REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BONIFACIO GAS CORPORATION, Petitioner,	**CTA CASE NO. 8794**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 12 2017 10:10 a.m.

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AMENDED DECISION

MINDARO-GRULLA, J.:

Before this Court is petitioner's **Motion for Reconsideration**, filed on October 14, 2016, without respondent's comment despite due notice as per Records Verification dated December 27, 2016.

Petitioner seeks reconsideration of the Court's Decision dated September 23, 2016, the dispositive portion of which reads:

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

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

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

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

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

In assailing the aforesaid Decision, petitioner anchors its arguments on the following grounds:

"1. The respondent's disallowance and the corresponding deficiency tax assessment on the 'Provision for Doubtful Accounts' was limited only to ₱8,184.00 and not for the entire amount. Accordingly, there is no deficiency income tax assessment to be upheld for the amount beyond the disallowed ₱8,184.00.

2. While the output VAT in the sale of services to the Bases Conversion and Development Authority (BCDA) by petitioner is subject to 12% VAT rate for its reporting purposes, the final and full liability thereon by petitioner is limited to 5% final VAT already withheld by BCDA;

3. There is already an unjust enrichment on the part of the government by the fact that the VAT liability of petitioner was reported and paid at 12% rate without the benefit of the 5% final VAT withheld by BCDA and yet to further subject petitioner to a

deficiency assessment under the circumstances of this case would constitute excessive collection of taxes; and

4. Petitioner should not be held liable to pay twenty five percent (25%) surcharge, twenty percent (20%) deficiency interest, and 20% delinquency interest."

Petitioner contends that since respondent only disallowed the amount of ₱8,184.00 due to failure to comply with the requirements for the deductibility of bad debts, it is an admission *per se* that the rest which were not disallowed complied with the said requirements. Petitioner also claims that the disallowance was based on mere presumption and bereft of any factual basis as the Court recognized the error committed by respondent. As such, the assessment should allegedly be cancelled.

Further, petitioner alleges that the amount of disallowance upheld by the Court should be limited only to the amount actually disallowed in the Formal Assessment Notice (FAN) as the latter has no power to assess for deficiency internal revenue taxes. According to petitioner, the power to assess belongs to respondent.

The Court finds petitioner's arguments partially meritorious.

It must be noted that respondent arrived at the disallowance amounting to ₱8,184.00 by deducting the amount of ₱688,324.00 representing Reversal of Allowance for Impairment Loss from the claimed amount of ₱696,508.00 pertaining to the Provision for Doubtful Accounts. The Court finds such deduction erroneous.

To further clarify, the "Provision for Doubtful Accounts" and the "Reversal of Allowance for Impairment Loss" are two different transactions. The former is an expense item, while the latter is an income item; which cannot be offset with each other. The Court held that to allow the offsetting of the two transactions in the instant case would be in effect allowing the bad debts to be automatically deductible from the gross income without complying with the requisites for valid deduction of bad debts in accordance with the abovementioned law and regulations.[1]

[1] Page 21 of the Decision dated September 23, 2016.

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The Court further found that petitioner failed to establish that it has fully complied with the requisites for deductibility of bad debts in the amount of ₱696,508.00 pertaining to the Provision for Doubtful Accounts. Thus, in the assailed Decision, the Court disallowed the amount of ₱696,508.00 as allowable deduction of bad debts.

Nevertheless, the Court takes into consideration the recent case of the *Commissioner of Internal Revenue vs. Transnational Plans, Inc.*[2], wherein this Court *En Banc* held as follows:

> "In as much as this Court's jurisdiction is appellate in nature, it is essential that matters taken up in the appeal should be included in the contested assessment. It must be realized that with respect to the deficiency VAT of TPI, the appealed amount before this Court's jurisdiction is only with respect to the ₱67,446,873.00, as what is indicated in the FDDA. As stated in the case of *Commissioner of Internal Revenue vs. Guerrero, et al.*:
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> > 'Although these charges and taxes are not included in the original and revised assessments made in this case, petitioner herein maintains that Guerrero may nevertheless be held liable therefor xxx
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> > Petitioner's contention is untenable. xxx In short, it refers to a point in issue. In the case at bar, the additional [amount] under consideration were not included in the contested assessments. Since the jurisdiction of the Court of Tax Appeals is purely appellate, said Court correctly declined to make an award thereon, for lack of jurisdiction over the same.'
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> Section 228 of the Tax Code clearly states that 'the taxpayer shall be informed in writing of the facts and the law on which the assessment is made; otherwise, the assessment shall be void.' As thus worded, the respondent has the bounden duty to inform the taxpayer not only of the law but more importantly, the surrounding

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[2] CTA EB Nos. 1337 and 1339, March 27,2017 (Appeal of the Decision dated February 20, 2015 and Amended Decision dated July 13, 2015, respectively, both in C.T.A. Case No. 8291).

> circumstances supporting the assessment, for it is only through a detailed appraisal of its basis that the taxpayer may be able to dispute the imposition or agree with it. The underlying reason of the law is the basic constitutional requirement that 'no person shall be deprived of his property without due process of law.'
>
> Thus, the amount to be collected from TPI should not go beyond what is stated in the assessment. In excess of such stated therein, TPI was not informed in writing of the facts and law on which the amount is made, thus, the taxpayer has no opportunity to dispute the said amount, in violation of due process.
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> Furthermore, as the said excess amount was not indicated in the FAN, it should be considered as not assessed by the CIR, hence, already beyond the prescriptive period for it to be included only at this time of judicial trial."

In view of the foregoing, the Court reconsiders its ruling in the assailed Decision and limits the disallowance of the provision for doubtful accounts to the appealed amount of ₱8,184.00 as indicated in the FAN.

As regards the issue pertaining to the output VAT on the sale of services to the Bases Conversion and Development Authority (BCDA), petitioner argues that it overpaid its output VAT liability. Petitioner claims that this Court should have considered the fact that the amount of ₱278,726.58 disallowed by respondent was paid to and received by the government, even if it was classified into a different tax account. Allegedly, the erroneous treatment of the said item did not prejudice the government, but instead, it even benefited from the excess payment. There is an alleged unjust enrichment on the part of the government by the fact that the VAT liability of petitioner was reported and paid at 12% rate without the benefit of the 5% final VAT withheld by BCDA; and that to further subject petitioner to a deficiency assessment would constitute excessive collection of taxes.

The Court sustains its ruling that petitioner's treatment of the 5% final VAT withheld as tax credit in its 2009 Annual ITR is erroneous. The Court already explained this matter in the assailed Decision, to wit:

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"xxx, the five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales to the Government. Should actual input VAT exceed the standard input VAT of seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. Conversely, if actual input VAT is less than the standard input VAT of 7% of gross payment, the difference must be treated as taxable income.[3]

In other words, the taxpayers shall declare the full 12% VAT on their gross sales to or receipts from the government under 'Sales to Government' in the filing of the VAT returns. The standard input VAT of seven percent (7%) shall be deducted therefrom leaving a net VAT payable of 5%, which is equivalent to the final VAT withheld. Thus, after deducting the 5% final VAT withheld by the government under 'VAT withheld on Sales to Government'[4], there remains no amount of output VAT due on the sales to or receipts from the government.

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

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

Lastly, petitioner asserts that it should not be liable to pay 25% surcharge, 20% deficiency interest, and 20% delinquency interest without any prior assessment made by respondent. Petitioner states

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[3] Revenue Memorandum Circular (RMC) NO. 29-05, Q&A no. 17.

[4] Line 23C of Monthly VAT Return (BIR Form No. 2550M) or Line 26D of Quarterly VAT Return (BIR Form No. 2550Q).

that only deficiency interest was imposed in the FAN and Formal Letter of Demand (FLD). As such, petitioner posits that the surcharge and delinquency interest may not be imposed against petitioner unless the required assessment is first issued against it.

The Court finds the said arguments unmeritorious.

Section 247 (a) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 247. **General Provisions.** –
>
> (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax."

In relation thereto is Sections 248 (A)(3) and 249 (C) of the NIRC of 1997, as amended, which state:

> "SEC. 248. **Civil Penalties.** – (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of this amount due, in the following cases:
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> xxx xxx xxx
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> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or"
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> "SEC. 249. **Interest.** –
>
> xxx xxx xxx
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> (C) *Delinquency Interest.* – In case of failure to pay:
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> (1) The amount of the tax due on any return required to be filed, or

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(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

The Court further emphasizes that the surcharges, deficiency interest, and delinquency interest as quoted above are provided in the NIRC of 1997, as amended, under Title X, Statutory Offenses and Penalties.

Based on the foregoing, the delinquency interest and surcharges were imposed as penalty for petitioner's failure to pay the amount assessed in the FAN within the period prescribed therein. Being a penalty, the same is necessarily imposed after the issuance of the FAN in case of non-payment of the amount assessed. Therefore, it is impossible for respondent to indicate in the FAN the delinquency interest and surcharges imposed in the assailed Decision.

Thus, the Court rules that the imposition of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest are proper.

In view thereof, petitioner's basic deficiency income tax is recomputed as follows:

Taxable Income/(Loss) per ITR		₱23,214,054.00
Add: Adjustments/Disallowance		
Disallowed provision for Doubtful Accounts		8,184.00
Adjusted Taxable Income		₱23,222,238.00
Basic Income Tax Due		₱ 6,966,671.40
Less: Credits/Payments		
Creditable Income Tax Withheld	₱1,921,689.00	
Add: Payments per return	5,042,527.20	
Total	₱6,964,216.20	
Less: Disallowed Creditable Withholding Tax	278,726.58	6,685,489.62
Basic Deficiency Income Tax		**₱ 281,181.78**

WHEREFORE, premises, considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, petitioner's **deficiency income tax is hereby reduced to ₱351,477.23**, inclusive of the twenty five percent (25%) surcharge imposed under Section 248(3) of the NIRC of 1997, as amended.

Basic Tax Deficiency Income Tax	₱ 281,181.78
Surcharge	70,295.45
Total	**₱351,477.23**

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

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱281,181.78 computed from April 15, 2010 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and,

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱351,477.23 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from April 4, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice