REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

8199 CONVENIENCE CORPORATION, Petitioner,	**CTA CASE NO. 8853**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 31 2018 2:06 pm

x - x

RESOLUTION

MINDARO-GRULLA, *J.*:

Pursuant to the Court's Resolution dated April 23, 2018, the following are submitted for resolution:

1. petitioner's **Motion for Partial Reconsideration**, filed on February 21, 2018, with respondent's **Comment (To Petitioner's Motion for Partial Reconsideration dated February 20, 2018)**, posted on March 19, 2018, and received by the Court March 27, 2018; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision dated February 02, 2018)**, posted on February 26, 2018, and received by the Court on March 5, 2018, without petitioner's comment despite notice as per Records Verification dated April 18, 2018.

Both petitioner and respondent seek reconsideration of the Court's Decision dated February 2, 2018, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the assessments issued by respondent against petitioner for taxable year 2009 covering deficiency income tax and deficiency VAT are **PARTIALLY UPHELD**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **SEVEN HUNDRED SEVENTY-FOUR THOUSAND TWO HUNDRED EIGHTY PESOS AND 54/100 (₱774,280.54)** representing the sum of the basic deficiency income tax and deficiency VAT and the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

TAX TYPE	BASIC TAX	25% SURCHARGE	TOTAL
Income Tax	₱ 487,192.05	₱ 121,798.01	₱ 608,990.06
Value-added Tax	132,232.38	33,058.10	165,290.48
Total	**₱ 619,424.43**	**₱ 154,856.11**	**₱ 774,280.54**

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

a.) Deficiency interest at the rate of twelve percent (12%) per annum on the basic deficiency income tax and value added tax, computed from the date prescribed from payment as indicated below until January 25, 2013, the date of petitioner's receipt of the notice and demand, pursuant to Section 249 (B) of the NIRC of 1997, as amended by RA No. 10963:

TAX TYPE	BASIC TAX	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	₱487,192.05	April 15, 2010
Value-Added Tax	₱132,232.38	January 25, 2010

b.) Delinquency interest at the rate of 12% per annum on the total amount of

ℓ

₱774,280.54 and on the 12% deficiency interest which have accrued as aforestated in (a) above, computed from February 25, 2013, the due date appearing in the notice and demand, until the amount is fully paid, pursuant to Section 249 (C) of the NIRC of 1997, as amended.

SO ORDERED.

Petitioner anchors its arguments based on the sole ground that it is not liable for basic deficiency income tax and value-added tax (VAT) amounting to ₱487,192.05 and ₱132,232.38, respectively.

On the other hand, respondent's grounds for reconsideration are the following:

1. This Court has no jurisdiction to entertain the instant Petition for Review; and

2. The adjustment to net income should be ₱2,910,813.00 and not ₱1,623,973.50.

Petitioner contends that the assessment for deficiency income tax and VAT based on best evidence does not fall under any of the categories allowed by the law and regulations. Petitioner states that respondent relied heavily on the best evidence rule when the latter disallowed 50% of the former's purchases and operating expenses that were claimed as deductions and all of the claimed input VAT. Petitioner points out that under Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Revenue Memorandum Circular (RMC) No. 23-00, the power of respondent to assess proper tax on best evidence rule is not limitless and should be exercised only under particular circumstances, such as when a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or rules and regulations. Allegedly, petitioner has consistently made it known in its communications with the Revenue Officer throughout the course of the tax investigation, written and verbal, that the documents supporting the expenses were voluminous, and therefore requested that the examinations be conducted at the office of petitioner where said documents were

l

kept. Petitioner avers that the documents and records were made available to respondent for examination to assess any deficiency internal revenue taxes; however, respondent failed to do so and took a seemingly easier path in coming up with an assessment by relying on the best evidence obtainable rule. It is petitioner's position that the use of the best evidence obtainable rule by respondent in this case is not authorized as it does not conform with the parameters set forth by the aforementioned provisions of the NIRC and RMC.

In his Comment, respondent alleges that he partially agrees with the assailed Decision finding petitioner liable for deficiency income tax and VAT. However, respondent reiterates his position that this Court has no jurisdiction to entertain this case and that the adjustment to net income should be ₱2,910,813.00 and not ₱1,623,973.50.

On the other hand, in his motion for partial reconsideration, respondent contends that the subject assessments became final and demandable for failure of petitioner to submit all relevant supporting documents within sixty (60) days from filing of the protest. Allegedly, respondent requested petitioner through a Letter dated March 8, 2013 to submit the latter's supporting documents. Likewise, respondent served a Notice of Informal Conference to petitioner on May 23, 2013 relative to the latter's protest/request for re-investigation. Then, respondent through a Letter dated August 13, 2013, allegedly informed petitioner that its 2009 tax case will be forwarded to the Assessment Division for appropriate action for the latter's failure to submit complete documentary requirements within 60 days from the date of filing of written protest. As such, respondent claims that the subject assessments had become final, executory, and demandable; thus, this Court has no jurisdiction over this case. To prove further such fact, respondent expresses that a Letter dated April 14, 2014 from Revenue Region (RR) No. 6, Manila was received by petitioner stating that its motion for reconsideration cannot be acted upon favorably since it was submitted beyond the 30-day period to act on the FDDA.

It is alleged by respondent that petitioner was assessed based on the best evidence obtainable under Section 6(b) of the NIRC of 1997, as amended, by disallowing 50% of petitioner's claimed cost and expenses. However, since petitioner was able to substantiate during trial of this case only the amount of ₱17,114.90 and ₱1,185.10, representing office supplies and other operating expenses, respectively, the unsubstantiated amount of ₱2,910,813.00

h

should be disallowed and to be adjusted to petitioner's taxable net income.

After a careful evaluation of the parties' arguments, the Court finds the same as mere rehash of the same facts and issues which have already been passed upon in the assailed Decision.

The Court reiterates its ruling in the assailed Decision that this Court has jurisdiction over this case and that the assessment has not become final, to wit:

> "Petitioner received the FLD and Assessment Notices on January 25, 2013. Petitioner protested the said assessment on February 6, 2013.
>
> A perusal of the protest letter shows that petitioner attached its 1st, 2nd, and 3rd Quarterly Value-added Tax (VAT) Returns to the said protest letter.
>
> It must be emphasized that respondent cannot demand from petitioner what type of supporting documents it should submit, as held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, thus:
>
>> 'The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. **The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted.** Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.' (*Emphasis supplied.*)
>
> However, respondent acknowledged petitioner's written protest through a Letter dated February 25, 2013; and respondent required petitioner through a Letter dated

March 8, 2013 to submit the needed requirements and supporting documents for the protest, a copy of which petitioner received on March 15, 2013. Accordingly, petitioner complied and transmitted its accounting records pertinent to the assessed deficiency taxes on May 7, 2013 and June 17, 2013.

Based on the foregoing, the assessment has not become final due to petitioner's purported failure to submit supporting documents. It is noteworthy that respondent requested the submission of supporting documents after the filing of the protest letter, and petitioner complied with the same.

xxx xxx xxx

Since the Petition for Review was filed on July 30, 2014, which was within the thirty days from receipt of the PCL, this Court has jurisdiction over this petition.

xxx xxx xxx

I. DEFICIENCY INCOME TAX (₱5,497,415.40)

In arriving at the deficiency income tax assessment of ₱5,497,415.40, respondent disallowed 50% of petitioner's claimed purchases and operating expenses amounting to ₱11,283,031.50 for being unsupported, 100% of petitioner's claimed depreciation expense amounting to ₱178,360.00 for failure to provide the required schedule, and petitioner's claimed security services amounting to ₱318,834.00 due to non-withholding of tax. Below is respondent's detailed computation of the alleged deficiency income tax:

Taxable Net Income per ITR		₱ 25,741.00
Add: Adjustments		
50% Disallowed Purchases & Operating Exp. (Schedule 1)	₱11,283,031.50	
100% Disallowed Depreciation Expense	178,360.00	
Disallowed Security Services - non-withholding	318,834.00	11,780,225.50
Adjusted Taxable Net Inome		₱ 11,805,966.50
Income Tax Due		₱ 3,541,789.95

L

Less: Payments		7,722.30
Deficiency Income Tax		₱ 3,534,067.65
Add: Surcharge (Sec. 248)		-
Interest p.a. from ___ to 01/25/2013 (Sec. 249)		1,963,347.75
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)		-
TOTAL AMOUNT DUE & COLLECTIBLE		**₱ 5,497,415.40**

A. 50% Disallowed Purchases and Operating Expenses (₱11,283,031.50)

In the Details of Discrepancies attached to the Formal Letter of Demand, the disallowance of ₱11,283,031.50 is broken down as follows:

Schedule 1 - 50% Disallowed Purchases & Oper. Exp.	**Amount**	**50% thereof**
Purchases	₱ 19,955,784.00	₱ 9,977,892.00
Operating Expenses		
Office Supplies	161,776.00	80,888.00
Insurance	13,011.00	6,505.50
Other Operating Expense	2,435,492.00	1,217,746.00
Total	₱ 22,566,063.00	₱ 11,283,031.50

Respondent based the 50% disallowed purchases and operating expenses on Section 6(B) of the NIRC of 1997, as amended, and as implemented by Revenue Memorandum Circular (RMC) No. 23-00, in relation to Section 34(A)(1)(b) of the same Code, pertinent portions of which are quoted hereafter for easy reference:

xxx xxx xxx"

It is worthy to emphasize that in the Details of Discrepancies as cited above, the assessed disallowances for office supplies, insurance and other operating expense were limited to 50% of the amount claimed for deduction based on best evidence obtainable rule. Thus, the disallowances for office supplies, insurance and other operating expense amounted only to ₱80,888.00, ₱6,505.50, and ₱1,217,746.00, respectively. Likewise, since petitioner failed to substantiate its claim, the Court upheld the said disallowances as assessed.

L

With regard to petitioner's claim that the best evidence obtainable rule does not apply in this case, the Court finds the same without merit.

As admitted by petitioner's witness, the documents supporting the expenses were indeed not submitted to respondent because they were voluminous and to avoid an instance wherein the original documents submitted by petitioner to BIR were returned incomplete, *viz*:

> "13. Q: After submitting those documents, what happened next, if any?
>
> A: We informed Mr. Tiangco that the other documents in relation to the 2009 tax audit, such as the books of accounts, official receipts, invoices and other supporting documents and schedules may be examined at our office.
>
> 14. Q: Why did you not submit those other documents to the BIR team conducting examination and instead preferred that the examination be conducted at your office?
>
> A: Those documents are quite voluminous and we've had experience before wherein the original documents submitted to a BIR office were returned to us incomplete. We want to avoid this scenario again."[1]

It is noteworthy that under Section 5 (C) of the NIRC of 1997, as amended, respondent has the power to summon a taxpayer to appear at a time and place specified in the summons and to produce the latter's books of accounts and other relevant accounting records. Apparently, petitioner has the burden to prove that it submitted the required documents, or that it indeed requested an examination to be conducted at its office and that the CIR approved its request.

---

[1] Exhibit "P-45", docket, vol. I, p. 98.

l

In this case, respondent properly assessed petitioner based on the best evidence obtainable rule by disallowing the operating expenses as deductions because petitioner failed to submit supporting documents despite respondent's request to do so. Likewise, the testimony of petitioner's witness that it requested for the examinations to be conducted at its office where the said documents were kept is a self-serving testimony without any other evidence corroborating the same.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration** and respondent's **Motion for Partial Reconsideration (Re: Decision dated February 02, 2018)** are **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice