REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GREEN VALLEY MARKETING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8988

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

FEB 15 2018 3:20 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision Promulgated on 03 November 2017)**, filed on November 17, 2017, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration of the Decision Promulgated on November 3, 2017)**, filed through registered mail on December 11, 2017 and received by the Court on December 14, 2017; and

2. petitioner's **Motion for Partial Reconsideration of the Decision promulgated on November 3, 2017**, filed on November 21, 2017, without respondent's comment despite notice per Records Verification dated January 17, 2018.

Both parties move for the partial reconsideration of the Court's Decision promulgated on November 3, 2017 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The deficiency VAT and miscellaneous tax assessments, as well as the compromise penalties, issued by respondent against petitioner for taxable year 2010 are **CANCELLED**. On the other hand, the deficiency income tax and expanded withholding tax assessments are **PARTIALLY UPHELD**. Accordingly, petitioner is ordered to pay the amount of **₱36,986,780.57**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	Surcharge	Total
Income Tax	₱ 28,294,209.73	₱ 7,073,552.43	₱ 35,367,762.16
Expanded Withholding Tax	1,295,214.73	323,803.68	1,619,018.41
TOTAL	**₱ 29,589,424.46**	**₱ 7,397,356.11**	**₱ 36,986,780.57**

> In addition, petitioner is ordered to pay:
>
> (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱28,294,209.73 and expanded withholding tax of ₱1,295,214.73 computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Deficiency Interest Computed From
Income Tax	15-Apr-2011
EWT	11-Jan-2011

> (b) Delinquency interest at the rate of 20% per annum on the total amount of ₱36,986,780.57 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from August 15, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> **SO ORDERED.** *Jr*

The Court shall first discuss respondent's motion, followed by petitioner's motion.

Respondent's Motion for Partial Reconsideration

Respondent's motion is based on the following grounds:

1. The Court erred in ruling that the petition for review was timely filed, the petition being prematurely filed;

2. The Court erred in ruling that petitioner is not liable for deficiency income tax for taxable year 2010 due to: (a) Undeclared Income on discrepancies per line-by-line reconciliation of ₱15,819,843.57; (b) Disallowed expenses in the amount of ₱813,253.16 (the disallowance of the remaining amount of ₱88,967,436.98 was affirmed by the Court); (c) Unaccounted income from unaccounted expenses in the amount of ₱30,667,979.09 (the unaccounted expenses in the amount of ₱6,880,450.84 was affirmed by the Court); and (d) disallowed excess MCIT in the amount of ₱460,156.61;

3. The Court erred in ruling that petitioner is not liable for deficiency value-added tax (VAT) for taxable year 2010 in the amount of ₱122,043,804.84;

4. The Court erred in ruling that petitioner is not liable for deficiency expanded withholding tax (EWT) in the amount of ₱16,283.94 for taxable year 2010 (the basic deficiency EWT assessment in the amount of ₱1,295,214.73 was affirmed by the Court); and

5. The Court erred in ruling that petitioner is not liable for compromise penalty in the amount of ₱50,000.00 and ₱75,000.00 on deficiency income tax, VAT and EWT.

Respondent argues that by taking into consideration the sixty (60) day period for the submission of supporting documents for the request, the Court considered the alleged protest of petitioner as a request for reinvestigation rather than a request for reconsideration. Respondent claims that the 180-day period for respondent to decide on the alleged protest of petitioner should have been counted from the lapse of the 60-day period to submit the supporting documents.

Moreover, respondent disagrees with the cancellation of certain items in the assessment for deficiency income tax. Respondent maintains that the undeclared income resulted from the comparison of the purchases from petitioner as declared by third parties thru the RELIEF System (Summary List of Purchases of third parties), TRS (Creditable Withholding Tax Withheld from petitioner as reported by third parties), SAWT (Summary Alphalist of Creditable Withholding Tax) vis-à-vis the declaration made per SLS (Summary List of Sales) of petitioner. Hence, respondent argues that petitioner should be liable for deficiency income tax due from undeclared income on discrepancies per line-by-line reconciliation in the entire amount of ₱15,819,843.57.

Respondent also disagrees with the cancellation of the assessment for deficiency income tax due to disallowed expenses in the amount of ₱813,253.16. Respondent stresses that a comparison of petitioner's income payments subject to withholding tax claimed per financial statement/income tax return as against the withholding tax returns filed (1601E) disclosed that petitioner has not subjected to withholding tax the subject expenses, hence disallowed pursuant to Section 34(K) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent likewise disagrees with the cancellation of the assessment of deficiency income tax due to unaccounted income from unaccounted expenses in the amount of ₱30,667,979.09 considering that petitioner allegedly failed to submit or present proof for the unaccounted cost/expenses claimed and overclaimed expenses. Moreover, respondent argues that the unaccounted rental expense of ₱232,857.18 was brought about after comparing the amount per petitioner's Financial Statement as against the EWT returns filed. Respondent contends that the resultant discrepancies were considered as undeclared revenues pursuant to the doctrine in *Perez vs. Court of Tax Appeals, et. al* where the Supreme Court made it explicit that unreflected sources of funds not accounted for in the taxpayer's returns leads to the inference that part of his income had not been reported. As to the excess MCIT, respondent argues that the same should have been cancelled since the adjusted taxable income would result in a higher regular corporate income tax than MCIT. *gr*

As to the assessment for deficiency VAT, respondent argues that unaccounted income due to unaccounted expenses in the amount of ₱84,671.41 and the unaccounted rental expense of ₱232,857.18 were fully discussed in petitioner's liability for deficiency income tax. Likewise, respondent contends that deficiency VAT due to disallowed creditable input taxes per reconciliation of VAT returns vs. SLP in the amount of ₱53,738,254.34 was based on petitioner's failure to reconcile the unaccounted difference.

Respondent also disagrees with the reduction of the assessment for deficiency EWT. Respondent maintains that verification disclosed that withholding taxes on certain income payments as discussed in the income tax deficiency assessment were not paid pursuant to Section 2.57.2 of Revenue Regulations (RR) No. 2-98, as amended.

Finally, respondent asserts that petitioner is liable for compromise penalties in the amount of ₱50,000.00 and ₱25,000.00 for each deficiency income tax, VAT and EWT, in the total amount of ₱75,000.00 pursuant to Revenue Memorandum Circular (RMC) No. 19-2007.

In its comment, petitioner contends that its administrative protest and the factual antecedents per Court's Decision are quite explicit in saying that the protest filed by petitioner to the Formal Letter of Demand (FLD) is in the nature of a request for reconsideration. Moreover, petitioner stresses that its non-submission of additional supporting documents within the 60-day period from filing of the administrative protest strengthens the Court's conclusion that the counting of the 180 days should be reckoned from the filing of the protest since what was filed was a request for reconsideration. Thus, petitioner concludes that the Court correctly found that it timely filed the instant petition for review.

Petitioner points out that respondent's arguments against the Court's ruling that petitioner is not liable for deficiency income tax due to variant reasons cited in his motion are mere reiteration of what he has already said. Nevertheless, petitioner agrees and reiterates the Court's findings.

Petitioner further contends that the VAT liability that respondent imputes on petitioner rest on the same findings under the alleged deficiency income tax assessment, which have been earlier properly disproved; and that the Court found that "no discrepancy exists between the input tax claimed per VAT returns and SLP", thus, such VAT liability imputation was rightly cancelled by the Court.

As to respondent's arguments with respect to deficiency EWT, the same are not new, but are mere reiterations of what the Court had already considered when it resolved the matter.

Lastly, with respect to compromise penalty, petitioner merely reiterates the Court's Decision that "the imposition of the same without the conformity of the taxpayer is illegal and unauthorized."

After a careful consideration of the parties' arguments, the Court finds respondent's motion bereft of merit.

As regards the first ground, respondent argues that the Court erroneously considered petitioner's protest as a request for reinvestigation, in other words, respondent is arguing that petitioner's protest is a request for reconsideration. However, respondent further argues that the 180-day period for respondent to decide on petitioner's protest should have been counted from the lapse of the 60-day period to submit the supporting documents.

At the outset, the Court found petitioner's protest as a request for reconsideration. Moreover, respondent appears to have confused the counting of the 180-day period for a request for reconsideration and request for reinvestigation. Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides in part:

> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest**, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. **The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration.** Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing

> the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.
>
> xxx xxx xxx
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> **If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation**, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

From the foregoing, in case of a request for reconsideration, the counting of the 180-day period for the respondent to act on the protest is from the date of the filing of the protest and not counted from the lapse of the 60-day period to submit the supporting documents as respondent erroneously argued. On the other hand, in case of a request for reinvestigation, the counting of the 180-day period is from the date of submission of the required documents within the 60-day period. If the taxpayer failed to submit the documents within the 60-day period, the assessment becomes final.

Hence, as found in the assailed Decision, considering that petitioner filed a protest in the nature of a request for reconsideration and did not submit additional supporting documents, the counting of the 180-day period was correctly reckoned from the filing of the administrative protest on July 25, 2014. Thus, respondent had until January 21, 2015 to decide on the protest. There being no action on the protest, petitioner had thirty (30) days from January 21, 2015, or until February 20, 2015, within which to file an appeal before this Court. Hence, petitioner timely filed the instant Petition for Review with this Court on February 20, 2015.

As to respondent's second to fifth grounds, a perusal of his arguments shows that they are mere reiteration of the arguments in his Answer and Memorandum which were already considered, thoroughly discussed and passed upon in the assailed Decision. There being no new matters or issues raised, the Court finds no compelling reason to reverse or modify the assailed Decision on the basis of respondent's arguments.

As to the disallowed excess MCIT of ₱460,156.61, the Court reiterates the finding in the assailed Decision that the FLD gave no explanation for its disallowance. Respondent belatedly providing an explanation that the cancellation is erroneous "since the adjusted taxable income would result in a higher regular corporate income tax than MCIT", does not cure the said defect. Regardless, respondent's explanation is vague, hence, the Court maintains its finding that it was improper for respondent to disallow the said excess MCIT because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2011.

Petitioner's Motion for Partial Reconsideration

Petitioner's motion is based on the following grounds:

1. Income payments not subject to withholding tax per matching of MAP vs. SLP - ₱25,712,868.93 (under income tax assessment)

Petitioner argues that the Court's finding already hinted at the flaw in the way respondent did his analysis of this particular issue. Petitioner stresses that the Court said that respondent could have directly compared "the amounts of income payments subject to withholding tax claimed, as categorically stated in the Details of Discrepancies, as against the withholding tax returns filed (BIR Form 1601 E)", which is the point of both petitioner and the Independent Certified Public Accountant (ICPA) because the MAP represents actual payments made to its suppliers, while the SLP for the purchases of inventory represents invoice amounts regardless if paid or not. Petitioner also claims that total expenses excluding major purchases in the amount of ₱75,033,761.20 was properly marked and identified in IC-66 with supporting document transmitted to the Court. Moreover, as regards the ₱14,461,555.95 worth of purchases of services not subjected to withholding tax, petitioner argues that the ICPA pointed out in his report that the Petron Fleet Card and Pilipinas Shell Petroleum Corporation are some of the supplier which were erroneously taken by respondent as "Supplier of Services". Petitioner claims that these suppliers are "Supplier of Goods" under the "Fuel and Oil" account. Petitioner also contends that if respondent's basis for its analysis was the MAP and SLP, which showed a total of ₱370,607,375.02 and ₱396,320,243.95, respectively, how could it proceed to disallow expenses in the Income Tax Return which shows the amount of expenses claimed as only ₱79,067,382.28, way under the amounts per MAP and SLP.

2. Income payments not subject to withholding tax per global reconciliation - ₱63,254,568.05 (under income tax and EWT assessment)

Petitioner contends that it offered proof that the amount is not subject to withholding tax, *i.e.*, the Amended ICPA Report dated December 8, 2015 and the documents on which it was based. Hence, petitioner claims that the EWT assessment must likewise be cancelled.

For the first two items above, petitioner points out that a complete side by side comparison was prepared by the ICPA in Annex IC-71 of the Amended ICPA Report. Also, petitioner avers that the complete details of the expenses subject to WE is provided in Annexes IC-66, IC-67 and IC-68, while Expenses Exempted from WE are provided in Annex IC-70.

3. Overstatement of expenses - ₱6,880,450.84 (under income tax assessment)

Petitioner submits that the disallowance of "cost/deductions" specifically pertaining to "freight and handling costs" which formed part of petitioner's cost of sales is without legal bases. Petitioner argues that based on Section 32 of the NIRC of 1997, as amended, substantiation is required for claim of deductions from gross income under Subsection (A) which refers to "expenses". Petitioner claims that nothing in the provision would imply that cost of sales also needs substantiation. Moreover, petitioner argues that the heading of Section 34 is "Deductions from Gross Income". Petitioner points out that cost of sales is deducted from gross sales to arrive at gross income. Moreover, petitioner claims that the alleged "freight and handling costs" was not claimed as deduction from gross income by petitioner. Jr

Petitioner's motion is likewise bereft of merit. A perusal of its arguments shows that they are mere reiterations of petitioner's previous arguments and findings in the ICPA Report that were already considered, thoroughly discussed and passed upon in the assailed Decision. Nevertheless, the Court will address certain arguments anew to emphasize certain points.

1. Income payments not subject to withholding tax per matching of MAP vs. SLP - ₱25,712,868.93 (under income tax assessment)

At first glance, respondent's presentation of this item of assessment appears to be misleading considering that instead of directly comparing the amounts of income payments subject to withholding tax claimed per financial statement/income tax as against the withholding tax returns filed (BIR Form 1601 E), as categorically stated in the Details of Discrepancies, respondent compared petitioner's SLP with its MAP.

Nevertheless, as explained in the assailed Decision, petitioner was still informed of the factual basis of the assessment considering that respondent disclosed the supporting computation of the assessment in the FLD, *i.e.,* the detailed comparison of its SLP and MAP, both of which were available to petitioner at hand (attached as Annexes A-3 and A-4 of the FLD). The details indicated therein are sufficient to inform petitioner of the factual basis of the assessment issued.

To reiterate, in the assailed Decision, the Court found that the amount per SLP should be ₱396,320,243.95, of which the amount of ₱370,607,375.02 was subjected to withholding tax, while the amount of ₱25,712,868.93 was not subjected to withholding tax. Although the ICPA explained in his report (Annex IC-70) that part of petitioner's expenses were not subjected to tax as the same were exempt from withholding tax, the Court cannot consider the same since the ICPA did not explain nor provide justification why the amount of ₱7,829,403.78 was exempted from withholding tax. Neither did petitioner and the ICPA provide the appropriate supporting documents for the Court to determine the nature of the transactions purported to be exempt from withholding taxes. Consequently, the entire amount of ₱25,712,868.93 shall be disallowed as deductible expense from petitioner's gross income for its failure to withhold taxes thereon.

Moreover, the Court cannot sustain petitioner's argument that if the assessment was denominated as "disallowed expenses for non-withholding of tax", and the MAP and SLP, showed a total of ₱370,607,375.02 and ₱396,320,243.95, respectively, then, how could respondent proceed to disallow expenses in its Income Tax Return which shows the amount of expenses claimed as only ₱79,067,382.28, way under the amounts per MAP and SLP. Petitioner failed to consider the cost of sales in the amount of ₱746,308,835.29 claimed by petitioner in its Annual Income Tax Return[1], which is also an expense.

As provided in Philippine Accounting Standard (PAS) 1, expenses are subclassified to highlight components of financial performance that may differ in terms of frequency, potential for gain or loss and predictability. This analysis is provided in one of two forms.[2] The first form of analysis is the nature of expense method. Expenses are aggregated in the income statement according to their nature (for example, depreciation, purchases of materials, transport costs, employee benefits and advertising costs), and are not reallocated among various functions within the entity.[3] The second form of analysis is the function of expense or 'cost of sales' method and classifies expenses according to their function as part of cost of sales or, for example, the costs of distribution or administrative activities. At a minimum, an entity discloses its cost of sales under this method separately from other expenses.[4]

Furthermore, in Sections 27(A) and (E)(4) of the NIRC of 1997, as amended, cost of goods sold or cost of sales is described as an expense, to wit:

> SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> (A) *In General.* – xxx
>
> xxx xxx xxx

[1] Exhibit "P-8", docket, vol. III, p. 1532.
[2] PAS 1, par. 90.
[3] PAS 1, par. 91.
[4] PAS 1, par. 92.

For purposes of this Section, the term "*gross income*" derived from business shall be equivalent to gross sales less sales returns, discounts and allowances and cost of goods sold. "*Cost of goods sold*" shall include all **business expenses** directly incurred to produce the merchandise to bring them to their present location and use.

xxx xxx xxx

(E) *Minimum Corporate Income Tax on Domestic Corporations.* –

xxx xxx xxx

(4) *Gross Income Defined.* – For purposes of applying the minimum corporate income tax provided under Subsection (E) hereof, the term "gross income" shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. "Cost of goods sold" shall include all **business expenses** directly incurred to produce the merchandise to bring them to their present location and use. (*Emphasis supplied*)

From the foregoing, cost of sales is an expense classified according to function. Being an expense, it may likewise be disallowed for non-withholding of tax.

More importantly, Section 34(K) of the NIRC of 1997, as amended, provides:

(K) *Additional Requirements for Deductibility of Certain Payments.* – **Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income** or for which depreciation or amortization may be allowed under this Section, **shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid** to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code. (*Emphasis supplied*) ~

The foregoing provision clearly states that any amount paid or payable taken into account in computing the gross income shall be allowed as deduction only if shown that the withholding tax was paid to the Bureau of Internal Revenue (BIR). Hence, cost of sales, which is taken into account in arriving at the gross income, as shown in the definition quoted above, shall likewise be subject to disallowance if the same was not subjected to withholding tax.

Hence, following petitioner's line of argument but incorporating the discussion above on cost of sales, adding the cost of sales of ₱746,308,835.29 and the deduction (from gross income) claimed of ₱79,067,382.28, or a total of ₱825,376,217.57, then the same is more than the amount of either the MAP or SLP.

2. Income payments not subject to withholding tax per global reconciliation - ₱63,254,568.05 (under income tax and EWT assessment)

Upon review of the records, the Court stands by its findings in the assailed Decision that petitioner failed to prove that the discrepancies were caused by items that are not subject to expanded withholding tax. The Court noted that the summaries/schedules prepared by the ICPA lack material details.

For instance, going over Annex IC-70 (Summary of Expenses – Exempt from Withholding Tax) of the ICPA Report, the Court noted that it merely provided the registered name of supplier, gross purchases, taxable and input tax, without more; no justification was provided why the amount of ₱29,227,082.22 was exempted from withholding tax. Hence, the Court cannot verify the amounts and nature of the transaction provided in the said summary considering that the source document from which the summary was based and the corresponding exhibit number reference was not provided therein.

Even though the ICPA submitted 24 boxes, allegedly containing photocopies of the voluminous documents examined, the Court noted that in the Amended Formal Offer of Evidence for the Petitioner[5], filed on March 17, 2016, only the Amended ICPA Report and Annexes thereto were offered in evidence (Exhibits "P-82" to "P-82-e"), but the voluminous documents supporting the report/annexes were not

[5] Docket, vol. IV, pp. 2554-2568.

offered in evidence. It is well-settled that the courts cannot consider evidence which has not been formally offered.[6]

Nevertheless, we relaxed the said rule and looked through the voluminous documents the ICPA submitted. Unfortunately, the Court cannot verify the entries on the schedules/summaries prepared by the ICPA with the voluminous documents in the boxes. The Court noted that these documents were not pre-marked. Consequently, the Court cannot appreciate the significance of these documents and how they relate to the summaries/schedules prepared by the ICPA.

In the interest of speedy administration of justice, the Court promulgated rules governing the presentation of voluminous accounts and/or long accounts[7] where the same must be referred to an ICPA for the purpose of presenting a summary and certification to avoid the time-consuming procedure of presenting each and every receipt or invoice or other document and individually marking, identifying and comparing the same with the originals before the Court or Commissioner. However, it does not relieve the ICPA of its imperative task of pre-marking the photocopies of the voluminous documents before submitting the same to the Court.[8]

The Court also notes that petitioner seems to rely heavily on the conclusions arrived at by the ICPA.

However, Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides that "**findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court**, which may, in whole or in part, adopt such findings and conclusion subject to verification."

Hence, this Court is not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented

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[6] *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006.
[7] Section 5, Rule 12 of the RRCTA, as amended.
[8] Section 2(b), Rule 13 of the RRCTA, as amended and ICPA's Oath of Commission.

during the trial in order to intelligently resolve the conflict brought before it.[9]

3. Overstatement of expenses - ₱6,880,450.84 (under income tax assessment)

The Court does not agree with petitioner's argument that cost of sales is not subject to the substantiation requirement.

As petitioner points out, gross income is arrived at after deducting cost of sales from gross sales (or more accurately, deducted from net sales as can be seen in the definitions provided under Sections 27(A) and (E)(4) of the NIRC of 1997, as amended, quoted earlier), while the substantiation requirement under Section 34(A)(1)(b) of the NIRC of 1997, as amended, pertains to deductions from gross income. However, this does not mean that cost of sales does not need to be substantiated. It is but logical to also require substantiation for cost of sales as this would be the basis for the amount to be declared as cost of sales in the income tax return. Hence, taxpayers are required to preserve their books of accounts and other accounting records under Section 235 of the NIRC of 1997, as amended. The reason for requiring the books of accounts to be preserved is to ensure that all taxes due to the government may be readily and accurately ascertained and determined any time of the year.[10]

The self-assessing system governs Philippine internal revenue taxes. Such a system imposes upon the taxpayer the obligation to conduct an assessment of himself so he could determine and declare the amount to be used as tax basis, any deductions therefrom, and finally, the tax due.[11] However, after the return is filed, or even if no return is filed, the Bureau of Internal Revenue (BIR) may authorize the examination of any taxpayer and the assessment of the correct amount of tax pursuant to Section 6 of the NIRC of 1997, as amended.

Hence, due to this self-assessing system, petitioner must be able to prove that the amounts it declared in its income tax return are correct and that it paid the correct income tax by presenting its

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[9] *First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue*, CTA E.B. Case No. 563, March 1, 2011.
[10] RR No. 17-2013 (Preservation of Books of Accounts and Other Accounting Records).
[11] *Philippine National Oil Company vs. The Hon. Court of Appeals, et al.*, G.R. Nos. 109976 and 112800, April 26, 2005.

books of account, invoices, receipts, vouchers, returns, and other source documents.

If the Court will subscribe to petitioner's argument that cost of sales is not subject to the substantiation requirement, then the BIR will not be able to ascertain if petitioner correctly declared its income tax due for the year, conversely, petitioner will not be able to prove the correctness of the amount it declared as income tax. More importantly, the purpose for preserving the books of accounts will be defeated.

Also, the Court disagrees with petitioner's argument that if the "freight and handling costs" amount was not fully supported, the same may not be deducted on the basis of "overstatement of expenses" when the same total amount was not claimed as deduction from gross income.

If the "overstatement of expenses" was deducted by respondent from petitioner's "deductions from gross income", then petitioner's argument has a basis. However, it should be noted that the "overstatement of expenses" under the "unaccounted income from unaccounted expenses" was added back by respondent to the taxable income per return.

The simplified computation of taxable income is as follows:

Gross sales
<u>Less: Sales returns, discounts and allowances</u>
Net sales
<u>Less: Cost of sales</u>
Gross income
<u>Less: Deductions/Expenses</u>
Taxable income

In this case, the Freight-In per FS in the amount of ₱47,384,410.00 was claimed as part of the cost of sales deducted from net sales[12]. Guided by the above formula, if there is a finding that the cost of sales is overstated, then, it had the effect of lowering the gross income and, in turn, lowering the taxable income. Hence, to arrive at the adjusted taxable income, the overstated cost of sales must be added back to the taxable income. *jr*

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[12] Note 10, Exhibit "P-8-a" (AFS), docket, vol. III, p. 1558 and Exhibit "P-8" (AITR), Exhibit "P-8", docket, vol. III, p. 1532.

Considering that the Court found that there is an overstatement of expenses in the reduced amount of ₱6,880,450.84, then, the said amount was correctly added back to the taxable income.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision Promulgated on 03 November 2017)** and petitioner's **Motion for Partial Reconsideration of the Decision promulgated on November 3, 2017** are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice