REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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HANTEX TRADING CO., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5126

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

FEB 07 2007 12:20PM

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DECISION

BAUTISTA, L., J.:

This is a remanded case stemming from the Decision of the Honorable Supreme Court dated March 31, 2005 in the case docketed as "**Commissioner of Internal Revenue vs. Hantex Trading Co., Inc., G.R. No. 136975**", setting aside the Court of Appeals' Decision which reversed this Court's Decision in CTA Case No. 5126[1] upholding the 1987 deficiency income and sales tax assessments against Hantex Trading Co., Inc., the dispositive portion of which reads as follows:

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[1] Hantex Trading Co., Inc. vs. Commissioner of Internal Revenue, December 11, 1997.

> *"**IN LIGHT OF ALL THE FOREGOING,** the petition is **GRANTED**. The Decision of the Court of Appeals is **SET ASIDE**. The records are **REMANDED** to the Court of Tax Appeals for further proceedings, conformably with the decision of this Court. No costs.*
>
> ***SO ORDERED."***

Petitioner is a registered general partnership duly organized and existing under the laws of the Philippines and is engaged in the importation of plastic products. Based on the investigation conducted by the agents of the Economic Intelligence and Investigation Bureau (EIIB),[2] it was recommended that assessment and collection from petitioner of the total amount of P41,916,937.76 be made. Subsequently, on April 15, 1991, then Assistant Commissioner for Collection Jaime Maza issued a demand letter to the petitioner for the payment of a deficiency income and sales tax for 1987 in the amounts of P13,414,226.40 and P14,752,903.28, respectively. On the same date, Assessment Notices Nos. FAS-1-87-91-001654 and FAS-4-87-91-001655 were issued against the petitioner requiring it to pay the amounts of P13,414,226.40 (interest being increased from P3,213,825.08 to P5,030,334.90) and P14,752,903.28 as its deficiency income and sales taxes, respectively for 1987.

Petitioner protested the aforementioned deficiency tax assessments. The same was denied by the respondent in a letter dated December 10, 1993. On July 6, 1994, petitioner filed with this Court the instant petition for review.

In a Decision of December 11, 1997, this Court denied the Petition for Review and ordered petitioner to pay the respondent its deficiency income and sales taxes for the year 1987 in the modified amounts of P11,182,350.26 and P12,660,382.46, respectively, plus a 20% delinquency interest per annum on both deficiency taxes. In holding that the assessments made by respondent against petitioner have valid and legal bases, this Court ratiocinated, thus:

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[2] Acting on a confidential information that petitioner's 1987 importations were understated in its accounting records.

"The issue should be ruled in the affirmative as petitioner has failed to rebut the validity or correctness of the aforementioned tax assessments. It is incongruous for petitioner to prove its cause by simply drawing an inference unfavorable to the respondent by attacking the source documents (Consumption Entries), which were the bases of the assessment and which were certified by the Chiefs of the Collection Division, Manila International Container Port and the Port of Manila, as having been processed and released in the name of the petitioner after payment of duties and taxes and the duly certified copies of Financial Statements secured from the Securities and Exchange Commission. Any such inference cannot operate to relieve petitioner from bearing its burden of proof and this Court has no warrant of absolution. The Court should have been persuaded to grant the reliefs sought by the petitioner should it have presented any evidence of relevance and competence required, like that of a certification from the Bureau of Customs or from any other agencies, attesting to the fact that those consumption entries did not really belong to them.

The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that the taxpayer is right (Tan Guan vs. CTA, 19 SCRA 903), otherwise the presumption in favor of the correctness of tax assessment stands (Sy Po vs. CTA, 164 SCRA 524). The burden of proving the illegality of the assessment lies upon the petitioner alleging it to be so. In the case at bar, petitioner miserably failed to discharge this duty.

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Further, petitioner, in seeking to exculpate itself from the assessments alleged that the tax assessments were based on documents which were mere xerox copies of import entries, thus, not admissible administratively or judicially against it, hence, the assessments were not based on actual facts but on mere presumptions. We ruled en contrario to the stand of the petitioner.

Section 16(b) authorizes the Commissioner to assess taxes on the basis of the <u>best evidence obtainable</u> in case of failure on the part of the taxpayer to submit the required returns, statement, records and other documents. Based on the records presented, petitioner fails to submit the required books and other financial records when requested. As held by the Supreme Court in the case of Sy Po vs. Court of Tax Appeals, supra, the rule on the 'best evidence obtainable' applies when a tax report required by law for the purpose of assessment is not available or when the tax report is incomplete or fraudulent. Hence, the questioned documents may be used by the respondent as basis for the assessment of any internal revenue tax.

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By the use of this method the Commissioner makes or amends the return from his own knowledge and from such information as he can obtain thru testimony or otherwise. Assessments made as such are deemed prima facie correct and sufficient for all legal purposes. The taxpayer has the duty of proving otherwise. As earlier adverted to, petitioner failed to discharge this duty.

Where the taxpayer is appealing to the Tax Court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove what is the correct and just liability by a full and fair disclosure of all pertinent data in his possession. Otherwise, if the taxpayer confines himself to proving that the assessment is wrong, the Tax Court proceedings would settle nothing, as the way would be left open for subsequent assessments and appeals in interminable succession. (Sy Po vs. Court of Tax Appeals, supra.)"

Not satisfied with the above Decision of this Court, both parties filed their respective motions for reconsideration.

In a Resolution promulgated on February 27, 1998,[3] this Court denied both motions for lack of merit.

Petitioner then elevated the case to the Court of Appeals through a Petition for Review.[4] On September 30, 1998, the Court of Appeals rendered its Decision[5] granting petitioner's Petition for Review thereby reversing this Court's Decision of December 11, 1997. The Court of Appeals resolved the issues raised in this wise:

> *"We are in full accord with the clear observations of the petitioner that the CTA has inescapably committed grave abuse of discretion amounting to lack or excess of jurisdiction in the case at bench.*
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> *The income and sales tax deficiency assessments made by the respondent BIR Commissioner against the petitioner were unlawful and baseless.*
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> *Unlawful, because it violates the fundamental rights of the petitioner guaranteed under Section 1, Article III of the Bill of Rights of the Philippine Constitution, xxx*
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> xxx xxx xxx
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> *Baseless, because the deficiency tax assessments issued and imposed upon by the BIR against the petitioner were basically computed and based from data secured in 1987 from photocopies (xerox) of the alleged consumption entry documents purportedly in the name of the petitioner in 1987. It should be noted that the xerox/photocopies consisting of sixty (sic) (68) pages (Exhibits "F-1" to "F-68") while otherwise uncontested and uncontroverted by the respondent BIR Commissioner were never authenticated nor verified under oath by the EIIB and the BIR investigators and their officials. In fact, the respondent BIR Commissioner, miserably failed to adduce any proof/evidence prima facie or a probable cause to establish correctness and sufficiency of his information obtained through testimony or otherwise in order to formulate his own belief and knowledge. There is nothing in the record whatsoever to show that respondent complied with the pertinent provision of Section 16(b) of National Internal Revenue Code (NIRC) of 1977, which provides, inter alia, 'that the Commissioner shall make or amend the return form his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.' In the instant case, no proof was presented that in the preparation of the tax deficiency assessments in question, the Commissioner ever made or amended the income and sales tax returns of the petitioner for the year 1987. This lends support to a well-established rule in our jurisprudence that:*

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[3] Rollo, pp. 279-280.
[4] Docketed as CA-G.R. SP No. 47172.
[5] Hantex Trading Co., Inc. vs. Commissioner of Internal Revenue, CA-G.R. SP No. 47172, Rollo, pp. 421-449.

'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.' *(Commissioner of Internal Revenue vs. Benipayo, L-13656, and SCRA 182, underlining ours)'*

The respondent claims that he has the power to make assessments on the basis of information he can obtain, citing the same provision of Section 16(b) of the Tax Code. In other words, the respondent submits that under the 'best evidence obtainable' method of assessing taxes, he issued the deficiency assessments based only on the information obtained from the EIIB.

Respondent's premise is wrong. His argument should have been based on the "best evidence" rule stating that the original document must be produced. If it could not be produced, secondary evidence must be adduced. This is the rationale of Rule 130 of the revised Rules of Court on the admissibility of documentary evidence.

The respondent's contention that the original copies of the consumption entries could no longer be produced in court, because they have already been destroyed and eaten by termites gathered from the testimony of the Chief of the Investigation Division of the EIIB, would not at all suffice to satisfy with the requirements of Rule 130 on the Best Evidence Rule and the Secondary Evidence Rule (Section 2 in relation to Section 4 thereof), of the same Rules.

In the instant case, significant is the fact that the public officer charged with the custody of the consumption entry documents was never presented in court (CTA) to lend credence to the alleged loss of the originals. Chief Flores' testimony, if at all, is merely hearsay in character, and therefore, inadmissible in evidence.

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Respondent also tries to justify that the certifications of the Chief Collector of the Manila International Container Port and the Chief Collector of the Port of Manila would amount to an authentication of the contents of the photocopies of the consumption entry documents while the import entries of the petitioner were duly processed and released from their ports after payment of duties and taxes.

We do not agree.

Their certifications do not serve as authentication and verification. There was no showing that these Collection Chiefs of the ports of the Bureau of Customs are the public officers charged with the legal custody of the consumption entry documents. What their letters would purport are merely enumerated entry numbers and dates of release and payments without simply identifying any of the sixty-eight (68) consumption entry documents.

Specifically, the certifications made by the two Customs Collection Chiefs under the guise of supporting the petitioner's alleged tax deficiency assessments invoking the 'best evidence obtainable' should not be permitted to supplant the 'Best Evidence Rule', more particularly under Section 7, Rule 130 of the Rules of Court, xxx

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In the present case, the records show that the BIR did not conduct its own separate investigation when the docket of the case was transmitted to it by the EIIB. It simply and solely relied on the findings and report made by the EIIB agents. xxx The BIR has therefore no factual basis to determine the tax liabilities of the petitioner because it is merely hearsay evidence to utilize the contents of the unauthenticated

> *and unverified photocopies of the consumption entries in its computations of the 1987 deficiency tax assessments against petitioner. xxx*
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> *xxx* *xxx* . *xxx*
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> *The CTA should not just brush aside the legal requisites provided for under the pertinent provisions of the Rules of Court in the matter of the admissibility of public documents. Substantive rules of evidence should not be disregarded by the CTA. xxx"*

Aggrieved by the said decision rendered by the Court of Appeals, respondent Commissioner appealed to the Honorable Supreme Court through a Petition for Review[6] under Rule 45 of the Rules of Court praying for the reversal of the Decision of the Court of Appeals and for the reinstatement of the ruling of the CTA.

On March 31, 2005, the Supreme Court rendered its Decision granting petitioner's *(herein respondent's)* Petition for Review thereby setting aside the Decision rendered by the Court of Appeals and remanding the case to this Court for further proceedings.

Hence, this case before Us.

The issues in this case remain: *Whether the final assessment against petitioner for deficiency income tax and sale tax for its 1987 importation of resins and calcium bicarbonate is based on competent evidence and the law and the total amount of deficiency taxes due from petitioner for 1987, if any.*

The Supreme Court, in disposing of the case, applied the "in the higher interest of justice" principle so that instead of dismissing the petition for lack of merit, it remanded the case to the CTA for further proceedings, to wit:

> "On the disposition of the case, the Court has two options, namely, to deny the petition for lack of merit and affirm the decision of the CA, without prejudice to the petitioner's *(herein respondent's)* issuance of a new assessment against respondent *(herein petitioner) based on credible evidence;* or to remand the case to the CTA for further proceedings, to enable the petitioner *(herein respondent)* to adduce in evidence certified true copies or duplicate original copies of the Consumption Entries for the respondent's *(herein petitioner's)* 1987 importations, if there be any, and the correct tax deficiency assessment thereon, without prejudice to the right of the respondent *(herein petitioner)* to adduce controverting evidence, so that

[6] Commissioner of Internal Revenue vs. Hantex Trading Co., Inc., G.R. No. 136975.

> the matter may be resolved once and for all by the CTA. In the higher interest of justice to both the parties, the Court has chosen the latter option. After all, as the Tax Court of the United States emphasized in *Harbin v. Commissioner of Internal Revenue,* taxation is not only practical; it is vital. The obligation of good faith and fair dealing in carrying out its provision is reciprocal and, as the government should never be over-reaching or tyrannical, neither should a taxpayer be permitted to escape payment by the concealment of material facts."

Thus, respondent was given the opportunity before this Court to present the certified true copies or duplicate original copies of the Consumption Entries for the petitioner's 1987 importations in order to finally determine petitioner's deficiency taxes for 1987, if any. He then submitted certifications and letters from the National Statistics Office, International Container Terminal Services, Inc., Asian Terminal, Inc., Bureau of Customs, and the Chairman of the Tariff Commission, from whom he had requested for certified true copies or duplicate original copies of the Consumption Entries for the petitioner's 1987 importations.

The Administrator of the National Statistics Office issued a Certification that the office cannot provide copies to herein respondent of the import entries of herein petitioner as it is bound by the confidentiality clause of Section 4, Commonwealth Act 591, which provides that "*...the data furnished to the National Statistics Office (NSO) will be kept* ***STRICTLY CONFIDENTIAL*** *and shall not be used as evidence in court for purposes of taxation, regulation of investigation; nor shall such data or information be divulged to any person except authorized employees of the National Statistics Office, nor shall such data be published except in the form of summaries of statistical tables in which no reference to an individual, corporation, association, partnership, institution or business enterprise shall appear. xxx.*[7] Likewise, respondent presented in evidence the letter of the National Statistics Office informing this Court that it cannot provide Us with the data as requested for the earliest data in its electronic files is 1991.[8]

[7] Exhibit "18"
[8] Exhibit "19"

Additionally, a letter from the Chairman of the Tariff Commission[9] was submitted by respondent informing the latter that he could not furnish the requested documents considering that the Tariff Commission only maintained import entries for a period of five (5) years and the earliest data they have in file is from the year 2000. The Bureau of Internal Revenue has no records either of the 1987 importation of Hantex Trading Co., Inc. as attested to by its Chief of Records Division.[10]

Lastly, the International Container Terminal Services, Inc. (ICTSI),[11] wrote respondent that it has no records pertaining to the importation of petitioner in 1987.

In sum, respondent failed to present the duplicate originals or certified true copies of the import entries he used as basis in the issuance of the final assessment against petitioner as mandated by the Supreme Court. Without such duplicate originals or certified true copies of the import entries, the said final assessment becomes devoid of factual basis and is invalid. Hence, the same should be cancelled and set aside.

As already elucidated by the Supreme Court before it remanded the case to this Court, the best evidence obtainable under Section 16 of the 1977 NIRC, as amended, which provision authorizes the Commissioner to assess taxes on the basis of the best evidence obtainable in case of failure on the part of the taxpayer to submit the required returns, statement, records and other documents, does not include mere photocopies of the records or documents and that for tax assessments to be presumed correct, they must be based on sufficient evidence. To quote:

> "Central to the second issue is Section 16 of the NIRC of 1977, as amended, which provides that the Commissioner of Internal Revenue has the power to make assessments and prescribe additional requirements for tax administration and enforcement. Among such powers are those provided in paragraph (b) thereof, which we quote:

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[9] Exhibit "20"
[10] Exhibit "21"
[11] Exhibit "22"

> *(b)* Failure to submit required reports, statements, reports and other documents. — When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or regulation or *when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.*
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> In case a person fails to file a required return or other document at the time prescribed by law, or *willfully or otherwise files a false of fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.*

This provision applies when the Commissioner of Internal Revenue undertakes to perform her administrative duty of assessing the proper tax against a taxpayer, to make a return in case of a taxpayer's failure to file one, or to amend a return already filed with the BIR.

The petitioner *(herein respondent)* may avail herself of the best evidence or other information or testimony by exercising her power or authority under paragraphs (1) to (4) of Section 7 of the NIRC:

> 1. To examine any book, paper, record or other data which may be relevant or material to such inquiry;
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> 2. To obtain information from any office or officer of the national and local governments, government agencies or its instrumentalities, including the Central Bank of the Philippines and government owned or controlled corporations;
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> 3. To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;
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> 4. To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; ...

The 'best evidence' envisaged in Section 16 of the 1977 NIRC, as amended, includes the corporate accounting records of the taxpayer who is the subject of the assessment process, the accounting records of other taxpayers engaged in the same line of business, including their gross profit and net profit sales. Such evidence includes data, record, paper, document or any evidence gathered by the internal revenue officers from other taxpayers who had personal transactions from whom the subject taxpayer received any income; and record, data, document and information secured from government offices or agencies, such as the SEC, the Central Bank of the Philippines, the Bureau of Customs, and the Tariff and Customs Commission.

The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable the BIR to get at the taxpayer's records in whatever form they may be kept. Such records include computer tapes of the said records prepared by the taxpayer in the course of business. In this era of developing information-storage technology, there is no valid reason to immunize companies with computer-based, record-keeping capabilities from the BIR scrutiny. *The standard is not the form of the record but where it might shed light on the accuracy of the taxpayer's return.*

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We agree with the contention of the petitioner *(herein respondent)* that the best evidence obtainable may consist of hearsay evidence, such as the testimony of third parties or accounts or other records of other taxpayers similarly circumstanced as the taxpayer subject of the investigation, hence, inadmissible in a regular proceeding in the regular courts. Moreover, the general rule is that administrative agencies such as the BIR are not bound by the technical rules of evidence. It can accept documents which cannot be admitted in a judicial proceeding where the Rules of Court are strictly observed. It can choose to give weight or disregard such evidence, depending on its trustworthiness.

However, the best evidence obtainable under Section 16 of the 1977 NIRC, as amended, does not include mere photocopies of records/documents. The petitioner *(herein respondent),* in making a preliminary and final tax deficiency assessment against a taxpayer, cannot anchor the said assessment on mere machine copies of records/documents. **Mere photocopies of the Consumption Entries have no probative weight if offered as proof of the contents thereof. The reason for this is that such copies are mere scraps of paper and are of no probative value as basis for any deficiency income or business tax against a taxpayer**. Indeed, in United States vs. Davey, the U.S. Court of Appeals (2nd Circuit) ruled that where the accuracy of a taxpayer's return is being checked, the government is entitled to use the original records rather than be forced to accept purported copies which present the risk of error or tampering.

In *Collector of Internal Revenue v. Benipayo,* the Court ruled that the assessment must be based on actual facts. The rule assumes more importance in this case since the xerox copies of the Consumption Entries furnished by the informer of the EIIB were furnished by yet another informer. While the EIIB tried to secure certified copies of the said entries from the Bureau of Customs, it was unable to do so because the said entries were allegedly eaten by termites. The Court can only surmise why the EIIB or the BIR, for that matter, failed to secure certified copies of the said entries from the Tariff and Customs Commission or from the National Statistics Office which also had copies thereof. It bears stressing that under Section 1306 of the Tariff and Customs Code, the Consumption Entries shall be the required number of copies as prescribed by regulations. The Consumption Entry is accomplished in sextuplicate copies and quadruplicate copies in other places. In Manila, the six copies are distributed to the Bureau of Customs, the Tariff and Customs Commission, the Declarant (Importer), the Terminal Operator, and the Bureau of Internal Revenue. Inexplicably, the Commissioner and the BIR personnel ignored the copy of the Consumption Entries filed with the BIR and relied on the photocopies supplied by the informer of the EIIB who secured the same from another informer. The BIR, in preparing and issuing its preliminary and final assessments against the respondent, even ignored the records on the investigation made by the District Revenue officers on the respondent's (herein petitioner's) importation for 1987.

The original copies of the Consumption Entries were of prime importance to the BIR. This is so because such entries are under oath and are presumed to be true and correct under penalty of falsification or perjury. Admissions in the said entries of the importers' documents are admissions against interest and presumptively correct.

In fine, then, the petitioner *(herein respondent)* acted arbitrarily and capriciously in relying on and giving weight to the machine copies of the Consumption Entries in fixing the tax deficiency assessments against the respondent *(herein petitioner).*

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We agree with the contention of the petitioner (*respondent herein)* that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. xxx

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

The issue that now comes to fore is whether the tax deficiency assessment against the respondent *(petitioner herein)* based on the certified copies of the Profit and Loss Statement submitted by the respondent *(petitioner herein)* to the SEC in 1987 and 1988, as well as certifications of Tomas and Danganan, is arbitrary, capricious and illegal. The CTA ruled that the respondent (petitioner herein) failed to overcome the *prima facie* correctness of the tax deficiency assessment issued by the petitioner (herein respondent), xxx

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We are not in full accord with the findings and ratiocination of the CTA. Based on the letter of the petitioner *(herein respondent)* to the respondent *(herein petitioner)* dated December 10, 1993, the tax deficiency assessment in question was based on (a) the findings of the agents of the EIIB which was based, in turn, on the photocopies of the Consumption Entries; (b) the Profit and Loss Statements of the respondent *(herein petitioner)* for 1987 and 1988; and (c) the certification of Tomas and Danganan dated August 7, 1990 and August 22, 1990:

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In fine, the petitioner *(herein respondent)* based her finding that the 1987 importation of the respondent *(herein petitioner)* was underdeclared in the amount of P105,761,527.00 on the **worthless** machine copies of the Consumption Entries. Aside from such copies, the petitioner *(herein respondent)* has no other evidence to prove that the respondent *(herein petitioner)* imported goods costing P105,761,527.00. The petitioner *(herein respondent)* cannot find solace on the certifications of Tomas and Danganan because they did not authenticate the machine copies of the Consumption Entries, and merely indicated the entry numbers of Consumption Entries and the dates when the Bureau of Customs released the same. xxx

Even if the Court would concede to the petitioner's *(herein respondent's)* contention that the certification of Tomas and Danganan authenticated the machine copies of the Consumption Entries referred to in the certification, it appears that the total cost of importations inclusive of advance sales tax is only P64,324,953.00 – far from the amount of P105,716,527.00 arrived at by the EIIB and the BIR, or even the amount of P110,079,491.61 arrived at by Deputy Commissioner Deoferio, Jr. As gleaned from the certifications of Tomas and Danganan, the goods covered by the Consumption Entries were released by the Bureau of Customs, from which it can be presumed that the respondent must have paid the taxes due on the said importation. The petitioner *(herein respondent)* did not adduce any documentary evidence to prove otherwise.

Thus, the computations of the EIIB and the BIR on the quantity and costs of the importation of the respondent in the amount of P105,761,527.00 for 1987 **have no factual basis**, hence, arbitrary and capricious. **The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in Collection of Internal Revenue v. Benipayo, in order to stand judicial scrutiny, the assessment must be based on facts.** The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.

> **Moreover, the uncontroverted fact is that the BIR District Revenue Office had repeatedly examined the 1987 books of accounts of the respondent showing its importations, and found that the latter had minimal business tax liability**. In this case, the presumption that the District Revenue officers performed their duties in accordance with the law shall apply. There is no evidence on record that the said officers neglected to perform their duties as mandated by law; neither is there evidence *aliunde* that the contents of the 1987 and 1988 Profit and Loss Statements submitted by the respondent (herein petitioner) with the SEC are incorrect.
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> **Admittedly, the respondent (herein petitioner) did not adduce evidence to prove its correct tax liability. However, considering that it has been established that the petitioner's *(herein respondent's)* assessment is barren of factual basis, arbitrary and illegal, such failure on the part of the respondent cannot serve as a basis for a finding by the Court that it is liable for the amount contained in the said assessment**; otherwise, the Court would thereby be committing a travesty." *(Emphasis Ours.)*

Considering the above pronouncement of the Supreme Court and after hearing duly conducted as recited in the findings of the Court, the Assessment issued against the petitioner for its 1987 importation is hereby cancelled.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income and sales taxes under Assessment Notice Nos. FAS-1-87-91-001654 and FAS-4-87-91-001655, respectively, covering the taxable year are hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division