REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Second Division

NATIONAL REINSURANCE CORPORATION OF THE PHILIPPINES, *Petitioner,*	**CTA CASE NO. 11156**
-versus-	**Members:** **RINGPIS-LIBAN,** *P.J., Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** FEB 1 2 2025

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3:10pm.

DECISION

RINGPIS-LIBAN, P.J.:

THE CASE

The *Petition for Review* filed on May 16, 2023, prays for cancellation and withdrawal of the assessments issued by respondent against petitioner on its alleged deficiency value-added tax (VAT) in the amount of ₱54,035,930.96, inclusive of surcharges and interest, for the calendar year (CY) 2017.[1]

THE PARTIES

Petitioner National Reinsurance Corporation of the Philippines is a corporation duly organized and existing under the laws of the Philippines.[2] It is primarily established to be the organization through which the Philippine insurance and reinsurance markets may participate in the Asian Reinsurance Corporation, and accordingly subscribe to and purchase the shares of capital stock of said corporation allotted to the Republic of the Philippines; to carry on

[1] Summary of the Case, Pre-Trial Order dated March 5, 2024, Docket – Vol. II, p. 869.
[2] Par. a, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 808.

the business of reinsurance of whatever kind and nature, whether life or non-life; and to perform any and all acts and deeds necessary to carry out the objectives of Presidential Decree No. 1270, as well as in carrying out the business of insurance and reinsurance, whether in the Philippines or abroad.[3]

Respondent is the duly appointed Commissioner of Internal Revenue who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[4]

THE FACTS OF THE CASE

On December 3, 2021, OIC-Assistant Commissioner Manuel Y. Mapoy issued the *Letter of Authority* (LOA) No. LOA-125-2021-00000201/SN:eLA201900048019 dated December 3, 2021,[5] authorizing Revenue Officers Rhea Joy Chua, Lilia Yvette Marie Aspiras, Solomon Hope Jr. Talpis, and Owen Villanueva, and Group Supervisor Rosario Arriolao, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from January 1, 2017 to December 31, 2017.

Respondent then issued the *Notice of Discrepancy* (NOD) dated May 20, 2022.[6] In response thereto, on June 22, 2022, petitioner filed its letter of even date, expressing its position with attached supporting documents, relative to the findings stated in the said NOD.[7]

Thereafter, on August 26, 2022, petitioner received the *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies* dated August 22, 2022,[8] finding petitioner liable for the following findings:

Deficiency Tax		Amount
Income tax	₱	249,598.61
VAT		51,612,233.81
Fringe benefits tax		3,798,877.74
Expanded withholding tax (EWT)		2,526,896.54
Final tax		258,891.54
Compromise penalty		135,000.00
TOTAL TAX DEFICIENCY	₱	**58,581,498.24**

[3] Par. b, Stipulation of Facts, JSFI, Docket – Vol. II, pp. 808 to 809; Exhibit "P-2-1", Docket – Vol. IV, at pp. 1375 to 1376.
[4] Par. c, Stipulation of Facts, JSFI, Docket – Vol. II, p. 809.
[5] Exhibit "P-6", Docket – Vol. IV, p. 1400; Exhibit "R-1", BIR Records (Exhibit "R-1"), p. 16
[6] Exhibit "P-9", Docket – Vol. IV, pp. 1417 to 1424; Exhibit "R-2", Docket – Vol. I, pp. 761 to 768.
[7] Exhibit "P-10", Docket – Vol. IV, pp. 1425 to 1439.
[8] Exhibit "P-11", Docket – Vol. IV, pp. 1440 to 1449; Exhibits "R-3" and "R-4", BIR Records, pp. 1113 to 1119 and 1126 to 1135, respectively.

On September 9, 2022, petitioner filed its letter of even date, stating its position against the PAN.[9] However, on November 10, 2022, petitioner sent its letter of even date to OIC Asst. Commissioner Maridur V. Rosario,[10] informing the latter that it already paid the enumerated deficiency taxes below, as shown in the attached BIR Form No. 0605 and EFPS payment, to wit:

Deficiency Tax		Amount
Income tax	₱	251,486.24
EWT on current year income payments		1,254,029.21
EWT on prior year income payments		1,282,101.71
Final withholding tax		260,812.10
TOTAL TAX PAID	**₱**	**3,048,429.25**

The BIR then issued the *Formal Letter of Demand,* with *Details of Discrepancies,* and *Assessment Notices* (FLD/FAN), both dated December 5, 2022,[11] containing the VAT deficiency assessment in the amount of ₱52,611,951.44, inclusive of interest, plus a compromise penalty in the aggregate amount of ₱120,000.00.

On January 3, 2023, petitioner filed its letter of even date, embodying its *Request for Reconsideration* against the subject FLD/FAN.[12]

Thereafter, respondent issued the *Final Decision on Disputed Assessment* (FDDA) dated March 24, 2023,[13] which was received by petitioner on April 27, 2023, assessing petitioner of deficiency VAT and compromise penalty for CY 2017, in the aggregate amount of ₱54,035,930.96, inclusive of interest and compromise penalties, the details of which are as follows:

I. VALUE-ADDED TAX

Vatable receipts subject to 12% per VAT return		₱ 130,645,676.82
Output tax Due		₱ 15,677,481.22
Less: Net creditable input taxes, net of carry-over	₱15,677,481.24	
Less: Disallowed input taxes (Schedule 1)	52,110.17	
Total	₱15,625,371.07	
Add: Additional Input Tax Allocable to Exempt Sales (Schedule 2)	33,000,148.50	(17,374,777.43)
VAT payable		₱ 33,052,258.65
Less: Payments per VAT return		
Basic Tax Due		₱ 33,052,258.65
Add: Penalty		
12% interest (01.26.18 to 04.30.23)		20,863,672.31
TOTAL AMOUNT DUE		**₱53,915,930.96**

[9] Exhibit "P-12", Docket – Vol. IV, pp. 1450 to 1462.
[10] Exhibits "P-13" to "P-17-1", Docket – Vol. IV, pp. 1463 to 1480.
[11] Exhibit "P-18", Docket – Vol. IV, pp. 1481 to 1491.
[12] Exhibit "P-19", Docket – Vol. IV, pp. 1492 to 1500.
[13] Refer to par. d, Stipulation of Facts, JSFI, Docket – Vol. II, p. 809; Exhibit "P-21", Docket – Vol. I, pp. 313 to 315.

II. COMPROMISE PENALTY	**₱ 120,000.00**
TOTAL AMOUNT DUE	**₱54,035,930.96**

On May 16, 2023, petitioner filed the present *Petition for Review with Urgent Motion to Suspend Tax Collection (with Prayer for the Issuance of Status Quo Ante Order and/or Writ of Preliminary Injunction).*[14] Respondent filed his *Comment/Opposition [to Petitioner's Urgent Motion to Suspend Tax Collection (with Prayer for the Issuance of Status Quo Ante Order and/or Writ of Preliminary Injunction) dated 16 May 2023]* on July 6, 2023.[15]

At the hearing held for the said *Urgent Motion to Suspend Tax Collection (with Prayer for the Issuance of Status Quo Ante Order and/or Writ of Preliminary Injunction)* on August 15, 2023, petitioner presented the testimony of its Vice President and Head of Finance, Mr. Santino U. Sontillano.[16]

The *Formal Offer of Evidence (for Petitioner's Urgent Motion to Suspend Tax Collection (with Prayer for the Issuance of Status Quo Ante Order and/or Writ of Preliminary Injunction)* was filed on August 31, 2023,[17] to which respondent submitted his *Comment (on Petitioner's Formal Offer of Evidence)* on September 5, 2023.[18] In the Resolution dated October 9, 2023,[19] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-2" and "P-25", as petitioner failed to file copies of either exhibit that had been duly presented, compared, and marked during a Commissioner's Hearing, having filed only pre-marked copies of the same.

In the Resolution dated October 26, 2023,[20] the Court denied petitioner's *Urgent Motion to Suspend Tax Collection (with Prayer for the Issuance of Status Quo Ante Order and/or Writ of Preliminary Injunction)* for lack of merit.

Petitioner then filed a *Motion for Reconsideration with Motion with Leave of Court for the Admission of Formal Offer of Evidence (Re: Resolution on the Formal Offer of Evidence dated 09 October 2023)* on October 26, 2023,[21] praying for the Court to render judgment: (1) giving due course to the instant *Motion*; (2) admitting Exhibits "P-2" and "P-25", as part of petitioner's evidence for the purposes for which they were offered and correcting the records as to their proper comparison and marking; (3) correcting the records as regards Exhibits "P-21", "P-21-1", and "P-24", as noted by the Court; and (4) admitting Exhibits "P-26" and "P-26-1", as part of petitioner's evidence for the purposes for which they were offered.

[14] Docket – Vol. I, pp. 6 to 31.
[15] Docket – Vol. I, pp. 323 to 334.
[16] Exhibit "P-26", Docket – Vol. I, pp. 347 to 356; Minutes of the hearing held on, and Order, dated August 15, 2023, Docket – Vol. I, pp. 407 to 409.
[17] Docket – Vol. I, pp. 426 to 429.
[18] Docket – Vol. I, pp. 433 to 435.
[19] Docket – Vol. I, pp. 462 to 463.
[20] Docket – Vol. II, pp. 791 to 795.
[21] Docket – Vol. II, pp. 796 to 806.

Respondent submitted a *Manifestation in Lieu of Filing a Comment* on November 24, 2023.[22]

Petitioner likewise filed a *Motion for Reconsideration (Re: Resolution on the Petitioner's Urgent Motion to Suspend Tax Collection dated 26 October 2023)* on November 28, 2023.[23] Respondent then submitted his *Comment and Opposition (to Petitioner's Motion for Reconsideration [Re: Resolution on the Petitioner's Urgent Motion to Suspend Tax Collection dated 26 October 2023])* on January 18, 2024.[24]

In the Resolution dated April 17, 2024,[25] the Court: (1) partially granted petitioner's *Motion for Reconsideration with Motion for Leave of Court for the Admission of Formal Offer of Evidence (Re: Resolution on the Formal Offer of Evidence dated 09 October 2023)* and, thus, admitted Exhibits "P-2", "P-25", "P-26", and "P-26-1"; (2) denied petitioner's *Motion for Reconsideration (Re: Resolution on Petitioner's Urgent Motion to Suspend Tax Collection dated 26 October 2023)* for lack of merit; and (3) affirmed the Court's Resolution dated October 26, 2023.

Respondent filed his *Answer (to Petitioner's Petition for Review dated 16 May 2023)* on August 22, 2023,[26] interposing the following special and affirmative defenses, to wit: (1) the assessment was issued in accordance with the provisions of the Tax Code, as amended, and its implementing rules and regulations; and (2) petitioner is liable for the assessed deficiency VAT and compromise penalties.

On September 11, 2023, respondent filed the *BIR Records* of this case, consisting of one (1) folder, consecutively numbered from pages 1 to 1591.[27]

The Pre-Trial Conference was set and held on October 19, 2023.[28] Prior thereto, *Respondent's Pre-Trial Brief* was filed on October 4, 2023,[29] while the *Pre-Trial Brief (of Petitioner National Reinsurance Corporation of the Philippines)* was submitted on October 13, 2023.[30]

During the above-stated Pre-trial Conference, the Court: (1) upon the parties' motion, gave them thirty (30) days from such date or until November 20, 2023, within which to file their Joint Stipulation of Facts and Issues; (2) gave petitioner the same period to file the motion for commissioning of an Independent Certified Public Accountant (ICPA); and (3) directed the parties to

[22] Docket – Vol. II, pp. 821 to 823.
[23] Docket – Vol. II, pp. 825 to 840.
[24] Docket – Vol. II, pp. 855 to 863.
[25] Docket – Vol. II, pp. 963 to 965.
[26] Docket – Vol. I, pp. 410 to 417.
[27] *Compliance* dated September 11, 2023, Docket – Vol. I, pp. 437 to 439.
[28] Notice of Pre-Trial Conference dated September 4, 2023, Docket – Vol. I, pp. 431 to 432; Minutes of the hearing held on, and Order dated, October 19, 2023, Docket – Vol. II, pp. 786 to 789.
[29] Docket – Vol. I, pp. 442 to 445.
[30] Docket – Vol. II, pp. 469 to 486.

appear before the Mediation Office on February 7, 2024 at 9:00 a.m.[31] However, the Philippine Mediation Center Unit – Court of Tax Appeals issued the *No Agreement to Mediate* dated February 7, 2024,[32] stating that the parties decided not to have their case mediated.

On November 15, 2023, the parties submitted their *Joint Stipulation of Facts and Issues*,[33] which was admitted and approved by the Court in its Resolution dated January 3, 2024,[34] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated March 5, 2024 was then issued.[35]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Jose Luis M. Yupangco,[36] Assistant Manager of Isla Lipana & Co.; (2) Mr. Raul G. Tumangday,[37] Senior Manager and Compliance Officer of petitioner; (3) Mr. Santino U. Sontillano,[38] Vice President and Head of Finance of petitioner; and (4) Ms. Irene G. Lozada,[39] Deputy Accounting Head of petitioner.

On July 26, 2024, petitioner filed its *Formal Offer of Evidence*,[40] to which respondent submitted his *Comment/Opposition (on Petitioner's Formal Offer of Evidence)* on August 6, 2024.[41] In the Resolution dated October 8, 2024,[42] the Court admitted petitioner's offered exhibits, *except* Exhibit "P-25", for petitioner's continued failure to submit the actually marked copy of the same.

For his part, respondent presented the testimony of Revenue Officer Rhea Joy Chua.[43]

Thereafter, the *Respondent's Formal Offer of Evidence* was filed on October 18, 2024,[44] to which petitioner submitted its *Comment on Respondent's Formal Offer*

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[31] Minutes of the hearing held on, and Order dated, October 19, 2023, Docket – Vol. II, pp. 786 to 789.
[32] Docket – Vol. II, p. 865.
[33] Docket – Vol. II, pp. 808 to 820.
[34] Docket – Vol. II, pp. 853 to 854.
[35] Docket – Vol. II, pp. 869 to 877.
[36] Exhibit "P-31", Docket – Vol. II, pp. 487 to 499; Minutes of hearing held on, and Order dated, March 7, 2024, Docket – Vol. II, pp. 878 to 879.
[37] Exhibit "P-32", Docket – Vol. II, pp. 636 to 642; Minutes of hearing held on, and Order dated, March 7, 2024, Docket – Vol. II, pp. 878 to 879.
[38] Exhibit "P-34", Docket – Vol. II, pp. 691 to 696; Minutes of hearing held on, and Order dated, April 18, 2024, Docket – Vol. II, pp. 966 to 968.
[39] Exhibit "P-33", Docket – Vol. II, pp. 890 to 903; Minutes of hearing held on, and Order dated, July 9, 2024, Docket – Vol. II, pp. 1254, and 1256 to 1257, respectively.
[40] Docket – Vol. IV, pp. 1340 to 1372.
[41] Docket – Vol. IV, pp. 1665 to 1667.
[42] Docket – Vol. IV, pp. 1671 to 1673.
[43] Exhibit "R-10", Docket – Vol. I, pp. 452 to 460.
[44] Docket – Vol. IV, pp. 1679 to 1684.

of Evidence on October 30, 2024.[45] In the Resolution dated November 29, 2024,[46] the Court admitted all of respondent's offered exhibits.

On February 3, 2025, petitioner filed its *Memorandum*,[47] while respondent submitted a *Manifestation* on February 11, 2025,[48] stating that he is adopting the arguments he raised in his *Answer* dated August 22, 2023, as his *Memorandum*.

The case was considered submitted for decision on February 13, 2025.[49]

THE STIPULATED ISSUE

The parties submit the following issue for this Court's resolution, to wit:

> "Whether Petitioner is liable to pay the assessed deficiency value-added tax (VAT) and compromise penalties, inclusive of interest, for taxable year 2017 in the aggregate amount of Php54,035,930.95."[50]

THE ARGUMENTS OF THE PARTIES

Petitioner argues that the respondent's assessment for deficiency VAT was not issued in accordance with the provisions of the Tax Code, as amended, and its implementing rules and regulations, on the bases of the following: (a) the disallowance of input VAT does not give rise to output VAT liability in the absence of any output VAT, and that it only reduces the amount of input VAT which may be offset against any future output VAT liability; and (b) that even after the disallowance of input VAT, petitioner has more than enough input tax to absorb the proposed VAT assessment.

Petitioner likewise insists that there is no factual and legal bases to hold petitioner liable for the deficiency VAT for CY 2017 in the aggregate amount of ₱54,035,930.96, inclusive of surcharges, interest, and penalties computed until 30 April 2023 on the following grounds: (a) that respondent had no authority or basis in law to disallow the input VAT on account of it being carried over to the succeeding period; and (b) that respondent's justification in recommending the issuance of the FLD/FAN and/or FDDA is not supported by law.

Respondent, in his *Answer*, contends that the assessment was issued in accordance with the provisions of the Tax Code, as amended, and its

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[45] Docket – Vol. IV, pp. 1688 to 1690.
[46] Docket – Vol. IV, pp. 1694 to 1695.
[47] Docket – Vol. IV, pp. 1702 to 1728.
[48] Docket – Vol. IV, pp. 1740 to 1742.
[49] Minute Resolution dated February 13, 2025, Docket – Vol. IV, p. 1739.
[50] Stipulation of Issue, JSFI, Docket – Vol. II, p. 809.

implementing rules and regulations; and that petitioner is liable for the assessed deficiency VAT and compromise penalties.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

In his FDDA, respondent assessed petitioner of deficiency VAT and compromise penalty, including interest, for CY 2017, in the aggregate amount of ₱54,035,930.96, to wit:

VALUE ADDED TAX				
VATable Receipts subject to 12% per VAT Return			₱	130,645,676.82
VAT Rate				12%
Output Tax				15,677,481.22
Less: Net creditable input taxes, net of carry over	₱	15,677,481.24		
Less: Disallowed input taxes (Schedule 1)		52,110.17		
Total	₱	15,625,371.07		
Add: Additional Input Tax Allocable to Exempt Sales (Schedule 2)		33,000,148.50		(17,174,777.43)
VAT Payable			₱	33,052,258.65
Less: Payments per VAT Return				-
Basic Tax Due				33,052,258.65
Add: Penalty				
12% interest (01.26.18 to 04.30.23)				20,863,672.31
TOTAL AMOUNT DUE			₱	**53,915,930.96**
II. COMPROMISE PENALTY				**120,000.00**
TOTAL AMOUNT DUE:			₱	**54,035,930.96**

The Court will now determine the propriety of the following items which comprise the deficiency VAT assessment:

A. Disallowed input taxes	₱ 52,110.17
B. Additional input tax allocable to exempt sales	33,000,148.50

A. Disallowed input taxes - ₱52,110.17

Respondent's verification disclosed a discrepancy between the amount of services rendered by non-residents as claimed by petitioner in its VAT returns and the amount of expenses subjected to final withholding VAT. Consequently, input taxes amounting to ₱52,110.17, as computed below, were accordingly disallowed pursuant to Section 110 of the NIRC, as amended, in relation to Sections 113 and 237 of the same Code:[51]

Schedule 1:

Services rendered by non-residents per VAT returns	₱14,479,636.75
Less: Expenses subjected to final withholding VAT	14,045,385.32
Difference	₱ 434,251.43
Multiply by: 12% Input Tax	12%
Disallowed input taxes	**₱ 52,110.17**

Sections 4.110-8(d) and 4.114-2(b) of Revenue Regulations (RR) No. 16-2005,[52] as amended by RR No. 4-2007,[53] provide for the substantiation requirement of input tax credits from services rendered by non-residents, as follows:

"SEC. 4.110-8. *Substantiation of Input Tax Credits*. -

xxx xxx xxx

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) **shall be supported by a copy of the Monthly Remittance Return of Value-Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.**

xxx xxx xxx

SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents*. —

xxx xxx xxx

(b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT with respect to the following payments:

(1) Lease or use of properties or property rights owned by non-residents; and

[51] *Details of Discrepancies*, Annex A, Exhibit "P-18", Docket – Vol. IV, at p. 1485.
[52] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.
[53] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

(2) Other services rendered in the Philippines by non-residents.

In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 Remittance Return of VAT and Other Percentage Taxes Withheld.

VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, **may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return**, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. **The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.**" *(Emphases added)*

As can be gleaned from the afore-quoted provisions, the duly filed BIR Form 1600 and proof of payment thereof shall serve as sufficient documentary substantiation for the claimed input tax on payments made to non-residents.

Indeed, a comparison between the amount of services rendered by non-residents, as reflected in petitioner's VAT returns, and the amount shown in BIR Forms No. 1600, which was subjected to final withholding VAT, reveals a discrepancy of ₱434,248.42, and not ₱434,251.43 as found by respondent. Consequently, petitioner overclaimed its input tax on services rendered by non-residents in the amount of ₱52,109.81, computed as follows:

CY 2017	Services Rendered by Non-Residents					
	Per VAT Return[54]		Per BIR Form No. 1600[55]		Difference - VAT Return is higher/(lower)	
	Amount of Services	Final Withholding VAT	Amount of Services	Final Withholding VAT	Amount of Services	Final Withholding VAT
1st Quarter	₱ 3,238,399.50	₱ 388,607.94	₱ 3,238,399.58	₱ 388,607.95	₱ (0.08)	₱ (0.01)
2nd Quarter	1,058,352.33	127,002.28	1,203,473.41	144,416.81	(145,121.08)	(17,414.53)
3rd Quarter	7,549,258.92	905,911.07	7,549,258.92	905,911.07	-	-
4th Quarter	2,633,626.00	316,035.12	2,054,256.42	246,510.77	579,369.58	69,524.35
Total	**₱14,479,636.75**	**₱1,737,556.41**	**₱14,045,388.33**	**₱1,685,446.60**	**₱434,248.42**	**₱52,109.81**

Thus, the Court upholds the disallowance of petitioner's claimed input tax in the amount of ₱52,109.81, and not ₱52,110.17 as determined by the BIR.

[54] BIR Records (Exhibit "R-9"), pp. 222 to 245 summarized in p. 246.
[55] BIR Records (Exhibit "R-9"), pp. 209 to 220 summarized in p. 221.

B. Additional input tax allocable to exempt sales - ₱33,000,148.50

Respondent's verification disclosed that petitioner's allocated input tax on its exempt sales per VAT returns amounted only to ₱2,433,823.50, instead of ₱35,433,972.00. Thus, respondent disallowed the difference of ₱33,000,148.50, pursuant to Section 4.110-4(2) of RR 16-2005 which states that "if any input tax cannot be directly attributed to either a VAT taxable or VAT exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to the transaction subject to VAT may be recognized for the input tax credit." Below is the BIR's computation of the ₱33,000,148.50 disallowed input tax allocable to petitioner's exempt sales:[56]

Schedule 2:

Per Audit			
	Exempt Revenues / Total Revenues	x Total Input Tax	
	₱2,727,143,102.85 / 2,857,788,779.67	x 37,131,460.94	= ₱ 35,433,972.00
Per Return			2,433,823.50
Additional Input Tax allocable to Exempt Sales			**₱33,000,148.50**

Moreover, the BIR, in response to petitioner's argument in its *Request for Reconsideration,*[57] contends in the subject FDDA that:

> "You argued that BIR did not take into account the excess VAT as of December 31, 2017, carried from previous years, which amounted to ₱143,140,581.42, which has remained unutilized as of this date. And that even if the entire VAT recognized for the current year is disallowed, it should not result in any VAT exposure because it has sufficient input VAT carry-over from prior years, that is more than enough to absorb any output VAT from current year's revenues that are subject to VAT. Your excess input tax for the year under audit was already carried over to succeeding period and cannot be utilized for any VAT exposure, hence, the herein assessment is hereby reiterated." [58]

Disagreeing with the foregoing findings, petitioner submits that there is no legal basis for respondent to impose VAT liability based solely on such disallowance or reduction of input VAT credits, as VAT liability cannot arise solely from the disallowance or reduction of input VAT credits. Accordingly, in as much as petitioner claimed input VAT as a purchaser, the disallowance of the said input VAT reported should not give rise to a transaction subject to VAT, as

[56] *Details of Discrepancies*, Annex A, Exhibit "P-18", Docket – Vol. IV, pp. 1485 to 1486.
[57] Exhibit "P-19", Docket – Vol. IV, at pp. 1493 to 1494.
[58] Exhibit "P-21", Docket – Vol. I, at p. 314.

there was no sale or exchange of goods that transpired to begin with. It further avers that Section 106 of the Tax Code specifically provides that VAT liability arises from sales transactions, either involving goods and services, and from the importation of goods in the Philippines.[59]

Petitioner likewise points out that nowhere in the Tax Code does it provide that the disallowance of input VAT results in a VAT liability. The disallowance of input VAT should, at most, reduce the amount of input VAT which may be offset against the output VAT liability of a taxpayer, and cannot be used to increase a taxpayer's output VAT liability.[60] It further claims that, by converting a mere disallowance of input VAT into an actual tax liability without any basis whatsoever, respondent arbitrarily imposed a tax not on any sale or consumption, but on the property or capital of petitioner, which is contrary to law.[61]

It further submits that even if the portion of the input tax credits being disallowed by respondent amounting to ₱33,052,258.65 would be removed from petitioner's 2017 input VAT credits, there is still an excess input VAT amounting to ₱143,140,581.42 to absorb the output VAT for the year being assessed, or any output VAT of the subsequent years, as the adjusted input VAT credit is still much greater than its output VAT liability for the year (*i.e.*, ₱15,677,481.22). As such, there should not still be any deficiency VAT payment due from petitioner resulting from any disallowance of its excess input VAT.[62]

Petitioner further argues that the practice of respondent to assess deficiency VAT whenever input VAT is disallowed based on the presumption that the same had been carried forward and utilized in the succeeding period/s has already been overruled by the CTA on two (2) grounds: (1) the succeeding year, which allegedly benefited from the input VAT carried forward, is obviously not covered by the tax audit; and (2) the legal remedy or action of respondent is to subject the succeeding year to tax audit and, to assess the alleged VAT liability, if any, pursuant to that audit.[63]

Lastly, petitioner insists that the audit period and authority of the respondent cover only the year 2017. As such, respondent has no authority to rule on the availability and validity of input tax credit available to petitioner in 2018. To rule otherwise would be violative of petitioner's right to due process, as the assessment would be effectively expanded beyond the period covered by the 2021 LOA.[64]

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[59] Pars. 28 to 31, petitioner's *Memorandum*, Docket – Vol. IV, pp. 1711 to 1712.
[60] Pars. 32 and 35, petitioner's *Memorandum*, Docket – Vol. IV, p. 1712.
[61] Par. 42, petitioner's *Memorandum*, Docket – Vol. IV, p. 1716.
[62] Par. 50, petitioner's *Memorandum*, Docket – Vol. IV, p. 1719.
[63] Pars. 55 to 55.2, petitioner's *Memorandum*, Docket – Vol. IV, pp. 1720 to 1721.
[64] Par. 60, petitioner's *Memorandum*, Docket – Vol. IV, p. 1722.

However, the Court is not convinced. The input VAT disallowance made by the BIR is proper and in order.

Section 110(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the determination of the amount of input tax creditable for a certain period, to wit:

> "SEC. 110. *Tax Credits.* – x x x
>
> (C) *Determination of Creditable Input Tax.* - The sum of the excess input tax carried over from the preceeding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be reduced by the amount of** claim for refund or tax credit for value-added tax and **other adjustments, such as** purchase returns or allowances and **input tax attributable to exempt sale.**
>
> The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments and the Bureau of Customs." (*Emphases added*)

Based on petitioner's 2017 *Quarterly Value-Added Tax Returns* (BIR Forms No. 2550-Q), as summarized below, it is evident that petitioner was engaged in taxable and exempt sales, or in mixed transactions, *viz:*

Period Covered	VATable Sales	Exempt Sales	Total For CY 2017
1st Quarter[65]	₱ 5,333,075.25	₱ 477,333,095.32	₱ 482,666,170.57
2nd Quarter[66]	116,888,497.92	519,317,618.12	636,206,116.04
3rd Quarter[67]	1,370,624.92	1,196,608,954.45	1,197,979,579.37
4th Quarter[68]	7,053,478.73	533,883,434.96	540,936,913.69
Total for CY 2017	**₱130,645,676.82**	**₱2,727,143,102.85**	**₱2,857,788,779.67**

Under Section 112(A) of the NIRC of 1997, as amended, if a VAT-registered entity is engaged in VATable and VAT-exempt transactions, and the input VAT cannot be directly identified with specific sales, the input VAT credits allowable will be computed under an apportionment formula, to wit:

> "xxx where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one

[65] Exhibit "P-23", Docket – Vol. IV, at p. 1504.
[66] Exhibit "P-28", Docket – Vol. IV, at p. 1611.
[67] Exhibit "P-29", Docket – Vol. IV, at p. 1613.
[68] Exhibit "P-30", Docket – Vol. IV, at p. 1615.

of the transactions, it shall be allocated proportionately on the basis of the volume of sales. xxx"

As a corollary thereto, Section 4.110-4 of RR No. 16-2005 provides as follows:

> "SEC. 4-110-4. *Apportionment of Input Tax on Mixed Transactions.* -A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed to recognize input tax credit on transactions subject to VAT as follows:
>
> 1. xxx xxx xxx
>
> **2. If any input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for input tax credit."** *(Emphasis added)*

Clearly, when there are mixed sales transactions, and a direct attribution of the input VAT cannot be made on such sales, a proportionate allocation on the basis of volume of sales must be made. However, no tax credit is allowed for input taxes in case of VAT-exempt transactions. Correspondingly, it can be inferred that the BIR's VAT assessment against petitioner has both factual and legal bases. Since petitioner has transactions exempt from payment of VAT, the corresponding input taxes attributable thereto should have been deducted from the available input tax pursuant to Section 110(A)(C) of the NIRC of 1997, as amended.

The Court further notes that in its 2017 *Quarterly Value-Added Tax Returns*, petitioner declared the following input taxes arising from current purchases of capital goods not exceeding ₱1Million, domestic purchases of goods other than capital goods, domestic purchases of services, services rendered by non-residents and amortization of input VAT on capital goods purchases exceeding ₱1Million:

	1st Quarter (Exhibit "P-23")[69]	**2nd Quarter** (Exhibit "P-28")[70]	**3rd Quarter** (Exhibit "P-29")[71]	**4th Quarter** (Exhibit "P-30")[72]	**CY 2017**
Input VAT on current purchases:					
Input VAT on purchase of capital goods not exceeding ₱1Million			₱ 50,701.77	₱ 132,542.50	₱ 183,244.27

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[69] Docket – Vol. IV, pp. 1504 to 1505.
[70] Docket – Vol. IV, pp. 1611 to 1612.
[71] Docket – Vol. IV, pp. 1613 to 1614.
[72] Docket – Vol. IV, pp. 1615 to 1616.

Input VAT on domestic purchases of goods other than capital goods	₱ 176,726.79	₱ 88,690.35	53,220.06	86,620.71	405,257.91
Input VAT on importation of goods other than capital goods				-	-
Input VAT on domestic purchase of services	10,154,371.61	8,838,588.29	13,937,031.48	1,875,410.95	34,805,402.33
Input VAT on services rendered by non-residents	388,607.94	127,002.28	905,911.07	316,035.12	1,737,556.41
Subtotal - Input VAT on current purchases	**₱ 10,719,706.34**	**₱ 9,054,280.92**	**₱ 14,946,864.38**	**₱ 2,410,609.28**	**₱ 37,131,460.92**
Amortization of input VAT on capital goods purchases exceeding ₱1Million:					
Input VAT on capital goods purchases exceeding ₱1Million from previous quarter	₱ 1,304,733.13	₱ 1,198,176.47	₱ 1,091,619.80	₱ 501,975.95	₱ 1,304,733.13
Less: Input VAT on capital goods purchases exceeding P1Million deferred for the succeeding period	(1,198,176.47)	(1,091,619.80)	(501,975.96)	(446,606.94)	(446,606.94)
Subtotal – Amortization of input VAT on capital goods purchases exceeding ₱1Million	**₱ 106,556.66**	**₱ 106,556.67**	**₱ 589,643.84**	**55,369.01**	**₱ 858,126.19**
Total Input VAT paid or incurred during the year 2017	**₱10,826,263.00**	**₱ 9,160,837.59**	**₱ 15,536,508.22**	**₱ 2,465,978.29**	**₱ 37,989,587.10**

Since petitioner had VATable sales and exempt sales for the year 2017, and its input VAT cannot be directly identified with specific sales, the Court shall allocate the input VAT proportionately on the basis of the volume of petitioner's sales, as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	CY 2017
Vatable Sales/Receipts	₱ 5,333,075.25	₱ 116,888,497.92	₱ 1,370,624.92	₱ 7,053,478.73	₱ 130,645,676.82
Exempt Sales/Receipts	477,333,095.32	519,317,618.12	1,196,608,954.45	533,883,434.96	2,727,143,102.85
Total Sales/Receipts	**₱482,666,170.57**	**₱636,206,116.04**	**₱1,197,979,579.37**	**₱540,936,913.69**	**₱2,857,788,779.67**
Allocation Factor:					
% of VATable Sales to Total Sales	1.1049200%	18.3727404%	0.1144114%	1.3039374%	
% of Exempt Sales to Total Sales	98.8950800%	81.6272596%	99.8855886%	98.6960626%	
Total input VAT from current purchases and amortization of input VAT on capital goods purchases exceeding ₱1Million per VAT returns	₱ 10,826,263.00	₱ 9,160,837.59	₱ 15,536,508.22	₱2,465,978.29	₱37,989,587.10
Add(Less):	.01	17,414.53	-	(69,524.35)	(52,109.81)

Overclaimed input tax on services rendered by non-residents					
Understatement of input VAT deferred on capital goods purchases exceeding ₱1Million from 3rd quarter to 4th quarter[73]				.01	.01
Adjusted total input VAT from current purchases and amortization of input VAT on capital goods purchases exceeding ₱1Million	₱10,826,263.01	₱9,178,252.12	₱15,536,508.22	₱2,396,453.95	₱37,937,477.30
Allocated as follows:					
Input VAT Allocated to VATable Sales	₱ 119,621.55	₱ 1,686,296.44	₱ 17,775.54	₱ 31,248.26	₱ 1,854,941.79
Input VAT Allocated to Exempt Sales	**10,706,641.46**	**7,491,955.68**	**15,518,732.68**	**2,365,205.69**	**36,082,535.51**
Total	₱ 10,826,263.01	₱ 9,178,252.12	₱ 15,536,508.22	₱ 2,396,453.95	₱ 37,937,477.30

It must be noted that prior to allocation, the total input VAT of ₱37,989,587.10 from current purchases and amortization of input VAT on capital goods purchases exceeding ₱1Million per VAT returns was adjusted to account for the ₱52,109.81 overclaimed input VAT on services rendered by non-residents, and the ₱.01 understatement of input VAT deferred on capital goods purchases exceeding ₱1Million from 3rd quarter to 4th quarter.

Based on the foregoing allocation, of the ₱37,937,477.30 adjusted input VAT, the amount of ₱1,854,941.79 represents input VAT allocable or attributable to petitioner's VATable sales, while the remaining amount of ₱36,082,535.51 represents input VAT allocable or attributable to petitioner's exempt sales.

A further perusal of petitioner's 2017 *Quarterly Value-Added Tax Returns* shows that, for the 1st, 2nd and 3rd quarters,[74] petitioner failed to deduct from its total available input VAT, the portion allocable or attributable to its VAT-exempt sales, and that it was only in the 4th quarter that petitioner deducted from the total available input VAT, the amount of ₱2,433,823.50, representing input VAT allocable or attributable to its VAT-exempt sales for the same quarter.[75]

But as pointed out earlier, the amount of creditable input tax in a month or quarter shall be net of input tax attributable to VAT-exempt sales, pursuant to Section 110(C) of the NIRC of 1997, as amended. Consequently, petitioner had overclaimed its input VAT arising from current purchase transactions and amortization of input VAT on capital goods purchases exceeding ₱1Million for the year 2017 in the amount of ₱33,648,712.01, computed as follows:

[73] Line 23A, Exhibit "P-29", Docket – Vol. IV, p. 1614 and Line 20B, Exhibit "P-30", Docket – Vol. IV, p. 1615.
[74] Line 23C, Exhibits "P-23", "P-28", "P-29, Docket – Vol. IV, pp. 1505, 1612 and 1614, respectively.
[75] Line 23C, Exhibit "P-30", Docket – Vol. IV, p. 1616.

CY 2017	Input VAT Allocable to Exempt Sales		
	Should-be Deduction from the Total Available Input VAT	Amount Deducted Per VAT Return	Overclaimed Input VAT
1st Quarter	₱ 10,706,641.46		₱ 10,706,641.46
2nd Quarter	7,491,955.68		7,491,955.68
3rd Quarter	15,518,732.68		15,518,732.68
4th Quarter	2,365,205.69	₱ 2,433,823.50	(68,617.81)
Total	**₱36,082,535.51**	**₱2,433,823.50**	**₱33,648,712.01**

Nonetheless, petitioner asserts that it has at the start of the year 2017, excess input VAT carried over from prior periods, amounting to ₱143,140,581.42 which is accordingly more than enough input tax to absorb the output VAT for the year being assessed, or any output VAT of the subsequent years – the adjusted input VAT credit is still much greater than its output VAT liability for the year (*i.e.*, ₱15,677,481.22). As such, petitioner insists that there should not still be any deficiency VAT payment due from petitioner resulting from any disallowance of its excess input VAT.[76]

The Court does not agree.

Undoubtedly, petitioner's 2017 *Quarterly Value-Added Tax Returns* show that it had excess input tax credits at the beginning of CY 2017 in the amount ₱143,140,581.42,[77] which at the end of CY 2017 amounted to ₱163,018,863.81.[78]

However, after deducting the input VAT disallowances of ₱33,700,821.81, petitioner's excess tax credits at the end of CY 2017 should only be ₱129,318,042.00, computed as follows:

Excess tax credits at the end of CY 2017			₱163,018,863.81
Less:	Disallowances per this Court's finding		
	Overclaimed input VAT from services rendered by non-residents	₱ 52,109.81	
	Understatement of the input VAT on capital goods purchases exceeding ₱1Million carried-over to the fourth quarter	(0.01)	
	Input VAT allocable to exempt sales which was not deducted from the total available input VAT	33,648,712.01	
	Total Disallowances		33,700,821.81
Should-be excess tax credits at the end of CY 2017			**₱129,318,042.00**

In other words, petitioner's reported excess tax credits at the end of CY 2017 amounting to ₱163,018,863.81 and carried-over to its *Quarterly Value-Added*

[76] Par. 50, petitioner's *Memorandum*, p. 1719.
[77] Line 20A, Exhibit "P-23", Docket – Vol. IV, p. 1504.
[78] Line 29, Exhibit "P-30-4, Docket – Vol. IV, p. 1616.

Tax Return for the 1st quarter of CY 2018[79] were overstated by ₱33,700,821.81. Thus, notwithstanding the invalidity of the ₱33,700,821.81, this amount remained available for utilization or crediting against petitioner's output tax liabilities in the succeeding periods.

It equally bears stressing that if the Court were to allow the offsetting of the assessed disallowed input VAT of ₱33,700,821.81 against the excess tax credits of ₱163,018,863.81, petitioner may end up benefiting petitioner twice from it, *i.e.,* as tax credit against output VAT in the subsequent periods; and as settlement/payment of the subject deficiency VAT assessment, at the expense of the government.

Similarly, if the Court should decide not to sustain respondent's assessment or disallow the input VAT of ₱33,700,821.81, this would not only put an additional burden on the taxpayer to amend subsequent returns to remove the excess input tax already utilized so as to prevent any BIR assessment on the matter, but would also burden the BIR to monitor the decisions of this Court in ensuring that the utilized excess tax credits are not being utilized again in the subsequent periods. This additional burden placed upon both parties would result to an outright disregard of the basic principle in tax law – that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.[80]

In fine, petitioner failed to sufficiently establish that the disallowed input tax credits of ₱33,700,821.81 were not utilized in the subsequent periods. Hence, petitioner is liable for basic deficiency VAT for CY 2017 in the amount of ₱33,700,821.81, computed as follows:

Vatable receipts subject to 12% per VAT return			₱ 130,645,676.82
Output tax Due			₱ 15,677,481.22
Less:	Net creditable input taxes, net of carry-over	₱15,677,481.24	
	Less: Disallowed input taxes	52,109.81	
	Total	₱15,625,371.43	
	Less: Additional input tax allocable to exempt sales	33,648,712.01	
	Understatement of input VAT deferred on capital goods purchases exceeding ₱1Million from 3rd quarter to 4th quarter	.01	(18,023,340.59)
VAT payable			₱ 33,700,821.81
Less:	Payments per VAT return		-
Basic Deficiency VAT Due			**₱33,700,821.81**

n/

[79] Line 20A, Exhibit "P-35", Docket – Vol. IV, p. 1617.

[80] *Commissioner of Internal Revenue vs. Stradcom Corporation*, G.R. No. 255520, April 21, 2025, citing *Commissioner of Internal Revenue vs. Algue, Inc.*, 241 Phil. 829 (1988) [Per J. Cruz, First Division].

Petitioner is not liable to pay the subject compromise penalties.

In the FDDA, the BIR assessed petitioner of compromise penalties in the aggregate amount of ₱120,000.00, due to the following alleged violations:[81]

Nature of Violation	Compromise Penalty (RMO 7-2015)
Failure to supply correct information at the time required by law or regulations- Income Tax (Pursuant to Section 34 of the NIRC, as amended)	₱ 20,000.00
Failure to supply correct information at the time required by law or regulations- Value-Added Tax (Pursuant to Section 105 of the NIRC, as amended)	50,000.00
Failure to withhold or remit correct amount of Expanded Withholding Tax (Pursuant to Section 58 of the NIRC, as amended; RR 2-98, as amended)	25,000.00
Failure to withhold or remit correct amount of Final Withholding Tax (Pursuant to Section 57 of the NIRC, as amended; RR 2-98, as amended)	25,000.00
TOTAL	**₱120,000.00**

It must be stressed, however, that a compromise is, by its nature, mutual in essence.[82] It implies agreement. One party cannot impose it upon the other.[83] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[84] Considering that there is no indication that petitioner consented to the subject compromise penalties, the said aggregate amount cannot be sustained.

ACCORDINGLY, the present *Petition for Review* is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner covering compromise penalties for CY 2017 are **CANCELLED** and **SET ASIDE**. However, the deficiency VAT assessment for CY 2017 is **UPHELD** with **MODIFICATIONS.**

Consequently, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱62,080,607.01**, inclusive of surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018, computed as follows:

[81] Exhibit "P-18", Docket – Vol. IV, at pp. 1483 to 1484.
[82] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[83] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
[84] Refer to Part III. 5, Revenue Memorandum Order No. 7-2015.

Basic Tax	₱ 33,700,821.81
Add: 25% Surcharge	8,425,205.45
12% Deficiency Interest from Jan. 26, 2018 to Dec. 31, 2022	
[₱33,700,821.81 x 12% x 1801/365 days]	19,954,579.75
Total Amount Due - December 31, 2022	**₱62,080,607.01**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the **₱62,080,607.01** total amount due as of December 31, 2022, or an amount equivalent to **₱20,410.06** per day,[85] from December 31, 2022 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, considering that this decision is partly favorable to the national government, the BIR, through respondent, is hereby authorized to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of petitioner in sufficient quantity to satisfy the tax or charge with any increment thereto incident to delinquency.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[85] ₱62,080,607.01 x 12%/365 days.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, is it 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice