REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

WELLFORM TRADING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9086

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

MAR 1 3 2018 9:00 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is petitioner's **Motion for Partial Reconsideration (of the Decision Promulgated on November 27, 2017)**, filed on December 14, 2017, without respondent's comment as per Records Verification dated January 23, 2018; and respondent's **Motion for Partial Reconsideration** filed on December 14, 2017, with petitioner's **Comment (To the Respondent's Motion for Partial Reconsideration)**, filed on January 19, 2018.

Both motions seek the reconsideration of the Decision promulgated on November 27, 2017, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. Accordingly, the Court finds petitioner liable to pay the basic deficiency VAT but

in the reduced amount of ₱20,035,440.15, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, as computed below:

Basic deficiency VAT	**₱ 16,028,352.12**
Add: 25% Surcharge	4,007,088.03
Total VAT due	**₱ 20,035,440.15**

In addition, petitioner is liable to pay:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱16,028,352.12 computed from July 25, 2012, 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 ₱20,035,440.15 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from December 11, 2014, until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED.

Petitioner's Motion for Partial Reconsideration

Petitioner maintains that the Court is limited to resolving the correctness of the assessment by weighing the arguments and bases cited by respondent on one hand, and the counter arguments and explanations forwarded by the petitioner on the other hand. In the present case, petitioner stresses that when respondent made the disallowance, the only reason cited in the Final Assessment Notice (FAN) is petitioner's alleged failure to provide supporting documents. Thus, petitioner argues that due process dictates that the Court may not disallow further on the basis of other reasons not cited in the FAN. Otherwise, the petitioner was not given the opportunity to dispute such other reasons cited in an administrative protest to the FAN, which is a deprivation of petitioner's right to due process.

Petitioner asserts that it complied with the substantiation requirement, which was the lone issue raised in the FAN, although there may have been some irregularities in the information stated on the submitted invoices or official receipts. Nevertheless, since the supporting documents were traced as sales attributable to the petitioner, then the fact remains that the amounts are all accounted for and that ultimately resulting to no loss to the government.

Following the enumeration found on Section 113(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Revenue Regulations No. 16-2005, it can be said that petitioner substantially complied with the same. For one, petitioner argues that its purchases were made from sellers that are currently existing VAT-registered entities with their respective tax identification numbers (TIN) properly indicated on the issued supporting documents. Petitioner further argues that the total amount, including the amount for VAT, was indicated on the supporting documents. Also indicated were the date of the transaction, quantity, cost and description of the goods or nature of the services.

Petitioner contends that a bulk of the disallowed input taxes were for the reason that the supporting documents submitted consisted of VAT invoices bearing incorrect TIN of the petitioner. However, it is apparent that there is substantial compliance with paragraph (4) Section 113(B) of the NIRC, as amended, since the name of the purchaser, its address, and TIN although erroneous, were all indicated on the supporting invoice. Worthy of note also is that this pertains to sales from a major supplier of petitioner. This connotes the regular purchase of the same goods from Asia Brewery Incorporated (ABI) and Interbev Philippines Incorporated (IPI). There may have been mistakes in the mechanical act of writing the TIN due to inadvertence, but nevertheless the purchases were found to have been made by petitioner.

Another reason for the disallowance of input taxes on domestic purchases of goods from ABI and IPI was due to the submission of photocopied or scanned copies of VAT invoices marked as "Certified True Copy" but the authority of the person certifying the same cannot be ascertained. Petitioner points out that following the enumeration provided under Section 113(B) of the NIRC, as amended, there being no mention therein of a requirement to certify photocopied or scanned copies of VAT invoices, so long as the input tax claimed are properly supported by VAT invoices containing the information enumerated in Section 113 (B), then there is substantial compliance with the substantiation requirement.

The Court finds the arguments raised by petitioner in its motion unmeritorious.

Section 110 of the NIRC of 1997, as amended, as implemented by Section 4.110-1 of RR No. 16-05, provides that in order for an input tax to be credited against output tax, the same **<u>must</u> be evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the same Code.**

Relative thereto, Sections 113(A) and (B) of the same Code provide for the invoicing requirements and contents of the VAT invoice or official receipt, to wit:

> **SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.*** –
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - <u>The following information shall be indicated in the VAT invoice or VAT official receipt:</u>
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That: *je*

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term **"VAT-exempt sale"** shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "**zero-rated sale**" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) <u>In the case of sales in the amount of one thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client.</u> (*Underlining supplied*)

The law is clear. The Tax Code expressly provides for the invoicing requirements and contents of the VAT invoice or official receipt. Thus, petitioner cannot claim deprivation of its right to due process on matters which are clearly provided by law in the guise of contesting limited wordings used in the FAN.

Further, mere submission of supporting documents or substantial compliance with the invoicing requirements cannot be considered as "proper substantiation" if these do not comply with the provisions of the law. The requirements set by the law would be rendered useless and nugatory if the Court will allow petitioner to claim credits for input taxes which are not compliant with the invoicing requirements.

By petitioner's admission, there were indeed irregularities in the information contained in the submitted VAT invoices and official receipts. Without proper substantiation in accordance with Section 113(A) and (B) of the Tax Code, the corresponding input taxes then cannot be claimed as tax credits by petitioner pursuant to Section 110 of the same Code. Hence, the Court correctly disallowed input taxes that failed to comply with the invoicing requirements.

Also, the Court correctly disallowed input taxes on domestic purchases of goods from ABI and IPI which were supported by photocopied or scanned copies of VAT invoices, as ascertained by the Independent Certified Public Accountant (ICPA)[1], marked as certified true copies (CTC).

It was observed from these sales invoices marked as CTC that there were discrepancies between the signatures of the persons certifying them and the persons issuing the same. As such, the said sales invoices cannot be given probative weight because the Court cannot ascertain if the certification was accordingly authorized by the issuer.

Furthermore, while petitioner presented Certifications[2] issued by its suppliers, ABI and IPI, certifying the total purchases made by the former, which purportedly corroborate the sales invoices marked as CTC which formed part of the said total purchases, the Court noticed that the signatures of the persons who issued said Certifications differ from the signature of the person certifying the sales invoices marked as CTC. Thus, the Court cannot find any sufficient corroboration from the presented Certifications to prove that the sales invoices marked as CTC are valid sources of input VAT.

In addition, while it is true that Section 113 of the NIRC of 1997, as amended, does not specifically provide for the furnishing of

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[1] Amended ICPA Report, Exhibit "P-32-A", p. 9.
[2] Annex IC-11, Amended ICPA Report, Exhibit "P-32-A".

original copies of VAT invoices or official receipts in substantiating input taxes, such requirement is in accordance with Section 237 of the same Code, which provides that "the **original of each receipt or invoice shall be issued to the purchaser, customer or client** at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period."

And as a general rule in statutory construction, the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[3]

As such, it is imperative that taxpayers must show the original copies of the supporting documents in substantiating their taxable transactions. Otherwise, in cases that the original copies cannot be provided, it is imperative on our part that we exercise higher degree of care in giving weight on documents other than the original copy.

Petitioner failed to discharge its burden of proof to be entitled to the input tax credits being claimed. Thus, the Court finds petitioner's Motion for Partial Reconsideration bereft of merit.

Respondent's Motion for Partial Reconsideration

Respondent contends that the assessment of petitioner was based on best evidence obtainable because of petitioner's failure and refusal to make certain records available despite being issued a *Subpoena Duces Tecum* dated July 23, 2013. Since there is no means by which the correctness and accuracy of petitioner's receipts can be ascertained, respondent argues that an assessment based on estimate was used pursuant to Section 2.4 of RMC 23-2000 which states that, "...In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or

[3] *Philippine International Trading Corporation vs. Commission on Audit*, G.R. No. 183517, June 22, 2010.

capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment..."

In its comment, petitioner mentions that respondent merely explained the concept of "best evidence obtainable" without expounding on why the "benchmark rate" should be considered as the "best evidence" in this particular case.

Petitioner further points out that the lone issue raised in the motion filed by respondent is a mere rehash of his previous arguments which were already considered by the Court and found to be without merit.

The Court agrees with petitioner.

As correctly pointed out by petitioner, respondent's allegations are a mere rehash of the arguments previously raised in his Memorandum[4] which have already been extensively addressed and discussed in the assailed Decision.

To reiterate, records already show that petitioner was able to submit documents to address respondent's request for documents pursuant to the eLOA.[5] Thus, respondent's claim that he resorted to the "best evidence obtainable" because of the alleged failure of petitioner to submit supporting documents is untenable.

Moreover, as already mentioned in the assailed Decision, the use of the benchmark rate in determining petitioner's total VATable sales is not the best evidence that can be obtained by respondent and that the use of the same in making an assessment has no support in law. Thus, for being without factual or legal basis, the deficiency VAT arising from the alleged sales not subjected to VAT was properly cancelled.

The Court likewise noticed that instead of exerting his best effort in gathering information from other sources to verify the alleged undeclared sales and instead of taking into consideration the documents submitted by petitioner, respondent chose to resort to

[4] Docket, vol. III, pp. 1272-1275.
[5] Exhibits "P-18" to "P-27", docket, vol. II, pp. 1193-1200.

presumptions and heavily relied on the results of the unverified third party matching and on the benchmark rate in estimating petitioner's sales and tax liability. Thus, the Court correctly held that respondent's findings on petitioner's alleged sales not subject to VAT and undeclared sales lack factual and legal basis.

Considering the foregoing, the Court finds respondent's motion bereft of merit.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Partial Reconsideration (of the Decision promulgated on November 27, 2017)** and respondent's **Motion for Partial Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice