

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER REVENUE,	OF	INTERNAL	CTA EB No. <u>883</u> (CTA Case No. 7415)
		Petitioner,	Present:
			Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, and Cotangco-Manalastas, <u>JJ</u> .
-versus-			

FAX N PARCEL, INCORPORATED,	Promulgated:
Respondent.	

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DECISION

CASTAÑEDA, JR., J:

Before this Court is a Petition for Review on the Decision¹ and Resolution² of the Court of Tax Appeals – First Division (CTA-First Division) both promulgated on November 22, 2011 and March 12, 2012 respectively, in the case entitled, *Fax N Parcel, Inc., -versus- Commissioner of Internal Revenue* docketed as CTA Case No. 7415. The *fallo* of the questioned Decision and Resolution viz:

November 22, 2011 Decision:

WHEREFORE, the instant Petition for Review filed by petitioner Fax N Parcel, Inc. is hereby **GRANTED**. Accordingly, the deficiency income tax and VAT assessments in the aggregate amount of P3,195,663.73 are hereby cancelled and withdrawn, for lack of factual basis.

SO ORDERED.³ *JJ*

¹ Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta. Associate Justice Erlinda P. Uy is on leave.

² Division *Rollo*, pp. 860-870.

³ *Rollo*, pp. 52-53.

March 12, 2012 Resolution:

WHEREFORE, the Motion for Reconsideration dated December 16, 2011 filed by respondent is hereby **DENIED**, for lack of merit.

SO ORDERED.⁴

THE FACTS

The following are the undisputed facts:

Fax N Parcel, Inc., (herein respondent) avers that it is a duly organized local corporation engaged in the business of transmitting information through different mediums of communication, such as but not limited to telephones, telegraphs, facsimile and other over-the-counter-related services. Its principal place of business is at Unit 33 LGF Building A, SM Megamall, EDSA, Mandaluyong City.

Petitioner on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) (herein petitioner) empowered to issue and cancel disputed assessments. She holds office at the BIR National Office Building, BIR Road, Agham, Quezon City.

On March 18, 2005, the Commissioner of Internal Revenue (CIR) issued against Fax N Parcel, Inc. (FNP) a Preliminary Assessment Notice (PAN), with attached Details of Discrepancies for unreported income from understatement of sales in the amount of P3,195,663.73 on purchases made by third parties during the 4th quarter of 2002. FNP received the PAN and the Details of Discrepancies on March 18, 2005.

On April 28, 2005, CIR issued a Formal Assessment Notice (FAN) with another Details of Discrepancies, which was but a reiteration of the Details of Discrepancies issued on March 18, 2005. They were received by FNP on April 30, 2005.

On May 30, 2005, FNP filed a Protest Letter, and submitted supporting documents on July 29, 2005. CIR however failed to act on the said protest within the required 180-day period from FNP's submission of supporting documents. Hence, the Petition for Review was filed on February 24, 2006. 

⁴ *Rollo*, p. 65.

In her answer dated May 19, 2006, CIR raised the following Special and Affirmative Defenses:

"A) Deficiency Income Tax

- 11) Pursuant to Revenue Regulations (RR) No. 7-95 dated 4 December 1995, as amended by RR 13-97 and 7-99 dated 18 November 1997 and 10 February 1999, respectively, which was duly approved by the Secretary of Finance upon the recommendation of the Commissioner of Internal Revenue, the Bureau of Internal Revenue made mandatory the submission of the Summary List of Sales and Purchases (SLSP) of all persons liable for VAT;
- 12) Verification disclosed that based on the Summary List of Purchases submitted by Petitioner's customers for the 4th quarter of 2002, Petitioner made a gross sale of P5,007,571.73, however, Petitioner's VAT return for the 4th quarter reflected a gross sales of only P1,811,908.00, hence, Petitioner has an undeclared income from its undeclared sales in the amount of P3,195,663.73, which is subject to income tax in the amount of P1,968,738.98, inclusive of surcharge and interest;

B) Deficiency Value Added Tax:

- 13) The 1997 Tax Code provides that any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to 10% value added tax on the gross selling price or gross value in money in cases of sale, barter or exchange 

of goods or properties; or on the gross receipt in cases of sale or exchange of services including the use or lease of properties (Sections 105, 106 & 108)

- 14) As mentioned in the preceding paragraphs, Petitioner made an under declaration of its sale in the amount of P3,195,663.73, such sale is subject to VAT at 10% or an amount of P629,239.32, inclusive of surcharge and interest;

C) Deficiency Assessments:

- 15) Contrary to the claim of Petitioner, the exact amounts of its deficiency income and value added taxes were stated in the Formal Assessment Notice (FAN), which was attached to the Details of Discrepancies, further, Petitioner received the FAN on 30 April 2005, hence, this date should be the reckoning point for the prescriptive period for the filing of the protest and other subsequent actions;
- 16) Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments (*Interprovincial Autobus Co., Inc. v. Collector*, 98 Phil. 290; *Cecilia Teodoro Dayrit v. Hon. Fernando Cruz and Commissioner*, L-39910, Sept. 26, 1988; *Bonifacia Sy Po v. CTA & Commissioner*, G.R. No. 81446, August 18, 1988, all cases cited in *Aban, Law of Basic Taxation in the Philippines*, 1st Edition, p. 109);" *Jr*

To expedite the proceeding, the parties submitted a Joint Stipulation of Facts on July 27, 2006, which the Court approved on September 7, 2006, thereby terminating the pre-trial conference.

Trial ensued with FNP presenting its first witness MA. ELENA T. ESPIRITU, its accounting manager.

She testified that after filing its VAT Return for 2002, FNP received from the BIR Details of Discrepancies dated March 18, 2005 with attached Quarterly Report on Third Party Information on Purchases.

This was followed by another Details of Discrepancies dated April 28, 2005 received by FNP on May 24, 2005, assessing it for alleged VAT deficiency for its sales during the fourth quarter of 2002 and for deficiency IT. The assessment was allegedly based on third party information received by the BIR from the customers of FNP.

FNP filed a protest to the assessment stating that the amounts allegedly reported by the third party customers were different from those reflected in FNP's record of actual purchases of the named customers. The amounts cited ranging from hundreds of thousands to millions of pesos were unrealistic since FNP was just a small enterprise engaged in photocopying, fax and courier services.

The witness further testified that FNP's transactions range from as low as P2.00 to a couple of hundreds, except for their courier service transactions which range from P1,500.00 to P3,000.00. During the fourth quarter of 2002, FNP had only two photocopying machines, two fax machines, a computer and a printer. Even assuming full capacity operation with no downtime or lean periods, their photocopying including their fax and courier services could only generate P30,000.00, more or less. The amount allegedly reported by informant SM Mart was already equivalent to FNP's sales for one whole month assuming that its operations would run for straight eleven hours daily.

In support of its protest, FNP submitted to CIR the summary of its sales for October, November and December 2002, together with the corresponding VAT remitted to the BIR for the same period and Form 2550Q for the fourth quarter of 2002. 

On September 16, 2005, FNP received a letter from the BIR dated September 13, 2005, indicating that its protest had been forwarded to Revenue District Office No. 50 for appropriate action. The letter as well mentioned that the assessed amounts of P1,968,738.98 was for deficiency IT, and the P629,239.32 was for deficiency VAT, both for the fourth quarter of 2002. The said amounts however were never mentioned in the previously issued Details of Discrepancies dated April 28, 2005.

For failure of CIR to act on FNP's protest within the allotted period of 180 days, FNP filed the instant Petition for Review before the Court on February 24, 2006.

On September 7, 2006, Ma. Elena T. Espiritu was recalled to the witness stand. She testified that the sales of FNP were net of VAT based on its books of accounts which she personally prepared. She presented FNP's Ledger for the months of October to December 2002.

On February 8, 2007, the same witness further testified that FNP had P6.8 Million Sales for the entire year of 2002 in stark contrast with P5M sales for one quarter alleged by the BIR examiner. This was unrealistic since FNP's Financial Statement and Income Tax Return for the year 2002 showed that FNP paid an IT of only P46,233.43. Further, FNP's Quarterly VAT Return for the fourth quarter of 2002, and the Official Receipt of the remittance of the VAT amounted only to P7,655.00.

To bolster its claim, FNP moved for issuance of Subpoenas *Duces Tecum Ad Testificandum* to the third-party purchasers who allegedly submitted a summary list of their purchases from FNP directing them to testify and bring to the Court official receipts and/or other documents pertaining to their claimed purchases from FNP for the fourth quarter of 2002.

In compliance with the subpoenas issued by the Court, Cheryl M. Joseph, Arlene Estipona, Nimfa A. Masculino, Ma. Irma Topacio, Anna May Ceredon, Marivic Trosado, Loida P. Leyson, Minerva Baguing, Jean Tiempo, Lovely Magnaye appeared and identified their respective judicial affidavits and certifications executed in compliance with the Court's directive.

CHERYL M. JOSEPH, Chief Finance Officer and previously Chief Accountant of Leisure and Allied Industries Philippines, Inc., (LAIP) in 2002, testified that in the conduct of their business in SM Megamall, they occasionally utilize the 

photocopying services of FNP. For the fourth quarter of 2002, the total purchases of LAIPI from FNP amounted to P623.75, inclusive of value added tax, based on official receipts issued by FNP and the cash disbursement voucher for payment and books of LAIPI. She prepared a summary of LAIPI's transactions with FNP indicating the date, particulars, gross amount, corresponding VAT, and official receipt number issued for each transaction. However, some transactions in the said summary do not have official receipt numbers as the corresponding receipts can no longer be located despite diligent search. Thus, the entries for these transactions made five (5) years ago were based on the cash disbursement voucher and/or books of LAIPI.

On cross, she added that LAIPI is the operator of the Timezone Family Entertainment Center, a VAT registered taxpayer. She confirmed that its total purchase from FNP for the fourth quarter of 2002 amounted to P623.75 inclusive of VAT. However only P409.55 was reflected in the Quarterly Report on Third Party Information on Purchases Per Taxpayer submitted to the BIR as their company was required to report actual purchases for the Fourth Quarter of 2002 and the purchases for the month of December were liquidated in January 2003.

On re-direct, she explained that the purchases for the month of December in the amount of P263.25 were liquidated in January 2003 for they were deemed petty cash expenses of Time Zone Megamall branch, thus were not included in the VAT liquidation for the fourth quarter of 2002.

ARLENE ESTIPONA, Accounting Officer of Arancia, Inc., testified that she has no knowledge of any transaction with FNP either in her personal capacity or as an officer of Arancia, Inc. She has no record showing that Arancia, Inc. ever dealt with FNP.

Both **MA. IRMA TOPACIO**, the Vice President for Finance of Music One Corporation and **MARIVIC TROSADO**, the Finance Officer of Hi-Integra, Inc., admitted that they were aware of the assessment issued by CIR against FNP for deficiency IT and VAT for the fourth quarter of 2002. The bases of this assessment were the computer print-outs showing that Music One Corporation made purchases from petitioner in the amount of P49.00 in December 2002, while Hi-Integra, Inc., in the amount of P54.00 in October 2002. But based on their respective records, there were no such purchases made by them from FNP during the fourth quarter of 2002. *✕*

MINERVA BAGUING, Accounting Manager of SM Mart, Inc., testified that per their record, they never purchased goods or services from FNP during the fourth quarter of 2002 and that their company never reported to CIR any purchase from FNP for the same period. This is contrary to the computer print-out of respondent showing that SM Mart purchased from FNP in October, November and December 2002 in the amounts of P555,365.30, P574,387.60 and P1,306,326.70, respectively.

Jean Tiempo, the Accounting Manager of Plaza Arcade, Inc., declared that FNP had been assessed for deficiency IT and VAT for the fourth quarter of 2002. Allegedly, part of the basis of said assessment was a report of purchases of Plaza Arcade, Inc., from FNP in a computer print-out in the amounts of P87,863.56 in October 2002, P168,004.31 in November 2002, and P424,061.14 in December 2002. However, she could not show any proof of such purchases as they had already disposed the records of all their transactions for that period based on usual accounting practice.

NIMFA A. MASCULINO, the Junior Bookkeeper of Asian Terminals, Inc., (ATI), alleged that per Official Receipt No. 104307 issued by FNP to ATI on September 24, 2002, the latter purchased from FNP during the fourth quarter of 2002 in the amount of P3,100.00. This receipt was part of a liquidation report submitted by ATI's former employees Mary Jane dela Cruz and of ATI's accounting records in October 2002.

ANNA MAY CEREDON, Liaison Officer of Lyncor, Inc. claimed that per Official Receipts Nos. 105485 and 106331, their total purchases from FNP for the fourth quarter of 2002 was only P30.00.

LOIDA P. LEYSON, Accounting Officer of Shinsung Corporation, testified that Official Receipt No. 108629 indicates that on December 8, 2002, they purchased from FNP, through Mr. So Young Lee Hong, in the amount of P1,929.00.

On July 7, 2009, **LOVELY MAGNAYE**, the Financial Reporting Manager of Jollibee Foods Corporation identified the Certification she issued on April 3, 2007 to the effect that there were no sales made by FNP to Jollibee Foods Corporation in the fourth quarter of 2002.

On August 20, 2009, FNP rested its case and filed its Formal Offer of Evidence. 

In a Resolution dated November 16, 2009, the Court admitted FNP's Exhibits "F," "J," "K," "L," "M," "N," "O," "P," and "R" but denied the admission of the rest of the exhibits.

However, upon motion for reconsideration, the Court in the Resolution dated February 26, 2010, admitted FNP's Exhibits "A," "B," "C," "D," "E," "G," "H," "I," "Q," "S," "T," "U," "X," "Y," "Z," "AA," and "BB."

CIR, on the other hand, presented as her first witness, Evelyn R. Garces, Information Technology Officer I assigned at the Information System Development Service of the BIR National Office. She supervises the generation of reports regarding taxpayer's compliance, electronic submission of third party information, including Letter Notices. A Letter Notice is a computer generated document resulting from the automated matching of third party information on purchases with the VAT return filed by the taxpayer. The third party who is either a customer or a purchaser provides information about its transactions with the seller subject to VAT.

According to the witness, the generation of Letter Notices starts with the submission to the BIR of a summary list of purchases (SLP) by the customers/purchasers. Only those customers whose quarterly gross purchases exceed P1,000,000.00 are required to submit an SLP pursuant to Revenue Memorandum Order No. RMC 24-02 and Revenue Regulation 08-02. The SLP must be in a diskette for submission to the Revenue District Office (RDO) that has jurisdiction over the business *situs* on a quarterly basis. It shall be uploaded by the RDO to the Integrated Tax System (ITS) server that will electronically transmit the data to the Data Warehouse of the BIR. The encoded and uploaded VAT Returns filed by the seller with the BIR are likewise transmitted to the Data Warehouse.

Subsequently, a memorandum from CIR shall authorize the RDO to run the program that will match the SLP as declared by the customer with the sales per the seller's declaration. The same memorandum sets the threshold or percentage of the discrepancy/under-declaration between the purchases and sales that will merit the issuance of a Letter Notice. The computer program will automatically compare the sales and purchases of each taxpayer and determine the discrepancies. If a discrepancy is detected, the computer program will determine if it matches with the threshold set in the system as indicated in the memorandum. If the discrepancies on the sales and purchases meet the set threshold, a Letter 

Notice together with a Quarterly Report on the Third Party Information on Purchases will be automatically generated. The Letter Notice informs the taxpayer that the computerized matching of the purchases by their customers with the sales declared in their returns discloses a discrepancy/under-declaration. Thereafter, the taxpayer is invited to the Revenue District Office concerned to reconcile the apparent discrepancy.

There had been no complaints regarding the accuracy of the system for the past seven years of its implementation which started in the last quarter of 2002.

On cross-examination, the witness admitted that in 2002, she was not yet involved in the generation of reports from the BIR Integrated Tax System (ITS) that resulted in the issuance of the subject assessment. While there is a validation program provided by the BIR, such includes only the checking of the format of the file submitted and the viruses. The validation process does not include the checking of the substance or content of the SLP against any other source or documents. Further, the SLP is only a listing without any attached invoices or receipt of the purchases stated in the said SLP.

The witness confirmed that the subject Quarterly Report on Third Party Information Purchases covers the fourth quarter of 2002 which was among the initial reports generated by the system when it was implemented in the last quarter of 2002. Since she does not handle tax assessments protests, she does not know if a complaint or protest has been filed by petitioner in relation to the discrepancies between the reports generated by the system and the actual sales, which is the basis of the subject assessment.

SAMIRA N. PAGDILAO, Revenue Officer III assigned at RDO No. 38, Quezon City, testified that she conducts audit examinations of taxpayers to determine their internal revenue tax liabilities and other matters referred to her by their group supervisor or revenue district officer.

Upon assignment and receipt of a Letter Notice, she notifies the taxpayer concerned to formally reply on the apparent discrepancies indicated in the Letter Notice. In the absence of the required explanation on the discrepancies noted, the BIR shall issue a Preliminary Assessment Notice (PAN). If the explanation to the PAN is still insufficient, a Formal Assessment Notice (FAN) is issued, otherwise, the case will be deemed closed and terminated. *je*

In the instant case, FNP, through a Letter Notice, was informed about the discrepancies between the sales as shown in its tax return and the sales as reported by its customers. She served the Letter Notice to FNP after it was assigned to her. When FNP failed to file the requested reply, she served a second notice requiring FNP to make a written reply lest the case would be referred to the legal division for appropriate action. Only then that it filed a reply. However, the said reply, coupled with supporting documents, did not sufficiently explain the discrepancies stated in the Letter Notice. Per her recommendation in a Memorandum dated December 31, 2004, a PAN with attached Details of Discrepancies was issued against FNP. Since there was no protest timely filed, a FAN was subsequently issued.

Contrary to FNP's contention, it received the FAN containing the computation of the assessed deficiency taxes as shown in the proof of receipt appearing on the upper-right hand corner on the first page of the FAN. After receipt, FNP filed a protest.

In both PAN and the FAN, FNP was subjected to deficiency IT based on the discrepancy amounting to P3,195,663.73 as revealed by FNP's tax return and the sales reported by its customers. Such discrepancy is considered as undeclared sales. For CIR, the sources of funds not accounted in the taxpayer's returns leads to an adverse inference that part of taxpayers' income has not been reported. The discrepancies noted in the Letter Notice in the total amount of P3,195,663.73 was also subjected to VAT in both the PAN and the FAN as the discrepancy represents unreported sales. Under the Tax Code, all sales, unless otherwise exempt, are subject to VAT.

On cross, she claimed that she is familiar with the computer system that generated the Quarterly Report on Third Party Information which served as the basis of the subject deficiency assessment. The said Report was generated by the HEAD Office from the Summary Sales of Purchases submitted by the Top 10,000 Corporations. After the matching of the Report from the purchasers and the discovery of the discrepancies in the documents submitted by FNP, the docket was assigned to the Districts, then to the RDO, who in turn, assigned the case to the examiner for verification.

The witness added that the Protest Letter of FNP was filed on May 30, 2005, after the issuance of the FAN. Upon receipt of the Protest, the case was re-assigned to another 

examiner. Thus, she is not aware of the result of the said Protest.

After the testimony of its second witness, CIR filed her Formal Offer of Evidence on August 19, 2010.

In a Resolution dated September 22, 2010, the Court admitted all the documentary exhibits offered by CIR to which no objection was interposed by FNP within the period granted. However, on September 24, 2010 or after the promulgation of the Resolution dated September 22, 2010, the Court received FNP's Comment to respondent's Formal Offer of Evidence which was filed through mail on September 7, 2010 or the last day for the filing of such pleading.

In a Resolution dated October 07, 2010, the Court noted FNP's Comment but maintained its ruling to admit all of the documentary exhibits offered by CIR.

On November 25, 2010, FNP filed its Memorandum. CIR however failed to file any, despite notice.

In a Resolution dated December 6, 2010, the instant petition was submitted for decision.

Granting the Petition, the CTA-First Division ordered that the assessed amount of P3,195,663.73 corresponding to the deficiency income tax and VAT assessment be cancelled and withdrawn for lack of factual basis.⁵ Aggrieved, the CIR sought for reconsideration⁶ on the said Decision but the same was denied in a Resolution dated March 12, 2012.⁷

Thus, petitioner filed her Petition for Review before this Court praying that the Petition be given due course and that judgment be rendered reversing and setting aside the assailed Decision and Resolution in CTA Case No. 7415.⁸

Acting on the Petition for Review before the Court *en banc*, this Court issued a resolution ordering the respondent to file a Comment to the Petition within ten (10) days from receipt thereof⁹ and on July 19, 2012, respondent filed its Comment thereto.¹⁰

With the Petition and Comment being filed by the respective parties, on July 31, 2012, this Court ordered both parties to file their individual Memorandum.¹¹ In 

⁵ Division *Rollo*, pp. 834-835.

⁶ *Id.* at pp. 836-843.

⁷ *Id.* at pp. 860-870.

⁸ *Rollo*, pp. 5-15.

⁹ *Id.* at pp. 79-80.

¹⁰ *Id.* at pp. 81-90.

¹¹ *Id.* at pp. 93-94.

compliance with the aforesaid Resolution, respondent filed its Memorandum on September 21, 2012.¹² On the other hand, in lieu of her Memorandum, on September 24, 2012, petitioner instead filed a "Manifestation & Motion" alleging that she is adopting all her legal arguments in her Petition for Review dated April 12, 2012 inclusive of all the documentary and testimonial evidences found in the records of this case as her Memorandum.¹³

Consequently, on October 3, 2012, this Court noted petitioner's "Manifestation & Motion" and eventually submitted this case for Decision.¹⁴ Hence, this Decision.

THE ISSUES

In support of her Petition, she raises the following issues¹⁵ to wit:

I.

THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN TOTALLY CANCELLING THE ASSESSED DEFICIENCY INCOME AND VALUE-ADDED TAXES ISSUED BY PETITIONER TO HEREIN RESPONDENT FOR THE 4TH QUARTER OF TAXABLE YEAR 2002 FOR LACK OF FACTUAL BASIS.

II.

THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT THE TESTIMONIES OF THE ELEVEN (11) WITNESSES OF HEREIN RESPONDENT ARE NOT SELF-SERVING AND HEARSAY EVIDENCE, HENCE, ADMISSIBLE.

THE COURT'S RULING

The petition has no merit due to the following reasons:

I. The assessments in question lack factual basis.

In support of her first assignment of error, petitioner claims that the CTA-First Division erred in cancelling *in toto* the assessed deficiency income and value added taxes for the taxable year 2002 in the amount of P3,195,663.73 on the premise that neither of the parties presented evidence on the alleged failure to file its Income Tax Return (ITR) which in effect prevented the Court *a quo* from ruling on the matter. 

¹² Id. at pp. 95-110.

¹³ *Rollo*, pp. 112-113.

¹⁴ Id. at pp.

¹⁵ Id at p. 7.

The CTA-First Division further erred in ruling that the summary lists of purchases received by the BIR were not verified with other externally sourced data to check the integrity of the information gathered and thus, relying instead on the purchases made by the third party purchasers.

Petitioner argues that after verification of the Summary List of Purchases submitted/reported by respondent's customers to the BIR for the 4th quarter of 2002, it was discovered that respondent made a gross sales of P5,007,571.73. However, in its VAT return for the fourth quarter of the same year respondent declared a gross sales of only P1,811,908.00, hence, it has an undeclared income from its under-declared sales in the amount of P3,195,663.73.

Hence, citing the Supreme Court ruling in *Interprovincial Autobus Co., Inc. v. CIR*¹⁶ and other cited cases,¹⁷ petitioner postulates that assessments carry the presumption of correctness and good faith and that in the absence of proof of any irregularity in its issuance, the same should not be disturbed.

The foregoing arguments were extensively discussed and passed upon in the assailed decision and therefore we find no cogent reason to disturb its findings to wit:

From the foregoing table, the total purchases made by the third party purchasers from petitioner (herein respondent in this case) for the 4th quarter of 2002, based on their own records/documents and books of account is only P5,682.00. On the other hand, based on the BIR Quarterly Report for the same details, it is P3,121,769.21. Significantly and as admitted by respondent's (herein petitioner in this case) own witness Evelyn R. Garces, the summary lists of purchases received by the BIR were not verified with other externally sourced data to check the integrity of the information gathered. In fact she categorically testified that Integrated Tax System of the BIR can only check or validate the format and possible viruses in the computer program but certainly not the content or substance of the encoded summary lists of purchases. x x x

Incidentally, this witness admitted that she was not the one who caused neither has she any participation in the generation of the subject Quarterly Report, which became the basis of the disputed assessment. In fine, she has no competence to testify on the subject document.

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the 

¹⁶ 98 Phil. 290.

¹⁷ *Sy Po v. CTA et al.*, G.R. No. 81446, August 18, 1988, 164 SCRA 524; *Dayrit et al., v. Cruz, et al.*, G.R. No. 39910, September 26, 1988, 165 SCRA 571.

presumption might be. This was highlighted in the case of *Commissioner of Internal Revenue v. Hantex Trading*, the pertinent portion of which is quoted below as follows:

We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. The rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.

However, **the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a “naked assessment,” i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. Hence the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.** (emphasis supplied)

In this case, the subject income tax and value-added tax assessments arose from petitioner's computerized consolidation and matching of data contained in the Summary Lists of Purchases submitted by respondent's customers for the fourth 

quarter of 2002 pursuant to Sec. 4.110-4 of Revenue Regulations No. 7-95, as amended by Revenue Regulations No. 13-97 and Revenue Regulations No. 7-99.

Thus, petitioner's assessment cannot be sustained since it was based merely on an unverified Quarterly Report. At the very least, petitioner should have submitted to this Court the Summary Lists of Purchases upon which the data in the Quarterly Report was obtained in order to corroborate her finding that respondent had indeed incurred undeclared sales for the fourth quarter of 2002. Moreover, the CTA-First Division correctly held in its assailed Resolution in this wise:

The Court cannot also ignore the fact that the assailed assessments were based on electronically generated document known as the Quarterly Report on third party Information on Purchases. And this information system, per admission of respondent's [petitioner's] witness, Evelyn R. Garces, has no way of verifying the veracity of the information fed into it. The witness explained that the validation program provided by the BIR does not include the checking of substance or content of the SLP¹⁸ against any other source documents. A fortiori, sans other satisfactory supporting evidence, the subject SLP is doubtful, inconclusive and unreliable. Of equal import is the fact that respondent [petitioner] failed to produce the source of the information as supplied by the third party purchasers whose representatives brought their own records to the Court to bolster their testimonies. (underlining supplied)

In fact, even the Bureau of Internal Revenue, in its Revenue Memorandum Order No. 04-03 recognizes the need to verify the amounts reflected in the Quarterly Report with other externally sourced data in ascertaining the taxpayer's underdeclaration of revenues or overstatement of costs and expenses, if any. The pertinent portions of RMO-04-03 are quoted thus:

The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.

The RELIEF system was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayer's Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to *JK*

¹⁸ Summary List of Purchases.

Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.

The RELIEF system shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information **with other externally sourced data** will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential. (emphasis supplied)

It is a legal truism that as a general rule, tax assessments are presumed to be correct. However, assessments should not be based on presumptions no matter how reasonable or logical the presumption might be. In order to withstand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.¹⁹

II. The testimonies of the eleven (11) witnesses are neither hearsay nor self-serving. Their testimonies are based on their own personal knowledge.

Anent the second assignment of error, petitioner posits that the CTA-First Division erred in ruling that the judicial affidavits and certifications executed by the eleven (11) witnesses of respondent were not self-serving and hearsay, and therefore, admissible in evidence. Petitioner asseverates that these testimonies are all in contravention with Sec. 23, in relation to Sec. 25 of the Batas Pambansa Blg. 168,²⁰ as amended, where it provides that all corporate powers are exercised, all business conducted, and all properties controlled by the Board of Directors.

Since the said witnesses were not given any written authority in the form of a corporate board resolution attesting to the fact that indeed they were authorized to act for and in behalf of the said corporations involved, their respective testimony are not binding upon the aforesaid corporation listed under the assailed Summary List of Quarterly Report on Third Party Information on Purchases presented by herein petitioner. Further, the judicial affidavits and certifications were all self-serving and hearsay evidence considering that the latter were not substantiated by material and relevant documentary evidence, such as, books of accounts and other accounting records, hence, inadmissible in the instant case.

Petitioner's argument is misplaced. 

¹⁹ *Collector of Internal Revenue v. Benipayo*, G.R. No. 13656, January 31, 1962, 4 SCRA 182.

²⁰ Otherwise known as the "Corporation Code of the Philippines."

Sec 23 of the Corporation Code provides:

Sec. 23. *The board of directors or trustees.* - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until the successors are elected and qualified.

X X X

X X X

X X X

True, a corporation can only exercise its powers and transact its business through its board of directors and through its officers when authorized by a board resolution or its by-laws. The power of a corporation to sue and be sued is exercised by the board of directors.²¹ In the case at bar, the CTA-First Division did not err when it held that an act of testifying as to a witness' personal knowledge as to their purchases done in the ordinary course of business does not necessarily bind the corporation which attaches corporate liability. In other words, there is no corporate act to speak of since the witnesses are testifying in their personal capacities and not strictly a corporate act that may involve authority of the board of directors of their respective corporations.

The cited case of *Philippine Airlines v. Flight Attendants and Stewards Association of the Philippines (FASAP)*²² is not in all fours in this case. In FASAP, it was ruled that only individuals vested with authority by a valid board resolution may sign a certificate of non-forum on behalf of the corporation.²³ As gleaned from this ruling, an act of initiating a case before the proper courts is indeed a corporate act since a corporation is vested with the express power to sue and be sued.²⁴ The corporations where these witnesses are connected are not privy to this case and therefore, do not require the approval of the board of directors.

Withal, even assuming that a board resolution is a precondition for testifying, the same may be disregarded since courts have the inherent power to compel the attendance of ANY person to testify in a case pending before it.²⁵

Thus, the CTA-First Division correctly ruled: 

²¹ *Salenga v. National Labor Relations Commission*, G.R. No. 174941, February 1, 2012, 664 SCRA 636.
²² G.R. No. 143088, January 24, 2006, 479 SCRA 605.
²³ *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*, G.R. No. 151413, February 13, 2008, 545 SCRA 10.
²⁴ *Premium Marble Resources v. Court of Appeals*, G.R. No. 96551, November 4, 1996, 264 SCRA 11 (1996); *Bitong v. Court of Appeals*, G.R. No. 123553, July 13, 1998, 292 SCRA 503 (1998).
²⁵ *Alonte v. Savellano, Jr. et al.*, G.R. Nos. 131652 & 131728, March 9, 1998, 287 SCRA 245.

Anent [petitioner's] argument that the eleven (11) witnesses needed Board Resolution specifically authorizing them to execute judicial affidavit and to authenticate the same before the Court, **suffice it to say that the said witnesses testified in their private capacities based on their personal knowledge and perception having actually participated in the alleged sale transactions. In short, their act was not corporate. They did not transact official business for and in behalf of the corporation. As such, there was no need for a Board Resolution since the act of testifying in this case was an individual act by the witnesses and not of the corporation.** This ratiocination likewise negates [petitioner's] contention that the testimonies of the eleven witnesses are self-serving and hearsay. Notably, the said eleven (11) witnesses were disinterested parties who appeared in Court merely to comply with the court process issued to ferret out the truth. Prevarication on their part is therefore remote. (emphasis supplied)

Lastly, petitioner argues that the respective judicial affidavits and certifications executed by the aforesaid witnesses of respondent were all self-serving and hearsay evidences since their respective denials that the corporation they represent had no purchases or transaction with herein respondent for the 4th quarter of taxable year 2002 were not duly substantiated by material and relevant documentary evidence, such as, books of accounts and other accounting records, hence, inadmissible in the instant case.

Petitioner's contention is untenable.

Sec. 36 of Rule 130 of the Rules of Court provides for the rule on hearsay evidence to wit:

Sec. 36. Testimony generally confined to personal knowledge; hearsay excluded. – A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

To begin with, any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand. Hence, information relayed to the former by the latter before it reaches the court is considered hearsay.²⁶

In this case, the CTA-First Division correctly ruled that the eleven (11) witnesses testified in their private capacities and based on their personal knowledge 

²⁶ *Bayani v. People*, G.R. No. 155619, August 14, 2007, 530 SCRA 84.

considering that these witnesses actively took part in the sale transactions in question and testified that they actually prepared their own financial records.

Neither can this Court sustain petitioner's claim that the testimonies of the said witnesses were all self-serving. The phrase "self-serving evidence" is a concept which has a well-defined judicial meaning.²⁷ As held in the case of *Hernandez v. Court of Appeals*:²⁸

The common objection known as "self-serving" is not correct because almost all testimonies are self-serving. The proper basis for objection is "hearsay" (Wenke, *Making and Meeting Objections*, 69).

Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court (*National Development Co. v. Workmen's Compensation Commission*, 19 SCRA 861 [1967]).

Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.

Thus, a self-serving declaration is one that is made by a party, out of court and in his favor. **It does not include the testimony he gives as a witness in Court.**²⁹ Tested against these standards, the testimonies of the eleven (11) witnesses are not self-serving and are admissible in evidence.

All told, this Court finds no compelling reason to disturb the findings and disposition of the CTA-First Division.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, both the assailed Decision and Resolution of the CTA-First Division in CTA Case No. 7415 are hereby **AFFIRMED in toto**.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

²⁷ *People v. Omictin*, G.R. No. 188130, July 26, 2010, 625 SCRA 611.

²⁸ G.R. No. 104874, December 14, 1993, 228 SCRA 429, 436.

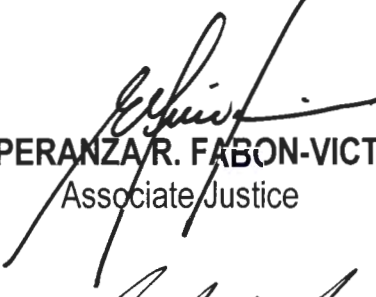
²⁹ *People v. Villarama*, G.R. No. 139211, February 12, 2003, 397 SCRA 306, 319.

WE CONCUR:


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice

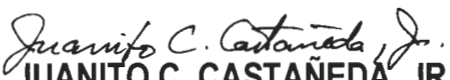

ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice