REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TYCO INFORMATION SOLUTIONS CORP., Petitioner,	CTA CASE NO. 8592
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 29 2016 11:40 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

Before the Court are the following incidents:

1) Partial Motion For Reconsideration dated October 20, 2015, filed by petitioner; and

2) Motion For Partial Reconsideration dated October 20, 2015, filed by respondent

Both motions assail the Decision dated October 2, 2015 rendered by the Court which modified and reduced the tax liability of petitioner for deficiency income tax (IT) and value added tax (VAT) for the year 2006 as assessed by respondent in the total amount of P13,952,204.35. The dispositive portion of the said Decision reads as follows:

> WHEREFORE, the Petition for Review dated December 21, 2012 filed by Tyco Information Solutions Corp. is PARTIALLY GRANTED. The assessment issued by respondent against

petitioner for taxable year 2006 covering deficiency income tax and value-added tax is hereby MODIFIED. Accordingly, petitioner is ORDERED TO PAY the amount of THIRTEEN MILLION NINE HUNDRED FIFTY-TWO THOUSAND TWO HUNDRED FOUR PESOS AND THIRTY-FOUR CENTAVOS (P13,952,204.34) representing deficiency income tax and value-added tax for taxable year 2006, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	**Basic Tax**	**25% Surcharge**	**Total**
Income Tax	₱ 7,490,159.41	₱ 1,872,539.85	₱ 9,362,699.26
Value-added Tax	3,671,604.06	917,901.02	4,589,505.08
Total	**₱11,161,763.47**	**₱2,790,440.87**	**₱13,952,204.34**

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 and value-added tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

	Basic Tax	**20% Deficiency Interest Computed from**
Income Tax	₱7,490,159.41	April 15, 2007
Value-added Tax	₱3,671,604.06	January 25, 2007

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱13,952,204.34 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 26, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

In its Motion, petitioner assails the disallowance by the Court of certain purchases made from suppliers as allowable deductions thereby resulting in higher income tax due on its part. Petitioner believes that the disallowance on the ground that the purchases were made before the BIR Authority to Print (ATP) was issued, does not find basis in law. There is nothing in the NIRC, particularly Section 34 thereof, or in any BIR regulation that requires the date of the ATP to precede the date of the transaction to be able to claim income tax deductions for business expense since the ATP has nothing to do with the amount of the expense being deducted, or that the expense being deducted pertains to the conduct of the trade, business, or profession of the taxpayer. What is important is that the taxpayer has acquired an ATP, which is obtaining in the case. Regardless of the discrepancy in the dates appearing in the invoices, petitioner did in fact make the purchases and should be entitled to the deduction of business expense. Moreover, the discrepancy on the date is not unusual and due to the lapses of the suppliers. With no participation in the preparation of the invoices, petitioner should not be penalized for any errors therein, and the same should not affect its claim for deductions from income tax. Finally, by disallowing the deduction resulting in higher income tax due, the Court in effect made an assessment without any basis in evidence from respondent.

Petitioner likewise disputes the ruling of the Court on the deficiency VAT imposed for the same reason that the ATP should not be used as basis for disallowance of certain of petitioner's input VAT.

Respondent failed to file comment or opposition to the Motion, despite notice.[1]

Obviously, petitioner did not carefully peruse the Decision dated October 2, 2015. The disallowance of a portion of petitioner's input VAT had nothing to do with the ATP. As stated in pages 16-17 of the Decision, the amount of P2,140,045.45 was disallowed for failure to substantiate it, and the amount of P1,531,558.61 was disallowed, for failure to submit the corresponding official receipts.

[1] See Records Verification dated December 22, 2015

As to the disallowance of certain purchases comprising deductions from income tax, the basis therefor had been amply explained in the assailed Decision of October 2, 2015, particularly in pages 10-14 thereof and to repeat is futile.

On the other hand, respondent in her own Motion contends that the testimony of its sole witness, Revenue Officer (RO) Dominador Callangan, as well as the Notice of Informal Conference and Formal Assessment Notice are sufficient to prove the existence of fraud in the purchases made by petitioner, contrary to the ruling of the Court in the assailed Decision. With fraud amply established the disallowance of the total amount of P44,801,265.26 as deductions from income from these purchases, and the disallowance of P4,948,142.75 input VAT resulting from these purchases, are justified. With these disallowances, the deficiency taxes indicated in the Formal Assessment Notice issued on January 19, 2010 against petitioner should be upheld.

In its comment, petitioner counters that the contrary, that the witness presented by respondent failed to prove the existence of fraud. Petitioner points out that respondent's sole witness referred to the findings in the Notice of Informal Conference and Formal Assessment Notice but was not the person who conducted the investigation on petitioner, making his testimony as mere hearsay. Thus, the Court was correct in its ruling that neither testimonial nor documentary evidence was presented by respondent to prove the existence of fraud in the purchases made by petitioner.

The issues of fraud and the propriety of the purchases made by petitioner as allowable deductions raised by respondent in her motion for reconsideration are not new and have been amply addressed in the Decision dated October 2, 2015, particularly in pages 9-14 thereof. The finding of deficiency VAT has also been elaborated in pages 14-18 of the same Decision.

In fine, no new argument has been proffered by respondent in its motion which would compel the Court to modify, much less reverse its findings.

WHEREFORE, the Partial Motion For Reconsideration of petitioner, as well as the Motion For Partial Reconsideration of respondent, both dated October 20, 2015, are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

Ma. Belen S

MA. BELEN M. RINGPIS-LIBAN
Associate Justice