REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, BIR REGIONAL DIRECTOR, REGION 12, BACOLOD CITY, Petitioner,	**CTA EB No. 2063** (CTA Case No. 9399)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
ANAPI MULTI-PURPOSE COOPERATIVE, Respondent.	***Promulgated:*** OCT 06 2020 3:29 p.m.

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DECISION

UY, *J.*:

The instant *Petition for Review*[1] filed on June 3, 2019 by the Commissioner of Internal Revenue against Anapi Multi-Purpose Cooperative, prays for the reversal and setting aside of the Decision dated January 21, 2019, and Resolution dated April 22, 2019, promulgated by the Special Second Division of this Court, in CTA Case No. 9399, entitled, *"Anapi Multi-Purpose Cooperative, Petitioner, vs. Commissioner of Internal Revenue, BIR Regional Director, Region 12, Bacolod City, Respondents,"* the dispositive portions of which respectively read as follows:

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[1] EB Docket, pp. 7 to 22.

<u>Decision dated January 21, 2019</u>:

> "**WHEREFORE,** the instant Petition for Review is **GRANTED.** The assessment for deficiency value-added tax, expanded withholding tax, ad valorem and compromise penalties for taxable year 2005 amounting to ₱37,082,748.19 are hereby **CANCELLED.**
>
> **SO ORDERED."**

<u>Resolution dated April 22, 2019</u>:

> "**WHEREFORE,** respondent's *Motion for Reconsideration Re: Decision dated 21 January 2019* is **DENIED** for lack of merit.
>
> **SO ORDERED."**

THE FACTS

Petitioner Commissioner of Internal Revenue (CIR) is the Chief of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. He may be served with summons, notices and other legal processes at Room 703, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent ANAPI Multi-Purpose Cooperative (ANAPI) is a multi-purpose agricultural cooperative duly organized in accordance with Philippine Laws, more particularly Republic Act No. 6938, with license to transact business and sue in the Philippines in accordance with the Cooperative Code, having its principal office address at No. 22, 13th St., Bacolod City. It is represented by Freddie W. Zayco, of legal age, married, resident of Bacolod City and Chairperson of the Board of ANAPI Multi-Purpose Cooperative and authorized through Board Resolution.

On February 27, 2008, ANAPI received the Letter of Authority (LOA) dated February 6, 2008, authorizing Revenue Officer Amelita S. Jaculbe, to be supervised by Group Supervisor Brigette B. Sepe, of Revenue District Office (RDO) No. 77-Bacolod City, to examine

ANAPI's books of accounts and other accounting records for the period January 1 to December 31, 2005.

Various requests for presentation of records/documents were issued by respondent, culminating in the issuance of a *subpoena duces tecum.*

On December 3, 2008, a Notice of Informal Conference (NIC) was issued, which was received by ANAPI on February 27, 2009.

On December 22, 2010, the BIR Revenue Region (RR)-12 issued a Preliminary Assessment Notice (PAN) against ANAPI for taxable year 2005.

A Formal Letter of Demand (FLD) and Assessment Notices (FAN) were received by ANAPI on January 24, 2011. The FLD/FAN assessed ANAPI for deficiency VAT of ₱37,011,743.21, deficiency EWT of ₱5,574.56, and ad valorem penalties of ₱3,330.42, inclusive of interest and surcharges, or for the total amount of ₱37,020,648.19.

ANAPI filed a letter of protest dated February 22, 2011, assailing the assessment notice and letter of demand on the grounds that it was exempt from payment of all internal revenue taxes, including VAT, on the sale of its refined sugar; that there is no provision in the National Internal Revenue Code of 1997, as amended (NIRC) imposing tax before the sale of refined sugar; and, that the assessment was issued beyond the three-year prescriptive period.

The BIR RR-12 issued a Final Decision dated February 26, 2013 reiterating the assessment against ANAPI on the ground that ANAPI is not the owner/producer of the sugar withdrawn from the refinery.

On April 2, 2013, ANAPI elevated the issue to the Office of the Commissioner of Internal Revenue, assailing the Final Decision of the BIR RR-12 on the grounds that ANAPI is a multi-purpose cooperative which was exempt from paying internal revenue taxes, including VAT, and that the assessment made was null and void having been issued beyond the three-year prescriptive period as provided for in Section 203 of the NIRC.

A Supplement to Motion for Reconsideration dated May 3, 2013 was also filed by ANAPI.

On June 21, 2016, the Office of the CIR issued a Decision, the dispositive portion of which provides:

> "**IN VIEW OF ALL THE FOREGOING**, the decision denying ANAPI's protest against the Formal Letter of Demand and Assessment Notice with Assessment Notice Nos. 00024-2011, 00025-2011, 00026-2011, and 00027-2011, and 00028-2011 issued against ANAPI demanding payment of the total amount of ₱37,082,748.19 as deficiency value-added, expanded withholding taxes, ad valorem and compromise penalties for taxable year 2005 is **AFFIRMED WITH MODIFICATION**. The assessment for deficiency expanded withholding tax, ad valorem penalties (1601E), ad valorem penalties (1601C), compromise penalty for failure to file BIR Form 1604-CF and E, compromise penalty for failure to withhold expanded withholding tax, and compromise penalty to file BIR Form 1601E and 1601C in the amounts of ₱5,574.56, ₱1,795.60, ₱1,534.82, ₱3,000.00, ₱1,500.00, and ₱7,600.00 respectively, is hereby cancelled and withdrawn. The assessment for deficiency value-added tax and compromise penalty for failure to file VAT returns in the amounts of ₱37,011,743.21 and ₱50,000.00 respectively, is hereby affirmed.
>
> Consequently, **ANAPI Multi-Purpose Cooperative** is hereby ordered to pay the aforestated amount, plus increments that have been accrued thereon until the actual date of payment, to the Collection Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from the receipt hereof; otherwise, collection thereof will be effected through the summary remedies provided by law.
>
> This constitutes the **Final Decision** of this Office on the matter." *(Emphasis in the original)*

On July 28, 2016, ANAPI filed its Petition for Review with the Court of Tax Appeals docketed as CTA Case No. 9399, praying for the cancellation of the assessments against it for taxable year 2005.

For his part, respondent filed his Answer on October 18, 2016, and interposed the following special and affirmative defenses:

1. The CIR's right to assess ANAPI has not prescribed since the CIR has a ten-year period to assess the taxes after discovery of the falsity, fraud or omission, pursuant to Section 222 of the Tax Code.

2. Anapi is liable for deficiency VAT and EWT.

After the pre-trial conference on November 24, 2016, the parties submitted their Joint Stipulation of Facts and Issues (JSFI) on December 27, 2016. The JSFI was approved and adopted in the Pre-Trial Order issued on January 18, 2017.

During trial, ANAPI presented its lone witness, Jose V. Ramos, who testified via judicial affidavit and was subjected to cross-examination. On February 13, 2017, the Court received the Formal Offer of Exhibits (FOE) for the Petitioner.

On March 28, 2017, the Court resolved ANAPI's FOE, admitting all of its exhibits except for Exhibit "P-2". However, upon motion, the Court reconsidered the denial of Exhibit "P-2," and admitted the same as part of petitioner's documentary evidence.

On the other hand, the CIR presented three witnesses, as follows: (1) Revenue Officer Markneil S. Collado; (2) Revenue Officer Amelita J. Domingo; and (3) Chief Revenue Officer Carmen Grace L. Comoda.

The CIR filed his Formal Offer of Evidence on February 8, 2018. The Court in Division admitted all of the CIR's exhibits on May 8, 2018.

Thereafter, petitioner and respondent filed their Memorandum on July 2, 2018 and July 9, 2018, respectively. Thus, CTA Case No. 9399 was submitted for decision on July 16, 2018.

In the Decision[2] dated January 21, 2019, the Court in Division granted ANAPI's Petition for Review, and cancelled the assessment for deficiency VAT, EWT, ad valorem and compromise penalties for taxable year 2005 amounting to ₱37,082,748.19.

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[2] EB Docket, pp. 23 to 39.

The CIR filed his *Motion for Reconsideration Re: Decision dated 21 January 2019* on February 6, 2019, to which ANAPI filed its *Comment (to Motion for Reconsideration Re: Decision dated 21 January 2019* on March 15, 2019.

The Court in Division denied the Motion for Reconsideration in the Resolution[3] dated April 22, 2019 for lack of merit.

Undaunted, the CIR filed a *Motion for Extension of Time to File Petition for Review* on May 16, 2019.[4] In the Minute Resolution[5] dated May 20, 2019, the subject Motion was granted and the CIR was given an additional period of fifteen (15) days from May 17, 2019, or until June 1, 2019, within which to file his Petition for Review.

Thereafter, the CIR filed the instant *Petition for Review* on June 3, 2019.[6] In the Resolution[7] dated July 3, 2019, respondent was directed to file its Comment to the Petition for Review, within ten (10) days from notice. Pursuant thereto, respondent filed its *Comment to Petition for Review*[8] on August 5, 2019.

On September 3, 2019,[9] this case was referred to mediation, pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals,* or A.M. No. 11-1-5-SC-PHILJA, approved on January 18, 2011. On October 10, 2019, the Philippine Mediation Center Unit issued a *No Agreement to Mediate* certificate, stating that the parties decided not to have their case mediated by the PMCU-CTA.[10]

In the Resolution dated November 13, 2019, this case was submitted for decision.[11] Hence, this Decision.

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[3] EB Docket, pp. 40 to 42.
[4] EB Docket, pp. 1 to 5.
[5] EB Docket, pp. 6.
[6] EB Docket, pp.7 to 22; Considering that June 1, 2019 falls on a Saturday, the CIR had until the next working day, or until June 3, 2019, within which to file his Petition for Review. Thus, the subject Petition for Review was filed on time.
[7] EB Docket, pp. 44 to 45.
[8] EB Docket, pp. 47 to 50.
[9] EB Docket, pp. 53 to 54.
[10] EB Docket, p. 55.
[11] EB Docket, pp. 59 to 61.

ISSUE

The sole ground raised by the CIR in his Petition for Review reads as follows:

> "THE COURT A QUO ERRED WHEN IT HELD THAT THE ASSESSMENTS SHOULD BE CANCELLED FOR ALLEGED LACK OF LEGAL AND FACTUAL BASES."

Petitioner's arguments:

The CIR contends that the Court in Division erred when it held that assessments should be cancelled for lack of legal and factual bases.

According to the CIR, respondent is liable for deficiency VAT, as it is neither the producer nor the owner of the raw sugar cane it delivered to the sugar refinery.

Finally, the CIR argues that assessments are presumed correct and made in good faith, and it is the taxpayer that has the duty of proving otherwise. Respondent has not pointed out any provision or item in the assessment notice which bears a trace of falsity.

Respondent's counter-arguments:

ANAPI counters that the tax assessment for the year 2005 issued against it, does not have any legal or factual basis. It is a tax-exempt cooperative, and was the owner of the refined sugar withdrawn from the sugar mill in the year 2005. All the refined sugar withdrawals it made for the year 2005 were covered by their respective Authorization Allowing the Release of Refined Sugar (AARRS).

Moreover, ANAPI avers that it is registered with the Cooperative Development Authority (CDA) and was granted a Certificate of Registration and Certificate of Good Standing. It has also been granted a Tax Exemption Certificate on February 16, 2001 by the BIR in BIR Ruling No. 12-08-2001. As such, it is not liable to pay or file returns for VAT or any other internal revenue tax.

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In compliance with RR No. 29-2002, as amended by RR No. 2-2004, ANAPI secured the required AARRS from the BIR prior to its withdrawal of the refined sugar from the sugar mill for taxable year 2005. For the AARRS to be released, the applicant is required to present before the BIR the sugar quedan in the name of its owner, which in this case was ANAPI. As such, there was clear proof of ownership.

Lastly, ANAPI submits that there is a presumption of regularity on the part of the BIR when it issued the AARRS in favor of ANAPI for the year 2005.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The subject assessment lacks factual and legal bases.

Petitioner contends that respondent is liable for deficiency VAT, because an investigation revealed that respondent did not own the raw sugar cane produced.

We are not convinced.

A perusal of the documentary and testimonial evidence presented by the petitioner before the Court in Division, shows that the alleged VAT liability of the respondent, as stated in the PAN dated December 22, 2010,[12] specifically Annex "A" – Details of Discrepancies; and FLD dated January 14, 2011,[13] in Schedule 1 – Details of Discrepancies thereof, was based primarily on unspecified "BIR data."

Both Annex "A" of the PAN dated December 22, 2010,[14] as well as Schedule 1 of the FLD dated January 14, 2011,[15] refers to "BIR data" as the basis for respondent's alleged deficiency VAT, without any further elaboration thereon, to wit:

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[12] Exhibit "R-8," BIR Records, pp. 160 to 164.
[13] Exhibit "R-9," BIR Records, pp. 165 to 169.
[14] Exhibit "R-8," BIR Records, pp. 160 to 164, at 161.
[15] Exhibit "R-9," BIR Records, pp. 165 to 169, at 169.

Annex "A" of the PAN dated December 22, 2010

> "Per BIR data, you had withdrawn 191,963.30 LKG of refined sugar for the taxable year 2005 without payment of Advance VAT, thus deficiency VAT was assessed in the total amount of P36,766,663.66, inclusive of penalties."

Schedule 1 of the FLD dated January 14, 2011

> "Per BIR data, you had withdrawn 191,963.30 LKG of refined sugar for the taxable year 2005 without payment of Advance VAT, thus deficiency VAT was assessed in the total amount of P37,011,743.21, inclusive of penalties."

Aside from the alleged "BIR data," however, the records are bereft of any other evidence that would show the basis of subject assessment for deficiency VAT.

In the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*[16] it was held that as a general rule, tax assessments are presumed correct. 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, to wit:

> "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 the 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. This 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

[16] G.R. No. 136975, March 31, 2005.

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***.

xxx xxx xxx

The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo,* **in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption**." *(Emphasis supplied.)*

Otherwise stated, an assessment should always be based on facts and cannot be based on mere presumptions. In order to stand judicial scrutiny, it must be shown that it has sufficient basis and foundation, and is not arbitrary or capricious.

In this case, petitioner failed to offer any evidence to elaborate on the alleged "BIR data" cited as basis for the deficiency VAT assessment. Aside from the LOA, PAN, FLD, Assessment Notices, FDDA and Decision dated June 21, 2016, there is no other evidence proffered to show that the subject assessment has factual basis.

Instead, petitioner relies on the findings stated in the FDDA dated February 26, 2013,[17] that alleges that respondent is not the

[17] Exhibit "R-11," BIR Records, pp. 235 to 238.

owner/producer of the sugar, as shown by sugar quedans which are not in the name of the cooperative, to wit:

> "2. ANAPI is not the owner/producer of the sugar as shown by the sugar quedans which are *not* in the name of the cooperative in violation of the provision of RR No. 29-02, as amended, which states:
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> xxx xxx xxx
>
> 2.1 Some of the quedans were in the name of the individual member-planter/cooperative while others are in the name of the cooperative but show different Plantation Audit Numbers (PANs) and TINs which only prove that these quedans are not owned by the cooperative itself but by its members. Likewise, the Abstract of Official Sugar Warehouse Receipt indicate different PANs and different TINs. Had the sugar been really owned by the cooperative exclusively, only one TIN and one PAN would have been indicated; there would have been no need to have different PANs and TINs/.
>
> 2.2 A scrutiny of its Income Statement does not show the expenses that a sugar producer would ordinarily and necessarily incur like soil preparation and cultivation, cutbacks, furrowing, planting, weeding, irrigation, fertilizer, harvesting and hauling expenses, among others.
>
> 2.3 Neither does it show the incentives which a sugar central normally gives a sugar planter/producer like: direct clean cane, trucking allowance, cane handling, fuel stab and fuel subsidy incentives, EMI, PMI, LMI, if planter delivers direct to sugar central. The transloading fees, as well as the social amelioration fund given to farm workers pursuant to law and the Sugar Industry Foundation Inc. (SIFI) accounts are likewise omitted.

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2.4 Instead, it shows the account "Cost of Assigned Sugar" which proves that the cooperative does not own or produce the sugar and that, another party merely assigned the sugar to it."

Despite the foregoing findings, however, there are absolutely no supporting documents on record to validate any of the allegations or conclusions arrived at in the subject FDDA, stating that respondent is not the owner/producer of the sugar.

On the contrary, petitioner's own witness, Revenue Officer Markneil S. Collado, testified that an Authorization Allowing the Release of Refined Sugar (AARRS), a clearance which is only issued if the quedan is in the name of the cooperative, was issued in favor of the respondent.[18] This was corroborated by petitioner's other witnesses, Chief Revenue Officer Carmen Grace L. Comoda, who testified that the withdrawals of refined sugar were covered by the appropriate authorization allowing release of refined sugar,[19] and Revenue Officer Amelita J. Domingo, who stated that all the withdrawals made by respondent were covered by the respective authorization allowing release of refined sugar.[20]

In fact, RO Collado even admitted that he based his evaluation solely on the BIR records and the conclusions stated in the FDDA, that not all of the sugar quedans are under the name of respondent.[21] Moreover, he admitted that the BIR did not have copies of the sugar quedans made, or the documents needed to support the allegations.[22]

In the absence of proof that the sugar quedans were not in respondent's name, there is no other basis for the subject deficiency VAT assessment. Thus, the Court in Division correctly ruled that the subject deficiency VAT assessment was a "naked assessment," or one that is without any rational basis.

Without sufficient evidence and basis to support the subject assessment, the presumption of correctness cannot be sustained, and the deficiency VAT assessment should be cancelled.

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[18] TSN dated October 23, 2017, pp. 10 to 14.
[19] TSN dated January 31, 2018, pp. 8 to 9.
[20] TSN dated January 31, 2018, p. 16.
[21] TSN dated October 23, 2017, p. 15.
[22] TSN dated October 23, 2017, p. 16.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated January 21, 2019 and the Resolution dated April 22, 2019 rendered by the Special Second Division of this Court in CTA Case No. 9399 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice