REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

NORTHERN MINDANAO SALES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8959

Members:

DEL ROSARIO, *P.J., Chairperson*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

AUG 3 0 2019 : 1:22 pm

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RESOLUTION

MINDARO-GRULLA, *J.*:

For the Court's resolution are:

1. petitioner's **Motion for Partial Reconsideration (of the Decision Promulgated on March 11, 2019)**, filed on March 29, 2019, with respondent's **Comment/Opposition (To Motion for Partial Reconsideration)**, filed through registered mail on May 14, 2019 and received by the Court on May 23, 2019; and

2. respondent's **Motion for Partial Reconsideration**, filed through registered mail on April 3, 2019 and received by the Court on April 8, 2019, with petitioner's **Comment (On the Respondent's Motion for Partial Reconsideration)**, filed on May 23, 2019.

Both parties move for the reconsideration of the Decision promulgated on March 11, 2019, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The deficiency VAT assessment issued by respondent against petitioner covering the period January 1, 2012 to June 30, 2012 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of **FIFTEEN MILLION FIVE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED SEVENTY-SIX PESOS AND SEVENTEEN CENTAVOS (₱15,517,576.17)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

Basic Deficiency VAT	₱ 4,447,705.09
Add: 25% Surcharge	1,111,926.27
20% Deficiency Interest from July 26, 2012 to June 23, 2014 *(₱4,447,705.09 x 20% x 698/365 days)*	1,701,094.88
Total Amount Due, June 23, 2014	**₱ 7,260,726.24**
Add: 20% Deficiency Interest from June 24, 2014 to December 31, 2017 *(₱4,447,705.09 x 20% x 1287/365 days)*	3,136,546.00
20% Delinquency Interest from June 24, 2014 to December 31, 2017 *(₱7,260,726.24 x 20% x 1287/365 days)*	5,120,303.93
Total Amount Due, December 31, 2017	**₱15,517,576.17**

> In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the aggregate amount due as of June 23, 2014 of **₱7,260,726.24**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.
>
> **SO ORDERED.**"

Petitioner's Motion for Partial Reconsideration

Petitioner claims that the assessment on unexplained debits to sales in the amount of ₱11,014,517.17 has been founded based on presumptions and hypothesis. It alleges that it complied with the substantiation requirement, which was the lone issue raised in the Formal Letter of Demand (FLD), although there may have been some irregularities in the information stated on the submitted invoices or official receipts. It asserts that respondent's manner of computing the alleged deficiency value added tax (VAT), which was on a semi-annual or semestral basis and not on a quarterly basis, is incorrect. It further asserts that the Final Assessment Notice (FAN) was not a valid assessment alleging that the statement in the FAN makes the alleged deficiency VAT liability indefinite citing the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*

Respondent opposes the above arguments and alleges that part of the assessment was upheld by the Court on the basis of discrepancies found by the Independent Certified Public Accountant (ICPA). He asserts that petitioner, as the one who sought the commissioning of the ICPA, should be the first to adhere or give respect to the findings of its chosen ICPA. He also argues that there is no law, rules or regulations that prescribes that the VAT audit should be done on a per quarter basis. He claims that the ruling in *Commissioner of Internal Revenue (CIR) vs. Fitness by Design, Inc.* is not applicable since there was a definite date for which the deficiency VAT liability should be paid.

To stress, petitioner seeks to reconsider the assailed Court's Decision insofar as the upholding of respondent's deficiency VAT assessment on: a) unreported sales in the reduced amount of ₱11,014,517.17 as a result of unexplained debits to sales; and b) disallowed input tax in the reduced amount of ₱3,125,962.95.

a) *Unreported sales in the reduced amount of ₱11,014,517.17 as a result of unexplained debits to sales*

Petitioner points out that if it had any sinister motive in recognizing the "Sales Discount" on the debit side of the general ledger for the "Sales" account, it would have been easy to conceal this "Sales Discount" by merely recording the sales at its net amount. What would have shown in the general ledger then would be the net sales on the credit side, without the eye-catcher "Sales Discount" on the debit side. Yet, petitioner allegedly did what is necessary, following an accounting principle of fully disclosing all facets of the

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transaction, *i.e.*, the gross sales and the sales discount as a contra-account.

Likewise, petitioner points out that the reports under the VAT Relief System (i.e., Summary Lists of Sales) have always tallied with its Ledgers and VAT Returns; which were prepared in different periods from January 1, 2012 to June 30, 2012.

Moreover, petitioner claims that it has dutifully paid output VAT for its sales of ₱368,297,808.49 during the period. Thus, there was allegedly no reason for it to be untruthful in the amount of ₱11,014,517.17 (a measly 2.99% of its total sales) and risk the status of all the sales for which it paid output VAT.

According to petitioner, if at all, what the present deficiency VAT issue, as introduced by the BIR in the assailed final assessment, has shown is that the BIR has a penchant for making general conclusions from which assessment issues arose, without considering the validity of taxpayer's arguments.

Petitioner submits that the protective clothing provided to tax assessments by virtue of the presumption of regularity in the performance of official duties, should now be unveiled; and thus, invalidate the entire assessment issue for having been founded on presumption and hypothesis.

The Court is not convinced.

The basic rule is that he who alleges must prove his case.[1] We must bear in mind the legal dictum that, "he who asserts, not he who denies, must prove."[2]

In this case, while petitioner insists that the presumption of regularity is not present during the investigation of respondent, however, it failed to present evidence other than its self-serving declarations. Therefore, the Court finds no compelling reason to reconsider its Decision on the unexplained, unsupported debits to sales.

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[1] *Francisco Lim vs. Equitable PCI Bank, now known as the Banco de Oro Unibank, Inc.*, G.R. 183918, January 15, 2014.

[2] As culled from the case of *Ricardo Portuguez vs. GSIS Family Bank (Comsavings Bank) and The Hon. Court of Appeals*, G.R. No. 169570, March 2, 2007.

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b) *Disallowance of input tax in the reduced amount of ₱3,125,962.95*

In the assailed Decision, the Court sustained respondent's disallowance of petitioner's claimed input tax in the reduced amount of ₱3,125,962.95. The Court held that in addition to the ₱1,383,325.02 input tax found to be unsupported by the Court-commissioned ICPA, the input tax of ₱1,742,637.93 shall likewise be disallowed for failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-8 and 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended.[3] Reproduced herein below is the breakdown of the ₱1,742,637.93 input VAT disallowance:

Supplier	Voucher No.	Purchases (Net of VAT)	Input VAT
Period: January 2012 (Exhibit P-40)			
Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and TIN and/or with incomplete petitioner's name and/or address			
Lorenzo Shipping Corporation	01-12-0002	₱ 206,896.80	₱ 24,827.62
Lorenzo Shipping Corporation	01-12-0003	49,019.54	5,882.34
Lorenzo Shipping Corporation	01-12-0004	133,367.50	16,004.10
Lorenzo Shipping Corporation	01-12-0029	114,315.00	13,717.80
Lorenzo Shipping Corporation	01-12-0052	38,105.00	4,572.60
Lorenzo Shipping Corporation	01-12-0053	19,052.50	2,286.30
T. Biraogo Trucking Services, Inc.	01-12-0006	75,399.74	9,047.97
Royal Master Services, Inc.	01-12-0014	53,769.32	6,452.32
T. Biraogo Trucking Services, Inc.	01-12-0018	118,301.92	14,196.23
Topkick Movers Corporation	01-12-0007	148,117.50	17,774.10
Dennis Trucking Services	01-12-0013	95,448.21	11,453.79
Topkick Movers Corporation	01-12-0023	28,694.64	3,443.36
Aboitiz Transport System Corporation	01-12-0026	26,353.75	3,162.45
Royal Master Services, Inc.	01-12-0051	35,846.23	4,301.55
Dennis Trucking Services	01-12-0035	119,951.75	14,394.21
Aboitiz Transport System Corporation	01-12-0027	381,477.93	45,777.35
Domestic purchases of services without supporting VAT OR			
P.N.A. Freight Services	01-12-0015	59,575.09	7,149.01
.N.A. Freight Services	01-12-0016	28,805.95	3,456.71

[3] Decision, pp. 26-37.

P.N.A. Freight Services	01-12-0017	47,660.07	5,719.21
Friends Trucking	01-12-0019	15,946.43	1,913.57
Friends Trucking	01-12-0020	42,608.04	5,112.96
Friends Trucking	01-12-0021	30,221.79	3,626.61
Friends Trucking	01-12-0022	91,947.02	11,033.64
GCT and Sons Agricultural Devt Corp	01-12-0011	32,979.31	3,957.52
GCT and Sons Agricultural Devt Corp	01-12-0012	15,686.83	1,882.42
GCT and Sons Agricultural Devt Corp	01-12-0028	8,770.54	1,052.46
GCT and Sons Agricultural Devt Corp	01-12-0034	18,529.46	2,223.54
Topkick Movers Corporation	01-12-0024	193,063.50	23,167.62
Topkick Movers Corporation	01-12-0041	141,860.81	17,023.30
Domestic purchases of services supported by VAT OR issued under the name of "Northern Mindanao Marketing Corp"			
F.A. Freight Services	01-12-0032	12,016.20	1,441.94
Subtotal-January 2012		**₱ 2,383,788.37**	**₱ 286,054.60**
Period: February 2012 (Exhibit P-41)			
Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and TIN and/or with incomplete petitioner's name and/or address			
T. Biraogo Trucking Services, Inc.	02-12-0002	₱ 36,451.79	₱ 4,374.21
T. Biraogo Trucking Services, Inc.	02-12-0003	58,996.43	7,079.57
T. Biraogo Trucking Services, Inc.	02-12-0025	211,991.96	25,439.04
Coren Commercial Co., Inc.	02-12-0027	84,821.43	10,178.57
Topkick Movers Corporation	02-12-0004	194,648.35	23,357.80
Royal Master Services, Inc.	02-12-0010	113,243.26	13,589.19
Royal Master Services, Inc.	02-12-0011	166,810.25	20,017.23
Topkick Movers Corporation	02-12-0016	150,926.63	18,111.19
Topkick Movers Corporation	02-12-0037	44,361.75	5,323.41
Topkick Movers Corporation	02-12-0039	168,547.50	20,225.70
Dennis Trucking Services	02-12-0013	136,652.21	16,398.27
Dennis Trucking Services	02-12-0033	58,996.43	7,079.57
YM Cargo Transport Corp	02-12-0024	28,397.14	3,407.66
Lorenzo Shipping Corporation	02-12-0038	24,509.77	2,941.17
Lorenzo Shipping Corporation	02-12-0040	106,177.04	12,741.24
Lorenzo Shipping Corporation	02-12-0052	43,562.27	5,227.47
Lorenzo Shipping Corporation	02-12-0053	73,529.30	8,823.52
ATS Consolidated, Inc.	02-12-0009	210,830.00	25,299.60
ATS Consolidated, Inc.	02-12-0046	316,245.00	37,949.40
Domestic purchases of services without supporting VAT OR			
Friend's Trucking	02-12-0020	61,522.78	7,382.73
Friend's Trucking	02-12-0021	25,144.40	3,017.33
P.N.A. Freight Services	02-12-0026	11,915.02	1,429.80
GCT and Sons Agricultural Devt Corp	02-12-0028	18,529.46	2,223.54
GCT and Sons Agricultural Devt Corp	02-12-0029	41,484.82	4,978.18
GCT and Sons Agricultural Devt Corp	02-12-0030	27,286.61	3,274.39

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GCT and Sons Agricultural Devt Corp	02-12-0031	3,126.81	375.22
Lawrian Press Corporation	02-12-0014	33,928.57	4,071.43
GCT and Sons Agricultural Devt Corp	02-12-0032	27,286.61	3,274.39
Square One Realty Corporation		1,375.00	165.00
Kheri Lines Inc		10,218.31	1,226.20
Domestic purchases of services supported by VAT OR issued under the name of "Northern Mindanao Marketing Corp."			
F.A. Freight Services	02-12-0045	107,151.29	12,858.15
Subtotal-February 2012		**₱ 2,598,668.19**	**₱ 311,840.17**
Period: March 2012 (Exhibit P-42)			
Domestic purchases of services without supporting VAT OR			
Dennis Trucking Services		₱ 58,996.43	₱ 7,079.57
Square One Realty Corporation		1,375.00	165.00
GCT and Sons and Agricultural Devp Corp	03-12-0005	58,531.91	7,023.83
GCT and Sons and Agricultural Devp Corp	03-12-0007	5,211.37	625.36
Friends Trucking	03-12-0018	29,393.30	3,527.20
Friends Trucking	03-12-0019	9,775.07	1,173.01
Friends Trucking	03-12-0041	18,529.46	2,223.54
Actuarial Advisers, Inc.	03-12-0047	4,500.00	540.00
Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and TIN and/or with incomplete name and/or address of petitioner			
Royal Master Services, Inc.	03-12-0012	65,684.37	7,882.12
P.N.A. Freight Services	03-12-0021	29,838.13	3,580.58
T. Biraogo Trucking Services, Inc.	03-12-0036	58,996.43	7,079.57
Royal Master Services, Inc.	03-12-0043	23,931.21	2,871.75
Ocean Transport Group of Companies, Inc.	03-12-0045	455,357.14	54,642.86
Ocean Transport Group of Companies, Inc.	03-12-0046	452,678.57	54,321.43
Topkick Movers Corporation	03-12-0016	28,694.64	3,443.36
Topkick Movers Corporation	03-12-0022	148,117.50	17,774.10
Topkick Movers Corporation	03-12-0040	143,010.00	17,161.20
Dennis Trucking Services	03-12-0006	83,062.84	9,967.54
YM Cargo Transport Corp.	03-12-0039	11,915.02	1,429.80
Lorenzo Shipping Corporation	03-12-0017	23,616.91	2,834.03
Lorenzo Shipping Corporation	03-12-0027	73,529.30	8,823.52
Lorenzo Shipping Corporation	03-12-0037	24,509.77	2,941.17
Lorenzo Shipping Corporation	03-12-0044	76,210.00	9,145.20
Subtotal-March 2012		**₱ 1,885,464.37**	**₱ 226,255.74**
Period: April 2012 (Exhibit P-43)			

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Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and/or TIN and/or with incomplete petitioner's name and/or address			
P.N.A.Freight Services	04-12-0007	₱ 11,915.02	₱ 1,429.80
T. Biraogo Trucking Services, Inc.	04-12-0008	121,036.38	14,524.37
Coren Commercial Co., Inc.	04-12-0031	85,937.50	10,312.50
T. Biraogo Trucking Services, Inc.	04-12-0037	60,518.19	7,262.18
Royal Master Services, Inc.	04-12-0048	11,915.02	1,429.80
Friends Trucking	04-12-0049	19,933.04	2,391.96
Friends Trucking	04-12-0050	22,955.36	2,754.64
P.N.A.Freight Services	04-12-0051	11,915.02	1,429.80
Ocean Transport Group of Companies, Inc.	04-12-0052	104,464.29	12,535.71
LBC Express Inc.	04-12-1010	1,616.07	193.93
Topkick Movers Corporation	04-12-0009	108,193.42	12,983.21
Ocean Transport Group of Companies, Inc.	04-12-0010	236,607.14	28,392.86
Topkick Movers Corporation	04-12-0017	57,389.29	6,886.71
Dennis Trucking Services	04-12-0011	41,538.52	4,984.62
Dennis Trucking Services	04-12-0019	96,969.97	11,636.40
Topkick Movers Corporation	04-12-0022	188,977.50	22,677.30
Topkick Movers Corporation	04-12-0030	7,329.04	879.48
EDM Caltex Service Station	04-12-1011	2,876.79	345.21
EDM Caltex Service Station	04-12-1012	4,201.07	504.13
Laser Tech Copier Services (OR Nos 1106 & 27186)	04-12-1009	76.00	8.14
Leyson Printing and Services	04-12-1009	350.00	42.00
Laser Tech Copier Services	04-12-1011	75.00	9.00
Leyson Printing and Services	04-12-1012	312.50	37.50
Lorenzo Shipping Corporation	04-12-0029	100,279.07	12,033.49
Lorenzo Shipping Corporation	04-12-0045	94,821.80	11,378.62
Shacene Pension House Restaurant (OR Nos. 9471 & 9436)	04-12-1012	4,241.07	508.93
Domestic purchases of services without supporting VAT OR			-
Lorenzo Shipping Corporation	04-12-0013	24,509.77	2,941.17
GCT & Sons Agricultural Devt Corp	04-12-0014	28,720.67	3,446.48
GCT & Sons Agricultural Devt Corp	04-12-0015	29,865.88	3,583.90
GCT & Sons Agricultural Devt Corp	04-12-0016	18,529.46	2,223.54
Value Care Health Systems Inc.	04-12-0025	1,746.58	209.59
Topkick Movers Corporation	04-12-0039	212,727.38	25,527.28
GCT & Sons Agricultural Devt Corp	04-12-0041	18,529.46	2,223.54
GCT & Sons Agricultural Devt Corp	04-12-0042	3,102.59	372.31
GCT & Sons Agricultural Devt Corp	04-12-0043	25,721.50	3,086.58
GCT & Sons Agricultural Devt Corp	04-12-0044	74,506.25	8,940.75
Shacene Pension House Restaurant (OR Nos. 9463 & 9437)	04-12-1012	2,547.64	305.72
Smart Broadband Inc - Butuan	04-12-1012	8,203.20	984.38
Square One Realty Corporation	04-12-0021	1,375.00	165.00
Domestic purchases of goods without supporting VAT sales invoice			
Tandag Auto Parts and Brake Bonding Center	04-12-1012	254.47	30.53

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JSL Petron Service Station	04-12-1009	4,196.75	503.61
Lavender Shell Service Station (Inv. 188180)	04-12-1012	651.79	78.21
Metro Surigao Shopping Center	04-12-1012	212.68	25.52
Tandag Auto Parts and Brake Bonding Center	04-12-1009	486.61	58.39
Tandag Petron Service Station	04-12-1010	2,062.50	247.50
Detan Shell Service Station	04-12-1012	2,519.81	302.38
Domestic purchases of services suported by VAT OR issued not under the name of petitioner			
Surigao Del Norte Electric Cooperative, Inc.	04-12-1009	3,703.58	444.43
Domestic purchases of goods supported by VAT sales invoice issued not under the name of petitioner			
Pilipinas Shell Petroleum Corporation	04-12-1024	25,215.28	3,025.83
Pilipinas Shell Petroleum Corporation	04-12-1033	27,618.45	3,314.21
Pilipinas Shell Petroleum Corporation	04-12-1025	35,390.30	4,246.84
Pilipinas Shell Petroleum Corporation	04-12-1036	28,680.07	3,441.61
Domestic purchases of goods supported by VAT sales invoices but without petitioner's address and TIN			
Detan Shell Service Station	04-12-1009	2,754.02	330.48
Diatagon Caltex Filling Station	04-12-1009	4,220.45	506.45
Tandag Petron Service Station	04-12-1011	2,287.50	274.50
Diatagon Caltex Filling Station	04-12-1012	4,371.45	524.57
Diatagon Caltex Filling Station	04-12-1011	3,499.54	419.94
Input VAT claim does not tie-up with the amount shown in the supporting VAT sales invoice			
Pilipinas Shell Petroleum Corp.			
Amount per Claim	04-12-1013	148,345.86	17,801.48
Amount per Invoice No. 366790		(22,415.71)	(2,689.88)
Amount per Claim	04-12-1031	254,480.41	30,537.65
Amount per Inv. No. 369923		(38,799.32)	(4,655.94)
Amount per Claim	04-12-1032	36,802.31	4,416.28
Amount per Inv. No. 369923		(11,825.16)	(1,419.02)
Amount per Claim	04-12-1034	231,876.21	27,825.14
Amount per Inv. No. 373012		(37,991.98)	(4,559.05)
Amount per Claim	04-12-1035	44,173.65	5,300.84
Amount per Inv. No. 373012		(13,102.32)	(1,572.28)
Subtotal-April 2012		**₱ 2,586,198.65**	**₱ 310,342.75**
Period: May 2012 (Exhibit P-44)			
Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and/or TIN and/or with incomplete name and/or address of petitioner			
Laser Tech Copier Services	05-12-1005	₱ 143.75	₱ 17.25
Leyson Printing and Services	05-12-1005	2,410.71	289.29

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Lavender Shell Service Station	05-12-1005	3,839.28	460.72
Laser Tech Copier Services (OR No. 28692)	05-12-1052	8.93	1.07
Shacene Pension House Restaurant	05-12-1052	4,241.06	508.94
Smart Broadband, Inc.	05-12-1052	12,455.40	1,494.65
Bayan Telecommunications, Inc.	05-12-1055	16,254.11	1,950.49
JRS Express	05-12-1055	3,131.25	375.75
Smart Broadband, Inc.	05-12-1057	474.20	56.90
Commando Security Service Agency	05-12-1057	562.50	67.50
Dennis Trucking Services	05-12-0002	40,770.54	4,892.46
Topkick Movers Corporation	05-12-0009	78,623.32	9,434.80
Royal Master Services, Inc.	05-12-0010	51,704.96	6,204.60
Royal Master Services, Inc.	05-12-0011	59,777.45	7,173.29
Topkick Movers Corporation	05-12-0012	117,472.50	14,096.70
Topkick Movers Corporation	05-12-0026	211,705.88	25,404.70
Topkick Movers Corporation	05-12-0030	34,015.18	4,081.82
Topkick Movers Corporation	05-12-0031	112,686.61	13,522.39
Topkick Movers Corporation	05-12-0032	178,762.50	21,451.50
Topkick Movers Corporation	05-12-0033	127,687.50	15,322.50
Lorenzo Shipping Corporation	05-12-0003	58,837.50	7,060.50
T. Biraogo Trucking Services, Inc.	05-12-0016	101,288.72	12,154.65
P.N.A. Freight Services	05-12-0023	65,583.19	7,869.98
T. Biraogo Trucking Services, Inc.	05-12-0047	122,311.61	14,677.39
LBC Express, Inc.	05-12-1005	3,209.82	385.18
ATS Consolidated, Inc.	05-12-0018	292,604.38	35,112.53
Dennis Trucking Services	05-12-0019	40,770.54	4,892.46
Domestic purchases of services supported by VAT OR but issued not under the name of petitioner			
Surigao Del Norte Electric Cooperative, Inc.	05-12-1005	3,628.67	435.44
Pilipinas Shell Petroleum Corp	05-12-1036	24,523.85	2,942.86
Surigao Del Norte Electric Cooperative, Inc.	05-12-1052	486.17	58.34
F.A. Freight Services	05-12-0014	45,696.87	5,483.62
F.A. Freight Services	05-12-0040	110,993.82	13,319.26
Domestic purchases of goods supported by VAT sales invoice but the amount of VAT was not separately shown and/or without petitioner's address and/or TIN			
EDM Caltex Service Station (Inv. 45909)	05-12-1005	4,017.86	482.14
JSL Petron Service Station	05-12-1005	3,238.59	388.63
Detan Shell Service Station	05-12-1005	4,803.64	576.44
Diatagon Caltex Filling Station	05-12-1005	3,156.06	378.73
EDM Caltex Service Station (Inv. 45909)	05-12-1052	3,839.29	460.71
Detan Shell Service Station	05-12-1052	2,791.07	334.93
Diatagon Caltex Filling Station	05-12-1052	2,995.89	359.51
Searcher's Spareparts Specialist	05-12-1052	848.21	101.79
JSL Petron Service Station	05-12-1052	2,678.57	321.43
Kumander Enterprises	05-12-1055	89.29	10.71
Butuan Express Hardware Workshop Inc.	05-12-1057	775.00	93.00
Kumander Enterprises	05-12-1057	669.64	80.36

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Domestic purchases of goods without supporting VAT sales invoice			
EDM Caltex Service Station	05-12-1005	357.14	42.86
Mercury Drug Corporation	05-12-1057	736.92	88.43
Petron Corporation	05-12-1057	329,855.89	39,582.71
Palma Superstore	05-12-1007	2,097.99	251.76
Pilipinas Shell Petroleum Corp	05-12-1008	154,788.12	18,574.57
Pilipinas Shell Petroleum Corp	05-12-1050	26,871.69	3,224.60
A.Y. Butuan Auto Supply	05-12-1056	2,321.42	278.57
Kumander Enterprises	05-12-1056	75.89	9.11
Life Auto Supply and Hardware	05-12-1056	2,017.85	242.14
Domestic purchases of services without supporting VAT OR			
PHILCOM	05-12-1057	4,205.26	504.63
Agusan Del Norte Electric Cooperative	05-12-1057	4,628.42	555.41
Friends Trucking	05-12-0021	13,624.11	1,634.89
Friends Trucking	05-12-0022	44,702.54	5,364.31
Lorenzo Shipping Corporation	05-12-0048	207,039.54	24,844.74
Square One Realty Corporation	05-12-0004	1,375.00	165.00
Sign Head Graphics	05-12-1053	33,750.00	4,050.00
Input VAT claim does not tie-up with the amount shown in the supporting VAT sales invoice			
Pilipinas Shell Petroleum Corp			
Amount of claim	05-12-1048	289,076.94	34,689.23
Less: Amount per Inv. No. 376122		(32,396.69)	(3,887.62)
Amount of claim	05-12-1049	32,960.12	3,955.22
Less: Amount per Inv. No. 376122		(17,490.35)	(2,098.85)
With unreadable supporting document			
UN City Gen Mdse Inc.	05-12-1005	49.11	5.89
Subtotal-May 2012		**₱ 3,057,212.79**	**₱ 366,865.51**
Period: June 2012 (Exhibit P-45)			
Domestic purchases of services supported by VAT OR but the amount of VAT was not separately shown and/or without petitioner's address and/or TIN and/or with incomplete name and/or address of petitioner			
Royal Master Services Inc.	06-12-0003	₱ 23,830.04	₱ 2,859.60
Topkick Movers Corporation	06-12-0011	62,709.82	7,525.18
Topkick Movers Corporation	06-12-0016	194,085.00	23,290.20
Dennis Trucking Services	06-12-0031	121,218.05	14,546.17
Royal Master Services Inc.	06-12-0045	53,668.17	6,440.18
P.N.A. Freight Services	06-12-0004	11,915.02	1,429.80
T. Biraogo Trucking Services, Inc.	06-12-0005	203,634.76	24,436.17
Friends Trucking	06-12-0021	15,946.43	1,913.57
Friends Trucking	06-12-0022	55,981.25	6,717.75
T. Biraogo Trucking Services, Inc.	06-12-0028	139,079.44	16,689.53
Dennis Trucking Services	06-12-0006	19,456.13	2,334.74

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Lorenzo Shipping Corporation	06-12-0014	42,397.27	5,087.67
Lorenzo Shipping Corporation	06-12-0046	64,294.77	7,715.37
Lorenzo Shipping Corporation	06-12-0048	44,682.27	5,361.87
ATS Consolidated, Inc.	06-12-0047	414,334.34	49,720.12
LBC Express Min Inc	06-12-1044	2,950.89	354.11
Laser Tech Copier Services (OR 29183)	06-12-1044	17.86	2.14
St. Augustine Shell Service Center	06-12-1044	3,799.11	455.89
Laser Tech Copier Services	06-12-1045	78.57	9.43
Leyson Printing Services	06-12-1045	3,750.00	450.00
Lifeworks Print Hub	06-12-1049	61,794.64	7,415.36
Domestic purchases of goods supported by VAT sales invoice but the amount of VAT was not separately shown and/or without petitioner's address and/or TIN			
EDM Caltex Service station	06-12-1044	7,358.83	883.06
Searchers Spareparts Specialist	06-12-1045	178.57	21.43
EDM Caltex Service station	06-12-1045	5,899.93	707.99
Tandag Petron Service Station (Inv. 21906)	06-12-1045	2,487.77	298.53
Kumander Enterprises	06-12-1047	281.25	33.75
Kumander Enterprises		466.07	55.93
Pilipinas Shell Petroleum Corp	06-12-1042	44,287.34	5,314.48
Domestic purchases of services without supporting VAT OR			
Value Care Health Systems, Inc.	06-12-0020	244.01	29.28
Square One Realty Corp	06-12-0026	1,375.00	165.00
Commando Security Service Agency	06-12-1044	375.00	45.00
Domestic purchases of goods supported by VAT sales invoice issued not under the name of petitioner			
Pilipinas Shell Petroleum Corp	06-12-1043	42,989.96	5,158.79
Domestic purchases of services supported by VAT OR issued not under the name of petitioner			
Surigao Del Norte Electric Cooperative, Inc.	06-12-1045	3,737.42	448.49
Input VAT claim does not tie-up with the amount shown in the supporting VAT sales invoice			
Pilipinas Shell Petroleum Corp			-
Amount of Claim	06-12-1046	148,811.20	17,857.34
Less: Amount per Inv. 376079		(31,840.25)	(3,820.83)
Amount of Claim	06-12-1051	277,745.69	33,329.48
Less: Amo unt per Inv. 379216		(37,798.16)	(4,535.78)
Domestic purchases of goods without supporting VAT sales invoice			-
A&M Commercial and General Merch	06-12-1047	160.71	19.29
A.Y. Butuan Auto Supply	06-12-1047	107.14	12.86
Diatagon Caltex Filling Station	06-12-1045	4,168.53	500.22
Subtotal-June 2012		**₱ 2,010,659.84**	**₱ 241,279.16**
Total Disallowances - January to June 2012		**₱ 14,521,992.21**	**₱ 1,742,637.93**

Petitioner avers that it can easily be deduced from the foregoing that the reasons were not entirely because of the alleged failure to "substantiate", but also includes as reason the failure to comply with the "invoicing requirements". Petitioner alleges that the latter reason was not made as basis for any disallowance per the Formal Letter of Demand (FLD) issued by respondent.

Petitioner contends that the focus of the Court's discussion must be on the weight of arguments and bases cited by respondent on one hand, and the counter-arguments and explanations forwarded by petitioner on the other. Thus, in this case, the issue should only be the alleged failure to substantiate the disallowed portion of the input taxes claimed by petitioner – no more, no less.

The Court disagrees with petitioner.

In the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN)[4] and Formal Assessment Notice (FAN)[5], it was clearly stated that respondent's basis for disallowing the subject input taxes was petitioner's failure to submit the required VAT invoices or official receipts pursuant to Section 110(A)(1) of the NIRC of 1997, as amended, which provides that: "*Any input tax claimed evidence by a VAT invoice or official receipt issued in accordance with **Section 113 of the NIRC** shall be creditable against output tax.*"

Therefore, the Court must check whether these are not only substantiated completely, but also, properly, meaning the VAT sales invoices and official receipts supporting petitioner's input taxes should be in compliance with the provisions of the VAT law and regulations.

To reiterate, Sections 113 and 238 of the NIRC of 1997, as amended, are clear as to what is required of any and all VAT-registered persons in issuing sales invoices and official receipts, to wit:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.-*

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[4] Exhibit "R-6-I", BIR Records, p. 1084
[5] Exhibit "P-2", BIR Records, p. 1090.

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(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

xxx xxx xxx

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer identification Number (TIN) of the purchaser, customer or client.

SEC. 238. *Printing of Receipts or Sales or Commercial Invoice.* –All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

Therefore, the input VAT disallowances upheld by this Court based on the foregoing provisions have legal and factual bases and have no reason to be overturned.

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Petitioner also urges the Court to re-evaluate the argument against respondent's manner of computing the alleged deficiency VAT, which was allegedly on a semi-annual, or semestral basis, and not on a quarterly basis. It contends that under the law and jurisprudence, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year.[6] The quarterly VAT return required to be filed under Section 114 of the NIRC, as amended, within twenty-five (25) days following the close of each taxable quarter is a final return in itself. Simply put, a quarterly VAT return is deemed a final return. Allegedly, there is no semestral, semi-annual or annual VAT return; and VAT liability is determined every quarter and not for any other taxable period.

Petitioner cites Section 6(A) of the NIRC of 1997, as amended, which defines the power of the Commissioner to make an assessment as follows:

> "SEC. 6. *Power of the Commissioner to Make Assessment and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.*—After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: xxx"

Petitioner insists that for failure to properly compute the alleged deficiency VAT liability of petitioner for the period from January 1, 2012 to June 30, 2012, the entire VAT assessment should be considered void, pursuant to Section 228 of the NIRC of 1997, as amended.

Petitioner questions in what quarter/taxable period did the assessed undeclared sales transactions arise. Allegedly, any assessment that failed to consider when the alleged deficiency tax occurred is a mere extrapolation which is not based on actual facts. Citing the case of *Collector of Internal Revenue vs. Albert D. Benipayo*[7], petitioner submits that the presumption of correctness of

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[6] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007.
[7] G.R. No. L-13656, January 31, 1962.

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assessment being a mere presumption cannot be made to rest of another presumption.

We do not agree with petitioner's contention that respondent's assessment was made to rest on a presumption, since, as petitioner has claimed from the very start, they provided all their VAT returns and records for purposes of the investigation. Therefore, the figures arrived at by respondent were based on the information contained in the Quarterly VAT Returns for the first and second quarters of CY 2012, which are factual, even though they were summed up to show two consecutive quarters.

Likewise, petitioner prays for the Court to reconsider the fact that the issued FAN contains the following statement after the computation of the alleged deficiency VAT:

> *"Please take note that the interest will have to be adjusted if paid beyond the dated (sic) specified therein."*

Petitioner submits that the foregoing statement makes the alleged deficiency VAT liability indefinite as declared in the Supreme Court case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[8]:

> "First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Bureau of Internal Revenue, is a 'Written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification depending on the date of payment. Thus:
>
> > 'The complete details covering the aforementioned discrepancies established during the investigation of this case are

[8] G.R. No. 215957, November 9, 2016.

> shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Section 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.'"

Petitioner states that the foregoing Supreme Court decision was applied in the case of *Northern Tobacco Redrying Co., Inc. vs. Commissioner of Internal Revenue*[9] wherein it was further declared:

> "In the foregoing case [*Fitness by Design case*], the Supreme Court, in ruling that the FLD lacks the definite amount of tax liability, considered the statement shown in the FLD which states '***that the interest and total amount due will have to be adjusted if paid prior or beyond April 15, 2014***.' The Supreme Court held that the amount of tax due remains indefinite since it is still subject to modification depending on the date of payment.
>
> The afore-cited case applies squarely to the present case wherein the subject FLD likewise states that '*the interest and total amount due will have to be adjusted if paid beyond November 30, 2013*.'"

Hence, for this reason alone, petitioner submits that the deficiency VAT assessment for period January 1 to June 30, 2012 must be invalidated *in toto.*

We disagree.

The detrimental factor to *Fitness by Design* and *Northern Tobacco* cases, is not the mere presence of the phrase "*that the interest and total amount due will have to be adjusted if paid prior or beyond [date]*" in the FAN but, the fact that the said phrase is also made to rest on another indefinite factor, which is the lack of due dates in the Formal Letters of Demand and FANs issued to the petitioners of both cases.

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[9] CTA Case No. 8857, December 14, 2017.

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In the *Fitness by Design* case, the Supreme Court ruled:

"xxx **the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**

xxx xxx xxx

The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**

xxx xxx xxx

A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period.**'

The disputed Final Assessment Notice is not a valid assessment.

<u>First</u>, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computations of respondent's tax liability,

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the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004*. (Emphasis Supplied)

<u>Second</u>, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice*. (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. **The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay**.

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial

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> before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation."[10] (Emphases and underscoring supplied)

Since the Formal Assessment Notice Parts I and II dated May 21, 2014[11] issued to petitioner contain a definite due date which is June 23, 2014, petitioner cannot raise the defense that the date and amount payable were undeterminable.

Respondent's Motion for Partial Reconsideration

Respondent argues that the assessment on undeclared sales and unexplained debits to sales of petitioner based on comparison of sales declared in petitioner's VAT return and Bureau of Internal Revenue's (BIR) own database should be upheld since the BIR's database should be accorded with utmost integrity considering that the figures extracted from it were obtained from submission of taxpayers in their quarterly summary lists of sales and purchases can be taken as is and need not be verified. He also claims that the assessment based on Best Evidence Obtainable Rule, specifically the benchmarking method in assessing petitioner, has basis in fact and in law. He claims that the assessments are *prima facie* presumed correct and made in good faith.

On the other hand, petitioner asserts that even after undergoing third-party matching, there is still need to confirm such information from the other "externally sourced data". It claims that the result of the matching process is not an automatic source of assessment. It further disagrees with the use of the benchmark rate in computing its alleged tax liability for lack of legal basis citing the case of *Wellform Trading Corporation vs. Commissioner of Internal Revenue*. Petitioner also contends that the presumption on the validity of assessments does not apply since there is doubt as to the accuracy of the data upon which the assessment was made.

Apparently, the issues and arguments presented are mere rehash of what have been said and reiterated in his Memorandum[12]

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[10] *Supra* note 8.
[11] Exhibits "P-1" to "P-5", BIR Records, pp. 1089-1096.
[12] Docket, vol. II, pp. 962-967.

and that which have been considered, weighed and resolved by the Court in the assailed Decision.

The Court has already ruled that the assessment lacks factual and legal bases as the same was based merely on unverified amounts extracted from respondent's own database. Further, Revenue Memorandum Order (RMO) No. 04-03 requires the verification of the amounts reflected in the quarterly report with other externally sourced data in ascertaining the taxpayer's under-declaration of revenues or overstatement of costs and expenses, if any. Instead of exerting his best effort in gathering information from other sources to verify the alleged sales discrepancy, respondent chose to resort to presumptions and heavily relied on the results of the unverified third-party information in determining petitioner's deficiency VAT liability. Thus, respondent's assessment on the alleged undeclared sales of ₱1,536,917.50 was cancelled.

The Court also held that the use of the benchmark rate in computing petitioner's tax liability has no legal basis. It found out that respondent computed the alleged undeclared sales of ₱75,332,536.46 based on benchmark rate less total VATable sales per VAT returns. Respondent, however, made no determination of the actual VATable sales of petitioner since the benchmark rate used by respondent pertains to the sales of other wholesaling companies as reflected in the computation. There was also no indication as to how the benchmark rate was derived by respondent or that it can at least be used to approximate the actual VATable sales of petitioner. Respondent merely assumed that the amount of VATable sales of other wholesaling companies is the same with the VATable sales of petitioner.

It is clear from Revenue Memorandum Order (RMO) No. 4-2006 that performance benchmarking is used in the monitoring and evaluation of tax payments to determine/identify taxpayer within industry groups who are paying below the minimum amount or set benchmarks for tax compliance purposes. It was issued to enhance taxpayers' voluntary compliance by setting up a standard in measuring taxpayers' compliance with regard to Income Tax Due and Net VAT Due of taxpayers engaged in the same line of industry; to prescribe policies, guidelines and procedures in the implementation of benchmarking activities in the districts in accordance with Sections 5(E) and 6(C) of the NIRC; and to effectively monitor the accomplishments of the Regional and Revenue District Offices regarding benchmarking activities. Hence,

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the use of benchmarking method in the computation of petitioner's tax liability has no legal basis.

An assessment fixes and determines the liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. 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.[13]

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (of the Decision Promulgated on March 11, 2019)** and respondent's **Motion for Partial Reconsideration** 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

[13] *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation, et al.*, G.R. No. L-46644, September 11, 1987.