Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

## *FIRST DIVISION*

**BONIFACIO GAS CORPORATION,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 8794**
For: Assessment

Members:

**DEL ROSARIO, P.J.,**
**UY, and**
**MINDARO-GRULLA, JJ.**

**Promulgated:**

SEP 23 2016 ; 2:30 p.m.

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# DECISION

***MINDARO-GRULLA, J.:***

This resolves the Petition for Review filed on April 7, 2014 by Bonifacio Gas Corporation pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals," as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(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;
x x x x x x

2 Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

Petitioner seeks the cancellation and setting aside of the Assessment Notice No. IT-LA4078/ELA4542-09-13-0153, the Formal Assessment Notice (FAN), and the Final Decision on Disputed Assessment (FDDA), all issued by the Commissioner of Internal Revenue, assessing it for alleged deficiency income tax in the total amount of ₱504,432.41, inclusive of interest, for taxable year (TY) 2009.[3]

Petitioner Bonifacio Gas Corporation is a domestic corporation existing under and by virtue of the laws of the Republic of the Philippines. It is duly registered with the Securities and Exchange Commission (SEC), with principal office address at 2nd Floor, Bonifacio Technology Centre, 31st St. corner 2nd Ave., Bonifacio Global City, Taguig City, Metro Manila.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), authorized to perform the duties of his office, including, among others, the power to decide disputed assessments or other charges and penalties imposed in relation thereto pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

> (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;
> x x x x x x
>
> Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –
>
> (a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Par. I, Pre-Trial Order, Docket, p. 346.
[4] Par. 1, Admitted and Stipulated Facts, Joint Stipulation of Fact and Issues (JSFI), Docket, p. 69.

On March 16, 2004, petitioner and the Bases Conversion Development Authority (BCDA) executed a Supply Contract, wherein the former would supply cold air to the latter.[5] The Supply Contract was later amended on January 15, 2008.[6]

Pursuant to the Letter of Authority No. LOA 2009 00004078[7] dated May 24, 2010 and Letter of Authority No. Ela201000004542[8] dated September 8, 2010, the assigned Revenue Officers of Revenue District Office (RDO) No. 44-Taguig/Pateros conducted a tax audit on petitioner for all internal revenue taxes covering TY 2009.[9] After the tax audit, respondent issued a Preliminary Assessment Notice[10] (PAN) on January 15, 2013, assessing petitioner for alleged deficiency income tax in the amount of ₱439,722.08.

Consequently, petitioner disputed the PAN on February 1, 2013.[11]

On March 6, 2013, the Assessment Notice No. IT-LA4078/ELA4542-09-13-0153[12] and the Formal Assessment Notice[13] were issued and received by petitioner on March 12, 2013[14], assessing it for basic deficiency income tax in the amount of ₱281,181.78 for TY 2009,[15] computed as follows:[16]

| | | | |
|---|---|---|---|
| I. Income Tax | | | |
| Taxable income/(Loss) per ITR | | | ₱23,214,054.00 |
| Add: | Adjustments/Disallowance | | |
| | Disallowed Provision for Doubtful Accounts | | 8,184.00 |
| Adjusted Taxable Income | | | ₱23,222,238.00 |
| Basic Income Tax Due (30%) | | | ₱ 6,966,671.40 |

[5] Exhibit "P-2", Docket, pp. 466 to 470.
[6] Exhibit "P-3", Docket, pp. 471 to 473.
[7] BIR records, p. 2.
[8] BIR records, p. 1.
[9] Par. 3, Admitted and Stipulated Facts, JSFI, Docket, p. 69.
[10] BIR records, pp. 580 to 581.
[11] BIR records, p. 582.
[12] BIR records, p. 589.
[13] BIR records, p. 587.
[14] Par. 2.01, Petition for Review, Docket, p. 15.
[15] Par. 4, Admitted and Stipulated Facts, JSFI, Docket, p. 70.
[16] Par. 5, Admitted and Stipulated Facts, JSFI, Docket, p. 70.

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| Less: | Credits Payments | | |
| | Creditable Income Tax Withheld | ₱1,921,689.00 | |
| | Add: Payments per Return | 5,042,527.20 | |
| | Total | 6,964,216.20 | |
| | Less: Disallowed Creditable Withholding Tax | ₱ 278,726.58 | 6,685,489.62 |
| Basic Deficiency Income Tax | | | ₱ 281,181.78 |

Petitioner then administratively protested the said assessment on April 5, 2013.[17]

On March 6, 2014, petitioner received a copy of the Final Decision on Disputed Assessment dated February 28, 2014, reiterating the deficiency income tax assessment against petitioner covering TY 2009 in the amount of ₱504,432.21, inclusive of interest computed from April 16, 2010 to April 4, 2014.[18]

As a result, petitioner filed the present Petition for Review[19] before this Court on April 7, 2014.

In the Answer[20] filed through registered mail on June 6, 2014 and received by the Court on June 17, 2014, respondent raised the following special and affirmative defenses:

"1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses.

2. Verification disclosed that petitioner did not comply with the requisites of Bad Debts to be deductible, hence the amount of ₱8,184.00 was disallowed pursuant to Revenue Regulations No. 25-2005.

3. The amount of ₱8,184.00 claimed by petitioner as deductible against the income

[17] Par. 6, Admitted and Stipulated Facts, JSFI, Docket, p. 70; Exhibits "P-1" and "P-1-a", Docket, p. 465.
[18] Par. 7, Admitted and Stipulated Facts, JSFI, Docket, p. 70.
[19] Docket, pp. 14 to 21.
[20] Docket, pp. 37 to 39.

payments was disallowed for failure to present any evidence that it resulted from write-off receivables.

4. Verification disclosed that petitioner's creditable withholding VAT amounting to ₱278,726.58 was erroneously deducted from the income tax due. This does not translate to complete compliance of creditable withholding tax to be deductible, hence, it is disallowed as tax credit pursuant to Section 2.58.3(B) of Revenue Regulations No. 2-98, as amended.

5. Assessment are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. *(Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109)*;

6. Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance *(Commissioner vs. Algue, Inc. L-28896, 17 February 1988)*. Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another- *Non videtur quisquam id capere quod ei necesse est alii restitutere*."

Respondent's Pre-Trial Brief[21] and petitioner's Pre-Trial Brief[22] were filed on August 18, 2014 and August 22, 2014, respectively. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[23] on September 11, 2014. In the Resolution issued on September 16, 2014, the Court

[21] Docket, pp. 44 to 47.
[22] Docket, pp. 48 to 56.
[23] Docket, pp. 69 to 80.

approved the same and terminated the pre-trial.[24] Subsequently, the Court issued the Pre-Trial Order[25] on December 5, 2014.

During trial, petitioner presented Ms. Maribel T. Tinonas and Ms. Catherine C. Bachoco as its witnesses. Then, petitioner formally offered its documentary evidence, consisting of Exhibits "P-1" to "P-105-a". The Court admitted Exhibits "P-1", "P-1-a", "P-2" to "P-12", "P-14" to "P-16", "P-23" to "P-103", "P104", "P-104-a", "P105", and "P-105-a", but denied the admission of Exhibits "P-13", "P-17", "P-18", "P-19", "P-20", "P-21", and "P-22".[26]

Petitioner's admitted documentary exhibits are as follows:

| Exhibit | Description |
|---|---|
| P-1 | Bonifacio Gas Corporation (BGC) Protest Letter dated April 5, 2013 against the 2009 deficiency tax assessment with BIR receiving stamp dated April 5, 2013 |
| P-1-a | Sub-marking on P-1 referring to the BIR-RR8 Makati Assessment Division receiving stamp dated April 5, 2013 |
| P-2 | Contract entitled "BONIFACIO TECHNOLOGY CENTER (BTC) AIR-CONDITIONING TERMS AND CONDITIONS" between the Bases Conversion Development Authority (BCDA) and BGC for air-conditioning services 16 March 2004 |
| P-3 | Amendment to the Supply Contract dated January 15, 2008 between BGC and BCDA |
| P-4 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA to BGC covering the period February 2009 with tax withheld amounting to P10,108.07 |
| P-5 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA to BGC covering the period March 2009 with tax withheld amounting to P10,108.07 |
| P-6 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA |

[24] Resolution, Docket, p. 88.
[25] Docket, pp. 346 to 359.
[26] Resolutions dated April 15, 2015 and August 18, 2015, Docket, pp. 630 to 631 and pp. 653 to 658, respectively.

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| | to BGC covering the period April 2009 with tax withheld amounting to P10,438.70 |
| P-7 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA to BGC covering the period May 2009 with tax withheld amounting to P10,274.47 |
| P-8 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA to BGC covering the period June 2009 with tax withheld amounting to P10,274.47 |
| P-9 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA to BGC covering the period July 2009 with tax withheld amounting to P10,490.64 |
| P-10 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA to BGC covering the period August 2009 with tax withheld amounting to P11,070.13 |
| P-11 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA to BGC covering the period September 2009 with tax withheld amounting to P9,611.42 |
| P-12 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA to BGC covering the period October 2009 with tax withheld amounting to P9,611.42 |
| P-14 | Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by BCDA to BGC covering the period December 2009 with tax withheld amounting to P9,611.42 |
| P-15 | Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by BCDA to BGC covering the period February 2009 with tax withheld amounting to P25,270.18 |
| P-16 | Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by BCDA to BGC covering the period March 2009 with tax withheld amounting to P25,270.18 |
| P-23 | Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by BCDA to BGC covering the period October 2009 with tax withheld amounting to P24,028.56 |
| P-24 | Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by BCDA to BGC covering the period November 2009 with tax withheld amounting to P24,729.50 |
| P-25 | Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by BCDA to BGC covering the period December 2009 with tax withheld amounting to P24,028.56 |

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| P-26 | Billing Statement No. 024093 as of Feb. 5, 2009 issued by BGC to BCDA |
| P-27 | Billing Statement No. 024094 as of Feb. 5, 2009 issued by BGC to BCDA |
| P-28 | Billing Statement No. 024759 as of Mar. 6, 2009 issued by BGC to BCDA |
| P-29 | Billing Statement No. 024760 as of Mar. 6, 2009 issued by BGC to BCDA |
| P-30 | Billing Statement No. 024783 as of April 2, 2009 issued by BGC to BCDA |
| P-31 | Billing Statement No. 024784 as of April 2, 2009 issued by BGC to BCDA |
| P-32 | Billing Statement No. 025651 as of May 8, 2009 issued by BGC to BCDA |
| P-33 | Billing Statement No. 025652 as of May 8, 2009 issued by BGC to BCDA |
| P-34 | Billing Statement No. 027504 as of June 5, 2009 issued by BGC to BCDA |
| P-35 | Billing Statement No. 027505 as of June 5, 2009 issued by BGC to BCDA |
| P-36 | Billing Statement No. 027652 as of July 7, 2009 issued by BGC to BCDA |
| P-37 | Billing Statement No. 027653 as of July 7, 2009 issued by BGC to BCDA |
| P-38 | Billing Statement No. 028353 as of Aug. 7, 2009 issued by BGC to BCDA |
| P-39 | Billing Statement No. 028354 as of Aug. 7, 2009 issued by BGC to BCDA |
| P-40 | Billing Statement No. 029772 as of Sept. 7, 2009 issued by BGC to BCDA |
| P-41 | Billing Statement No. 030406 as of October 7, 2009 issued by BGC to BCDA |
| P-42 | Billing Statement No. 031313 as of Nov. 10, 2009 issued by BGC to BCDA |
| P-43 | Billing Statement No. 032003 as of Dec. 9, 2009 issued by BGC to BCDA |
| P-44 | VAT Official Receipt No. 010198 dated Feb. 18, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditioning services net of withholding taxes |
| P-45 | VAT Official Receipt No. 010199 dated Feb. 18, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditioning services net of withholding taxes |
| P-46 | VAT Official Receipt No. 010696 dated March 17, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-47 | VAT Official Receipt No. 010697 dated March |

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| | 17, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-48 | VAT Official Receipt No. 010823 dated April 22, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-49 | VAT Official Receipt No. 010824 dated April 22, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-50 | VAT Official Receipt No. 011084 dated May 19, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-51 | VAT Official Receipt No. 011085 dated May 19, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-52 | VAT Official Receipt No. 011787 dated June 17, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-53 | VAT Official Receipt No. 011788 dated June 17, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-54 | VAT Official Receipt No. 012343 dated July 20, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-55 | VAT Official Receipt No. 012344 dated July 20, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-56 | VAT Official Receipt No. 012842 dated August 18, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-57 | VAT Official Receipt No. 012843 dated August 18, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-58 | VAT Official Receipt No. 013384 dated Sept. 22, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-59 | VAT Official Receipt No. 014013 dated Oct. 20, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning |

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| | services net of withholding taxes |
| P-60 | VAT Official Receipt No. 014654 dated Nov. 23, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-61 | VAT Official Receipt No. 015256 dated Dec. 21, 2009 issued by BGC to cover receipt of BCDA's payment for the air-conditiioning services net of withholding taxes |
| P-62 | Monthly Value Added Tax Declaration (BIR Form No. 2550M) of BGC for the period/month of January 2009 filed with the BIR |
| P-63 | Monthly Value Added Tax Declaration (BIR Form No. 2550M) of BGC for the period/month of February 2009 filed with the BIR |
| P-64 | Quarterly Value Added Tax Return (BIR Form No. 2550Q) of BGC for the 1st Quarter of 2009 filed with the BIR |
| P-65 | Monthly Value Added Tax Declaration (BIR Form No. 2550M) of BGC for the period/month of April 2009 filed with the BIR |
| P-66 | Monthly Value Added Tax Declaration (BIR Form No. 2550M) of BGC for the period/month of May 2009 filed with the BIR |
| P-67 | Quarterly Value Added Tax Declaration (BIR Form No. 2550Q) of BGC for the period/month of July 2009 filed with the BIR |
| P-69 | Monthly Value Added Tax Declaration (BIR Form No. 2550M) of BGC for the period/month of August 2009 filed with the BIR |
| P-70 | Quarterly Value Added Tax Return (BIR Form No. 2550Q) of BGC for the 3rd Quarter of 2009 filed with the BIR |
| P-71 | Monthly Value Added Tax Declaration (BIR Form No. 2550M) of BGC for the period/month of October 2009 filed with the BIR |
| P-72 | Monthly Value Added Tax Declaration (BIR Form No. 2550M) of BGC for the period/month of November 2009 filed with the BIR |
| P-73 | Quarterly Value Added Tax Return (BIR Form No. 2550Q) of BGC for the 4th Quarter of 2009 filed with the BIR |
| P-74 | VAT Summary List of BGC for 1st Quarter of 2009 showing the summary of input and output VAT/VAT exempt sales per revenue |

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| | source for the 3 months covered by the taxable quarter |
| P-75 | VAT Summary List of BGC for 2nd Quarter of 2009 showing the summary of input and output VAT/VAT exempt sales per revenue source for the 3 months covered by the taxable quarter |
| P-76 | VAT Summary List of BGC for 3rd Quarter of 2009 showing the summary of input and output VAT/VAT exempt sales per revenue source for the 3 months covered by the taxable quarter |
| P-77 | VAT Summary List of BGC for 4th Quarter of 2009 showing the summary of input and output VAT/VAT exempt sales per revenue source for the 3 months covered by the taxable quarter |
| P-78 | Monthly billing schedule for chilled water/air-con services of BGC for January 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-79 | Monthly billing schedule for chilled water/air-con services of BGC for February 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-80 | Monthly billing schedule for chilled water/air-con services of BGC for March 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-81 | Monthly billing schedule for chilled water/air-con services of BGC for April 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-82 | Monthly billing schedule for chilled water/air-con services of BGC for May 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-83 | Monthly billing schedule for chilled water/air- |

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| | con services of BGC for June 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-84 | Monthly billing schedule for chilled water/air-con services of BGC for July 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-85 | Monthly billing schedule for chilled water/air-con services of BGC for August 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-86 | Monthly billing schedule for chilled water/air-con services of BGC for September 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-87 | Monthly billing schedule for chilled water/air-con services of BGC for October 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-88 | Monthly billing schedule for chilled water/air-con services of BGC for November 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-89 | Monthly billing schedule for chilled water/air-con services of BGC for December 2009 covering Bonifacio Technology Center (BTC) tenants showing locator profile, area, core operating hours, factor, number of days, amount, overtime charges, VAT and billed amount |
| P-90 | Portion of the BIR registered General Ledger of BGC Volume 1 consisting of 5 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from Jan. 1, 2009 to Jan. 31, 2009 |

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| P-91 | Portion of the BIR registered General Ledger of BGC Volume 2 consisting of 4 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from Feb. 1, 2009 to Feb. 28, 2009 |
| P-92 | Portion of the BIR registered General Ledger of BGC Volume 3 consisting of 3 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from Mar. 1, 2009 to Mar. 31, 2009 |
| P-93 | Portion of the BIR registered General Ledger of BGC Volume 4 consisting of 3 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from April 1, 2009 to April 30, 2009 |
| P-94 | Portion of the BIR registered General Ledger of BGC Volume 5 consisting of 3 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from May 1, 2009 to May 31, 2009 |
| P-95 | Portion of the BIR registered General Ledger of BGC Volume 6 consisting of 4 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from June 1, 2009 to June 30, 2009 |
| P-96 | Portion of the BIR registered General Ledger of BGC Volume 7 consisting of 5 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from July 1, 2009 to July 31, 2009 |
| P-97 | Portion of the BIR registered General Ledger of BGC Volume 8 consisting of 4 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from August 1, 2009 to August 31, 2009 |
| P-98 | Portion of the BIR registered General Ledger of BGC Volume 9 consisting of 5 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from September 1, 2009 to September 30, 2009 |
| P-99 | Portion of the BIR registered General Ledger of BGC Volume 10 consisting of 5 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from October 1, 2009 to October 31, 2009 |
| P-100 | Portion of the BIR registered General Ledger of BGC Volume 11 consisting of 5 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from November 1, 2009 to November 30, 2009 |

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| P-101 | Portion of the BIR registered General Ledger of BGC Volume 12 consisting of 3 pages showing the G/L Account 700.20500.004 for Output VAT recorded for the period from December 1, 2009 to December 31, 2009 |
| P-102 | Print out of Annual Income Tax Return (BIR Form No. 1702) of BGC for the taxable year 2009 filed through the Electronic Filing and Payment System (EFPS) of the BIR with Filing Reference No. 121000003721499 electronically filed on April 15, 2010 consisting of 10 printed pages |
| P-103 | Reconciliation of FS and ITR dated December 31, 2009 showing the adjustments or reconciliations made per FS and per ITR covering taxable year 2009 |
| P-104 | Judicial Affidavit of Maribel T. Tinonas dated September 30, 2014 |
| P-104-a | Sub-marking on Exhibit "P-104" pertaining to the printed name and signature of Maribel T. Tinonas |
| P-105 | Judicial Affidavit of Ma. Catherine C. Bachoco dated September 30, 2014 |
| P-105-a | Sub-marking on Exhibit "P-105" pertaining to the printed name and signature of Ma. Catherine C. Bachoco |

On the other hand, respondent's counsel manifested during the hearing on January 27, 2015 that respondent would no longer be presenting evidence in this case.[27]

The case was declared submitted for decision on October 14, 2015,[28] considering respondent's Memorandum[29] received by the Court on June 25, 2015 and the Records Verification[30] issued by the Court's Judicial Records Division on October 7, 2015, stating that petitioner failed to file its Memorandum.

The sole issue stipulated upon by the parties for the Court's determination is as follows: ℓ

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[27] Resolution, Docket, p. 373.
[28] Resolution, Docket, p. 661.
[29] Docket, pp. 645 to 649.
[30] Docket, p. 659.

"Whether or not petitioner is liable for deficiency income tax amounting to ₱504,432.41 inclusive of interest computed from April 16, 2010 until April 4, 2014."[31]

The Court shall determine first the timeliness of the filing of the instant petition.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

"SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty

[31] Par. II, JSFI, Docket, p. 71; Pre-Trial Order, Docket, p. 348.

(60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Based on the foregoing, petitioner had thirty (30) days from receipt of the FDDA on March 6, 2014 or until April 5, 2014 within which to appeal before this Court.

Considering that April 5, 2014 fell on a Saturday, petitioner filed this Petition for Review on the next working day which was April 7, 2014.[32] Thus, the instant petition was timely filed.

The Court shall now determine whether petitioner is liable for alleged deficiency income tax.

In the FDDA dated February 28, 2014, respondent assessed petitioner for deficiency income tax in the total amount of ₱504,432.41, inclusive of the interest computed from April 16, 2010 to April 4, 2014, for TY 2009. Details are as follows:[33]

| | | |
|---|---|---|
| Taxable Income/(Loss) per ITR | | ₱23,214,054.00 |
| Add: Disallowance/Adjustments | | |
| Disallowed provision for Doubtful Accounts | | 8,184.00 |
| Adjusted Taxable Income | | ₱23,222,238.00 |
| | | |
| Basic Income Tax Due | | ₱ 6,966,671.40 |
| Less: Tax Credits/Payments | | |

[32] Docket, p. 14.
[33] BIR records, pp. 721 to 722.

| | | |
|---|---|---|
| Creditable Income Tax Withheld | ₱1,921,689.00 | |
| Add: Payments per return | 5,042,527.20 | |
| Total | ₱6,964,216.20 | |
| Less: Disallowed Creditable Withholding Tax | 278,726.58 | 6,685,489.62 |
| Basic Deficiency Income Tax | | ₱ 281,181.78 |
| Add: Interest (4.16.10 to 4.4.14) | | 223,250.63 |
| **TOTAL AMOUNT DUE** | | **₱ 504,432.41** |

The deficiency income tax assessment pertains to the disallowance of the alleged provision for doubtful accounts in the amount of ₱8,184.00 and the disallowance of withholding tax credited by petitioner to its income tax liability for the amount of ₱278,726.58, covered by Certificates of Final Tax Withheld at Source issued by the Bases Conversion and Development Authority, a government-owned and -controlled corporation (GOCC).

The Court shall evaluate the propriety of the items comprising the assessment, to wit:

| | |
|---|---|
| I. Disallowed Provision for Doubtful Accounts | ₱ 8,184.00 |
| II. Disallowed Creditable Withholding Tax | ₱278,726.58 |

## I. Disallowed Provision for Doubtful Accounts – ₱8,184.00

Upon verification, respondent found that the amount of ₱8,184.00, representing the Provision for Doubtful Accounts, did not comply with the requisites for deductibility of bad debts pursuant to Revenue Regulations (RR) No. 25-02, amending Section 3 of RR No. 05-99. Consequently, respondent assessed petitioner for such deficiency income tax.

On the other hand, petitioner avers that respondent's computation of the ₱8,184.00 disallowance was erroneous because it was arrived at by subtracting the Reversal of Allowance amounting to ₱688,324.00[34], which was included as part of petitioner's Non-Operating and Taxable Other

[34] Other Income (Expense), Reconciliation of FS and ITR, Exhibit "P-103", Docket, p. 623; Note 14, Audited Financial Statements, BIR records, pp. 171 to 199.

Income[35], from the Provision for Doubtful Accounts amounting to ₱696,508.00[36], which was claimed as deduction from petitioner's gross income for taxable year 2009.

Petitioner explains that the Reversal of Allowance was actually an income item subjected to income tax for 2009. It purportedly does not relate at all to the 2009 reported Provision for Doubtful Accounts. Instead, it allegedly pertains to the 2008 Provision for Doubtful Account which was subjected to income tax in 2009 when the same was eventually collected in 2009.

Further, petitioner contends that the assessment cannot be sustained because it is based on a mere presumption. The difference between the Reversal of Allowance and the Provision for Doubtful Accounts has been concluded by respondent as bad debts, and the same has allegedly failed to comply with the requisites for deductibility of bad debts. Citing the case of *Collector of Internal Revenue vs. Benipayo*[37], petitioner insists that the assessment must be based on actual facts and that the correctness of assessment being a mere presumption cannot be made to rest on another presumption.

Section 34(E)(1) of the NIRC of 1997, as amended, states:

> "SEC. 34. *Deductions from Gross Income.* – xxx
>
> xxx xxx xxx
>
> (E) *Bad Debts.* –
>
> (1) *In General.* – Debts due to the taxpayer actually ascertained to be worthless and charged

[35] Line 20, Annual Income Tax Return, Exhibit "P-102", Docket, pp. 613 to 614.
[36] Line 115, Schedule 7, Annual Income Tax Return, Exhibit "P-102", Docket, p. 619.
[37] G.R. No. L-13656, January 31, 1962.

> off within the taxable year except those not connected with profession, trade or business and those sustained in a transaction entered into between parties mentioned under Section 36(B) of this Code: *Provided*, That recovery of bad debts previously allowed as deduction in the preceding years shall be included as part of the gross income in the year of recovery to the extent of the income tax benefit of said deduction."

RR No. 05-99, which implements the afore-quoted law, defines "Bad Debts" as those debts resulting from the worthlessness or uncollectibility, in whole or in part, of amounts due the taxpayer by others, arising from money lent or from uncollectible amounts of income from goods sold or services rendered.

Pertinent thereto is Section 2 of RR No. 25-02, amending Section 3 of RR No. 05-99, which has enumerated the following requisites for valid deduction of bad debts:

> "SECTION 2. *Amendment* – Section 3 of RR 5-99 on the requisites for valid deduction of bad debts from gross income is hereby amended by deleting the penultimate paragraph of the said Section and should now read as follows:
>
> > 'Sec. 3. *Requisites for valid deduction of bad debts from gross income.* – The requisites for deductibility of bad debts are:
> >
> > (1) There must be an existing indebtedness due to the taxpayer which must be valid and legally demandable;
> >
> > (2) The same must be connected with the taxpayer's trade, business or practice of profession;ℓ

(3) The same must not be sustained in a transaction entered into between related parties enumerated under Sec. 36(B) of the Tax Code of 1997;

(4) The same must be actually charged off the books of accounts of the taxpayer as of the end of the taxable year; and

(5) The same must be actually ascertained to be worthless and uncollectible as of the end of the taxable year.

xxx xxx xxx"

A perusal of petitioner's Annual Income Tax Return[38] (ITR) for TY 2009 shows that petitioner claimed the amount of ₱696,508.00[39], representing Provision for Doubtful Accounts, as deduction from its taxable gross income. Hence, the said amount purportedly pertains to the deductible bad debts contemplated under RR No. 05-99, as amended by RR No. 25-02 in relation to Section 34(E)(1) of the NIRC of 1997, as amended.

In arriving at the disallowance of ₱8,184.00, respondent deducted the amount of ₱688,324.00 representing Reversal of Allowance for Impairment Loss[40] from the claimed amount of ₱696,508.00 Provision for Doubtful Accounts. However, the Court finds such deduction erroneous.

Petitioner has admitted that the Reversal of Allowance for Impairment Loss in the amount of ₱688,324.00 pertained

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[38] Exhibit "P-102", Docket, pp. 613 to 622.
[39] Line 115, Schedule 7, Exhibit "P-102", Docket, p. 619.
[40] Exhibits "P-103", Docket, p. 623; Note 14, Audited Financial Statements, BIR records, p. 176.

to 2008 but reported as part of its taxable income for 2009 when the same was eventually collected in 2009.[41]

Apparently, the amount of ₱688,324.00 represents bad debts written off and claimed as deduction from petitioner's gross income in 2008, but was subsequently recovered or collected and reported as part of petitioner's taxable income in 2009. This tax treatment is in accordance with the "Tax Benefit Rule" under Section 4 of RR No. 05-99, which states that:

> "SECTION 4. *Tax Benefit Rule.* - The recovery of bad debts previously allowed as deduction in the preceding year or years shall be included as part of the taxpayer's gross income in the year of such recovery to the extent of the income tax benefit of said deduction. Example: If in the year the taxpayer claimed deduction of bad debts written-off, he realized a reduction of the income tax due from him on account of the said deduction, his subsequent recovery thereof from his debtor shall be treated as a receipt of realized taxable income. xxx"

On the other hand, the Provision for Doubtful Accounts in the amount of ₱696,508.00 purportedly pertains to petitioner's claimed deduction for bad debts written-off during the year 2009, as stated earlier.

The "Provision for Doubtful Accounts" and the "Reversal of Allowance for Impairment Loss" are two different transactions. The former is an income item, while the latter is an expense item; which cannot be offset with each other. The Court opines that to allow the offsetting of the two transactions in the instant case, would be in effect allowing the bad debts automatically deductible from the gross income without complying with the requisites for valid deduction of bad debts in accordance with the above-mentioned law and regulations.

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[41] Par. 4.02, Petition for Review, Docket, p. 17.

Nonetheless, while respondent erred in computing for the amount of bad debts disallowance, this does not mean that the assessment was based on a mere presumption. Respondent's assessment has factual basis as it was derived from the figures appearing in petitioner's Audited Financial Statements and Annual Income Tax Return for TY 2009. Clearly, the assessment is based on actual facts.

Further, in claiming a deduction from gross income, petitioner has the burden of proving that the amount of ₱696,508.00 representing Provision for Doubtful Accounts complied with the requisites for deductibility as set forth under RR No. 25-02. Deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed.[42]

However, other than the allegation that the assessment was erroneous and devoid of factual basis, petitioner has failed to present any document establishing that it has fully complied with the requisites for deductibility of bad debts in the amount of ₱696,508.00.

This Court applies by analogy to the instant case the ruling in the case of *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*[43], where the Supreme Court held that a mere averment that the taxpayer has incurred a loss does not automatically warrant a deduction from its gross income, to wit:

> "The rule that tax deductions, being in the nature of tax exemptions, are to be construed *in strictissimi juris* against the taxpayer is well settled. Corollary to this rule is the principle that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be

[42] *Philex Mining Corporation vs. Commissioner of Internal Revenue,* G.R. No. 148187, April 16, 2008

[43] G.R. No. 173373, July 29, 2013.

able to prove that he is entitled to the deduction which the law allows. An item of expenditure, therefore, must fall squarely within the language of the law in order to be deductible. A mere averment that the taxpayer has incurred a loss does not automatically warrant a deduction from its gross income.

Thus, the disallowance of the allowable deduction of bad debts in the amount of ₱696,508.00 is upheld.

## II. Disallowed Creditable Withholding Tax - ₱278,726.58

Respondent's verification disclosed that petitioner's creditable withholding value-added tax (VAT) amounting to ₱278,726.58 was erroneously deducted from the latter's income tax due; thus, the same was disallowed as tax credit pursuant to Section 2.58.3(B) of RR No. 02-98, as amended.

Petitioner explains that the subject withholding VAT pertained to its income from air-conditioning services rendered to the BCDA, where the latter withheld five percent (5%) final withholding VAT. Petitioner points out that the BCDA issued Certificates of Final Tax Withheld at Source or BIR Form No. 2306 as proof of withholding.

The amount of VAT withheld totaling ₱278,726.58 was admitted by petitioner to have been erroneously included as tax credits in its 2009 Annual Income Tax Return for having mistakenly thought that such were creditable income tax withheld by BCDA.

Petitioner also claims that it remitted the entire twelve percent (12%) output VAT on its gross receipts from air-conditioning services rendered to the BCDA, notwithstanding that the latter had already withheld a 5% VAT.

According to petitioner, considering the difficulty and even ambiguity in the treatment of the 5% final withholding

VAT under the law and numerous regulations issued by respondent, the commission of such error in reporting the said withholding VAT as part of creditable withholding taxes for income tax purposes, and the said BCDA payments as subject to the full 12% VAT (which benefited the government), is an honest mistake which petitioner committed in good faith.

Petitioner points out that no losses were incurred on the part of the government under these circumstances (*i.e.*, petitioner reporting a full 12% VAT liability on the BCDA payments without consideration for the 5% withholding VAT, and petitioner claiming the 5% withholding VAT as credit to its income tax liability) as it would only be a reclassification from one tax account to another. On the contrary, the government has allegedly benefited from the said circumstances; while petitioner suffered a loss by subjecting the BCDA payments to the full 12% VAT instead of the 5% already withheld by the BCDA. Petitioner posits that to further impose upon it the deficiency income tax as a result of the disallowance of the 5% withholding VAT, would be an oppressive double taxation on the part of petitioner leading to further undue enrichment on the part of government, which should not be sanctioned.

The Court finds petitioner's arguments bereft of merit.

Section 114(C) of the NIRC of 1997, as amended, mandates the withholding of 5% final VAT on sales to government, to wit:

> "SEC. 114. *Return and Payment of Value-added Tax.* -
>
> xxx xxx xxx
>
> (C) *Withholding of Creditable Value-added Tax.* - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled

corporations (GOCCs) **shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors** which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, **deduct and withhold the value-added tax due at the rate of five percent (5%) of the gross payment thereof**: xxx" *(Emphasis supplied)*

Section 4.114-2(a) of RR No. 16-05, as amended by RR No. 04-07, provides for the proper treatment of the 5% final VAT withheld from sales to government, *viz*:

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

(a) The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) **shall, before making payment on account of each purchase of goods and/or of services** taxed at twelve percent (12%) VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and **withhold a final VAT due at the rate of five percent (5%)** of the gross payment thereof.

**The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller**. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost." *(Emphasis supplied)*

In relation thereto is Section 4.114-3(h) of RR No. 16-05, which provides that a Certificate of Final Tax Withheld at Source (BIR Form No. 2306) should be issued to the payee as proof of the VAT withheld by the government.

Based on the foregoing provisions, the 5% final VAT withholding rate shall represent the net VAT payable of the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales to the Government. Should actual input VAT exceed the standard input VAT of 7% of gross payments, the excess may form part of the sellers' expense or cost. Conversely, if actual input VAT is less than the standard input VAT of 7% of gross payment, the difference must be treated as taxable income.[44]

In other words, the taxpayers shall declare the full 12% VAT on their gross sales to or receipts from the government under "Sales to Government" in the filing of the VAT returns. The standard input VAT of 7% shall be deducted therefrom leaving a net VAT payable of 5%, which is equivalent to the final VAT withheld. Thus, after deducting the 5% final VAT withheld by the government under "VAT withheld on Sales to Government"[45], there remains no amount of output VAT due on the sales to or receipts from the government.

Based on the foregoing, the law and regulations are clear as to the reporting of the VAT implications arising from sales of goods or services to the government and its instrumentalities, including GOCCs such as the BCDA.

[44] Revenue Memorandum Circular (RMC) No. 29-05, Q&A No. 17.
[45] Line 23C of Monthly VAT Return (BIR Form No. 2550M) or Line 26D of Quarterly VAT Return (BIR Form No. 2550Q).

Applying the foregoing provisions to the instant case, the Court finds it proper that petitioner declared the full 12% VAT on its receipts from the BCDA, but finds erroneous petitioner's treatment with respect to the 5% final VAT withheld as tax credit in its 2009 Annual ITR. Therefore, the Court upholds respondent's assessment on this item.

In sum, petitioner is liable to pay basic deficiency income tax for TY 2009 in the amount of ₱487,678.98, computed as follows:

| | | |
|---|---|---|
| Taxable income | | ₱ 23,214,054.00 |
| Add: Adjustments/Disallowance | | |
| Disallowed provision for doubtful accounts | | 696,508.00 |
| Adjusted taxable income | | ₱ 23,910,562.00 |
| Basic income tax due | | ₱ 7,173,168.60 |
| Less: Credits/Payments | | |
| Creditable income tax withheld | ₱ 1,921,689.00 | |
| Add: Payments per return | 5,042,527.20 | |
| Total | ₱ 6,964,216.20 | |
| Less: Disallowed creditable withholding tax | 278,726.58 | 6,685,489.62 |
| **Basic deficiency income tax** | | **₱ 487,678.98** |

**WHEREFORE**, premises considered, the deficiency income tax assessment issued by respondent against petitioner for taxable year 2009 is **AFFIRMED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **SIX HUNDRED NINE THOUSAND FIVE HUNDRED NINETY-EIGHT PESOS AND 73/100 (₱609,598.73)** representing basic deficiency income tax and the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

| | |
|---|---|
| Basic Tax Deficiency Income Tax | ₱ 487,678.98 |
| Surcharge | 121,919.75 |
| **Total** | **₱609,598.73** |

In addition, petitioner is hereby **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱487,678.98 computed from April 15, 2010 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱609,598.73 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from April 4, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

**SO ORDERED.**

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

WE CONCUR:

(with Concurring & Dissenting Opinion)
**ROMAN G. DEL ROSARIO**
Presiding Justice

**ERLINDA P. UY**
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
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
**Court of Tax Appeals**
QUEZON CITY

## *FIRST DIVISION*

**BONIFACIO GAS CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8794**

*Members:*

Del Rosario, P.J.,
Uy, and
Mindaro-Grulla, JJ.

Promulgated:
SEP 23 2016 2:30 p.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, PJ:***

I concur in the *ponencia* insofar as it affirms the deficiency income tax assessment issued by respondent against petitioner as a result of the disallowance of petitioner's Provision for Doubtful Accounts and Creditable Withholding Tax for taxable year 2009. The point of my dissent relates to the *ponencia's* **computation of the basic deficiency income tax**. To be specific, I am of the view that **the *ponencia's* disallowance of petitioner's Provision for Doubtful Accounts should have been limited to the amount disallowed by respondent as indicated in the Final Assessment Notice (FAN).**

A perusal of the *ponencia* reveals the disallowance of petitioner's "Provision for Doubtful Accounts" in the amount of Php696,508.00 **instead of the amount of Php8,184.00 as originally disallowed by respondent in the FAN**. Said increase in the amount disallowed by the *ponencia* resulted in an increase in the basic deficiency income tax assessment from Php281,181.78 as indicated in the FAN to Php487,678.98 as computed in the *ponencia*.

Records reveal that the amount of Php8,184.00 represents the difference between the "Provision for Doubtful Accounts" of Php696,508.00 for 2009 and the "Reversal of Allowance for Impairment Loss" account of Php688,324.00, which are bad debts written off and claimed as deduction from petitioner's gross income in 2008 but was subsequently recovered and reported as part of petitioner's income in 2009.

The *ponencia* correctly observed that respondent committed a mistake in computing the bad debts disallowance as the "Provision for Doubtful Accounts" and the "Reversal of Allowance for Impairment Loss" are two different accounts which cannot be offset with each other, the former being an expense item and the latter, an income item. Indeed, offsetting the two accounts would effectively allow bad debts as automatic deduction from gross income without complying with the requisites for valid deduction of bad debts under Section 34(E)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations (RR) No. 05-99, as amended by RR No. 25-02. **I am, however, of the humble opinion that respondent's mistake in computing the amount of bad debts disallowance is not sufficient justification for the Court to disallow the amount of Php696,508.00, which is <u>higher</u> than the amount of Php8,184.00 disallowed by respondent in the FAN**.

In disallowing the amount of Php696,508.00, the *ponencia* found that there was a failure on the part of petitioner to present any document that would establish its compliance with the requisites for deductibility of said amount as bad debts. To my mind, however, petitioner should not be faulted for such failure because there is nothing in the FAN which indicates that petitioner should have substantiated the validity of its deduction of the amount of Php696,508.00 as bad debts. To insist on requiring petitioner to do so at this late stage of the proceedings is tantamount to a violation of petitioner's right to due process. **To reiterate, the amount of Php696,508.00 was not disallowed by respondent in the FAN. Hence, there was no reason for petitioner to dispute or substantiate the same before this Court.**

Indeed, the power and duty to assess national internal revenue taxes are lodged with the BIR.[1] This Court has no assessment

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[1] Section 2 of the National Internal Revenue Code of 1997 provides:
SEC. 2. Powers and Duties of the Bureau of Internal Revenue. — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of

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powers and its jurisdiction is confined to reviewing on appeal the decision or inaction of the Commissioner of Internal Revenue on disputed assessment. The case of *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*[2] is instructive, *viz.:*

> "**The Court of Tax Appeals has no power to make an assessment at the first instance**. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.
>
> Xxx xxx xxx.
>
> **Tax deficiencies should be subject to assessment procedures and the rules of prescription. The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight**. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers." *(Boldfacing supplied)*

While this Court is allowed to make its own determination of the taxpayer's liability in the process of reviewing the BIR's assessment, **any determination however in excess of what the BIR had assessed could not simply be included in the computation of tax liability, without affording the taxpayer the opportunity to dispute the same.** To do so would not only be arrogating unto the Court a duty which rightfully belongs to the BIR, but more importantly, would necessarily violate the taxpayer's right to due process - - specifically the taxpayer's right to be informed of the factual basis of the assessment and to submit evidence to contest the same.

In view of the foregoing, I VOTE to AFFIRM the deficiency income tax assessment as computed in the FAN, WITH MODIFICATION relating to the inclusion of the 25% surcharge, 20% deficiency interest and 20% delinquency interest, which are hereby imposed pursuant to Section 248 (A) and 249(B) and (C) of the NIRC of 1997, as amended.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

[2] G.R. No. 175410, November 12, 2014.