REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

# SPECIAL SECOND DIVISION

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| **RICKY TAN TANGAN,**<br>Petitioner, | **CTA CASE NO. 10150** |
| | Members: |
| - versus - | **BACORRO-VILLENA,** *Acting Chairperson, and*<br>**CUI-DAVID,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,**<br>Respondent. | Promulgated: OCT 19 2023 4:30 p.m. |

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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a "Petition for Review (With Urgent Motion to Hold in Abeyance Enforcement of Warrant of Distraint and Levy [**WDL**])"[1] filed by petitioner Ricky Tan Tangan (**petitioner**) pursuant to Section 3(a)(1)[2], Rule 4[3] and Section 4(a)[4], Rule 8[5] of the Revised Rules of the

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[1] Filed on 08 August 2019, Division Docket, pp. 10-32, with annexes.

[2] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* — …
(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[.]

[3] JURISDICTION OF THE COURT.

[4] **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.

[5] PROCEDURE IN CIVIL CASES.

Court of Tax Appeals (**RRCTA**). It seeks the cancellation of the deficiency tax assessment of income tax (**IT**) and value-added tax (**VAT**) for the calendar year (**CY**) 2012 in the total amount of ₱3,310,639.41, inclusive of surcharge, interest and compromise penalty, and the cancellation of the WDL issued therefor.[6]

## PARTIES OF THE CASE

Petitioner is a Filipino citizen, of legal age, with business address at Gulod Pulong Buhangin, Sta. Maria, Bulacan. He is doing business under the trade name Asean's Best Link Transport and is registered with Bureau of Internal Revenue (**BIR**) Revenue District Office (**RDO**) No. 25B, Sta. Maria, Bulacan, with Tax Identification No. (**TIN**) 218-648-631-000.[7]

Respondent, on the other hand, is the Commissioner of Internal Revenue (**respondent/CIR**) or his duly authorized representative, vested with authority to act as such, including among others, the power to authorize the examination of a taxpayer's books of accounts, and to issue and decide deficiency assessments of internal revenue taxes.[8] He may be served with summons and other legal processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.

## FACTS OF THE CASE

On 07 February 2018, petitioner received a Final Assessment Notice (**FAN**) dated 29 December 2017, assessing him for deficiency IT and VAT for CY 2012.[9]

On 08 March 2018, petitioner filed a Protest against the FAN with the Office of the Regional Director, Revenue Region No. 5 (Caloocan).[10] Respondent allegedly failed to act on the said Protest.[11]

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6 Pars. 6-7, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 243.
7 Par. 2, id., p. 242.
8 Par. 3, id., pp. 242-243.
9 Par. 4, id., p. 243.
10 Par. 5, id.
11 Par. 4, Petition for Review, supra at note 1, pp. 11-12.

Subsequently, respondent issued a WDL, seeking to collect the alleged deficiency taxes and increments for late payment for CY 2012 in the aggregate amount of ₱3,310,639.41, broken down as follows:[12]

| | **Amount** |
|---|---|
| **A. Deficiency Tax (inclusive of Interest)** | |
| IT | ₱1,380,725.17 |
| VAT | 1,084,699.72 |
| **Subtotal** | **₱2,465,424.89** |
| **B. Increments for Late Payment** | |
| Surcharge for late payment | ₱616,356.22 |
| Interest from 17 November 2018 to 18 July 2019 | 188,858.30 |
| Compromise Penalty | 40,000.00 |
| **Subtotal** | **₱845,214.52** |
| **Total Assessment for Collection** | **₱3,310,639.41** |

On 01 August 2019, the WDL was purportedly delivered to the residence of petitioner's father in Quezon City. Petitioner claims that he was only informed verbally of the WDL's delivery by his father's helper and was handed a copy of it on 02 August 2019.[13]

After failing to receive any reply from respondent, petitioner treated the WDL as respondent's final decision on his Protest against the FAN.[14]

## PROCEEDINGS BEFORE THE COURT

On 08 August 2019, within thirty (30) days from receipt of respondent's WDL, petitioner filed the instant Petition for Review[15] before the Second Division[16], docketed as CTA Case No. 10150.

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12 Pars. 6-7, JSFI, supra at note 6.
13 Pars. 4 and 5, Petition for Review, supra at note 1, pp. 11-12.
14 Par. 5, id., p. 12.
15 Supra at note 1.
16 The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, and Associate Justice Cielito N. Mindaro-Grulla (Ret.) and Associate Justice Jean Marie A. Bacorro-Villena, as Members.

On 13 August 2019, the Court issued Summons[17] to respondent directing him or her to submit an Answer within fifteen (15) days from service. Respondent received the said Summons on 20 August 2019.[18]

After the Second Division granted an extension of time[19], on 01 October 2019, respondent filed his or her "Answer with Special Affirmative Defenses"[20] (**Answer**). There, respondent cited the following special and affirmative defenses: (1) the assessment issued against petitioner for CY 2012 was already final, executory, and demandable; (2) the right of the government to collect taxes against petitioner has not yet prescribed; (3) this Court has no jurisdiction over the instant 'tax collection case' as the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than ₱1 Million; and, (4) the instant case should be dismissed for lack of cause of action and/or failure to state a cause of action.

Meanwhile, in the Resolution dated 01 October 2019[21], the Second Division set on 09 October 2019 the presentation of petitioner's evidence in support of his Urgent Motion to Hold in Abeyance Enforcement of WDL (incorporated in his Petition for Review)[22] (**First Urgent Motion**). Respondent did not file any comment thereto despite due notice.[23]

On 07 October 2019, petitioner filed a "Manifestation with Urgent Motion to Hold in Abeyance Enforcement of Warrant of Garnishment [WoG] and Motion to Reset Hearing Date"[24] (**Manifestation with Second Urgent Motion**), asking the Second Division to temporarily hold off the enforcement and, subsequently, lift and cancel both the WDL and the WoG issued against him and to reset the hearing for the presentation of his evidence earlier scheduled on 09 October 2019.

During the 09 October 2019 hearing, there being no objection from respondent, the Second Division granted petitioner's

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17 Division Docket, p. 33.
18 See Notification dated 01 October 2019, id., p. 43.
19 See Order dated 03 September 2019, id., p. 40.
20 Id., pp. 48-76, with exhibits.
21 Id., pp. 46-47, with exhibits.
22 Supra at note 1.
23 See Records Verification dated 18 September 2019, Division Docket, p. 42.
24 Id., pp. 77-80.

Manifestation with Second Urgent Motion and thereby, reset the hearing to 23 October 2019 for the presentation of all witnesses for both parties in relation to petitioner's First Urgent Motion. Respondent likewise undertook to submit the BIR Records of the case on 11 October 2019.[25]

On 21 October 2019, respondent transmitted the entire BIR Records of the case consisting of 260 pages.[26] The Second Division noted the same in a Minute Resolution dated 30 October 2019.[27]

In the Order dated 23 October 2019[28], the Second Division granted petitioner's First Urgent Motion, subject to petitioner's posting of an acceptable surety bond in the amount equivalent to double the amount of the alleged basic tax assessments of ₱964,349.78, or in the total amount of ₱1,928,699.56, within ten (10) days from notice.

In the same Order, the Second Division set the case for a Pre-Trial Conference on 21 November 2019.[29] Respondent filed his or her Pre-Trial Brief[30] on 14 November 2019, while petitioner filed his Pre-Trial Brief[31] on 18 November 2019.

On 14 November 2019, respondent filed a "Motion to Defer Pre-Trial Conference and/or to Suspend Proceedings"[32] (**Motion to Defer**), asking the Second Division to suspend the proceedings until the final resolution of the jurisdictional issue raised by way of special affirmative defenses in his or her Answer.[33]

During the 21 November 2019 hearing, the Second Division gave petitioner's counsel a period of ten (10) days therefrom, or until 01 December 2019, within which to comment on respondent's Motion to Defer.[34] In compliance with the Court's directive, petitioner filed his

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25 See Minutes of the Hearing and Order, both dated 09 October 2019, id., pp. 83 and 84, respectively.
26 See Respondent's *Ex-Parte* Manifestation and Compliance dated 17 October 2019, id., pp. 116-117.
27 Id., p. 121.
28 Id., pp. 119-120.
29 Id.
30 Id., pp. 129-132.
31 Id., pp. 137-143.
32 Id., pp. 133-136.
33 Supra at note 20.
34 See Minutes of the Hearing and Order, both dated 21 November 2019, Division Docket, pp. 146 and 145, respectively.

"Comment on Respondent's Motion (To Defer Pre-Trial Conference and/or To Suspend Proceedings)"[35] on 02 December 2019.

Later, on 06 December 2019[36], petitioner filed his "Compliance (Posting of Surety Bond)" dated 29 November 2019 (**Surety Bond Compliance**), with attached documentary requirements.[37]

In the Resolution dated 09 January 2020[38], the Second Division denied respondent's Motion to Defer[39] for lack of merit, noted petitioner's Surety Bond Compliance, and set the case anew for Pre-Trial Conference on 30 January 2020.

On 27 January 2020, respondent filed a Motion for Reconsideration[40] (**MR**) on the Court's 09 January 2020 Resolution. Petitioner filed his Comment[41] thereto on 10 February 2020. Subsequently, on 19 June 2020, the Second Division likewise denied respondent's MR for lack of merit.[42]

During the 30 January 2020 Pre-Trial Conference, the Second Division ordered the parties to appear before the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation proceedings on 20 February 2020.[43] The Court also noted the undertaking of respondent's counsel to submit his Special Power of Attorney (**SPA**) within five (5) days therefrom.[44] In compliance therewith, respondent's counsel filed his duly notarized SPA[45] on 04 February 2020.

Upon the parties' "Request for Extension"[46] filed on 03 August 2020, the Second Division granted a final extension of 30 days, or until 08 September 2020, to reach an amicable settlement.[47]

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35 Id., pp. 164-179, with attachments.
36 See Resolution granting an extension of time dated 13 November 2019, id., p. 128.
37 Id., pp. 147-163.
38 Id., pp. 188-191.
39 Supra at note 32.
40 Division Docket, pp. 181-185.
41 Id., pp. 202-207.
42 See Resolution dated 19 June 2020, id., pp. 211-213.
43 See Minutes of the Hearing, Order and Resolution, all dated 30 January 2020, Division Docket, pp. 194, 197 and 196, respectively.
44 Id.
45 Id., pp. 199-200.
46 Id., p. 216.
47 See Resolution dated 26 August 2020, id., p. 218.

On 22 September 2020, the Second Division received the PMC-CTA's "Mediator's Report"[48] stating that the mediation was unsuccessful. In the Resolution dated 28 September 2020[49], the Court noted the same and set the case anew for a Pre-Trial Conference on 09 November 2020. However, the hearing was later reset to 07 December 2020 for failure of respondent's counsel to appear despite due notice.[50]

During the 07 December 2020 Pre-Trial Conference, the Second Division gave both parties 30 days within which to file their Joint Stipulation of Facts and Issues (**JSFI**) and set the Commissioner's Hearing (to present the originals of petitioner's exhibits for comparison). The initial presentation of petitioner's evidence and the continuation thereof were all set on 25 January 2021, 08 February 2021, and 01 March 2021, respectively.[51] On 07 January 2021, the parties submitted their JSFI.[52]

On 13 January 2021, the Second Division issued a Pre-Trial Order[53] approving the parties' JSFI and terminating the pre-trial.

In the trial that ensued on 08 February 2021, petitioner presented his testimonial and documentary evidence. He offered the testimonies of his witnesses, namely: (1) Rowena Cartagenas (**Cartagenas**), petitioner's Secretary; and, (2) Christian Ver D. Mendoza (**Mendoza**), petitioner's Administrative Assistant.

On the witness stand, Cartagenas identified her Judicial Affidavit dated 29 January 2021[54], where she declared that: (1) as petitioner's Secretary, she is in charge of overseeing the daily operations of petitioner's business, receives official letters on petitioner's behalf, organizes and files important documents, including petitioner's BIR registration papers, tax returns, financial statements, books of accounts and other accounting documents, and responsible for all documents

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48 Id., p. 219.
49 Id., p. 228.
50 See Minutes of the Hearing and Order, both dated 09 November 2020, id., pp. 229 and 230, respectively.
51 See Order dated 07 December 2020, id., p. 234.
52 Id., pp. 242-248.
53 Id., pp. 251-254.
54 Exhibit "P-12", Judicial Affidavit of Rowena Cartagenas, id., pp. 264-278, with exhibits.

relating to BIR tax audit matters of petitioner's business; (2) she witnessed her niece, Rolline Cartagenas, receiving a copy of the FAN issued to petitioner in relation to the BIR's tax audit for CY 2012; (3) petitioner's office received the FAN on 07 February 2018, as indicated beside her niece's name on the FAN; (4) petitioner's counsel handed her a copy of respondent's Final Decision on Disputed Assessment (**FDDA**), which was attached to respondent's Answer and alleged therein to have been sent to petitioner *via* registered mail at his office address; and, (5) neither she nor petitioner received a copy of the said FDDA.

On cross-examination, Cartagenas confirmed that the address indicated in both the FAN and the FDDA is Gulod Pulong Buhangin, Sta. Maria, Bulacan.[55] Despite petitioner's address being consistent in both documents, she attested during the redirect examination that petitioner's office received the FAN but not the FDDA.[56]

On re-cross examination, Cartagenas clarified that petitioner did not receive a copy of the FDDA and that she only testified regarding the fact that the FDDA was attached to respondent's Answer.[57]

Next to assume the witness stand was Mendoza, who identified his Judicial Affidavit dated 29 January 2021[58], where he declared that: (1) he works as an Administrative Assistant for petitioner; (2) he signed the Letter-Request drafted by Cartagenas for the issuance of a Certification from the Office of the Postmaster in Sta. Maria, Bulacan regarding respondent's FDDA with Registered Mail No. RD875867309ZZ (allegedly sent to and received by petitioner's office); (3) on 17 October 2019, he personally submitted the said Letter-Request to the Post Office of Sta. Maria, Bulacan; and, (4) on 18 October 2019, he picked up the Certification dated 17 October 2019 (signed by Erwin Varilla and Gerry I. De Guzman, the Letter Carrier and Postmaster, respectively), stating that respondent's FDDA with Registered Mail No. RD875867309ZZ was "Returned to Sender-Reason for Insufficient Address" on 22 November 2018 *via* Caloocan CPO-Reg. under Bill #44, page 1, line 12, column 1.

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55 TSN dated 08 February 2021, p. 8.
56 Id., pp. 9-10.
57 Id., pp. 10-11.
58 Exhibit "P-13", id., pp. 292-300, with exhibits.

On cross-examination, Mendoza stated that he has been working for petitioner as an Administrative Assistant since 2018. When asked about the nature of petitioner's business, he responded that petitioner is in the importation business. Although he mentioned that he reports for work at petitioner's office in Quezon City, petitioner's official office address is in Gulod Pulong Buhangin, Sta. Maria, Bulacan. He also confirmed that this address is specified in petitioner's Certificate of Registration and the Verification and Certification of Non-Forum Shopping (attached to the instant Petition for Review). The same address is also noted in the FAN, Formal Letter of Demand (**FLD**), and FDDA allegedly issued by respondent to petitioner.[59]

Petitioner did not conduct any redirect examination.[60]

At the hearing held on 01 March 2021, the Second Division granted petitioner's "Urgent Motion to Reset Hearing"[61] and thereby, reset the presentation of petitioner's evidence to 19 April 2021.[62]

On 22 March 2021, petitioner moved for the issuance of a subpoena *ad testificandum* to its witness, Jose Rafael S. Ledesma (**Ledesma**), the Chief Finance Officer (**CFO**) of Galeo Equipment Corporation (**GEC**).[63] However, in the Resolution dated 03 June 2021[64], the Second Division denied the same for lack of merit since petitioner failed to allege that Ledesma unjustifiably refused to execute a judicial affidavit.

After two (2) resettings[65], the presentation of petitioner's evidence continued on 11 October 2021. There, petitioner recalled his witness, Cartagenas, and offered the testimony of his additional witness, Noelyn A. Samenada (**Samenada**), an Executive Assistant at Kargamine Too, Inc. (**KTI**).

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59 TSN dated 08 February 2021, pp. 15-18.
60 Id., p. 18.
61 Division Docket, pp. 319-321.
62 See Minutes of the Hearing and Order, both dated 01 March 2021, id., pp. 324 and 325, respectively.
63 See "Motion for Issuance of Subpoena *ad Testificandum*" dated 19 March 2021, id., pp. 331-334.
64 Id., pp. 338-339.
65 See Notices of Resetting dated 04 June 2021 and 29 September 2021, id., pp. 340 and 396.

During the 11 October 2021 videoconference hearing[66], Cartagenas identified her Judicial Affidavit dated 30 July 2021[67], where she declared that: (1) petitioner is a sole proprietor of various businesses one of which is Asean Best link that deals with the transport of goods; (2) the instant case involves petitioner's request for the cancellation of the deficiency assessments of IT and VAT for CY 2012; (3) the subject assessments originated from the FAN that petitioner received on 07 February 2018; (4) the deficiency IT assessment pertains to petitioner's alleged undeclared sales to GEC, amounting to ₱3,501,785.75, as derived by the BIR from a matching of the Reconciliation of Listing for Enforcement (**RELIEF**) data for the covered period; (5) the deficiency VAT assessment is likewise based on the same alleged undeclared sales to GEC; (6) upon inquiry with GEC's CFO, Ledesma, it was discovered that the said undeclared sales subject of herein assessments were inadvertently reflected in GEC's pertinent Summary List of Purchases (**SLP**) as purchases from petitioner instead of from KTI since GEC used petitioner's TIN as seller; (7) petitioner did not receive respondent's FDDA; (8) petitioner filed the instant Petition for Review within 30 days from the WDL's receipt to preserve his judicial remedy to dispute the BIR's deficiency tax assessments; (9) since petitioner did not render any services to GEC, the subject deficiency assessments of IT and VAT for CY 2012 have no factual basis; and, (10) considering that petitioner timely filed his IT and VAT returns for CY 2012, the FAN that petitioner received on 07 February 2018 was already barred by prescription.

On cross-examination, Cartagenas declared that she had completed a vocational course at St. Alice Fashion Technology in Malolos, Bulacan. She also attested that, despite the level of her educational attainment, she understands her duties and responsibilities when handling petitioner's financial statements. When asked about the inquiry with GEC's CFO, she confirmed that she had no personal knowledge of the aforementioned error in GEC's SLP, as such information was merely relayed to her.[68]

Petitioner did not conduct any redirect examination.[69]

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66 TSN dated 11 October 2011, pp. 5-8.
67 Exhibit "P-17", id., pp. 344-367, with exhibits.
68 Supra at note 66, pp. 9-12.
69 Supra at note 66, p. 12.

Next to testify was Samenada, who identified her Judicial Affidavit dated 30 July 2021[70], where she declared that: (1) as an Executive Assistant at KTI, she monitors the company's business performance, communicates the said performance to management, oversees the company's tax and regulatory compliance issues, and is responsible for securely maintaining company records including BIR registration, tax returns, financial statements, and other financial and accounting documents; (2) in 2012 and 2013, KTI issued official receipts (**ORs**) to GEC for payments for the services rendered to the latter; (3) she received information from GEC's CFO, Ledesma, that purchases of services from KTI were inadvertently reported in GEC's pertinent quarterly SLP under the wrong TIN (*i.e.*, petitioner's TIN instead of KTI's); (4) similarly, GEC's pertinent Monthly Alphalist of Payees (**MAP**) attached to BIR Form No. 1601-E and the Alphalist attached to BIR Form No. 1604-E erroneously reflected KTI's TIN as that of petitioner; (5) KTI rendered the services to GEC, as evidenced by the ORs and the withholding tax certificates issued by KTI to GEC in 2012; and, (6) the purchases listed in GEC's SLP can no longer be amended since GEC had already received a LOA for CY 2012 and settled the tax case arising therefrom.

On cross-examination, Samenada stated that she started working for KTI in the early part of 2012. In reply to the Court's clarificatory question, Samenada confirmed that KTI issued ORs to GEC for the services it provided. Concerning her claim in the Judicial Affidavit that she received information from GEC's CFO, Ledesma, about an error in GEC's SLP, she conceded that she never directly communicated with Ledesma. Instead, it was KTI's senior management that passed the information to her.[71]

Petitioner did not conduct any redirect examination.[72]

On 02 November 2021, after completing the presentation of his testimonial evidence, petitioner filed his "Formal Offer of Evidence with Manifestation"[73] (**FOE**) consisting of Exhibits "P-1" to "P-18-1", inclusive.

70 Exhibit "P-18", id., pp. 368-381, with exhibits.
71 Supra at note 66, pp. 20-24.
72 Supra at note 66, p. 24.
73 Division Docket, pp. 387-393.

of sub-markings. On 16 November 2021, respondent filed his or her Comment/Opposition[74] thereto.

In a Resolution dated 10 March 2022[75], the Second Division admitted petitioner's exhibits *except* for: (1) Exhibits "P-1", "P-6", "P-6-A" to "P-6-C", "P-7", "P-7-A" to "P-7-K", "P-10", "P-10-A", "P-10-B", "P-10-C" and "P-11"[76], for failure to submit the duly marked exhibits; and, (2) Exhibits "P-8", "P-14", "P-15", "P-15-A", "P-16" and "P-16-A" to "P-16-C"[77], for failure to present the originals for comparison. In the same Resolution, the Second Division set the initial presentation of respondent's evidence on 25 April 2022.

On 25 April 2022, respondent presented his or her lone witness, Revenue Officer Victorio San Antonio (**RO San Antonio**), who testified by way of his Judicial Affidavit dated 09 December 2020[78] that: (1) he was assigned as RO II at RDO No. 25B – Sta. Maria, Bulacan, from 2016 up to 2018; (2) some of his functions and duties as an RO include the conduct of audit examination or investigation of taxpayers within the jurisdiction of RDO No. 25B – Sta. Maria, Bulacan, pursuant to a Letter of Authority (**LOA**) issued by the Revenue Regional Director, the

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74 Id., pp. 382-384.
75 Id., pp. 404-405.
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| Exhibit No. | Description |
|---|---|
| "P-1" | BIR Certificate of Registration No. 4RC0000403380. |
| "P-6" | Assessment Notices and Formal Letter of Demand dated 29 December 2017. |
| "P-6-A" to "P-6-C" | |
| "P-7" | Letter of Protest dated 07 March 2018. |
| "P-7-A" to "P-7-K" | |
| "P-10" | FDDA. |
| "P-10-A" | Registry Receipt No. RD 875 867 309 ZZ. |
| "P-10-B" | Letter Request to Bulacan Postmaster. |
| "P-10-C" | Postmaster Certification dated 17 October 2019. |
| "P-11" | Warrant of Distraint and Levy. |

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| Exhibit No. | Description |
|---|---|
| "P-8" | Affidavit of Jose Rafael S. Ledesma dated 06 March 2015 (An attachment to the Letter of Protest dated 07 March 2018 filed by petitioner. |
| "P-14" | BIR Certificate of Registration No. 4RC0000528098 for Kargamine Too, Inc. with TIN 007-716-485-000. |
| "P-15" | Kargamine Too, Inc. Official Receipt Nos. 0032, 0031, 0037 and 0039. |
| "P-15-A" | |
| "P-16" | BIR Form 2307 issued by Kargamine Too, Inc. to Galeo Equipment & Mining Co., Inc. |
| "P-16-A" to "P-16-C" | |

78 Exhibit "R-10", Division Docket, pp. 235-241.

issuance of a recommendation for assessment of deficiency tax due, if any, and the surveillance and tax mapping operations; (3) LOA No. 25B-2017-00000223 dated 23 May 2017 was issued to him and Group Supervisor Henry Sarmiento (**GS Sarmiento**) for the examination of petitioner's accounting records for CY 2012; (4) on 08 June 2017, he personally served the LOA, along with the First Notice and Checklist of Requirements, to Cartagenas, in her capacity as petitioner's Secretary, at petitioner's registered business address at Gulod Pulong Buhangin, Sta. Maria, Bulacan; (5) he conducted the audit examination based on the accounting records that petitioner submitted; (6) he prepared a Revenue Audit Report on petitioner's deficiency IT and VAT assessments for CY 2012; (7) based on his approved Revenue Audit Report, the Preliminary Assessment Notice (**PAN**) and the FAN were issued to petitioner; and, (8) given that there was no response or payment in relation to the FAN, the assessed deficiency taxes have become final, executory, and demandable, prompting the BIR to pursue its collection either through administrative summary remedies or judicial action.

On cross-examination, RO San Antonio confirmed that he was assigned at RDO No. 25B – Sta. Maria, Bulacan, from 2016 up to 2018. He also noted that the basis for the subject deficiency tax assessments stemmed from a computerized matching of information from third-party sources carried out in 2014. However, when asked if he had verified such information from these third-party sources, he answered in the negative.[79]

Respondent did not conduct any redirect examination.[80]

During the 25 April 2022 hearing, the Second Division likewise granted respondent's request to set a Commissioner's Hearing for the purpose of comparison with the originals the documentary exhibits not yet attached to RO San Antonio's Judicial Affidavit. The requested Commissioner's Hearing was set on 23 May 2022.[81]

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79 TSN dated 25 April 2022, pp. 8-9.
80 Id., p. 9.
81 See Minutes of the Hearing and Order, both dated 25 April 2022, id., pp. 406 and 407, respectively.

On 01 June 2022, respondent filed his or her FOE[82] consisting of Exhibits "R-1" to "R-10-a", inclusive of sub-markings. On 20 June 2022, petitioner filed his Comment[83] thereto.

In the Resolution dated 01 September 2022[84], the Second Division admitted respondent's exhibits *except* for: (1) Exhibits "R-4" and "R-5"[85], for not being found in the records. In the same Resolution, the Court likewise granted the parties a period of 30 days within which to file their respective memoranda.

Thereafter, on 06 October 2022, petitioner filed his Memorandum[86], while respondent filed his or her Memorandum[87] on 10 October 2022. Accordingly, on 21 October 2022, the Second Division considered the case submitted for decision.[88]

## ISSUES

As the parties so stipulated, the following issues were submitted for this Court's determination —

I.

WHETHER THE BUREAU OF INTERNAL REVENUE'S (BIR'S) WARRANT OF DISTRAINT AND LEVY DATED 24 JULY 2019 SHOULD BE LIFTED AND CANCELLED FOR HAVING NO BASIS IN FACT AND LAW;

II.

WHETHER THE ASSESSMENTS FOR DEFICIENCY INCOME TAX (IT), VALUE-ADDED TAX (VAT), ADDITIONAL INCREMENTS FOR LATE PAYMENT INCLUDING THE COMPROMISE PENALTY FOR THE CALENDAR YEAR (CY) 2012 IN THE TOTAL AMOUNT OF ₱3,310,639.41 SHOULD BE CANCELLED FOR HAVING NO BASIS IN FACT AND LAW;

82 Division Docket, pp. 411-414.
83 Id., pp. 415-418.
84 Id., pp. 421-422.
85

| Exhibit No. | Description |
|---|---|
| "R-4" and "R-5" | Petitioner's Annual Income Tax Returns and Financial Statements. |

86 Division Docket, pp. 435-447.
87 Id., pp. 423-433.
88 See Resolution dated 21 October 2022, id., p. 450.

III.
WHETHER THE FORMAL ASSESSMENT NOTICE (FAN) RECEIVED ON 07 FEBRUARY 2018 WAS INVALID THEREBY HAVING NO BASIS IN FACT AND LAW; AND,

IV.
WHETHER THE ASSESSMENT ISSUED AGAINST PETITIONER RICKY TAN TANGAN FOR THE CALENDAR YEAR (CY) 2012 WAS ALREADY FINAL, EXECUTORY, AND DEMANDABLE.

## ARGUMENTS

In support of the present petition, petitioner argues that the subject deficiency IT and VAT assessments for CY 2012 are void for being based on unverified third-party information (**TPI**) and for being issued beyond the three (3)-year ordinary prescriptive period for assessment.

Petitioner asserts that respondent's basis for the subject deficiency tax assessments rests solely on assumptions and speculation. This conclusion arises from the fact that respondent's witness, RO San Antonio, who was assigned to RDO No. 25B – Sta. Maria, Bulacan, only from 2016 to 2018, based his findings on a computerized matching of records carried out by other BIR personnel in 2014. Moreover, RO San Antonio admitted that he did not verify the TPI from such computerized matching of records.

Citing the case of *Ayala Property Management Corporation v. Commissioner of Internal Revenue*[89], where the Court in Division cancelled therein respondent's deficiency IT and VAT assessments after said respondent's witness testified that the computerized matching of records from third-party sources were not verified, petitioner asks this Court to similarly set aside herein respondent's naked assessment as it is bereft of any rational basis.

Petitioner further asserts that the subject deficiency IT and VAT assessments for CY 2012 are void for being issued beyond the ordinary prescriptive period for assessment of three (3) years under Section 203[90]

[89] CTA Case No. 9298, 21 January 2019.

[90] **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by

of the National Internal Revenue Code (NIRC) of 1997, as amended, absent evidence that he filed a fraudulent return.

On the other hand, respondent insists that there was no denial of due process in this case, as petitioner himself admitted to receiving both the FAN and the subsequent WDL issued for it. Respondent claims to have given due course to petitioner's request for reinvestigation (*i.e.*, Protest against the FAN), but it was allegedly denied due to the latter's failure to submit the required supporting documents.

Respondent contends further that the subject assessment of petitioner's deficiency taxes was issued within the period allowed by law. On this note, respondent maintains that the 10-year prescriptive period under Section 222(a)[91] of the NIRC of 1997, as amended, should apply since petitioner's Income Tax Return (ITR) for CY 2012 was a fraudulent return on account of his failure to declare sales or receipts in an amount exceeding 30% of that declared *per* return. Moreover, under Section 223[92] of the NIRC of 1997, as amended, the government's right to collect delinquent taxes has not yet prescribed as respondent granted petitioner's request for a reinvestigation.

Contrary to petitioner's claim, the subject deficiency tax assessments for CY 2012 issued against petitioner was already final, executory and demandable for petitioner's failure to file a valid protest

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law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

91 SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

92 SEC. 223. *Suspension of Running of Statute of Limitations.* — The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided*, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

against the FAN. In this regard, respondent asserts that the instant Petition for Review should likewise be dismissed for lack of cause of action and/or failure to state a cause of action since the filing thereof cannot invalidate an assessment that has already become final, executory and demandable.

## RULING OF THE COURT

Before delving into the merits of the case, We shall first resolve whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

In his or her Answer[93], respondent argues that this Court lacks jurisdiction over the instant tax collection case as the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than ₱1 Million.

Respondent is mistaken.

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[94] Section 7 of Republic Act (**RA**) No. 1125[95], as amended by RA 9282[96], provides:

> ...
>
> Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[93] Supra at note 20.

[94] *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019 citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

[95] AN ACT CREATING THE COURT OF TAX APPEALS.

[96] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> 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;**
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]**[97]
>
> ...

Taking cue from the foregoing, the Court in Division's appellate jurisdiction is not limited to cases involving decisions of the CIR in relation to disputed assessments or refunds. The second portion of Section 7(a)(1) and (2) of RA 1125, as amended by RA 9282, clearly covers "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the BIR.

The CTA's "other matters" jurisdiction includes the determination of the validity of the WDL, as ruled by the Supreme Court in the case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*[98] (**La Flor**), citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[99], to wit:

> ...
>
> In *Philippine Journalists*, **we ruled that the CTA's appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessments or refunds. Section 7(a)(2) of RA 9282 also covers "other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."** <u>**Clearly, the CTA has jurisdiction to determine whether the WDL issued by the BIR is valid**</u> and rule on the validity of the five waivers of the statute of limitations and La Flor's application for tax amnesty under RA 9480.
>
> ...

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97 Emphasis supplied.
98 G.R. No. 202105, 28 April 2021; Italics in the original text, emphasis and underscoring supplied.
99 G.R. No. 162852, 16 December 2004.

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*[100], the Supreme Court reiterated the CTA's jurisdiction to determine the validity of a WDL, *viz*:

> ...
>
> Contrary however to the CIR's argument, Section 7(a)(1) of Republic Act No. (**RA**) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC:
>
> > 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 [Code] or other laws administered by the Bureau of Internal Revenue[.]
>
> As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.**
>
> ...

Considering that the issuance of a WDL falls under the CTA's jurisdiction to review "other matters arising under the NIRC", this Court can take cognizance of this case.

It is also worth noting that this case revolves around an appeal initiated by petitioner after receiving the WDL, considered as respondent's FDDA. The primary intent is to preserve his judicial remedy against respondent's deficiency tax assessments for CY 2012. Precisely because the assessment remains in dispute, We cannot agree

[100] G.R. No. 255473, 13 February 2023; Citations omitted, italics and emphasis in the original text and supplied.

with respondent's assertion that this is a tax collection case requiring a jurisdictional amount of at least ₱1 Million.

Further, the WDL is the adverse decision appealable to this Court and not the FDDA since petitioner categorically denied receipt of the FDDA and respondent failed to prove by competent evidence that petitioner indeed received the FDDA.

The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[101]

In this case, the registry receipt for the FDDA was *not* offered in evidence, and respondent simply claimed that the FDDA was mailed and thus presumed to have been received by petitioner. However, a mere assertion is insufficient. What is essential to prove is the fact of mailing *via* the registry receipt issued by the Bureau of Posts or the Registry Return Card, which would bear petitioner's signature or that of his authorized representative. If these documents are unavailable, respondent should, at the very least, provide the Court with a certification from the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. This Court does not put much credence to the self-serving documentations made by BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing.

We shall now determine the timeliness of the instant petition.

Section 11 of the RA 1125, as amended by RA 9282, in relation to Section 3(a), Rule 8 of the RRCTA, provides for the time period when the taxpayer may invoke the CTA's jurisdiction in order to question the validity of the WDL, to wit:

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[101] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 157064, 07 August 2006.

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue,** the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>
> SEC. 3. *Who may appeal; period to file petition.* —
>
> (a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed <u>within thirty days</u> after receipt of a copy of such decision or ruling,** or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[102]
>
> ...

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given thirty (30) days to file a Petition for Review with the CTA.

Here, it is undisputed that petitioner received the WDL on 02 August 2019 (which is the adverse decision appealable to this Court).[103] He thus had 30 days from the said date, or until 01 September 2019, to file a Petition for Review with the CTA. Clearly, petitioner timely filed the instant Petition for Review on 08 August 2019.

For an orderly discussion on the merits of this case, this Court deems it more propitious to first settle the issue on prescription.

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102 Emphasis and underscoring supplied.

103 Respondent admitted the allegations in Par. 5 of the Petition for Review; See Par. 4 of respondent's Answer, supra at note 20, p. 49.

RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR ALLEGED DEFICIENCY TAXES FOR THE CALENDAR YEAR 2012 HAS ALREADY PRESCRIBED.

Petitioner argues that respondent's right to assess him for alleged deficiency IT and VAT for CY 2012 is already barred by prescription since he received the FAN therefor only on 07 February 2018, which is beyond the three (3)-year period prescribed by law for the assessment and collection of taxes.

Respondent counter-argues that the extraordinary prescriptive period of ten (10) years should be applied as petitioner's 2012 ITR is a fraudulent return.

We agree with petitioner.

Section 203 of the NIRC of 1997, as amended, reads:

> ...
> SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed **within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, **the three (3)-year period shall be counted from the day the return was filed.** For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[104]
> ...

In the case of *Commissioner of Internal Revenue v. FMF Development Corporation*[105], the Supreme Court held that the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time, *viz*:

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104 Emphasis supplied.
105 G.R. No. 167765, 30 June 2008; Citations omitted, and emphasis supplied.

> ...
>
> Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. **This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.**
>
> ...

Accordingly, respondent has only three (3) years from the date of the actual filing of the return or from the last day prescribed by law for such filing, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for its collection without an assessment. *However*, this rule is subject to the exceptions provided under Section 222 of the NIRC of 1997, as amended, which states:

> ...
>
> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) In the case of a **false or fraudulent return with intent to evade tax or of failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.[106]
>
> ...

In relation thereto, Section 248(B) of the NIRC of 1997, as amended, provides that:

> ...
>
> SEC. 248. *Civil Penalties.* —
>
> ...

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106 Emphasis supplied.

> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or **in case a false or fraudulent return is willfully made**, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That **a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return**: *Provided, further*, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein..[107]
>
> ...

Based on the afore-cited provisions, where there is a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions exceeding thirty percent (30%) of that declared *per* return, the same shall constitute *prima facie* evidence of a false or fraudulent return. Further, by willfully filing a false or fraudulent return, a penalty of fifty percent (50%) on the tax or deficiency tax shall be imposed.

Notably, in *Commissioner of Internal Revenue v. Asalus Corporation*[108], the Supreme Court held that a mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the 10-year prescriptive period, *viz*:

> ...
>
> Generally, internal revenue taxes shall be assessed **<u>within three (3) years</u>** after the last day prescribed by law for the filing of the return, or where the return is filed beyond the period, from the day the return was actually filed. Section 222 of the NIRC, however, provides for exceptions to the general rule. It states that in the case of a false or fraudulent return with intent to evade tax or of failure to file

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107 Emphasis supplied.

108 G.R. No. 221590, 22 February 2017; Citations omitted, italics in the original text, emphasis and underscoring supplied.

a return, the assessment may be made **within ten (10) years** from the discovery of the falsity, fraud or omission.

In the oft-cited *Aznar v. CTA*, the Court compared a false return to a fraudulent return in relation to the applicable prescriptive periods for assessments, to wit:

...

...We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, **the tax may be assessed**, or a proceeding in court for the collection of such tax may be begun without assessment, at any time **within ten years** after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely "falsity," "fraud" and "omission." That there is a difference between **"false return"** and **"fraudulent return"** cannot be denied. **While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.**

...

There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332 (a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made.

Thus, **a mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud**, is sufficient to warrant the application of the **ten (10)-year prescriptive period** under Section 222 of the NIRC.

...

This Court has consistently held that allegations of falsity or fraud in the filing of tax returns must be proven to exist by clear and convincing evidence and cannot be justified by mere speculation. The fraud or falsity contemplated by law is actual and not constructive in nature. Falsity or fraud is a question of fact and should never be presumed.[109]

Respondent claims that petitioner's 2012 ITR is a fraudulent return as he failed to declare sales or receipts in an amount exceeding 30% of that declared *per* return.

However, after carefully evaluating the records, this Court finds no evidence supporting the claim that petitioner filed a fraudulent return, as respondent failed to present any witnesses or evidence to substantiate the fraud allegation. It should be noted that this Court denied Exhibits "R-4" and "R-5" (pertaining to petitioner's 2012 ITR), as they were not found in the records. Additionally, the BIR Records for this case lack any other type of return (*e.g.*, VAT return) indicating petitioner's sales or receipts for CY 2012. As such, there is no way to verify any substantial under-declaration of sales, receipts, or income exceeding 30%, as claimed by respondent.

Based on the foregoing, respondent failed to convince this Court that petitioner indeed filed a fraudulent tax return; thus, the extraordinary prescriptive period of 10 years cannot be applied to the case at bar.

Now, since this case involves deficiency IT and VAT, the last day fixed by law for the filing of the corresponding tax returns differs. Hence, the basis of the three (3)-year prescriptive period varies accordingly. As to IT, Section 77(B)[110] of the NIRC of 1997, as amended, provides that the final adjustment return shall be filed on or before the fifteenth (15th) day of April. In the case of VAT, the filing of quarterly VAT returns must be made within twenty-five (25) days after the close of each taxable quarter for each taxpayer in accordance with Section 114(A)[111] of the NIRC of 1997,

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109 See *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, 09 November 2016, citing *Commissioner of Internal Revenue v. Ayala Securities Corporation, et al.*, G.R. No. L-29485, 31 March 1976.

110 SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* —

...

(B) *Time of Filing the Income Tax Return.* — The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

111 **SEC. 114.** *Return and Payment of Value-Added Tax.* —

as amended.

Here, the relevant tax returns were *not* offered in evidence. As such, this Court cannot establish the actual date of filing of these returns and consequently, it cannot ascertain the reckoning point of the three (3)-year period to assess, which is either the last day prescribed by law for the filing of the return or in case where a return is filed beyond the period prescribed by law, the day the return was filed.

Even if We are to assume that the relevant returns were filed on the final day prescribed by law and consider this merely for illustrative purposes, the table below presents the relevant dates for the subject deficiency tax assessments:

| **Tax Type and Period Covered** | **Last Day to File Return** | **Last Day to Assess** | **Date of Receipt of the FAN** | **Status** |
|---|---|---|---|---|
| IT: CY 2012 | 15 April 2013 | 15 April 2016 | 07 February 2018 | Prescribed |
| VAT: 1st Quarter of CY 2012 | 25 April 2012 | 25 April 2015 | | |
| VAT: 2nd Quarter of CY 2012 | 25 July 2012 | 25 July 2015 | | |
| VAT: 3rd Quarter of CY 2012 | 25 October 2012 | 25 October 2015 | | |
| VAT: 4th Quarter of CY 2012 | 25 January 2013 | 25 January 2016 | | |

Clearly from the above table, the subject FAN was issued beyond the three (3)-year prescriptive period; thus, rendering the assessments against petitioner inescapably void.

Nevertheless, even assuming for the sake of argument that the period to assess petitioner was extended beyond the ordinary three

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(A) *In General.* — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis...

(3)-year prescriptive period, the deficiency tax assessments would still be rendered void for lack of factual basis.

THE ASSESSMENTS ARE VOID FOR BEING BASED ON MERE PRESUMPTION AND UNVERIFIED DATA.

Respondent purportedly found petitioner to have undeclared sales or receipts not subjected to IT and VAT as a result of the computerized matching of information from third-party sources using the BIR's RELIEF System. *However*, as petitioner pointed out and as respondent's witness had admitted, the said undeclared sales or receipts were all unverified.

In the cross-examination of respondent's witness, RO San Antonio, during the hearing held on 25 April 2022, he made the following statements:[112]

...
ATTY. DAVID:

Q: Mr. Witness, in your Judicial Affidavit, you testified that you were assigned at Revenue District Office 25B Sta. Maria, Bulacan from 2016 to 2018, correct?

RO SAN ANTONIO:

A: Yes, sir.

ATTY. DAVID:

Q: Mr. Witness, let's go to the Formal Letter of Demand.

RO SAN ANTONIO:

A: Yes, sir.

ATTY. DAVID:

Q: **Okay. In the Formal Letter of Demand, it stated that the basis for the deficiency assessment is a computerized**

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112 Supra at note 79; Emphasis supplied.

**matching of information from 3rd party sources conducted in 2014, correct?**

RO SAN ANTONIO:

A: **Yes, sir.**

ATTY. DAVID:

Q: **Mr. Witness, did you verify the information from the 3rd party sources?**

RO SAN ANTONIO:

A: **No, sir.**

ATTY. DAVID:

No further questions for the witness, Your Honors.

...

In the implementation of the BIR's RELIEF system, Revenue Memorandum Order (**RMO**) No. 04-2003[113] states:

...

**I. BACKGROUND**

The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.

The RELIEF System was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.

The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales

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113 Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002.

and Purchases in magnetic form based on a prescribed electronic format. **The consolidation and matching of information <u>with other externally sourced data</u> will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential.**[114]

...

Corollarily, RMO No. 46-2004[115] has laid down the procedures to be followed for TPI discrepancy, as follows:

...

III. PROCEDURES

...

<u>Action on Protested LNs due to TPI discrepancy</u>

The **<u>Revenue Officer</u>** assigned to handle the Letter Notice **<u>shall</u>**:

1. Evaluate the merits of the taxpayer's Protest by:

   1.1 Requiring the taxpayer to submit the necessary schedules and supporting documents to substantiate his claims.

   1.2 Reconciling the Schedule of Sales/Local Purchases submitted by the taxpayer against the Details of Taxpayer's Customers/Suppliers' Records (DTCS) culled from the Quarterly Summary List of Sales/Purchases submitted by taxpayer's suppliers and customers, respectively.

   1.3 Reconciling the Schedule of Importation submitted by the taxpayer against the Details of Importation with Return Information Matching (DIRIM) culled from data provided by the Bureau of Customs (BOC).

   1.4 Checking for the propriety of the transactions reflected in the schedules submitted by the taxpayer by validating against source documents (*e.g.*, sales invoice, official receipts, import entry declarations, etc.).

2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.

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114 Emphasis and underscoring supplied.

115 Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

3. **<u>Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.</u>**

    3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:

    3.1.1 **Prepare "Confirmation Requests"** (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS[.]

    3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

    3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

    3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

    a. **Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source** (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

    b. **Secure a sworn statement from the TPI source** thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

    c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.[116]

...

Based on the foregoing guidelines, in assessment proceedings, if there arises TPI discrepancies, the taxpayer is required to submit schedules and reconciliations to substantiate his or her claims. In addition, the taxpayer is required to execute a sworn statement to attest

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[116] Emphasis and underscoring supplied.

the veracity and authenticity of the schedules and documents presented or submitted. On the other hand, the BIR is mandated to obtain sworn statements from TPI sources to attest the veracity of the data provided. To obtain the sworn statements, the BIR must first send confirmation requests to the third-party sources or coordinate with the RDO having jurisdiction over the third-party sources, to course through the confirmation requests to the latter. In this context, the fact that the undeclared sales or receipts, based on TPI, were admittedly unverified casts doubt on the reliability and correctness of respondent's findings of deficiency taxes.

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[117], the Supreme Court ruled that for an assessment to stand judicial scrutiny, it must be based on facts supported by credible evidence. We quote:

> ...
>
> The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. **However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.**
>
> 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 the 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 recordkeeping requirements of the NIRC.

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117 G.R. No. 136975, 31 March 2005; Citations omitted, italics in the original text, emphasis and underscoring supplied.

> **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.*
>
> ...
>
> Thus, the computations of the EIIB and the BIR on the quantity and costs of the importations 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 *Collector 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.**
>
> ...

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[118]

In fine, the subject deficiency IT and VAT assessments corresponding to the alleged undeclared sales or receipts of ₱3,501,785.75 based on unverified TPI must also be declared void for lack of factual basis.

**WHEREFORE**, the foregoing premises considered, the present Petition for Review filed by petitioner Ricky Tan Tangan on 08 August 2019 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue's notices and assessments are declared **VOID** and

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118 *Collector of Internal Revenue (now Commissioner) v. Alberto D. Benipayo*, G.R. No. L-13656, 31 January 1962.

henceforth **CANCELLED**. Consequently, the Warrant of Distraint and/or Levy dated 24 July 2019, covering the assessed deficiency tax liabilities against petitioner for the calendar year 2012, in the aggregate amount of ₱3,310,639.41, inclusive of surcharge, interest and compromise penalty, is also **CANCELLED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from pursuing any action against petitioner Ricky Tan Tangan relative to the above-mentioned void assessments.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**I CONCUR:**

**LANEE S. CUI-DAVID**
Associate Justice

## ATTESTATION

I attest 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.

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice
Special 2nd Division Acting Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, 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.

Ma. Belen M. R-L

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice