REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11158

GMA WORLDWIDE (PHILS.), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. DAYNE B. MEDINA
ATTY. SHEEHERAZADEE A. LABOR-MORAN
ATTY. XINIA CARMELA B. CRUZ-LAVER
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Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **August 1, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 5, 2025.**

Atty. Maria Johanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

GMA WORLDWIDE (PHILS.), INC., *Petitioner*,	**CTA CASE NO. 11158**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 01 2025; 2:45PM

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*[1] filed by petitioner GMA Worldwide (Phils.), Inc. against respondent Commissioner of Internal Revenue (CIR). Petitioner prays that the Court render judgment: (a) finding respondent's Notice of Denial to have been issued contrary to facts and law; (b) declaring respondent's right to collect the deficiency value-added tax (VAT) assessment for taxable year (TY) 2011 to be barred by prescription; (c) declaring the deficiency VAT assessment for TY 2011 null and void for violating petitioner's right to due process; and (d) declaring the Notice of Denial, and respondent's request for payment of ₱573,425.13 "plus all increments incident to the delinquency", to be null and void and of no effect.

THE PARTIES

Petitioner, GMA Worldwide (Phils.), Inc., is a corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business located at the 10/F, GMA Network Center, EDSA corner Timog Ave.,

[1] Docket, pp. 6–35.

Diliman, Quezon City.[2] Petitioner is registered with the Bureau of Internal Revenue's (BIR), Revenue Region No. 7A, Revenue District Office (RDO) No. 39, as evidenced by its Certificate of Registration, with Tax Identification Number (TIN) 004-616-129-000.[3]

Respondent is the duly appointed CIR, vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of the said office, including, *inter alia*, the power to decide matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR. Respondent may be served with summons and other legal processes through his counsel at the Legal Division of Revenue Region No. 7A – Quezon City, at Room 516, 5th Floor (Roof Deck), Fisher Mall, Quezon Avenue, Quezon City.[4]

THE FACTS AND THE PROCEEDINGS

On September 6, 2012, petitioner received a Letter of Authority[5] (LOA) with SN: eLA201100002080, issued by Mr. Jonas DP Amora, OIC-Regional Director of Revenue Region No. 7 – Quezon City, authorizing Revenue Officer (RO) Ginalyn Bunagan and Group Supervisor (GS) Maribeth Feliciano of RDO No. 39 to examine petitioner's books of accounts and other accounting records for TY 2011. Attached to the LOA was a two-page document captioned "Checklist of Requirements"[6] dated September 5, 2012.

On May 20, 2014, through its Assistant Comptroller, Rolando G. Sanico, Jr., petitioner executed a *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code*[7] (*"2014 Waiver"*), waiving the defense of prescription under the Tax Code until March 31, 2015.

Thereafter, on March 12, 2015, petitioner received a Preliminary Assessment Notice[8] (PAN) dated March 11, 2015, assessing deficiency income tax (IT), VAT, expanded withholding tax (EWT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET) for TY 2011, in the

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2 *Id.* at 7, Petition for Review, The Parties, par. 1.
3 *Id.* at 248, Joint Stipulation of Facts and Issues (JSFI), par. 1.
4 *Id.* at 248, JSFI, par. 2.
5 *Id.* at 335, Exhibit P-3.
6 *Id.* at 336–337, Exhibit P-3-1.
7 *Id.* at 338, Exhibit P-4.
8 *Id.* at 339–342, Exhibit P-5.

aggregate amount of ₱5,702,658.16, inclusive of interests and surcharges.

Petitioner had fifteen (15) days from receipt of the PAN on March 12, 2015, or until March 27, 2015, to respond. However, on March 26, 2015, respondent issued the Formal Letter Demand [9] and Assessment Notices [10] (FLD/FANs), finding petitioner liable for deficiency taxes in the total amount of ₱5,791,986.04, broken down as follows:

	Basic Tax	Interest	Surcharge	Compromise	Total
IT	2,780,654.06	1,680,581.60			4,461,235.66
VAT	458,991.60	298,030.17			757,021.77
EWT	135,000.00	87,583.56			222,583.56
DST	112,668.19	74,391.87	28,167.05	16,000.00	231,227.11
IAET	56,672.25	37,077.63	14,168.06	12,000.00	119,917.94
				Total	**5,791,986.04**

On March 30, 2015, petitioner received the FLD/FANs, all dated March 26, 2015, which it protested *via* a Request for Reinvestigation[11] on April 30, 2015.

On July 9, 2015, petitioner received a letter[12] dated July 3, 2015, signed by Regional Director Alfredo V. Misajon, denying its Request for Reinvestigation for being filed late. Hence, the FLD/FANs were deemed final and demandable.

On October 30, 2015, petitioner received a Preliminary Collection Notice[13] (PCL) dated October 8, 2015, requesting payment of the amount of ₱5,791,986.04 within five (5) days from receipt.

On November 13, 2015, petitioner received a Final Notice Before Seizure [14] (FNBS) dated October 18, 2015, giving petitioner the last opportunity to settle the amount of ₱5,791,986.04 within five (5) days from notice, otherwise, respondent "*will be constrained to serve and execute the Warrants of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your unpaid account.*"

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[9] *Id.* at 349–351, Exhibit P-12.
[10] *Id.* at 343–348, Exhibits P-6 to P-11, respectively.
[11] *Id.* at 353–358, Exhibit P-14.
[12] *Id.* at 360, Exhibit P-15.
[13] *Id.* at 361, Exhibit P-16.
[14] *Id.* at 362, Exhibit P-17.

On November 30, 2015, petitioner paid the following amounts to the BIR in support of its application for compromise settlement:

Tax Type	Basic Tax	%	Compromise Amount
IT	₱2,780,654.06	40	₱1,112,261.62[15]
VAT	458,991.60	40	183,596.64[16]
EWT	135,000.00	100	135,000.00[17]
DST	112,668.19	100	112,668.19[18]
IAET	56,672.25	100	56,672.25[19]
Compromise Penalty			28,000.00[20]
Total			**₱1,628,198.70**

On January 7, 2016, petitioner filed with the Office of the Regional Director of Revenue Region No. 7 a formal letter-request [21] for compromise dated December 4, 2015. In consideration of this request for compromise, petitioner executed another *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code*[22] (*"2016 Waiver"*) on February 11, 2016, waiving the defense of prescription under the Tax Code until December 31, 2020.

Years later, on April 19, 2023, petitioner received: (i) a letter[23] dated April 17, 2023, stating that its application for compromise settlement was "*initially denied by the Regional Evaluation Board, this region, due to company's failure to substantiate its claim that the assessment has no basis in fact and in law*"; and (ii) a Notice of Denial[24] dated April 3, 2023, signed by Regional Director Mahinardo G. Mailig, stating that petitioner's application for compromise of VAT liability for TY 2011 was disapproved by the Regional Evaluation Board. In the same Notice of Denial, petitioner was requested to pay the amount of ₱573,425.13 "plus all increments incident to the delinquency", within 15 days from notice.

Unable to agree, petitioner elevated its case before the Court *via* the instant *Petition of Review* filed on May 19, 2023.

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15 Exhibit P-19, BIR Records, pp. 424–425.
16 Exhibit P-20, BIR Records, pp. 428–429.
17 Exhibit P-21, BIR Records, pp. 432–433.
18 Exhibit P-22, BIR Records, pp.436–437.
19 Exhibit P-23, BIR Records, pp. 440–441.
20 Exhibit P-24, BIR Records, pp. 444–445.
21 Exhibit P-18, BIR Records, pp. 415–421.
22 Exhibit P-25, Docket, p. 363.
23 Exhibit P-27, Docket, p. 365.
24 Exhibit P-28, Docket, p. 366.

On August 15, 2023, and within the extended[25] period granted by the Court, respondent filed his *Answer,*[26] seeking dismissal of the instant *Petition for Review* on grounds of lack of jurisdiction and lack of merit.

After the pre-trial conference, the parties submitted a *Joint Stipulation of Facts and Issues*[27] on November 28, 2023, based on which a *Pre-Trial Order*[28] was issued on February 20, 2024.

Trial ensued, during which petitioner presented its lone witness, Ms. Joan C. Rumbaoa, who testified on direct examination by way of her Judicial Affidavit[29] dated May 17, 2023.

On March 11, 2024, petitioner filed its *Formal Offer of Evidence,*[30] to which respondent filed his *Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated March 11, 2024)*[31] on March 18, 2024. In a Resolution[32] promulgated on May 14, 2024, the Court admitted petitioner's offered documentary exhibits, *except* Exhibit P-2, for failure to submit the duly marked exhibit.

Respondent, on the other hand, presented and offered the testimonies of Revenue Officers (ROs) Ginalyn M. Bunagan[33] and Bianca Glouell T. Capistrano.[34]

On June 3, 2024, respondent filed his *Formal Offer of Evidence,*[35] offering Exhibits R-1 to R-16-A, which the Court admitted in a Resolution[36] dated July 31, 2024. In the same Resolution, the parties were given a period of thirty (30) days from notice to file their respective memoranda.

On September 6, 2024, petitioner filed its *Memorandum*[37] followed by respondent's *Memorandum*[38] filed on September 9,

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25 Docket, p. 136, Minute Resolution dated July 26, 2023.
26 *Id.* at 137–142.
27 *Id.* at 248–259.
28 *Id.* at 279–302.
29 *Id.* at 39–51, Exhibit P-30.
30 *Id.* at 309–320.
31 *Id.* at 388–396.
32 *Id.* at 403–404.
33 *Id.* at 181–193, Exhibit R-12.
34 *Id.* at 232–237, Exhibit R-16.
35 *Id.* at 409–418.
36 *Id.* at 469–470.
37 *Id.* at. 474–500.
38 *Id.* at 504–514.

2024. Accordingly, in a Resolution dated October 2, 2024, the instant case was deemed submitted for decision.

Hence, this Decision.

THE ISSUE

As stipulated by the parties, the issues[39] for resolution by this Court are as follows:

a. WHETHER OR NOT RESPONDENT'S NOTICE OF DENIAL OF APPLICATION FOR COMPROMISE OF VAT LIABILITY WAS ISSUED CONTRARY TO FACTS AND LAW;

b. WHETHER OR NOT RESPONDENT'S RIGHT TO COLLECT DEFICIENCY VAT FOR TAXABLE YEAR (TY) 2011 PLUS THE INCREMENTS THERETO HAS PRESCRIBED;

c. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY VAT IN THE AGGREGATE AMOUNT OF PHP573,425.13, INCLUSIVE OF SURCHARGE, DEFICIENCY INTEREST, AND DELINQUENCY INTEREST, AS PROVIDED FOR IN THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, FOR TY 2011; and,

d. WHETHER OR NOT THE PETITION FOR REVIEW WAS TIMELY FILED BY PETITIONER.

Petitioner's arguments:

At the outset, petitioner disagrees with respondent's assertion that the Court lacks jurisdiction over the Petition for Review due to the finality of the assessment. According to petitioner, respondent's denial of its application for compromise falls squarely within the Court's jurisdiction, citing the ruling of this Court's *En Banc* in *Commissioner of Internal Revenue v. Tridharma Marketing Corporation.*[40] Petitioner adds that the instant *Petition for Review* was filed within the prescribed period, thereby vesting the Court with jurisdiction.

Petitioner likewise argues that respondent's right to collect the deficiency VAT for TY 2011 is barred by prescription. It explains that from the time it received the FLD on March 30, 2015 until its receipt of the Notice of Denial on April 19, 2023, respondent made no effort to collect the deficiency VAT

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39 *Id.* at 251–252, JSFI, Issues.
40 CTA *EB* No. 2250 (CTA Case No. 9155), Resolution dated July 5, 2022.

assessment. Hence, respondent can no longer seek to enforce collection of taxes that it had long foregone.

Petitioner also claims that it was not accorded procedural due process by respondent. Allegedly, petitioner received the PAN on March 12, 2015. Hence, it had until March 27, 2015 to submit its reply. However, respondent issued the FLD/FANs on March 26, 2015, before the expiration of the response period. Petitioner asserts that this premature issuance violated its right to due process.

Finally, assuming the assessment was issued in accordance with due process requirements, petitioner asserts that the deficiency VAT for TY 2011 was without any factual basis. According to petitioner, even though the FLD/FANs have become final due to its failure to protest on time, it is not prevented from questioning the basis of the assessment in support of its application for compromise settlement, citing Section 3(1)(d)[41] of Revenue Regulations (RR) No. 30-2002.[42]

Petitioner avers that it is apparent from the Details of Discrepancies that respondent's assessment for deficiency VAT was based on mere presumptions. In fact, according to petitioner, respondent himself stated in the Details of Discrepancies that certain discrepancies in petitioner's records "*led to the inference*" that petitioner had an "*unaccounted source of cash*" which should be subjected to VAT. For petitioner, the presumption of correctness of a tax assessment is erased when it is shown to be premised purely on presumptions.[43]

Respondent's counter-arguments:

At the outset, respondent asserts that the Notice of Denial of application for compromise of VAT liability was validly issued

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[41] SECTION 3. Basis for Acceptance of Compromise Settlement. — The Commissioner may compromise the payment of any internal revenue tax on the following grounds:
1. Doubtful validity of the assessment. — The offer to compromise a delinquent account or disputed assessment under these Regulations on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:

... ...

(d) The taxpayer failed to file a request for reinvestigation/reconsideration within 30 days from receipt of final assessment notice and there is reason to believe that the assessment is lacking in legal and/or factual basis; or ...

[42] SUBJECT: Revenue Regulations Implementing Sections 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001.

[43] *Mercury Group of Companies, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9531, September 6, 2019; *Green Valley Marketing Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8988, November 3, 2017.

in view of petitioner's failure to substantiate its claim that the assessment was based on presumptions.

Respondent likewise claims that petitioner is liable for deficiency VAT for TY 2011. According to respondent, in petitioner's application for compromise, it stated, among others, that the assessment is arbitrary in nature, appearing to be based on presumptions, hence, lacking in legal and factual basis. However, records reveal that petitioner submitted relevant documents and schedules, which were verified by the authorized revenue examiners and considered in their audit. Allegedly, the Details of Discrepancies specifically mentions these documents such as VAT Returns, audited financial statements, *alphalist* of income payees and schedule of income payments made to Medicard Philippines, Inc. Hence, for respondent, the tax assessment was based on facts and not on presumptions.

Moreover, respondent asserts that all presumptions are in favor of the correctness of the assessment. Hence, it is incumbent upon the taxpayer to prove the contrary. Here, petitioner failed to overcome the presumption of validity of the assessment.

Finally, respondent submits that the assessment for deficiency VAT has long become final, executory and demandable due to petitioner's failure to file a timely and valid protest. Hence, the Court has no jurisdiction over the instant *Petition for Review*.

THE COURT'S RULING

The Court must first determine whether it has jurisdiction over the instant *Petition for Review*.

The Court of Tax Appeals (CTA) has jurisdiction over this case.

As a court of special jurisdiction, the CTA can only take cognizance of such matters as are clearly within its jurisdiction.[44] Its jurisdiction is defined under Republic Act (RA) No. 1125, as amended by RA No. 9282, which provides:

> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> (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 or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

This is further echoed in Section 3 (a) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

> 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:
>
> (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**; (*Emphasis supplied*)

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[45] the Supreme Court clarified:

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision [Section 7 (1) of Republic Act 1125] covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue**. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the

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[44] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014 [Per J. Perez, Second Division].

[45] G.R. No. 162852, December 16, 2004 [Per J. Ynares-Santiago, First Division].

> Waiver of Statute of Limitations was validly effected. (*Emphasis supplied*)

In this *Petition for Review*, the assailed Notice of Denial dated April 3, 2023, constitutes a decision or ruling of the CIR. It denied petitioner's application for compromise settlement, which involves the interpretation and application of Section 204 of the NIRC of 1997, as amended. As such, it falls under the phrase "other matters" arising from the NIRC, and is therefore within the jurisdiction of the CTA pursuant to Section 7(a)(1) of RA No. 1125, as amended.

Furthermore, for the Court to acquire jurisdiction, the Petition *for Review* must be filed within the prescribed period. Section 11 of RA No. 1125, as amended, provides that any party adversely affected by a decision or ruling of the CIR may file an appeal with the CTA within 30 days from receipt of such decision or ruling.

In the instant case, records reveal that petitioner received the Notice of Denial on April 19, 2023. Counting thirty (30) days from that date, it had until May 19, 2023 to file a *Petition for Review*. The *Petition for Review* was filed on May 19, 2023, within the prescribed period. Hence, the Court has jurisdiction to hear and determine the instant case.

Proceeding now to the merits.

Respondent's claim against petitioner is not merely of doubtful validity; it is, in fact, void.

Under Section 204(A) of the NIRC of 1997, as amended, the CIR may compromise the payment of any internal revenue tax on either of the following grounds, to wit:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> (A) Compromise the payment of any internal revenue tax, when:
>
> (1) A **reasonable doubt as to the validity** of the claim against the taxpayer exists; or

> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
>
> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
>
> For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
>
> Where the basic tax involved exceeds One million pesos (P1,000.000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners. (*Emphasis supplied*)

Records show that petitioner applied for a compromise settlement of its IT, VAT, EWT, DST, IAET liabilities on the ground of *doubtful validity* of the assessment. However, petitioner's request for compromise settlement was denied due to petitioner's alleged failure to substantiate its claim that the assessment had no legal or factual basis. The relevant portion of the Notice of Denial reads:

> "Please be informed that after careful review and evaluation of your application, **the same has been disapproved by the Regional Evaluation Board (REB)** of this Bureau, due to:
>
> Reason: **Failure to substantiate the taxpayer's claim that the assessment has no legal and/or factual basis.**" (*Emphasis supplied*)

Considering that the ground invoked was doubtful validity of the assessment, the Court must determine whether reasonable doubt exists as to the validity of the assessment that would warrant a compromise settlement.

Records show that the assessment against petitioner for TY 2011 arose from Letter of Authority SN: eLA201100002080, under which petitioner was found liable for deficiency taxes in the aggregate amount of ₱5,791,986.04, as reflected in the FLD/FANs dated March 26, 2015. As per Details of Discrepancies attached to the FLD/FANs, petitioner is being assessed, as follows:

I. DEFICIENCY INCOME TAX

a. **Unaccounted Source of Cash (P3,258,214.60)** – Verification disclosed that the following discrepancies, as analyzed item by item below were considered as unaccounted source of cash and led to the inference that part of your income has not been declared as enunciated by the Court in the case of Perez vs. CTA & CIR L-10507 dated May 30, 1958. Therefore, the amount is added in your reported taxable income pursuant to Sections 31 and 32 of the Tax Code of 1997, as amended.

a.1 Verification disclosed that your Deferred VAT reflected in your Financial Statements (FS), was not reported as per VAT returns which was considered as unaccounted source of cash.

Deferred VAT per FS	P 2,761,159.00
Deferred VAT per VAT returns/audit	-
Unaccounted deferred VAT	P 2,761,159.00

a.2 Verification disclosed that you have assets that were not reported in the financial statements (FS) which was considered as unaccounted source of cash.

Excess tax credits to be carried over per ITR	P 457,533.00
Excess tax credits to be carried over per FS	-
Unaccounted excess tax credits	P 457,533.00

a.3 Verification disclosed that the income payments made to Medical Philippines (Phils.), Inc. per alphalist was not fully reported in the financial statements (FS) which was considered as unaccounted source of cash.

Income payments made to Medicard Phils., Inc. per alphalist	P264,192.56
Income payments made to Medicard Phils., Inc. per schedule/FS	224,669.96
Unaccounted income payments	P39,522.60

Unaccounted sources of cash	**P3,258,214.60**

xxx xxx xxx

II. DEFICIENCY VALUE-ADDED TAX

a. **Unaccounted sources of cash (P3,258,214.60)** – Verification disclosed that this aforementioned undeclared income as discussed under I. above is subject to VAT pursuant to Section 106 and 108 of the Tax Code of 1997, as amended.

b. **Disallowed input Tax (P68,005.85)** – Verification disclosed that portion of your claimed input tax for VAT returns amounting to P68,005.85 were not substantiated

> with the necessary documentary evidence, thus, disallowed as a deduction from your VAT liability pursuant to Section 110, 113 and 237 of the Tax Code of 1997, as amended.
>
> xxx xxx xxx

In its Request for Compromise Settlement,[46] petitioner claims that the assessment was arbitrary, explaining that:

> **1. Income Tax (Basic Deficiency Tax of P2,780,654.06)**
>
> The alleged deficiency income tax arises from the following Adjustments per Investigation made by BIR:
>
> | | | |
> |---|---|---|
> | a. | Unaccounted source of cash | P3,258,214.60 |
> | b. | Unsupported cost and expenses | 1,486,787.77 |
> | c. | Income payments not subjected to withholding tax | 4,523,844.48 |
>
> a. Unaccounted source of cash of P3,258,214.60:
>
> Per BIR Details of Discrepancies (Schedule "1"), the alleged unaccounted source of cash of P3,258,214.60 was computed by BIR by comparing the (i) Deferred VAT per Financial Statements of P2,761,159.00 with Deferred VAT sales per vat returns of NIL; (ii) Excess tax credits to be carried over per ITR of P457,533.00 with Excess tax credits to be carried over per FS of NIL; and (iii) income payments made to Medicard Phils., Inc. per alphalist of P264,192.56 with Income payments made to Medicard Phils., Inc. per schedule/FS of P224,669.96. The Revenue Officers considered the aggregate discrepancy of P3,258,214.60 as "unaccounted source of cash and led to the inference that part of our income has not been declared."
>
> In reply, we wish to put on record that all our sources of cash are fully accounted for and reported to BIR through the Statement of Cash Flows which is part and parcel of the Company's Financial Statements for 2011 duly audited by SyCip Gorres Velayo & Co.
>
> Further, kindly be informed of the following:
>
> i. Being a service provider, vat payments are made upon collection of receivables. Deferred vat of P2,761,159.00 per FS represents that vat portion of the Trade Receivable of P25,770,824.00. Deferred vat is actually not reported in vat returns until the collection of the related receivable.
>
> ii. The Excess tax credits carried over per ITR of P457,533.00 is duly included in the FS under Prepaid Expenses with details below:

[46] Exhibit P-18, BIR Records, pp. 415–421.

Particulars	Amount
Medicard Phils., (prepaid portion)	139,619.44
Creditable Withholding Tax/Excess	457,532.74
Input Tax	13,598.77
	610,750.95

iii. On the discrepancy assessed by BIR on the income payments made to Medicard Phils., Inc., please be noted that the amount P264,192.56 is not per schedule/FS per BIR's Details of Discrepancies (Schedule "1"), but rather per Summary List of Purchases attached to vat returns. The difference between what was reported in vat returns versus alphalist is due to the presented billings of Medicard wherein a portion is not subjected to vat. However, for withholding tax purposes, full amount was considered.

Moreover, a mere inference is not enough basis that there was unaccounted income payments. In the case of AGRINURTURE, INC., petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent per C.T.A. CASE NO. 8345 issued May 29, 2013, it was ruled that in the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer.

xxx xxx xxx

2. Value-Added Tax (Basic Deficiency Tax of P458,991.60)

The alleged deficiency value added tax arises from the following Adjustments per Investigation made by BIR:

a.	Unaccounted source of cash	P 3,258,214.60
b.	Disallowed input tax	68,005.85

a. Unaccounted source of cash of P3,258,214.60:

Per BIR Details of Discrepancies (Schedule "1"), this is the same issue with item 1-a. above wherein the alleged unaccounted source of cash of P3,258,214.60 was computed by BIR by comparing the (i) Deferred VAT per Financial Statements of P2,761,159.00 with Deferred VAT sales per vat returns of NIL; (ii) Excess tax credits to be carried over per ITR of P457,533.00 with Excess tax credits to be carried over per FS of NIL; and (iii) income payments made to Medicard Phils., Inc. per alphalist of P264,192.56 with Income payments made to Medicard Phils., Inc. per schedule/FS of P224,669.96; all of which prompted the Revenue Officers to conclude that these unreported or not fully reported items subject to 12% VAT pursuant to Section 106 and 108 of NIRC of 1997, as amended.

We again cite the case of AGRINURTURE, INC., petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent per C.T.A. CASE NO. 8345 issued May 29, 2013, wherein it was ruled that 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 or services, and not when there is presumption of unaccounted expenses. The CTA pointed out that under Section 106(A) of the NIRC of 1997, as amended, 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 of 1997, as amended, VAT is assessed on the "gross receipts derived from the sale or exchange of services". Significantly, the law defines "gross receipts" as: "...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."

We reiterate our earlier reply that being a service provider, Vat portion of uncollected sales are not yet recorded per Vat returns and thus deferred for FS purposes. We are also showed that the excess tax credits were in fact presented in the FS under Prepaid Expenses.

b. Disallowed input tax of P68,005.85:

Per BIR Details of Discrepancies (Schedule "1"), examination made by the BIR disclosed that the portion of claimed input tax for Vat returns amounting to P68,005.85 were not substantiated with the necessary documentary evidence, thus, disallowed as a deduction from the tax liability pursuant to Sections 110, 113 and 237 of the Tax Code of 1997, as amended.

We reiterate that all input tax in the vat returns are duly supported with supplier's official receipts and sales invoices hence should not be disallowed. We can provide the documents when required.

xxx xxx xxx

It is a legal truism that, as a general rule, assessments are *prima facie* presumed correct and made in good faith; that the taxpayer has the duty of proving otherwise; and, in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.[47]

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[47] *Dayrit, et al. v. Cruz, et al.*, G.R. No. L-39910, September 26, 1988 [Per J. Gancayco, First Division]; *Sy Po v. Court of Tax Appeals, et al.*, G.R. No. 81446, August 18, 1988 [Per J. Sarmiento, Second Division]; *Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue*, G.R. No. L-6741, January 31, 1956 [Per J. Labrador, First Division].

However, the *prima facie* correctness of a tax assessment does not apply when proof is provided 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.[48] To withstand 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.[49] This was highlighted in the case of *Commissioner of Internal Revenue v. Hantex Trading*[50] *("Hantex")*, to wit:

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.

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[48] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005 [Per J. Callejo, Sr., Second Division].
[49] *Collector of Internal Revenue v. Benipayo*, G.R. No. 13656, January 31, 1962 [Per J. Dizon, *En Banc*].
[50] G.R. No. 136975, March 31, 2005 [Per J. Callejo, Sr., Second Division].

In the instant case, more particularly on the unaccounted source of cash in the aggregate amount of ₱3,258,214.60, the Court finds that respondent's imposition of VAT does not hold water as he simply relied on the presumption that there was undeclared income that is subject to VAT. Following the dictum in *Hantex*, a finding that an unaccounted source of cash would automatically result in an undeclared income/sales, which would in turn increase the taxpayer's VAT liability, is not based on actual facts and thus, is a mere presumption. To reiterate, assessment should not be based on mere presumptions, no matter how reasonable or logical said presumptions may be.[51]

Thus, for lack of a factual basis, the deficiency VAT assessment is not only of doubtful validity but also legally defective.

Moreover, even assuming *arguendo* that the imposition of deficiency VAT had some factual basis, the assessment remains invalid due to a clear violation of petitioner's right to due process.

Records establish that petitioner received the PAN dated March 11, 2015, on **March 12, 2015**. Pursuant to RR No. 12-99, as amended, petitioner had 15 days, or until **March 27, 2015**, to submit its reply thereto. However, without awaiting the expiration of the 15-day response period, respondent prematurely issued the FLD/FANs on **March 26, 2015**, **<u>a day early</u>**, effectively depriving petitioner of its full 15-day period to respond to the PAN.

This procedural infirmity was confirmed during the hearing conducted on May 23, 2024, when respondent's own witness, Ms. Ginalyn M. Bunagan, expressly admitted, under clarificatory questioning by the Court, that the Final Assessment Notice was issued prior to the expiration of the 15-day period,[52] to wit:

JUSTICE DEL ROSARIO

> Please confirm, the Final Assessment Notice and all documents referred to herein were issued one day before March 27, right?

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[51] *The Collector of Internal Revenue v. Benipayo*, G.R. No. L-13656, January 31, 1962 [Per Dizon, *En Banc*]; *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation, et al.*, G.R. No. L-46644, [Per Padilla, Second Division], September 11, 1987.

[52] TSN, Ms. Ginalyn M. Bunagan, March 23, 2024, pp. 16–17.

MS. BUNAGAN

Yes, your Honors.

JUSTICE DEL ROSARIO

Without actually completing the fifteen-day period within which the taxpayer is supposed to respond.

MS. BUNAGAN

However, you Honors, the notice (interrupted)

JUSTICE DEL ROSARIO

No, it's only a matter of computation.

MS. BUNAGAN

Yes po, your Honors.

JUSTICE DEL ROSARIO

Yes. So, it was issued, there was already a Final Assessment Notice even before the expiration of the fifteen days, right?

MS. BUNAGAN

Yes, your Honors.

JUSTICE DEL ROSARIO

Alright, thank you Ms. Bunagan. (*Emphasis supplied*)

In *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue (Prime Steel Mill)*,[53] the Supreme Court categorically held that the BIR's issuance of a FAN before the lapse of the 15-day period granted to the taxpayer to respond to the PAN, as mandated by RR No. 12-99, constitutes a clear violation of due process, *viz.*:

There is no true disagreement that the FAN was issued well within the 15-day period for petitioner to reply to the PAN. As recounted above, the PAN was received by petitioner on 7 January 2009 and its reply thereto was filed on 22 January 2009. Without waiting to receive petitioner's reply, the BIR apparently issued the FAN on 14 January 2009, albeit it was received by petitioner only on 12 February 2009.

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[53] G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].

The CTA *En Banc* noted such discrepancy but brushed this aside by saying that the requirements of due process were already substantially complied with considering that petitioner was, in any event, given an opportunity to be heard on its grounds for disputing the assessment.

The respondent, through the Office of the Solicitor General, does not deny that the 15-day period was not observed; it simply reverberates the declaration of the CTA En Banc that there was substantial compliance with the requirements of the due process.

This line of reasoning does not stand judicial muster.

In several cases, this Court has enjoined strict observance by the BIR of the prescribed procedure for the issuance of assessment notices in order to uphold the taxpayers' constitutional rights.

In the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, the Court held that <u>the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules</u>.

The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.

In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that "[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN."

While *Yumex* rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. <u>There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN</u>.

As the Court also held in *Yumex*, "<u>[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment.</u>" "Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from **receipt** of the PAN to file a response."

> In the same vein, it is beside the point that petitioner was able to submit a "well-prepared protest letter." The fact remains that respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.
>
> Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect.
>
> With the foregoing conclusion, the Court finds no compelling reason to resolve the other matters raised by the parties. (*Citations omitted; Emphasis supplied*)

The Supreme Court emphasized in *Prime Steel Mill* that the mere filing of a protest or receipt of the FAN does not cure the violation of due process, and any assessment issued in disregard of the taxpayer's right to respond within the prescribed period is **null and void**.

Applying the foregoing jurisprudential pronouncements, respondent's failure to observe the full 15-day period effectively deprived petitioner of its right to due process. As a consequence, the assessment is void and without legal effect. It could not have attained finality, nor can it serve as basis for any tax collection. Being a void assessment, no valid fruit can be derived therefrom.[54]

Given the clear invalidity, not merely doubtful invalidity, of the assessment, the denial of petitioner's request for compromise settlement is likewise bereft of any factual or legal basis. There exists no enforceable claim upon which the BIR may lawfully demand payment or enter into compromise.

The foregoing conclusion renders unnecessary a discussion on the other issues raised in the *Petition for Review.*

WHEREFORE, the *Petition for Review* filed by GMA Worldwide (Phils.), Inc. is **GRANTED**. Accordingly, respondent's Notice of Denial dated April 3, 2023, is hereby **ANNULLED**, **REVERSED**, and **SET ASIDE**. The deficiency Value-Added Tax assessment contained in the Formal Letter of Demand/Final Assessment Notices, and the subject of the instant appeal,

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[54] *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021 [Per J. Carandang, First Division]; *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation.*, G.R. Nos. 215534 & 215557, April 18, 2016 [Per J. Mendoza, Second Division].

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demanding the payment of the amount of ₱573,425.13, plus all increments incident to the delinquency, is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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.

ROMAN G. DEL ROSARIO
Presiding Justice