REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ALLEGRO MICROSYSTEMS PHILS., INC.,
Respondent.

CTA EB NO. 1329
(CTA Case No. 8445)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Ringpis-Liban, *JJ.*

Promulgated:
NOV 15 2016 3:31 p.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) pursuant to Section 11 of Republic Act (RA) No. 1125, as amended by Section 18 of RA No. 9282, from the Decision[1] dated February 12, 2015, and the Resolution[2] dated June 10, 2015 of the First Division of the Court (Court in Division).

[1] Rollo, CTA EB Case No. 1239, pp. 18-49.
[2] Rollo pp. 51-57.

THE FACTS

The facts as stated in the Court in Division's Decision are as follows:

"On July 15, 2008, petitioner[3] filed its Annual Income Tax Return for fiscal year ending March 31, 2008.

Subsequently, the BIR issued Letter of Authority (LA) dated July 17, 2008 numbered 00067654, authorizing certain Revenue Officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the fiscal year ending March 31, 2008. The said LA was received by petitioner on August 1, 2008.

Petitioner then received the Preliminary Assessment Notice (PAN) dated May 27, 2011 issued by the BIR, informing petitioner of the latter's finding that a deficiency income tax in the amount of P452,304,361.60, including interest, is due from petitioner for fiscal year ending March 31, 2008. The said PAN was received by petitioner on June 6, 2011.

In answer to the said PAN, petitioner filed with the BIR, on June 21, 2011, the letter dated June 21, 2011 expressing its disagreement to the BIR's findings and stating the reasons therefor.

Acting on the said letter of petitioner, respondent[4] reconsidered its position, reducing the amount of deficiency income tax to P17,687,864.78, inclusive of interest. Correspondingly, the BIR issued the Formal Letter of Demand (FLD) dated June 22, 2011, and the Audit Result/Assessment Notice No. LTDO-122-IT-2007-00012 (FAN), requesting the payment of the said amount. Petitioner received the said FLD and FAN on July 13, 2011.

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Petitioner filed its protest on August 11, 2011.

On February 27, 2012, petitioner received a copy of the Final Decision on Disputed Assessment (FDDA) dated January 18, 2012, wherein the BIR revised the assessment, and requested

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[3] Respondent in this case.
[4] Petitioner in this case.

the payment of P17,755,765.05, representing the deficiency income tax, inclusive of interest, for the same taxable year, determined as follows:

Taxable Income per Return		
Add: Understatement of Gross Income due to		P101,790,902.00
overstatement of cost	P26,600,000.00	
Purchases- unsupported/overclaimed	836,829.72	
Bad Debts – not ascertained to be worthless	1,471,232.73	28,908,062.45
Taxable Income per Audit		P130,698,964.45
Income Tax Due per Audit		P 45,744,637.56
Less: Income Tax Due per Return		35,626,816.00
Deficiency Tax		P 10,117,821.56
Add: Interest as of 2/29/2012		7,637,943.49
Total Deficiency Income Tax, including increments		P 17,755,765.05

On March 27, 2012, Allegro Microsystems Philippines, Inc. (AMPI) filed a Petition for Review[5] against the CIR.

On May 17, 2012, the CIR filed an Answer.[6]

In the Joint Stipulation of Facts and Issues,[7] the parties agreed that the issues to be resolved by the Court in Division are as follows:

1) Whether AMPI overstated its cost up to the extent of P26,600,000.00;
2) Whether AMPI purchases in the amount of P836,829.72 are duly substantiated;
3) Whether AMPI may claim as income tax deductions its unpaid receivables from Kras Asia and M/A Com; and
4) Whether AMPI is liable for deficiency income tax in the amount of P17,755,765.05.

During the trial, both parties presented their respective evidence. In the Resolution[8] dated January 28, 2014, the parties were ordered to file their respective memorandum. On March 10, 2014, AMPI filed its Memorandum. On March 21, 2014, the CIR filed a "Manifestation and Motion" stating that he will adopt the arguments raised in the Answer as his memorandum.

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[5] Docket, CTA Case No. 8445, pp. 6-19, with Annexes.
[6] Docket, pp. 99-110.
[7] Ibid. pp. 155-156.
[8] Ibid. pp. 619-620.

The case was submitted for decision on April 21, 2014.[9]

On February 12, 2015, the Court in Division issued the assailed Decision. The dispositive portion thereof reads:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the assessment issued by respondent against the petitioner covering deficiency income tax for the fiscal year ended March 31, 2008 is hereby **MODIFIED**. Petitioner is hereby **ORDERED TO PAY** respondent the amount of P1,009,776.95, consisting of the basic income tax due and surcharge, computed as follows:

Taxable Income per Return		P 101,790,902.00
Add: Purchases- unsupported/overclaimed	836,829.72	
Bad Debts- not ascertained to be Worthless	1,471,232.73	2,308,062.45
Taxable Income		P 104,098,964.45
Income Tax Due		P 36,434,637.56
Less: Income Tax Due per Return		35,626,816.00
Deficiency Income Tax Due		P 807,821.56
Add: Surcharge (25%)		201,955.39
Total deficiency Income Tax, including Increments		P 1,009,776.95

> In addition, petitioner is **ORDERED TO PAY**:
>
> (a) deficiency interest at the rate of twenty percent (20%) *per anum* on the basic deficiency income tax of P807,821.56, computed from July 15, 20078 until full payment thereof pursuant to Section 249 of the NIRC of 1997, as amended; and
>
> (b) delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount of P1,009.776.95, plus 20% deficiency interest which have accrued under subparagraph 9a) hereof, computed from February 27, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.
>
> **SO ORDERED.**"

On June 10, 2015, the Court in Division issued the assailed Resolution. The dispositive portion thereof reads:

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9 Ibid. p. 647.

> "**WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Aggrieved, petitioner CIR filed before the Court *En Banc* this Petition for Review[10].

In the Resolution[11] dated August 18, 2015, AMPI was directed by the Court *En Banc* to file its Comment in this case. On September 7, 2015, AMPI filed its Comment.

In the Resolution[12] dated September 21, 2015, the Court *En Banc* ordered the parties to file their respective memorandum within thirty (30) days from notice. On November 17, 2015, AMPI filed its "Memorandum."[13] On December 10, 2015, the CIR filed a "Manifestation and Motion"[14]

In the Resolution[15] dated January 21, 2016, this case was deemed submitted for decision.

ISSUE

The issue in this case is whether the Court in Division committed reversible error when it partially granted the Petition for Review, wherein the Court modified the income tax assessment for fiscal year ending March 31, 2008, and ordered AMPI to pay the amount of P1,009,776.95 representing the basic income tax due and surcharge.

ARGUMENTS

Petitioner CIR argues that the First Division of this Court erred in cancelling and setting aside a part of the subject deficiency income tax assessment of respondent for fiscal year ending March 31, 2008, declaring that the AMPI did not overstate its cost in the amount of P26,600,000.00; that the judicial admissions made by the parties under the Joint Stipulation of Facts and Issues dated July 17, 2012 are conclusive between the parties and that the CIR need not present evidence to prove those facts; and that the Bureau of Internal

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[10] Rollo, CTA EB CASE No.1329, pp.6-16, with Annexes.
[11] Ibid pp.60-61.
[12] Ibid. pp. 84-85.
[13] Ibid. pp. 86-104.
[14] Ibid. pp. 105-107.
[15] Ibid pp. 225-226.

Revenue (BIR) examiner's assessment should be given full weight and credit, in the absence of proof to the contrary submitted by a taxpayer.

On the other hand, AMPI argues that the Court in Division correctly ruled that AMPI did not judicially admit that it overstated its cost and understated its income to the extent of P26,600,000.00 for Fiscal Year (FY) 2008; that the Court in Division correctly ruled that AMPI sufficiently proved there was no understatement of gross income to the extent of P26,600,000.00 for FY2008; the presumption of correctness does not apply in this case since sufficient evidence was presented to prove that the assessment was issued without factual basis; that petitioner's prayer that AMPI be ordered to pay P17,755,765.05, plus surcharge and interest, is erroneous since the appeal to this Court only involved the portion of the assessment pertaining to the alleged overstatement of cost to the extent of P26,600,000.00; and that AMPI has already paid the portion of the assessment as affirmed by the Court in Division in its Decision.

RULING OF THE COURT EN BANC

After a review of petitioner's arguments and the records of this case, the Court *En Banc* finds no reason to reverse the Decision and Resolution of the Court in Division. The Court in Division did not err in modifying the assessment for deficiency income tax for fiscal year ending March 31, 2008 finding that there was no understatement of income in the amount of P26,600,000.00. This argument was exhaustively discussed by the Court in Division which we herein adopt as follows[16]:

> "Based on the FDDA dated January 18, 2012, the amount of 26,600,000.00 represents the difference between the amount indicated in IEIRD No. 12998 dated July 4, 2007 and the amount indicated in the SLI attached to petitioner's Quarterly VAT Return filed on October 24, 2007. In the said IEIRD No. 12998, it is shown that petitioner imported 200,000 units of permanent magnet, and the landed cost therefor is P2,955,974.10 (to which the imposition of the VAT was based), while on the other hand, in the said SLI, the amount reflected for the same information is P29,555,974.10.
>
> According to petitioner's witness, Mr. Ronald B. De La Rosa, *'the amount of P29,555,794 being referred to by the respondent is the result of the inadvertent inclusion of an additional '5' in the landed cost of IEIRD No. 12998 as indicated in the SLI.'* This testimony was never

[16] Decision, pp. 16-19, citations omitted.

disputed by respondent, either by cross-examination or by contrary evidence.

Furthermore, in *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, the High Court ruled:

> 'From petitioner's evidence, the account vouchers specifically indicate that the disallowed purchases were recorded under inventory accounts, instead of depreciable accounts. That petitioner failed to indicate under its fixed assets or depreciable assets account, goods and services allegedly purchased pursuant to the rehabilitation and maintenance of Malaya Power Plant Complex, militates against its claim for refund. As correctly found by the CTA, the goods or properties must be recorded and treated as depreciable assets under Section 34 (F) of the NIRC.
>
> Petitioner further contends that since the disallowed items are treated as capital goods in the general ledger and accounting records, as testified on by its senior accountant, Karen Bulos, before the CTA, this should have been given more significance that the account vouchers which list the items under inventory accounts.
>
> A general ledger is a record of a business entity's accounts which, made up its financial statements. Information contained in a general ledger is gathered from source documents such as <u>account vouchers</u>, purchase orders and sales invoices. In case of variance between the source document and the general ledger, the former is preferred.'

Applying the foregoing ruling *mutatis mutandis* to the instant case, the IEIRD, being the source document, should prevail over the SLI, which merely report the transaction reflected in the said IEIRD.

Thus, considering the contents of the said IEIRD vis-à-vis of the said SLI, coupled with the testimony of Mr. De La Rosa, We find that the true amount for the subject importation is P2,955,974.10, and not P29,555,974.10.

With the prevalence of the IEIRD being resolved, We now proceed to the main issue as to correctness of the amount deducted for income tax purposes.

The Court-commissioned ICPA was able to verify that based on the procedures they performed, the amount *'that was claimed as deduction by the Company for income tax purposes is the actual cost paid of P3,035,480.50, (with landed cost of P2,955,974.10 upon importation) and not P29,555,974.10 as alleged by the BIR.'* The difference between the actual cost recorded versus the amount being questioned in this case arose from the *'increase in price of the magnets from the time of importation up to the time of usage and recording as inventory in the books of the Company', computed as follows:*

Particulars	Amounts in Php	Amounts in USD
Date of importation (June 29, 2007)	**P 2,955,974.10**	**$ 59,800.00**
Date of usage/invoice:		
Sales Invoice No. 24706 (Exhibit "AA-1")	1,317,165.04	28,205.00
Sales Invoice No. 24710 (Exhibit "AA-2")	3,420,981.09	36,795.00
Total	**P 3,035,480.50**	**$ 65,000.00**
Total price increase	**P 79,506.40**	**$ 5,200.00**

In accordance with petitioner's accounting policy of using the standard cost method in accounting for its inventories, the amount of P3,035,480.50 was further broken down as follows:

Particulars	Amount
Standard cost of magnets	P 2,876,000.00
(Under DM- Assembly Materials- Magnets)	
(200,000 pcs x P14.38 standard cost)	
Purchase price variance of the magnets	
(Under DM-PPV Others)	159,480.00
Total cost	P 3,035.480.50

The ICPA explained the process flow over which IEIRD No. 12998 had undergone in petitioner's accounting system which led to the deduction of the correct amount of cost and not the erroneous amount as reported in the SLI.

An examination of the ICPA report on the flow of accounting entries shows that the cost of the 200,000 pieces of magnets per the IEIRD was properly forwarded to the general ledger account of 5018 DM-Purchase Price Variance amounting to P159,480.50 and to 5021 DM- Assembly Materials – Magnets with series of entries totaling P2,876,000.00. The total ending balances of the two aforementioned general ledger accounts are P10,524,937.67 and P251,906,351.35, respectively. These comprise one of the accounts in the audited Trial Balance under the grouping Raw Materials Used and Changes in Inventory with a total of P903,471,316.59. This amount was in turn presented in Note 14 of petitioner's Audited Financial Statements, which provided a breakdown of the Cost of Goods Sold amounting to P2,608,799,128.00 as reflected in the Statement of Income of the same Financial Statements.

