

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, **CTA *EB* NO. 2345**
(CTA Case No. 9657)

Petitioner,

Present:

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

-versus-

ICONIC BEVERAGES, INC.,
Respondent.

Promulgated:

JUL 21 2022

[Signature]
4:00pm

x ----- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,¹ filed by petitioner Commissioner of Internal Revenue assailing the Decision, dated 2 March 2020 (“Assailed Decision”),² and Resolution dated 21 September 2020 (“Assailed Resolution”),³ both rendered by the Court in Division upholding petitioner’s assessment only with respect to deficiency Expanded Withholding Tax (“EWT”) for calendar year 2012.

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¹ *EB* Records, pp. 6-12, with annexes.

² Division Records Vol. 2, pp. 1028-1048.

³ *Id.*, pp. 1069-1072.

The Parties

Petitioner is the head of the Bureau of Internal Revenue (“BIR”), with office address at the Office of the Commissioner of Internal Revenue, BIR, National Office Building, Agham Road, Diliman, Quezon City, Metro Manila, where he may be served with summons and other court processes.⁴

Meanwhile, respondent is a domestic corporation with principal office at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.⁵

The Facts

On 20 May 2014, respondent received Letter of Authority No. 116-2014-00000035,⁶ dated 9 March 2014, from the BIR-Large Taxpayer’s Regular Audit Division 1 authorizing the examination of respondent’s books of accounts and other accounting records for all internal revenue taxes for taxable period 1 January 2012 to 31 December 2012.

From 2015 to 2016, respondent executed several Waivers⁷ which extended the prescriptive period of assessment for deficiency taxes for taxable year 2012 to 31 December 2016.

On 7 December 2016, respondent received two (2) Preliminary Assessment Notices⁸ (collectively, “PAN”) for deficiency EWT, Income Tax, Value-Added Tax (“VAT”), Documentary Stamp Tax (“DST”), and compromise penalty in the aggregate amount of ₱5,462, 923.92, for taxable year 2012, computed as follows:

Type of Tax	Amount
Income Tax	₱ 2,704, 151.63
Value-Added Tax	1,098,610.34
Expanded Withholding Tax	25.11
Documentary Stamp Tax	1,579,136.84
<i>Sub-total</i>	5,381,923.92
Add: Compromise Penalty	81,000.00
<i>Total</i>	₱ 5,462,923.92

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⁴ Pre-Trial Order, Division Records Vol. 1, p. 768.
⁵ *Ibid.*
⁶ Exhibit “R-1”, BIR Records, p. 1.
⁷ *Id.*, pp. 221, 225, 227, and 231.
⁸ Exhibit “P-1”, Division Records Vol. 1, p. 380-383; Exhibit “P-1-a”, *id.*, pp. 384-385.

On 22 December 2016, respondent replied⁹ to the PAN through a letter addressed to Teresita M. Angeles, the Assistant Commissioner-Large Taxpayers Service (“LTS”).

On 27 December 2016, respondent received the Formal Letter of Demand and Assessment Notices (“FLD/FAN”).¹⁰

On 24 January 2017, respondent protested¹¹ the FLD/FAN. However, petitioner had not rendered a Decision as of 23 July 2017, the last day of the 180-day period within which he could act on the Protest/Request for Reconsideration.

Due to petitioner’s inaction, respondent filed a Petition for Review on 22 August 2017.¹²

On 2 March 2020, the Court in Division promulgated the Assailed Decision,¹³ where it partially granted the Petition for Review. The Court set aside the imposition of deficiency income tax, VAT, DST, and compromise penalty. However, the Court upheld the imposition of deficiency EWT, inclusive of increments. The dispositive portion of the Assailed Decision reads:

“**WHEREFORE**, premises considered, the Petition for Review filed on August 22, 2017 by petitioner is **PARTIALLY GRANTED**. The assessment for deficiency income tax, value-added tax, documentary stamp tax, and compromise penalty is hereby **CANCELLED AND SET ASIDE**. The assessment, however, for deficiency expanded withholding tax is **AFFIRMED**. Accordingly, petitioner is **ORDERED TO PAY** the amount of ₱37.05 representing deficiency EWT, inclusive of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest imposed thereon under Sections 248(A)(3), and 294(B) and (C) of the National Internal Revenue Code of 1997, as amended, respectively, computed until December 31, 2017, detailed below:

Basic Deficiency EWT	₱ 14.01
Add: 25% Surcharge	3.50
Deficiency Interest from 01/26/13 to 12/31/2016 (₱14.01 x 20% x 1,436/365 days)	11.02
<i>Total Amount Due, December 31, 2016</i>	<u>₱ 28.54</u>

Deficiency Interest

From 1/1/17 to 12/31/17 (₱14.01 x 20% x 365/365 days)	₱ 2.80
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Delinquency Interest

From 1/1/17 to 12/31/17 (₱28.54 x 20% x 365/365 days)	<u>5.71</u>
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⁹ Exhibit “P-2”, *id.*, pp. 386-392.

¹⁰ Exhibit “P-3”, *id.*, p. 393-397; Exhibit “P-3-a”, *id.*, pp. 398-404.

¹¹ Exhibit “P-4”, *id.*, pp. 405-419, with annexes.

¹² *Id.*, pp. 10-37.

¹³ *EB Records*, pp. 20-40.

Total Amount Due, December 31, 2017

₱ 37.05

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the amount of ₱28.54 computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the 1997 National Internal Revenue Code of 1997, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.”

Both parties received the Decision on 4 March 2020.¹⁴

On 1 July 2020, petitioner filed a Motion for Reconsideration¹⁵ of the Assailed Decision. The Court in Division, on 21 September 2020, issued the Assailed Resolution,¹⁶ denying petitioner’s Motion for Reconsideration.

Petitioner received the assailed Resolution on 29 September 2020.¹⁷ Respondent received the Resolution on 30 September 2020.¹⁸

On 14 October 2020, petitioner filed a Motion for Extension of Time to File Petition for Review.¹⁹ The Court *En Banc* granted the Motion for Extension through a Minute Resolution²⁰ dated 16 October 2020.

Petitioner filed the present Petition for Review²¹ with the Court *En Banc* on 29 October 2020. Respondent filed its Comment²² thereto within the period prescribed by this Court.

On 7 July 2021, the Court issued a Resolution²³ submitting the case for decision.

Hence, this Decision.

Issue²⁴

The sole issue submitted for the Court *En Banc*’s resolution is: 

¹⁴ Division Records Vol. 2, p. 1026.

¹⁵ *Id.*, pp. 1049-1057.

¹⁶ *Id.*, pp. 1069-1072.

¹⁷ *Id.*, pp. 1068.

¹⁸ *Id.*, pp. 1067.

¹⁹ *EB* Records, pp. 1-3.

²⁰ *Id.*, p. 5.

²¹ *Id.*, pp. 6-12, with annexes.

²² *Id.*, pp. 53-82.

²³ *Id.*, pp. 89-90.

²⁴ See Grounds, Petition for Review, *id.*, p. 7.

Whether the Honorable Court in Division erred in ruling that the assessment for deficiency income tax, VAT, DST, and compromise penalty should be cancelled and set aside.

Arguments of the Parties

Petitioner's Arguments²⁵

Petitioner maintains that the assessment of deficiency taxes against respondent is correct. He insists that assessments are presumed correct and made in good faith unless proven otherwise by the taxpayer. According to petitioner, the burden of proof lies with the taxpayer to show the incorrectness of the assessment.

Petitioner also reiterates the correctness of the result of its audit findings and verification of respondent's documents that resulted in the deficiency assessment for income tax ₱2,701,151.63, VAT of ₱1,098,610.34, DST of ₱1,579.136.84, and miscellaneous tax of ₱81,000.00 plus interest.

Respondent's Arguments²⁶

Meanwhile, respondent raised the following grounds praying for the denial or dismissal of the instant Petition for Review:

First, the Petition for Review is not sufficient in form and substance and should be dismissed. Respondent points out that the present Petition for Review does not contain a "concise statement of the facts and issues involved" as required in **Section 6, Rule 43 of the Rules of Civil Procedure of 1997** which, respondent claims applies to the present case in view of **Section 4(b), Rule 8, of the Revised Rules of the Court of Tax Appeals**. Respondent calls the attention of the Court that instead of a "concise statement of the facts and issues involved", what is found in the Petition is "(to be supplied)".

Second, there is clearly and actually no "Undeclared Royalty Income". According to respondent, petitioner erred in assessing "Undeclared Royalty Income" based on San Miguel Brewery's total sales revenue as a whole. Respondent maintains that it correctly paid taxes due on its 2012 royalty income based only on San Miguel Brewery's total net sales revenue from its beer and malt-based beverage products as stipulated in the license agreement. 

²⁵ See Discussion, Petition for Review, *id.*, pp. 7-11.

²⁶ See Grounds for the Dismissal/ Denial of the Petition for Review and Discussion, Comments on the Petition for Review, *id.*, pp. 64-81,

Third, petitioner erred in including in the FLD/FAN the portion of deficiency income tax assessment pertaining to Disallowed Travel and Transportation Expense. Respondent contends that the Court in Division correctly found that respondent elected the Optional Standard Deduction (“OSD”) in lieu of itemized deduction as testified to by respondent’s witness, Ms. Noemi L. Ronquillo, in her Judicial Affidavit, dated 11 June 2018 (Exhibit “P-14”), and as shown in Item 13 of respondent’s Quarterly Income Tax Return (BIR Form 1702Q) for the first quarter of taxable year 2012, (Exhibit “P-12”). Consequently, as the Court in Division found, respondent is not required to substantiate or prove the reasonableness of its travel and transportation expenses for purposes of computing the OSD.

Fourth, considering that respondent does not have any “Undeclared Royalty Income” for the year 2012, the corresponding VAT deficiency assessment has no leg to stand on.

Fifth, the imposition of DST under ***Section 179 of the Tax Code, as amended***, governing debt instruments on an Unpaid Royalty Fee of respondent to San Miguel Brewery, on the mistaken belief that the same is a loan from the latter, is patently erroneous and has no factual and legal basis at all considering that the alleged deficiency DST assessment does not pertain to any advance to respondent. In support of its claim, respondent refers to the testimony of Ms. Ronquillo, (Exhibit “P-14”), and other pieces of evidence such as respondent’s Statement of Financial Position in the 2012 Audited Financial Statements (Exhibit “P-13”), Billing Statement for San Miguel Brewery for Royalty Fee for the month of December 2012 (Exhibit “P-13-a”), Official Receipt, dated 16 January 2013, showing payment date thereof (Exhibit “P-11-k”), check evidencing payment (Exhibit “P-13-b”), and BIR Form 2307 evidencing the withholding tax (Exhibit “P-13-c”).

Sixth, the miscellaneous tax assessment for the alleged compromise penalty for the supposed violation of certain provisions of the ***Tax Code, as amended***, has no factual and legal basis. In support of its claim, respondent refers to the FLD II/FAN (Exhibit “P-3-a”) and the testimony of Ms. Ronquillo (Exhibit “P-14”), stating that respondent did not enter into any agreement whatsoever with petitioner with respect to any compromise penalty.

Finally, respondent contends that assessments should not be based on mere presumptions. Rather, it should be based on actual facts to stand judicial scrutiny.

The Ruling of the Court En Banc

The present Petition for Review lacks merit.



At the onset, the Court *En Banc* observes that the arguments in the present Petition for Review are exactly the same as the arguments raised in respondent's Memorandum²⁷ and Motion for Reconsideration,²⁸ which have been adequately and judiciously passed upon by the Court in Division in the Assailed Decision and Assailed Resolution.

The presumption of correctness of taxes applies only when the assessment is based on fact.

Assessments should be based on fact to stand judicial scrutiny. It is long established that the presumption of correctness of assessments does not apply when the assessment is utterly without foundation.

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*,²⁹ the Supreme Court explained that for the presumption of correctness of assessment to apply, the assessment must be based on fact:

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 relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.

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

...

...The petitioner cannot rely on the presumption that she and 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

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²⁷ Division Records Vol. 2, pp. 1017-1020.

²⁸ *Id.*, pp. 1050-1054.

²⁹ G.R. No. 136975, 31 March 2005.

presumption of correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.
(Emphasis, Ours.)

The same ruling was reiterated in the more recent case *Commissioner of Internal Revenue v. Spouses Magaan*³⁰ where the Supreme Court held that the presumption of the correctness of the assessment does not apply when it is arbitrarily issued, without foundation and rational basis.

Given the foregoing, in order to stand judicial scrutiny, the assessment must be shown to have sufficient basis and foundation and to not be arbitrary or capricious.

In the present case, for the Court to apply the presumption of correctness of the assessment, it is incumbent upon petitioner to present evidence that would show that his assessment is based on fact and is not arbitrary. However, other than petitioner's exact reiteration and bare insistence on the correctness of his assessment, he failed to submit sufficient evidence establishing the rational basis and foundation of the deficiency income tax, VAT, and DST assessment as well as establishing the propriety of the imposition of compromise penalty. Thus, petitioner's contention on the presumption of correctness of the assessment must fail.

Findings of fact of the Court in Division are not to be disturbed in the absence of grave abuse of discretion.

Petitioner's reiterated arguments pertain to factual findings of the Court in Division. Particularly, petitioner reiterated its bare allegation that the result of its audit findings and verification of respondent's documents resulted in the deficiency assessment for income tax ₱2,701,151.63, VAT of ₱1,098,610.34, DST of ₱1,579.136.84, and miscellaneous tax of ₱81,000.00 plus interest.

In the absence of an assignment of grave abuse of discretion on the part of the Court in Division and a clear showing of misappreciation of facts, the factual findings of the Court in Division are binding and conclusive on this Court, given that the Court in Division directly observed and appreciated the evidence adduced by the parties during the trial of the case. *h*

³⁰ G.R. No. 232663, 3 May 2021.

In *Heirs of Teresita Villanueva, et al. v. Heirs of Petronila Syquia Mendoza, et al.*,³¹ the Supreme Court explained that factual findings are accorded the highest degree of respect as they are in a much better position to determine which party was able to present evidence with greater weight:

“Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.”

(Emphasis, Ours.)

Similarly, in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (Formerly Mirant (Phils.) Energy Corporation)*,³² the Supreme Court further explained in this wise:

“With regard to the second requirement, it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties. ...”

(Emphasis, Ours)

Following the foregoing jurisprudential pronouncements and the stark absence of contrary evidence, this Court *En Banc* finds no sufficient basis to overturn the factual findings made by the Court in Division which was made through circumspect examination of the pieces of evidence adduced during trial.

All told, the Court *En Banc* finds no justifiable reason to modify, much less reverse, the Assailed Decision and Assailed Resolution of the Court in Division.

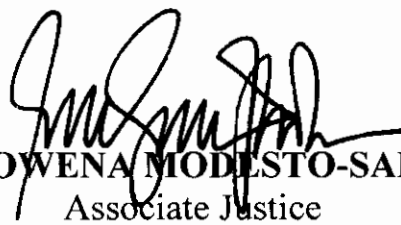
WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 2 March 2020, and Resolution, dated 21 September 2020, both rendered by the Court in Division, are hereby **AFFIRMED**.



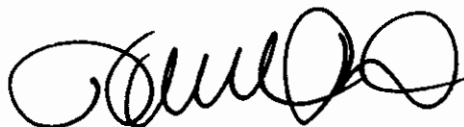
³¹ G.R. No. 209132, 5 June 2017.

³² G.R. No. 188016, 14 January 2015.

SO ORDERED.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

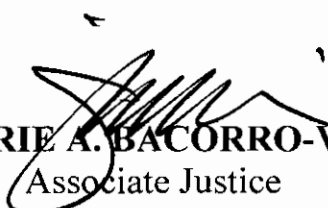
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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



ROMAN G. DEL ROSARIO
Presiding Justice