Expenses - Php20,484,501.50

As stated in the *Details of Discrepancies* attached to the FAN, respondent's comparison of petitioner's Audited Financial Statement/Income Tax Return ("AFS/ITR") against expenses reported per 1604CF/1601-E resulted to a discrepancy in the amount of Php20,484,501.50. This was then treated as unaccounted source of cash which was considered as undeclared income pursuant to Section 32 of the NIRC of 1997, as amended, as what has been held in the case of *Perez vs. CTA and CIR L-9193 dated May 29, 1957 for it has been held that unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of his income had not been reported.* Such unaccounted expenses translated into undeclared income were also subjected by respondent to VAT pursuant to Section 105 and 108 of the NIRC of 1997, as amended.

The Court finds the assessment bereft of merit.

Respondent's imputation of alleged undeclared income is based on a mere presumption that since there were alleged unaccounted expenses in petitioner's AFS/ITR, there was likewise undeclared income which corresponds to it. It must be pointed out, however, that under Section 106(A) of the NIRC of 1997, as amended, VAT is assessed on the *"gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor"*. Also, under Section 108 of the NIRC of 1997, as amended, VAT is assessed on the *"gross-receipts derived from the sale or exchange of services"*.

Thus, what is critical to be shown in the imposition or assessment of VAT is that the taxpayer received an amount of money or its equivalent from its sale, barter or exchange of goods or properties, or from sale or exchange of services, 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.

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.[77] Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[78]

Consequently, while there is a presumption of correctness of assessment issued by respondent, being a mere presumption, the same cannot be made to rest on another presumption, which is, here, respondent's presumption that the unaccounted expenses would automatically result in undeclared income or additional taxable sales, which would in turn increase petitioner's VAT liabilities. Accordingly, the deficiency VAT assessment on the alleged unaccounted expenses must be cancelled.

B. Unsupported Zero-rated Sales - Php240,514,276.35

Respondent argues that petitioner failed to provide sufficient and/or conclusive evidence to show that Innodata, Inc. and Pactera Technologies NA, Inc. are not doing business in the Philippines.

Petitioner claims that its zero-rated sales are derived from the sale of services to two (2) non-resident foreign corporations ("NRFCs"), *i.e.*, Innodata, Inc. and Pactera Technologies NA, Inc., the consideration for which were allegedly paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of BSP.

Relative thereto, Section 108(B)(2) of the NIRC of 1997, as amended, reads:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following **services performed in the Philippines** by VAT-registered persons shall be subject to zero percent (0%) rate:

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77 *Collector of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962, 4 SCRA 182; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987, 153 SCRA 665.

78 *Ibid.*

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"[79]

Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[80]

2. The services fall under any of the categories under Section 108(B)(2),[81] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[82]

3. The services must be performed in the Philippines[83] by a VAT-registered person; and

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79 *Emphasis supplied.*

80 *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11,2012.

81 *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

82 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra.*

83 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[84]

As to the *first* essential element, to prove that its clients are NRFCs for purposes of VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner must prove that: (1) the client was established under the laws of a foreign country; and, (2) it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these requirements to establish that the clients are foreign corporations AND are not doing business in the Philippines.[85]

Thus, petitioner must submit for its NRFC clients, at the very least, **both**: (1) the SEC Certificate of Non-Registration of Corporation/Partnership; **and** (2) Proof of Certificate/Articles of Foreign Incorporation/Association showing the state/province/country where the entity was organized.

The SEC Certificate of Non-Registration shows that the foreign client is not engaged in trade or business in the Philippines. On the other hand, the Certificate/Articles of Foreign Incorporation/Association proves that the client was established under the laws of a foreign country. Together, these two (2) documents prove the two (2) requisites necessary to establish the NRFC status of a client.

In *Commissioner of Internal Revenue vs. BW Shipping, Inc.*,[86] the Supreme Court held that:

> "In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, the Court, through Associate Justice Henri Jean Paul B. Inting, held that in order for sales to a non-resident foreign corporation to qualify for zero-rating under Section 108(B)(2) of the NIRC, the claimant must be able to prove '(1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.' Accordingly, the Court likewise ruled that **'the SEC Certifications of Non-Registration show that [clients]**

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84 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*

85 *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

86 G.R. No. 261171, October 4, 2023.

> **are foreign corporations**. On the other hand, **the articles of association/certificates of incorporation stating that these [clients] are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines**."[87]

Based on the foregoing jurisprudential pronouncements, the articles of association/certificates of incorporation stating that the client/affiliate is registered to operate in its home country, outside the Philippines are *prima facie* evidence that the client/affiliate is not engaged in trade or business in the Philippines. Parenthetically, a *prima facie* evidence is evidence that is not rebutted or contradicted, making it good and sufficient on its face to establish a fact constituting a party's claim or defense.[88] Thus, unless contrary evidence is produced, the said articles of association/certificates of incorporation are *prima facie* evidence that the client-affiliate is not doing business, or engaged in trade or business, in the Philippines.

In this case, the following table shows whether petitioner complied with the *first* essential element as it presented evidence of the said SEC Certificate of Non-Registration and Certificates of Registration/ Foreign Incorporation/ Association for each of the recipients of the services rendered by it:

	Client's Name	**SEC Certification of Non-Registration (Exhibit Nos.)**	**Certificate/ Articles of Incorporation/ Registration (Exhibit Nos.)**
1	Innodata, Inc.	"P-22"[89]	"P-21", "P-21-1", "P-21-2" and "P-21-3"[90]
2	Pactera Technologies NA, Inc.	"P-33"[91]	**None**

Thus, petitioner was able to present SEC Certificate of Non-Registration and Certificates of Registration/Foreign Incorporation/Association of its client, Innodata, Inc. Aside from these documents, petitioner also presented IRS Form W-9 of Innodata, Inc.[92] and lists of clients of Innodata, Inc.[93] As for Pactera

87 *Emphasis supplied.*
88 *Bicol Medical Center, et al. vs. Botor, et al.*, G.R. No. 214073, October 4, 2017.
89 Docket – Vol. 3, p. 1790.
90 Docket – Vol. 4, pp. 2019 to 2041.
91 Docket – Vol. 4, p. 2087.
92 Exhibits "P-23", Docket – Vol. 4, p. 2042.
93 Exhibits "P-24", Docket – Vol. 4, pp. 2043 to 2050.

Technologies NA, Inc., petitioner only presented the pertinent SEC Certificate of Non-Registration.

In any event, respondent contends that the above documents are not conclusive proof that Innodata, Inc. is not doing business in the Philippines. In connection therewith, respondent emphasizes that there are factual circumstances present in this case which indicate that petitioner's clients (especially Innodata, Inc.) may be considered doing business in the Philippines. Allegedly, a close scrutiny of petitioner's AFS) for taxable year 2015 would reveal that Innodata, Inc., being the ultimate parent of petitioner, exercises significant control over the latter in terms of its financial and operating decisions.[94]

The Court does not agree.

It must be noted that a corporation has a separate and distinct personality from its corporate officers or stockholders [95] Moreover, mere presence of control and full ownership of a parent over a subsidiary is not enough to pierce the veil of corporate fiction. It has been reiterated by this Court time and again that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[96] Indeed, the mere fact that Innodata, Inc. is the ultimate parent company and the related party of petitioner, is not a sufficient ground to disregard the separate corporate personalities of Innodata, Inc. and petitioner.

In addition, there is no showing that petitioner was appointed as agent of Innodata, Inc. or was authorized to act for and in behalf of the latter in transactions with third persons. In fact, the relationship of petitioner and Innodata, Inc. is clearly defined/outlined in their *Service Agreement*, to wit:

> "**ARTICLE 8: LEGAL POSITION OF THE SERVICE PROVIDER**
>
> 8.1 **Independent parties:** It is expressly understood that the Service Provider is not an agent of the Contractor. The Service Provider is not authorized to enter into or execute any contracts, orders or any other commitments or otherwise

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[94] *Answer (With Affirmative Defenses)*, Docket – Vol. I, p, 532; and Respondent's *Memorandum*, Docket – Vol. 4, p. 2226

[95] *Zomer Development Company, Inc. vs Court of Appeals, Cebu City, et al.*, G.R. No. 194461, January 7, 2020.

[96] *Montilla, Jr. vs. G Holdings, Inc.*, G.R. No. 194995, November 18, 2021.

obligate the Contractor in any matter unless requested in writing by the Contractor to do so.

8.2 **No Joint Venture relationship:** Nothing contained in this Agreement shall be construed to simply a joint venture, partnership, or principal agent relationship between the parties; and neither party by virtue of this Agreement shall have the right, power or authority to act or create any obligation, express or implied on behalf of the other party. Neither shall this Agreement be construed to create rights, express or implied, on behalf of or for the use of any party, other than the Contractor and the Service Provider.

8.3 **No Employer/Employee relationship:** The Service Provider shall in no sense be considered an employee or, by virtue anything contained in this Agreement, nor shall it or its employees or associates be entitled to participate in any benefits or privileges given or extended by the Contractor to irs employees or be deemed an employee of the Contractor for purposes of any contributions due on behalf of itself or its employee."[97]

Furthermore, while it is true that the primary purposes for petitioner's incorporation, *i.e. providing knowledge process outsourcing services as well as a publishing and related information technology services*,[98] are akin to the services being rendered by petitioner to Innodata, Inc., there is no indication that the services being offered by the former is exclusively or only for the latter. Also, there is no showing that petitioner is prohibited from accepting other clients apart from Innodata, Inc. In fact, in this case, petitioner renders services not only to Innodata, Inc. but also to Pactera Technologies NA, Inc. Furthermore, as stated by petitioner's witness, petitioner is engaged in providing information technology services to local and foreign clients.[99]

Considering that SEC Certificate of Non-Registration and Certificates of Registration/Foreign Incorporation of Innodata, Inc. was presented by petitioner, they sufficiently established that Innodata, Inc. is a foreign corporation not engaged in trade or business in the Philippines.

Thus, only petitioner's client, Innodata, Inc. shall be considered an NRFC doing business outside the Philippines, insofar as petitioner's compliance with the *first* essential element is concerned.

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[97] Exhibits "P-20", Docket – Vol. 4, p. 2015.
[98] Exhibits "P-20", Docket – Vol. 4, p. 2010.
[99] Exhibits "P-1" (QA7), Docket – Vol. I, p. 30.

Relative to the *second* essential element, petitioner presented only the *Service Agreement* made on December 02, 2013, between Innodata, Inc. and petitioner.[100] Notably, this *Service Agreement* provides that petitioner shall provide a "*broad portfolio of content-related services ranging from abstracting and indexing to data conversion and digitalization.*" Certainly, the services it renders are not in the same category as *"processing, manufacturing or repacking of goods"*, hence, petitioner satisfactorily complied with the *second* essential element, insofar as the Innodata, Inc. is concerned.

However, petitioner failed to establish compliance with the *third* essential element. The *Service Agreement* between Innodata, Inc. and petitioner neither bear any indication nor categorically state that the subject services were to be performed by the petitioner in the Philippines. Likewise, petitioner's evidence is bereft of any indication that the subject services were performed in the Philippines.

Petitioner has fallen short in establishing that its sales or supply of services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. Thus, the assessment for VAT on unsupported zero-rated sales amounting to Php240,514,276.35 as shown in the FAN dated November 8, 2017 is sustained.

As a corollary, it becomes unnecessary to look into petitioner's compliance with the other remaining elements for VAT zero-rating.

C. Disallowed Input Tax Carried Forward to Succeeding Period - Php926,868.91

In arriving at the deficiency VAT liability of petitioner, respondent also deducted the amount of Php926,868.91 from the available input tax credits of petitioner which effectively disallows the same. He, however, did not provide any legal basis for disallowing the said amount. Such being the case, the same must be cancelled in violation of Section 228 of the NIRC of 1997, which requires that the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

[100] Exhibits "P-20", Docket – Vol. 4, pp. 2010 to 2018.

The assessment issued by respondent against petitioner for the taxable year 2015 covering deficiency income tax assessment is **CANCELLED and WITHDRAWN**. However, the deficiency VAT assessment for taxable year 2015 is **UPHELD IN PART**.

Accordingly, petitioner is **ORDERED TO PAY** respondent the deficiency VAT in the aggregate amount of **Php45,041,482.37**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C)(3) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion ("TRAIN") Law, and as implemented by RR No. 21-2018, computed until December 31, 2018, as shown below:

Taxable Sales per Return	Php 835,702.42
Add: Unsupported Zero-rated Sales	240,514,276.35
Adjusted Taxable Sales	241,349,978.77
Output Tax Due	Php 28,961,997.45
Less: Input Tax Carried Over from Previous Period	1,027,153.20
VAT Payable	Php 27,934,844.25
Less: Payments per Returns	-
Basic Tax Due	**Php 27,934,844.25**
Add: 25% Surcharge	6,983,711.06
20% Deficiency Interest from April 16, 2016 until December 8, 2017[101] (Php27,934,844.25 x 20% x 602 days ÷ 365 days)	9,214,671.91
Total Amount due as of December 08, 2017	**Php 44,133,227.22**
Add: 20% Deficiency Interest from December 09, 2017 to December 31, 2017 (Php27,934,844.25 x 20% x 23 days ÷ 365 days)	352,055.57
20% Delinquency Interest from December 09, 2017 to December 31, 2017 (Php44,133,227.23 x 20% x 23 days ÷ 365 days)	556,199.58
Total Amount due as of December 31, 2017	**Php 45,041,482.37**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency tax due as of December 08, 2017 in the amount of **Php44,133,227.22** or equivalent to Php14,509.55 per day, computed from January 01, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by TRAIN Law and as implemented by RR No. 21-2018.

[101] Deadline for payment, Exhibit "P-6", Docket – Vol. I, p. 62.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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