And while in its Annual Income Tax Return for the fiscal year ended March 31, 2008 filed on July 15, 2008, petitioner claimed a total deductible Cost of Sales/Services amounting to P2,607,770,279.00, the difference of P1,028,849.00 was reconciled as follows:

Particulars	Regular	Exempt	Total
Cost of goods sold per FS	**P 2,508,540,532**	**P 100,258,596**	**P 2,608,799,128**
Reconciling items:			
Provision for inventory obsolescence	(3,314,452)	(185,651)	(3,500,103)
Accrued retirement benefit cost	(9,092,695)	(509,305)	(9,602,000)
Contribution to retirement fund	9,642,530	540,102	10,182,632
Amortization of past service cost	356,887	19,990	376,877
Non-deductible rental expense	1,430,680	80,136	1,510,816
Provision (payment) for employee indemnities	2,772	155	2,927
Cost of goods sold per ITR	P 2,507,566,254	P 100,204,025	P 2,607,770,279

Based on all the foregoing, petitioner sufficiently proved that the amount of P2,955,974.10 per IEIRD was correctly taken up in the computation of its taxable gross income and not the erroneous amount of P29,555,974.10 per SLI."

Moreover, as correctly ruled by the Court in Division, in its Resolution:[17]

"It is true that the following facts were judicially admitted: '1.6. **Import Entry & Internal Revenue Declaration ('IERD') No. 12998 dated 4 July 2007** <u>**indicates**</u> **the landed cost of P2,955,974.10**, and VAT in the amount of P354,716.89;

1.7. **In the Summary List of Importations ('SLI') attached to AMPI's Quarterly VAT Return filed on 24 October 2007, the total landed cost of the importation covered by IEIRD No.**

[17] Resolution, pp. 4-5, citations omitted.

12998 dated 4 July 2007 <u>reflected</u> the amount of P29,555,974.10;

1.8. **The difference between the figures in IEIRD No. 12998 and the SLI is P26,600,000.00;**

1.9. AMPI paid VAT on the importation covered by IEIRD No. 12998 in the amount of P354,716.89.' *(Emphases and underscoring supplied)*

Nevertheless, We find it hard to agree with respondent in contending that on the basis of the foregoing judicial admissions, it is shown that petitioner has understated its gross income in the amount of P26,600,000.00 due to the overstatement of its cost.

A cursory reading of the said judicial admissions would reveal that what were judicially admitted are the facts that the landed cost in the amount of P2,955,974.10 is **'indicated'** in the IE[I]RD No. 12998; that the amount of P29,555,974.10, which represents the landed cost covered by the same IE[I]RD, is **'reflected'** in the SLI; and that the difference between the said amount is P26,600,000.00. Nothing more.

The word 'indicate' means to 'give knowledge of; show as something existing or taking place; point out; show; suggest', while the term 'reflect', which is practically the same as the said word 'indicate', connotes 'to make apparent' to 'to show'.

Thus, simply put, the judicially admitted facts are that the amounts of P2,955,974.10 and P29,555,974.10 are shown in IE[I]RD No. 12998 and the said SLI, respectively, resulting to a difference of P26,600,000.00. This difference is then explained by petitioner's witness, Mr. Ronald B. De La Rosa, that '*the amount of P29,555,974 being referred to by the Respondent is the result of the inadvertent inclusion of an additional '5' in the landed cost of IEIRD No. 12998 as indicated in the SLI'*, which testimony was never disputed by respondent, either by cross-examination or by contrary evidence. Correspondingly, as We have decreed in the assailed Decision, considering the contents of the said IEIRD, being the source document, vis-à-vis of the subject SLI, coupled with the said testimony, We find that the true amount for the subject importation is P2,955,974.10, and not P29,555,974.10. Such being the case, there is no finding of understatement of income in this case in the amount of P26,600,000.00"

The presumption of correctness of tax assessments is not applicable in this case. Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved. Thus, even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[18]

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED for lack of merit.** Accordingly, the Decision dated February 12, 2015 and Resolution dated June 10, 2015 are hereby affirmed.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[18] *Lacsona Land Co., Inc. vs. CIR,* G.R. No. 171251, March 5, 2012, citing *Commissioner vs. Algue, Inc.* 241 Phil 829 (1988).

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice