REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SOUTHERN LUZON DRUG CORPORATION, *Petitioner,*	**CTA Case No. 8941**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 07 2018 11:50 a.m.

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D E C I S I O N

MANAHAN, J.:

This case involves a Petition for Review filed by Southern Luzon Drug Corporation to appeal the Commissioner of Internal Revenue's denial of its protest against the assessment for deficiency value-added tax plus interest for the taxable period January 1, 2012 to June 30, 2012.

FACTS

Petitioner Southern Luzon Drug Corporation is a corporation organized under Philippine laws with principal place of business at No. 7, Mercury Avenue (formerly Richmonde Avenue), Bagumbayan, Quezon City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested by law to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws.[2]

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[1] Docket, Vol. I, Petition for Review (PFR), pp. 6-7.
[2] Docket, Vol. II, Joint Stipulation of Facts and Issues (JSFI), p. 779.

Petitioner received Letter of Authority (LOA) No. LOA-V07-2012-00000165/SN: eLA201100035300[3] dated December 11, 2012 (First LOA), authorizing the examination of petitioner's books of accounts and other accounting records for the period January 1, 2012 to June 30, 2012.[4] The First LOA was received by petitioner on December 13, 2012.

Petitioner received LOA No. LOA-040-2013-0001232/SN: eLA201100067347[5] dated December 2, 2013 (Second LOA) for the investigation of the books of accounts and other accounting records of petitioner for the period January 1, 2012 to December 31, 2012, for all internal revenue taxes.[6]

Petitioner received Letter Notice (LN) No. 040-RLFTRS-12-00-00916 dated June 9, 2014,[7] requiring petitioner to reconcile and explain the allegedly under-declared sales in the amount of Php53,469,245.53 for taxable year 2012.[8]

The BIR issued the Preliminary Assessment Notice (PAN)[9] dated May 26, 2014,[10] and received by petitioner on June 3, 2014.[11]

On June 19, 2014, respondent issued, and petitioner received, the Formal Letter of Demand No. VAT-040-B001-12[12] with attached Assessment Notice[13] (FLD/FAN), signed by then Regional Director Jonas DP Amora, for deficiency VAT and interest for the period January 1, 2012 to June 30, 2012.[14]

Petitioner filed its protest[15] to the FLD/FAN on July 21, 2014.

The FLD contained the following computation:

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[3] Docket, Vol. IV, Exhibit "P-5", p. 1938; BIR Records, Exhibit "R-2", p. 8.
[4] Docket, Vol. II, JSFI, p. 780.
[5] Docket, Vol. IV, Exhibit "P-9", p. 1942.
[6] Docket, Vol. II, JSFI, p. 780.
[7] Docket, Vol. IV. Exhibit "P-10", p. 1944.
[8] Docket, Vol. II, JSFI, p. 780.
[9] Docket, Vol. IV, Exhibit "P-12", pp. 1946-1947; Vol. V, Exhibits "R-7" and "R-7.1", pp. 2202-2203.
[10] Docket, Vol. II, JSFI, p. 780.
[11] Docket, Vol. I, PFR, p. 10.
[12] Docket, Vol. I, Exhibits "P-13" and "P-13-A", pp. 404-405; Vol. V, Exhibits "R-8.1" and "R-8.2", pp. 2205-2206.
[13] Docket, Vol. V, Exhibit "R-8", p. 2204.
[14] Docket, Vol. II, JSFI, p. 779.
[15] Docket, Vol. I, Exhibit "P-14", pp. 407-408.

DEFICIENCY VALUE ADDED TAX			
Taxable revenue/receipts per VAT returns			P1,155,791,492.25
Add: Adjustments per investigation			
Additional vatable sales from undeclared purchases			244,454,158.40
Taxable sales/receipts per investigation			P1,400,245,650.65
Output tax due thereon			P 168,029,478.08
Less: Allowed tax credits/payments			
Input tax on current purchases		P178,698,850.20	
Input tax carried over from previous period		21,692,239.79	
Input tax deferred on capital goods exceeding P1M from previous period		24,276,855.23	
Total		P224,667,945.22	
Less: Deferred input tax on capital goods exceeding P1M	P24,581,547.68		
Input tax allocable to exempt sales	41,703,018.86		
Disallowed input tax	154.30		
Additional input tax allocable to exempt sales	3,126,437.61		
Excess input tax credits carried over to succeeding period	19,688,399.02	89,099,557.47	135,568,387.75
Deficiency value added tax			P 32,461,090.33
Add: 20% interest p.a. (07/26/2012 to 07/21/2014)			12,895,501.64
TOTAL AMOUNT DUE			**P 45,356,591.97**

Petitioner received a Letter dated October 23, 2014[16] denying with finality the protest to the FLD/FAN.[17] Petitioner received the said letter on October 30, 2014.[18] Petitioner also received a Preliminary Collection Letter (PCL)[19] dated October 15, 2014, on October 31, 2014.[20] Petitioner likewise received a Final Notice Before Seizure[21] dated November 3, 2014.[22]

On December 1, 2014, the instant Petition for Review (With Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction)[23] was filed. Petitioner prays that assessment for taxable period January 1, 2012 to June 30, 2012 be cancelled and set aside.

After conducting hearings on the Application for Temporary Restraining Order and/or Writ of Preliminary Injunction, the admission of evidence and submission of memoranda, the Court denied the application. In its Resolution dated May 8, 2015, the Court reasoned that petitioner failed to prove that it presently has no means to pay its current liabilities including the tax assessments.[24] Petitioner's Motion for

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[16] Docket, Vol. I, Exhibit "P-18", p. 421.
[17] Docket, Vol. II, JSFI, p. 781.
[18] Docket, Vol. I, PFR, p. 11.
[19] Docket, Vol. I, Exhibit "P-19", p. 422.
[20] Docket, Vol. II, JSFI, p. 781, in relation to Vol. 1, PFR, p. 12.
[21] Docket, Vol. I, Exhibit "P-20, p. 423.
[22] Docket, Vol. II, JSFI, p. 781.
[23] Docket Vol. I, pp. 6-36.
[24] Docket, Vol. I, Resolution dated May 8, 2015, pp. 551-555.

Reconsideration was likewise denied.[25] Said resolutions were the subject of a petition for certiorari with the Supreme Court docketed as G.R. No. 221283, which was subsequently dismissed.[26]

Meanwhile, respondent, within the extended period granted,[27] timely filed his Answer[28] on January 29, 2015. The case was set for pre-trial with petitioner filing its Pre-Trial Brief[29] on July 7, 2015, and Amended Pre-Trial Brief[30] on August 3, 2015. Respondent filed his Pre-Trial Brief[31] on August 4, 2015. On August 24, 2015, the parties filed their Joint Stipulation of Facts and Issues (JSFI)[32], which was approved and adopted in the Pre-Trial Order[33] dated September 1, 2015.

Petitioner filed its Motion For Commissioning of Independent Certified Public Accountant (ICPA)[34] on September 10, 2015 to commission Michael L. Aguirre of M.L. Aguirre & Co., as ICPA. Said motion was granted and Michael L. Aguirre was commissioned as ICPA on October 7, 2015.[35]

The case proceeded to trial with petitioner presenting the following witnesses: (1) Jefferson L. Culanag;[36] (2) Cyre M. Clores;[37] and (3) Michael L. Aguirre.[38] Petitioner filed its Formal Offer of Evidence (FOE)[39] on March 16, 2016. The Court issued its Resolution dated June 15, 2016 admitting and denying several of petitioner's exhibits.[40] On reconsideration, the Court issued Resolution dated December 2, 2016 which resulted to the denial of Exhibit "P-28-d" only.[41]

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[25] Docket, Vol. II, Resolution dated September 15, 2015, pp. 827-829.
[26] Docket, Vol. IV, pp. 1471-1472.
[27] Docket, Vol. I, pp. 208-210, in relation to p. 211.
[28] Docket, Vol. I, pp. 496-504.
[29] Docket, Vol. II, pp. 688-706.
[30] Docket, Vol. II, pp. 743-766.
[31] Docket, Vol. II, pp. 767-773.
[32] Docket, Vol. II, pp. 779-797.
[33] Docket, Vol. II, pp. 800-807.
[34] Docket, Vol. II, pp. 813-815.
[35] Docket, Vol. II, Minutes of Hearing dated October 7, 2015, p. 841; Oath of Commission, p. 842
[36] Docket, Vol. II, Minutes of Hearing dated October 7, 2015, p. 841; Vol. IV, Minutes of Hearing dated February 1, 2016, p. 1468.
[37] Docket, Vol. II, Minutes of Hearing dated October 28, 2015, p. 843.
[38] Docket, Vol. IV, Minutes of Hearing dated January 18, 2016, p. 1395.
[39] Docket, Vol. IV, pp. 1566-1935.
[40] Docket, Vol. V, pp. 2082-2098.
[41] Docket, Vol. V, pp. 2184-2186.

On the other hand, respondent presented the following witnesses: (1) Alexis F. Suñga;[42] and (2) Jennifer P. Enriquez.[43] Respondent filed his FOE[44] on May 2, 2017, which was resolved by the Court on October 6, 2017[45].

The Court granted the parties thirty (30) days within which to file their respective memoranda.[46] Petitioner filed its Memorandum[47] on November 11, 2017, however, respondent, despite notice, failed to file his memorandum per Records Verification[48] dated November 27, 2017. Considering the foregoing, the instant case was deemed submitted for decision on December 12, 2017.[49]

ISSUES[50]

The parties submit the following issues for resolution:

1. Whether or not FLD No. VAT-040-B001-12 dated June 19, 2014 is void for having been issued pursuant to a withdrawn Letter of Authority.

2. Assuming *arguendo* that FLD No. VAT-040-B001-12 dated June 19, 2014 is valid, whether or not the deficiency VAT and interest assessed therein have become final and executory.

3. Assuming *arguendo* that FLD No. VAT-040-B001-12 dated June 19, 2014 is valid, whether or not petitioner had undeclared purchases in the amount of Php216,097,476.04, resulting to additional VATable sales of Php244,454,158.40, rendering petitioner liable for deficiency VAT and interest.

4. Assuming *arguendo* that FLD No. VAT-040-B001-12 dated June 19, 2014 is valid, whether or not petitioner is liable for deficiency VAT and interest arising from disallowed

[42] Docket, Vol. V, Minutes of Hearing dated March 6, 2017, p. 2233.
[43] Docket, Vol. V, Minutes of Hearing dated April 19, 2017, p. 2257.
[44] Docket, Vol. V, pp. 2259-2264.
[45] Docket, Vol. V, pp. 2280-2281.
[46] *Id.*
[47] Docket, Vol. V, pp. 2285-2328.
[48] Docket, Vol. V., p. 2329.
[49] Docket, Vol. V, p. 2330.
[50] Docket, Vol. II, JSFI, pp. 781-782.

input VAT of Php3,126,437.61 in relation to VAT exempt sales.

5. Whether or not the petitioner is liable to pay the questioned deficiency VAT.

Petitioner's Arguments[51]

Petitioner argues that the deficiency VAT and interest assessed under FLD No. VAT-040-B001-12 dated June 19, 2014 is void for having been issued pursuant to a cancelled/repealed LOA. Petitioner states that the First LOA was cancelled/repealed by the issued Second LOA, since the Second LOA includes the tax type and tax period covered by the First LOA.

Assuming *arguendo* that FLD No. VAT-040-B001-12 is valid, petitioner argues that the assessment has not become final and executory. Petitioner states that it timely filed its protest on July 21, 2014 contrary to the statement of respondent that petitioner filed the protest on August 1, 2014; that the protest complied with the requirements for a valid protest.

As to the alleged underdeclaration of purchases, petitioner argues that it did not under-declare its 2012 purchases in the amount of Php216,097,476.04; that respondent did not present the Summary List of Sales allegedly submitted by petitioner's suppliers to enable petitioner to examine and verify the transactions; that respondent failed to inform petitioner of the factual and legal basis of the assessment on undeclared purchases; and, that the discrepancy from the declared purchases by petitioner and the sales declared by its suppliers is caused by the difference in the period of recognition of sales by the supplier and the period of recognition of purchase by the petitioner.

As to the alleged disallowed input VAT of Php3,126,437.61 in relation to VAT-exempt sales, petitioner argues that only Php1,807,696.00 should have been disallowed; that petitioner paid Php1,807,696.00 plus interest amounting to

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[51] Docket, Vol. I, PFR, pp. 13-26; Vol. V, Memorandum, pp. 2293-2326.

Php728,030.99 on July 30, 2014; and, considering the payment, this item of assessment should be cancelled.

Finally, petitioner argues that deficiency interest should not be imposed since the 20% deficiency interest under Section 249(B) is only imposed on deficiency assessments for income tax, estate tax and donor's tax.

Respondent's Counter-Arguments[52]

Respondent states that the First LOA pertains to VAT while the Second LOA involves all other internal revenue taxes, thus, the two LOAs pertain to different tax types. Respondent also argues that petitioner failed to timely file a valid protest with the correct office; that petitioner filed its protest at the Revenue District Office (RDO) No. 40-Cubao instead of the Office of the Regional Director as required in Revenue Memorandum Circular (RMC) No. 39-2013; and, that this failure to validly file a protest rendered the assessment against petitioner as final, executory and demandable.

RULING OF THE COURT

The petition has merit.

The Court has jurisdiction over the petition for review.

Under Rule 4, Section 3(a)(1)[53] of the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in division has jurisdiction over the decisions of the CIR in cases involving disputed assessments. In the instant case, the FLD/FAN was issued by respondent and received by petitioner on June 19, 2014.[54] Petitioner timely filed its protest on July 21, 2014[55].[56]

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[52] Docket, Vol. I, Answer, pp. 498-503.
[53] Rule 4 Jurisdiction of the Court
Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.
[54] Docket, Vol. I, Exhibit "P-13", pp. 405-406.
[55] Docket, Vol. I, Exhibit "P-14", pp. 407-408.
[56] July 19, 2014 fell on Saturday. *an*

Petitioner received respondent's letter dated October 23, 2014 on October 30, 2014, denying petitioner's protest and stating that the assessment under FLD No. VAT-040-B001-12 has become final, executory and demandable.[57] The letter further stated that it is the final decision.

Pursuant to Rule 8, Section 3(a)[58] of the RRCTA, petitioner had thirty (30) days from receipt of the final decision within which to file its petition for review. Counting thirty (30) days from October 30, 2014, petitioner had until November 29, 2014 to file its petition. Considering that November 29, 2014 was a Saturday, petitioner timely filed its petition for review on December 1, 2014.

Anent respondent's argument that the assessment has become final and executory when petitioner failed to file the protest in the correct venue, the Court finds no merit.

Respondent cites RMC No. 039-2013[59] which provides in part:

> 1. All letters of protest, requests for reinvestigation/ reconsideration and similar correspondences shall only be filed by the taxpayers or their duly authorized representatives, in person or through registered mail with return card, with the <u>Office of the concerned Regional Director (RD)</u>, Assistant Commissioner-Large Taxpayers Service (ACIR-LTS) and Assistant Commissioner-Enforcement Service (ACIR-ES), <u>who signed the Preliminary Assessment Notices (PANs), FANs and Formal Letters of Demand</u>, for proper recording of the protests, and evaluation if the same is in accordance with Section 228 of the NIRC, as implemented by Revenue Regulations No. 12-99. <u>If the aforesaid procedures are not followed, then the letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall be considered void and without force and effect</u>.

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[57] Docket, Vol. I, Exhibit "P-18", p. 421.
[58] Rule 8 Procedure in Civil Cases
Sec. 3. Who may appeal; period to file petition. –
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling...
[59] Receipt of Protest Letter on Final Assessment Notices and Final Decision on Disputed Assessments, April 4, 2013.

Respondent alleges that petitioner filed its protest in the wrong venue when it filed with the RDO instead of the Regional Office. However, respondent did not present any evidence to prove the same. In the records, petitioner's protest was addressed to the Regional Director, furthermore, the denial of petitioner's protest was signed by said Regional Director.

Considering the foregoing, the Court has jurisdiction over the petition for review.

The First LOA was not repealed by the issuance of the Second LOA.

Petitioner argues that the Second LOA repealed the First LOA; that two LOAs covering the same tax type and taxable period cannot exist simultaneously. Petitioner cites Revenue Memorandum Order No. (RMO) 44-2010[60] which provides:

> IV. Policies and Guidelines
>
> xxx xxx xxx
>
> 7. In the event that, in the course of the processing of a request for issuance of an electronic LA submitted by an investigating office, it should be determined that a valid LA has been previously issued by <u>another investigating office for the same taxpayer covering the same tax type(s) and taxable period</u>, the resolution of which investigating office shall handle the audit shall be determined by the Commissioner of Internal Revenue, or the designated official.

The Court does not agree with petitioner's contentions.

The details of the First and Second LOA are set out in the table below for ease of comparison:

	First LOA[61]	Second LOA[62]
Authorized BIR employees	RO Alexis Sunga GS Efren Clemente	RO Saladin Domato GS Elma Capistrano

[60] Electronic Issuance of Letters of Authority, May 12, 2010.
[61] Docket, Vol. IV, Exhibit "P-5", p. 1938; BIR Records, Exhibit "R-2", p. 8.
[62] Docket, Vol. IV, Exhibit "P-9", p. 1942.

Investigating Office	Revenue District No. V07-Assessment Division	Revenue District No. 040-Cubao
Tax Type	VT	All internal revenue taxes including documentary stamp tax (DS), other taxes (miscellaneous)(OTH)
Tax Period	January 1, 2012 to June 30, 2012	January 1, 2012 to December 31, 2012
Basis	RMO 20-2012, Value Added Tax Audit Program	Sec. 6(A) and Sec. 10(C) of the NIRC of 1997, as amended.
Signatory	Jonas DP Amora OIC-Regional Director RR 7-Quezon City	Jonas DP Amora OIC-Regional Director RR 7-Quezon City

It is true that an examination of the books and other accounting records shall be made only once in a taxable year.[63] In relation to this, RMO 044-10 provides that the CIR or the designated official shall resolve which investigating office shall handle the audit in the situation wherein two LOAs are issued for the same taxpayer covering the same tax type(s) and taxable period. However, there is no provision in said RMO 044-10 which provides that the issuance of a second LOA covering the same tax type(s) for the same taxable period repeals the first LOA. The same may only be implied from the need to determine which investigating office shall handle the investigation.

Applying the foregoing, the Court finds that the two LOAs do not cover the same tax type and taxable period. The First LOA covers VAT for January 1, 2012 to June 30, 2012, while the Second LOA covers all internal revenue taxes including documentary stamp tax (DST) for the period January 1, 2012 to December 31, 2012. While it may appear that the Second LOA also includes VAT for the entire year, thereby duplicating the coverage of the First LOA, an examination of the PAN[64] and FLD[65] issued under the Second LOA shows that only VAT for the 3rd and 4th quarters is included therein. Since the two LOAs do not cover the same tax type and taxable period, there is no need to resolve which investigating office shall

[63] NIRC, Sec. 235. Preservation of Books and Accounts and Other Accounting Records. – ... The said books and records shall be subject to examination and inspection by internal revenue offices: *Provided*, That for income tax purposes, such examination and inspection shall be made only once in a taxable year, ...
[64] Docket, Vol. V, Exhibit "P-46", pp. 2141-2147, at p. 2142.
[65] Docket, Vol. V, Exhibit "P-48", pp. 2161-2166, at p. 2162.

handle the investigation, and therefore, the investigation under each LOA is valid.

Furthermore, RMO 020-12[66] provides for such a situation wherein a taxpayer is chosen for the VAT audit program and subsequently picked for the regular audit. It states:

> IV. Audit Policies and Procedures
>
> A. In General
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> xxx xxx xxx
>
> 11. If the taxpayer has been previously selected in the RDO for regular audit of all internal revenue tax liabilities in 2011 or any prior year, significant findings on the audit of VAT should be communicated to the Chief-AD for possible risk identification in the current quarters.
>
> <u>If an eLA has been issued under the VAT audit program and subsequently, the taxpayer becomes a candidate for regular audit in the RDO based on the selection criteria under the annual audit program, the request for eLA for regular audit should not include the VAT liability.</u>
>
> The head of the VAT Audit Team should transmit a copy of the VAT findings to the RDO conducting the regular audit to determine their relevance and effect to other tax liabilities.

This was subsequently clarified in RMO 027-13,[67] which provides:

> II. Policies
>
> 3. Item IV.A.11 of the above RMO is hereby amended to read as follows:
>
> "xxx xxx xxx
>
> Thus, <u>where there is already an eLA issued by the VAT Audit Team for any taxable quarter for 2012</u> and/or

[66] 2012 Value-Added Tax Audit Program, August 23, 2012.
[67] Amendments to the 2012 Value-Added Tax (VAT) Audit Program, September 26, 2013. am

thereafter, and the taxpayer has been selected for regular audit in the RDO, the tax type to be requested for investigation by the Revenue District Officer shall be:

All internal revenue taxes except VAT."

To be sure, the RDO involved herein, RDO No. 40-Cubao failed to comply with the above requirement to exclude VAT in its request for LOA for the regular audit (Second LOA). However, again, there is no provision that failure to comply with the provisions of the RMO renders the LOA invalid. Instead, any violation or deviation from the said RMOs opens the concerned BIR employee to disciplinary or administrative sanctions, *to wit*:

> V. Violations
>
> Any violation of this Order will be referred by the concerned revenue official to the IS for investigation, or the IAD, thru the IS, may initiate its own fact-finding revalida on the violation/infraction of ROs, Legal Officers, Group Supervisors, VAT Audit Heads, Chiefs of Legal Divisions of regional offices and RDs. In this regard, the ACIR-IS, through the DCIR-OG, may recommend to the Commissioner the relief, re-assignment, transfer or imposition of administrative sanctions on any revenue official/RO violating any provisions of this Order.[68]

From the foregoing, the Court finds that the First LOA was not repealed by the issuance of the Second LOA. The First LOA is valid, therefore, the PAN and FLD/FAN issued pursuant thereto were issued with authority.

The Court will now determine the merits of the assessment, in relation to the alleged payment of deficiency VAT amounting to Php1,807,696.00 plus interest of Php728,030.99 on July 30, 2014.[69]

The assessments should be cancelled.

[68] RMO 020-12, August 23, 2012.
[69] Docket, Vol. I, PFR, p. 26, in relation to Exhibits "P-15", "P-15-A" to "P-15-D", pp. 411-415.

The assessment against petitioner, as found in the FLD, is shown below:

DEFICIENCY VALUE ADDED TAX			
Taxable revenue/receipts per VAT returns			P1,155,791,492.25
Add: Adjustments per investigation			
Additional vatable sales from undeclared purchases			244,454,158.40
Taxable sales/receipts per investigation			P1,400,245,650.65
Output tax due thereon			P 168,029,478.08
Less: Allowed tax credits/payments			
Input tax on current purchases		P178,698,850.20	
Input tax carried over from previous period		21,692,239.79	
Input tax deferred on capital goods exceeding P1M from previous period		24,276,855.23	
Total		P224,667,945.22	
Less: Deferred input tax on capital goods exceeding P1M	P24,581,547.68		
Input tax allocable to exempt sales	41,703,018.86		
Disallowed input tax	154.30		
Additional input tax allocable to exempt sales	3,126,437.61		
Excess input tax credits carried over to succeeding period	19,688,399.02	89,099,557.47	135,568,387.75
Deficiency value added tax			P 32,461,090.33
Add: 20% interest p.a. (07/26/2012 to 07/21/2014)			12,895,501.64
TOTAL AMOUNT DUE			**P 45,356,591.97**

However, petitioner made a partial payment of Php2,535,726.99 on July 30, 2014,[70] thus, reducing the deficiency VAT to Php42,820,864.98, computed as follows:

Tax Type	Basic	Interest	Total
Value-added tax	Php32,461,090.33	Php12,895,501.64	Php45,356,591.97
Less: Payment made on July 30, 2014			2,535,726.99
TOTAL			**Php42,820,864.98**

The validity of the assessment shall be discussed based on the following items:

A. Additional VATable sales from undeclared purchases	Php 244,454,158.40
B. Disallowed input tax	154.30
C. Additional input tax allocable to exempt sales	3,126,437.61
D. Excess input tax credits carried over to succeeding period	19,688,399.02

A. Additional VATable sales from undeclared purchases of

[70] Docket, Vol. I, Exhibit "P-15-A to D", pp. 412-415.

Php216,097,476.04 - Php244,454,158.40.

Respondent's verification and matching of information/ data provided by petitioner's sellers against the purchases declared in the latter's tax returns and submitted schedules disclosed the following discrepancies, hence, petitioner is assessed for the corresponding deficiency VAT pursuant to Section 106 and 108 of the NIRC:[71]

Supplier	**Per Third-Party Information**	**Per Taxpayer's Schedule**	**Difference**
Alphaquest Enterprises	Php -	Php (4.33)	Php 4.33
Basic Distributors Inc.	2,531,793.76	1,743,845.08	787,948.68
Body Needs and Basics, Inc.	539,136.70	348,617.08	190,519.62
Croley Foods Manufacturing Corp.	205,545.53	174,767.16	30,778.37
Energizer Philippines Inc.	906,389.85	674,092.75	232,297.10
Ever Bilena Cosmetics Inc	6,316.74	(1,957.33)	8,274.07
Golden ABC Inc.	80,481.29	73,731.25	6,750.04
Mega Market Inc.		(620.08)	620.08
Mercury Drug Corporation	1,299,369,485.29	1,295,585,306.16	3,784,179.13
Mercury Drug Group of Companies	2,043,345.59	1,357,685.98	685,659.61
Nestle Philippines Inc	8,796,193.58	5,699,477.17	3,096,716.41
Rhodesian Distribution		(1,161.92)	1,161.92
Robinsons Land Corp	139,164.58	120,957.25	18,207.33
Scanasia Overseas, Inc.	224,448,360.41	17,895,461.34	206,552,899.07
Sia, Alice C.	282,160.71		282,160.71
So, Stewart Gan	415,089.82		415,089.82
Team Asia Corporation		(4,209.75)	4,209.75
Discrepancy in purchases			**Php 216,097,476.04**
Divided by cost of goods sold rate*			88.40%
Additional VATable sales from undeclared purchases			**Php 244,454,158.40**
*Based on 2012 Information per BIR-ITS			
Sales	Php 3,213,277,640.09	100.00%	
Cost of sales	2,840,487,233.59	88.40%	
Gross income	Php 372,790,406.50	11.60%	

Petitioner argues that this item of assessment was rendered in violation of petitioner's right to be informed of the factual and legal bases of the assessments against it, not to mention that the assessment is without factual basis.

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[71] Docket, Vol. I, Exhibit "P-13-A" Details of Discrepancies, p. 405.

Respondent did not furnish petitioner with copies of the Summary List of Sales submitted by the aforementioned suppliers in order to allow petitioner an opportunity to examine and verify for itself the dates, nature, and amounts of the transactions used by the BIR in its computation of the deficiency VAT assessment. To sustain this item of assessment is highly violative of petitioner's right to due process. Lacking such information, petitioner was not able to fully respond to the assessments against it. This is tantamount to violation of petitioner's due process rights, rendering the assessment void.[72]

Further, petitioner asserts that the presence of undeclared purchases, assuming it was true, does not automatically result to liability for deficiency VAT.

Contrary to petitioner's argument that the assessment is void, a review of the records shows otherwise. The FLD shows how respondent arrived at the alleged discrepancy, particularly in the details of discrepancies. Even though respondent failed to provide the summary list of sales submitted by petitioner's suppliers, the summary list of purchases and the supporting official receipts and invoices are readily available to petitioner. With these documents at hand, petitioner may easily determine the discrepancies subject of this assessment. Therefore, petitioner cannot say that it was deprived of an opportunity to refute respondent's findings.

Indeed, the Supreme Court has had occasion to rule:

> In a long line of cases decided by this Court, we consistently stressed that the requirement of the law to inform the taxpayer of the basis of the assessment should not be construed as limiting to the assessment notice itself. Upon a careful study of the law, it is noteworthy to emphasize that assessment notices need not be a full narration of the facts and laws on which the assessment is based. Further, the law mandates that the notice to acquaint the taxpayer of the basis of his assessment must be in writing but it does not categorically state that the assessment itself must contain such information. It is enough that petitioner be substantially informed of the law and the facts on which the assessment for a tax liability is made in any other written document presented to the taxpayer. Thus, so long as the parties are notified and were given the opportunity to explain their side, the

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[72] Docket, Vol. V, Petitioner's Memorandum, paragraphs 71, 73 and 75, pp. 2314-2315.

requirements of due process are satisfactorily complied with.[73]

The Court shall now determine whether the aforementioned discrepancy from alleged undeclared purchases may give rise to deficiency VAT.

The Court disagrees. By dividing the total undeclared purchases by the cost of sales rate, respondent is essentially assessing petitioner for undeclared sales from the alleged undeclared purchases.

It must be pointed out that under Section 106(A) of the NIRC, VAT is assessed on the "*gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.*"

Also, under Section 108 of the NIRC, VAT is assessed on the *"gross receipts derived from the sale or exchange of services"*. Significantly, the law defines "gross selling price" and "gross receipts", as follows:

> "...**'gross selling price'** means the total amount of money or its equivalent which the purchaser pays or is obligated to pay the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax."
>
> "...**'gross receipts'** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

Clearly, VAT can be imposed only when it is shown that the taxpayer received an amount of money or its equivalent from its sale, barter, or exchange of goods or properties, or from sale or exchange of services, and not when there are under-declared

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[73] *Southern Negros Development Corporation v. Commissioner of Internal Revenue*, CTA EB No. August, 8, 2006, citing *Calma, et al., v. Court of Appeals, et al.*, G.R. No. 122787, February 9, 1999.

purchases. In other words, VAT is imposed when one sells, not when one purchases.

At this juncture, it must be pointed out that in order to stand 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.[74] Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[75]

As such, respondent's conclusion that petitioner had undeclared sales arising from said alleged undeclared purchases cannot be enforced against petitioner; lest, petitioner shall be taxed arbitrarily. Accordingly, the deficiency VAT assessment on the alleged undeclared purchases should be cancelled and withdrawn.

B. Disallowed input tax – Php154.30

In its protest letter[76] to the FLD, petitioner stated that it is agreeable to pay said VAT deficiency including interest. As such, this item of assessment shall not be disturbed.

C. Additional input tax allocable to exempt sales – Php3,126,437.61

Respondent's investigation disclosed that petitioner is also engaged in transactions which are exempt from VAT. Hence, petitioner is not allowed any tax credit of VAT input tax on purchases attributable to the exempt sales/receipts pursuant to Sections 4.109-1(A) and 4.110-4 of Revenue Regulations (RR) No. 16-2005.

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[74] *Collector of Internal Revenue v. Alberto D. Benipayo,* G.R.No. L-13656, January 31, 1962; *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644. September 11, 1987.
[75] *Collector of Internal Revenue v. Alberto D. Benipayo,* G.R.No. L-13656, January 31, 1962; *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644. September 11, 1987.
[76] Docket, Vol. I, Exhibit "P-14", p. 407.

The disallowed input tax allocable to exempt sales in the amount of Php3,126,437.61 was computed as follows:

VATable sales	Php 1,155,791,492.25
Exempt sales	387,045,185.94
Total sales/receipts	**Php 1,542,836,678.19**
Claimed input tax per VAT returns	Php 178,698,850.20
Multiply by: Rate of exempt sales/Total sales	25.09%
Input tax allocable to exempt sales	44,829,456.47
Less: Input tax allocable to exempt sales per VAT returns	41,703,018.86
Additional input tax allocable to exempt sales	**Php 3,126,437.61**

Petitioner disagrees with said findings and asserts that it is only liable to pay the deficiency VAT in the amount of Php1,807,696.00, as computed below:

Input tax directly attributable to VAT-exempt sales	Php 40,407,517.00
Input tax not directly attributable to VAT-exempt sales	3,103,198.00
Total input tax allocable to exempt sales	Php 43,510,715.00
Less: Input tax allocable to exempt sales per VAT returns	41,703,019.00
Additional input tax allocable to exempt sales	**Php 1,807,696.00**

Thus, on July 30, 2014, petitioner paid the admitted basic VAT of Php1,807,696.00 plus interest in the amount of Php728,030.99, or in the aggregate amount of Php2,535,726.99.[77] Considering this payment, petitioner argues that this item of assessment should be cancelled for lack of merit.[78]

We find against petitioner.

Section 110(C) of the NIRC, provides for the determination of the amount of input tax creditable for a certain period, as follows:

> Sec. 110. Tax Credits. – xxx
>
> (C) *Determination of Creditable Input Tax.* – The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter

[77] Docket, Vol. I, Exhibits "P-15 to 15-D" and "P-16", pp. 411-420.
[78] Docket, Vol. I, Petition for Review, pars. 66 to 70, pp. 25-26.

> **shall be reduced by the amount** of claim for refund or tax credit for value-added tax **and other adjustments, such as** purchase returns or allowances and **input tax attributable to exempt sale**.
>
> The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments and the Bureau of Customs. (*Emphasis supplied*)

Relatively, it was observed that petitioner is engaged in taxable and exempt sales of goods. In short, it is engaged in mixed transactions. It is clearly shown that for the first and second quarters of taxable year 2012, petitioner reported in its Quarterly VAT returns[79] taxable sales subject to 12% VAT and exempt sales.

Accordingly, if a VAT-registered person (or entity) is engaged in VATable and VAT-exempt transactions (and zero-rated transactions), the tax credits allowable will be computed under an apportionment formula, in view of the provision of Section 112(A) of the NIRC, *to wit*:

> ...where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any on of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Corollary thereto, Section 4.110-4 of RR No. 16-2005 provides the guidelines in determining the amount of input tax attributable to a specific sales type in case of mixed sales for a particular period. The pertinent provisions state:

> SECTION 4.110-4. *Apportionment of Input Tax on Mixed Transactions.* – A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed to recognize input tax credit on transactions subject to VAT as follows:

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[79] Docket, Vol. IV, Exhibits "P-25" and "P-28", pp. 1968-1969, and 2000-2001.

1. All input taxes that can be directly attributed to transactions subject to VAT may be recognized for input tax credit; *Provided*, that input taxes that can be directly attributable to VAT taxable sales of goods and services to the Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall not be credited against output taxes arising from sales to non-Government entities; and

2. If any input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for input tax credit.

Thus, based on the foregoing, there is no dispute that when there are mixed transactions, and a direct attribution of the input VAT cannot be made on such sales, a proportionate allocation on the basis of volume of sales must be made. No tax credit, however, is allowed for input taxes in case of VAT-exempt transactions.

In its computation, petitioner claims that the input VAT amount of Php40,407,517.00 is directly attributable to its VAT-exempt sales. However, petitioner did not provide proof to specifically pin-point that the said claimed input VAT is indeed directly attributable to such VAT-exempt sales and was not used in generating its sales subject to 12% VAT. Thus, it is but appropriate to apportion the entire input VAT due or paid on the basis of the volume of its sale made in each quarter. Accordingly, the input VAT allocable to VAT-exempt sales amounts to Php44,731,067.30, as computed below:

	1st Quarter 2012	**2nd Quarter 2012**	**Total**
VATable Sales	Php 566,432,331.25	Php 589,359,161.00	Php 1,155,791,492.25
Exempt Sales	186,892,519.42	200,152,666.52	387,045,185.94
Total Sales	**Php753,324,850.67**	**Php789,511,827.52**	**Php 1,542,836,678.19**
Input Tax Deferred on Capital Goods exceeding ₱1M from Previous Quarter	Php 11,714,168.21	Php 12,562,687.02	Php 24,276,855.23
Input Tax on Purchases of Capital Goods Exceeding ₱1M	1,945,655.76	586,518.58	2,532,174.34
Total	Php 13,659,823.97	Php 13,149,205.60	Php 26,809,029.57
Input Tax on Capital Goods exceeding ₱1M deferred for the succeeding period	12,562,687.02	12,018,860.66	24,581,547.68
Amortization of Input Tax on Capital Goods exceeding ₱1M	1,097,136.95	1,130,344.94	2,227,481.89

Input Tax on Purchases of Capital Goods not Exceeding ₱1 M	102,139.38	64,599.70	166,739.08
Domestic Purchases of Goods other than Capital Goods	85,576,635.36	80,753,947.26	166,330,582.62
Domestic Purchases of Services	4,376,112.23	5,293,241.94	9,669,354.17
Total Input VAT	**Php 91,152,023.92**	**Php 87,242,133.84**	**Php 178,394,157.76**
Total Input VAT	Php 91,152,023.92	Php 87,242,133.84	Php 178,394,157.76
Divided by Total Sales	753,324,850.67	789,511,827.52	1,542,836,678.19
Multiply by Exempt Sales	186,892,519.42	200,152,666.52	387,045,185.94
Input VAT Allocable to Exempt Sales	**Php 22,613,924.64**	**Php 22,117,142.66**	**Php 44,731,067.30**

Consequently, the additional input VAT allocable to exempt sales which petitioner cannot claim as tax credits amounts to Php3,028,048.44, as computed below:

	1st Quarter 2012	2nd Quarter 2012	Total
Input VAT Allocable to Exempt Sales	Php 22,613,924.64	Php22,117,142.66	Php44,731,067.30
Less: Input VAT Allocable to Exempt Sales per VAT Returns	21,230,725.33	20,472,293.53	41,703,018.86
Additional Input VAT Allocable to Exempt Sales	**Php 1,383,199.31**	**Php1,644,849.13**	**Php3,028,048.44**

D. Excess input tax credits carried over to succeeding period – Php19,688,399.02

Respondent deducted the amount of Php19,688,399.02 from the allowed tax credits/payments of petitioner which effectively disallows the same. This was lifted from Line 29 of the 2nd Quarterly VAT Return,[80] or the total amount of overpayment for taxable quarter ended June 30, 2012 which is to be carried over to the next period. However, respondent failed to provide the legal and factual basis for excluding said input tax credits in the assessment. This renders the disallowance null and void.

In view of the foregoing, petitioner is not liable for deficiency VAT for the first and second quarters of taxable year 2012, considering that petitioner has sufficient input tax credit to cover its output VAT liability for the same period, as computed below:

[80] Docket, Vol. IV, Exhibit "P-28", p. 2001.

Taxable revenue/receipts per VAT returns			Php1,155,791,492.25
Output tax due thereon			Php 138,694,979.07
Less: Allowed tax credits/payments			
Input tax on current purchases		Php178,698,850.20	
Input tax carried over from previous period		21,692,239.79	
Input tax deferred on capital goods exceeding ₱1M from previous period		24,276,855.23	
Total		Php224,667,945.22	
Less: Deferred input tax on capital goods exceeding ₱1M	Php24,581,547.68		
Input tax allocable to VAT exempt Sales	41,703,018.86		
Disallowed input tax	154.30		
Additional input tax allocable to exempt sales	3,028,048.44	69,312,769.28	155,355,175.94
Basic Deficiency VAT			**Php (16,660,196.87)**

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for the 1st and 2nd quarters of taxable year 2012 covering deficiency VAT is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice