REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ANAPI MULTI-PURPOSE COOPERATIVE, *Petitioner,*	**CTA Case No. 9399**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson, and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, BIR REGIONAL DIRECTOR, REGION 12, BACOLOD CITY, *Respondents.*	Promulgated: JAN 21 2019 3:40 p.m.

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DECISION

MANAHAN, *J.*:

This involves a Petition for Review[1] filed by ANAPI Multi-Purpose Cooperative (ANAPI) seeking to annul and set aside the Decision of the Commissioner of Internal Revenue, which upheld the assessments against ANAPI for deficiency value-added tax (VAT), expanded withholding tax (EWT), ad valorem and compromise penalties for taxable year 2005.

FACTS

Petitioner is a multi-purpose agricultural cooperative duly organized in accordance with Philippine Laws, more particularly Republic Act No. 6938, with license to transact business and sue in the Philippines in accordance with the Cooperative Code, having its principal office address at No. 22, 13th St., Bacolod City.[2] It is represented by Freddie W. Zayco, of legal age, married, resident of Bacolod City and Chairperson of the Board of ANAPI Multi-Purpose Cooperative and authorized through Board Resolution.[3]

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[1] Docket, CTA Case No. 9399, pp. 10-12.
[2] Docket, Joint Stipulation of Facts and Issues (JSFI), p. 168.
[3] Docket, JSFI, p. 168.

Respondent Commissioner of Internal Revenue (CIR) is the Chief of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.[4] He may be served with summons, notices and other legal processes at Room 703, BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

On February 27, 2008, ANAPI received the Letter of Authority (LOA)[6] dated February 6, 2008, authorizing Revenue Officer Amelita S. Jaculbe, to be supervised by Group Supervisor Brigette B. Sepe, of Revenue District Office (RDO) No. 77-Bacolod City, to examine ANAPI's books of accounts and other accounting records for the period January 1 to December 31, 2005.

Various requests[7] for presentation of records/documents were issued by respondent, culminating in the issuance of a *subpoena duces tecum.*[8]

On December 3, 2008, a Notice of Informal Conference (NIC)[9] was issued, which was received by ANAPI on February 27, 2009.

On December 22, 2010, the BIR Revenue Region (RR)-12 issued a Preliminary Assessment Notice (PAN)[10] against ANAPI for taxable year 2005.[11]

A Formal Letter of Demand (FLD)[12] and Assessment Notices (FAN)[13] were received by ANAPI on January 24, 2011.[14] The FLD/FAN assessed ANAPI for deficiency VAT of Php37,011,743.21, deficiency EWT of 5,574.56, and ad valorem penalties of Php3,330.42, inclusive of interest and surcharges, or for the total amount of Php37,020,648.19.

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[4] Docket, JSFI, pp. 168-169.
[5] Docket, JSFI, p. 169.
[6] BIR Records, Exhibit "R-1", p. 68.
[7] BIR Records, Exhibits "R-2", "R-3", and "R-4", pp. 67, 72, and 74.
[8] BIR Records, Exhibit "R-5", p. 96.
[9] BIR Records, Exhibit "R-6", pp. 118-119.
[10] BIR Records, Exhibit "R-8", pp. 160-164.
[11] Docket, Petition for Review (PFR), p. 12.
[12] BIR Records, Exhibit "R-9", pp. 165-169.
[13] BIR Records, Exhibit "R-10", pp. 170-175.
[14] Docket, PFR, p. 12.

ANAPI filed a letter of protest dated February 22, 2011, assailing the assessment notice and letter of demand on the grounds that it was exempt from payment of all internal revenue taxes, including VAT, on the sale of its refined sugar; that there is no provision in the National Internal Revenue Code of 1997, as amended (NIRC) imposing tax before the sale of refined sugar; and, that the assessment was issued beyond the three-year prescriptive period.[15]

The BIR RR-12 issued a Final Decision[16] dated February 26, 2013 reiterating the assessment against ANAPI on the ground that ANAPI is not the owner/producer of the sugar withdrawn from the refinery.

On April 2, 2013, ANAPI elevated the issue to the Office of the Commissioner of Internal Revenue, assailing the Final Decision of the BIR RR-12 on the grounds that ANAPI is a multi-purpose cooperative which was exempt from paying internal revenue taxes, including VAT, and that the assessment made was null and void having been issued beyond the three-year prescriptive period as provided for in Section 203 of the NIRC.[17]

A Supplement to Motion for Reconsideration dated May 3, 2013 was also filed by ANAPI.[18]

On June 21, 2016, the Office of the CIR issued a Decision,[19] the dispositive portion of which provides:[20]

> **IN VIEW OF ALL THE FOREGOING**, the decision denying ANAPI's protest against the Formal Letter of Demand and Assessment Notice with Assessment Notice Nos. 00024-2011, 00025-2011, 00026-2011, and 00027-2011, and 00028-2011 issued against ANAPI demanding payment of the total amount of P37,082,748.19 as deficiency value-added, expanded withholding taxes, ad valorem and compromise penalties for taxable year 2005 is **AFFIRMED WITH MODIFICATION**. The assessment for deficiency expanded withholding tax, ad valorem penalties (1601E), ad valorem penalties (1601C), compromise penalty for failure to file BIR Form 1604-CF and E, compromise penalty for failure to withhold

[15] Docket, PFR, p. 12.
[16] BIR Records, Exhibit "R-11", pp. 235-238.
[17] Docket, PFR, p. 13.
[18] Docket, PFR, p. 13.
[19] BIR Records, Exhibit "R-12", pp. 417-431.
[20] Docket, PFR, p. 13.

> expanded withholding tax, and compromise penalty to file BIR Form 1601E and 1601C in the amounts of P5,574.56, P1,795.60, P1,534.82, P3,000.00, P1,500.00, and P7,600.00 respectively, is hereby cancelled and withdrawn. The assessment for deficiency value-added tax and compromise penalty for failure to file VAT returns in the amounts of P37,011,743.21 and P50,000.00 respectively, is hereby affirmed.
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> Consequently, **ANAPI Multi-Purpose Cooperative** is hereby ordered to pay the aforestated amount, plus increments that have been accrued thereon until the actual date of payment, to the Collection Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from the receipt hereof; otherwise, collection thereof will be effected through the summary remedies provided by law.
>
> This constitutes the **Final Decision** of this Office on the matter. (*Emphasis in the original*)[21]

On July 28, 2016, ANAPI filed the instant Petition for Review with the Court of Tax Appeals, praying for the cancellation of the assessments against it for taxable year 2005.

After two extensions,[22] respondent filed his Answer[23] on October 18, 2016. The case was set for pre-trial conference.[24] The parties sent their respective pre-trial briefs[25] and agreed to submit a joint stipulation.

On December 27, 2016, the parties submitted their Joint Stipulation of Facts and Issues (JSFI),[26] which was approved and adopted in the Pre-Trial Order[27] issued on January 18, 2017.

During trial,[28] petitioner presented its lone witness, Mr. Jose V. Ramos, who testified via judicial affidavit[29] and was

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[21] BIR Records, Exhibit "R-12", p. 417.
[22] Docket, Orders dated September 20, 2016 and October 11, 2016, pp. 71 and 76, respectively.
[23] Docket, pp. 77-85.
[24] Docket, Notice of Pre-Trial Conference, pp. 86-87.
[25] Docket, Respondent's Pre-Trial Brief, pp. 92-96; Pre-Trial Brief for Petitioner, pp. 98-102.
[26] Docket, pp. 168-171.
[27] Docket, pp. 173-176.
[28] Docket, Minutes of Hearing on February 1, 2017, p. 182.
[29] Docket, Exhibit "P-36", pp. 103-111.

subjected to cross-examination. On February 13, 2017, the Court received the Formal Offer of Exhibits for the Petitioner (FOE).[30]

On March 28, 2017, the Court resolved petitioner's FOE, admitting all of petitioner's exhibits except for Exhibit "P-2".[31] However, upon motion,[32] the Court reconsidered the denial of Exhibit "P-2", thereby resulting into the same being admitted in to evidence.[33]

On the other hand, respondent presented three witnesses, as follows: (1) Revenue Officer Markneil S. Collado;[34] (2) Revenue Officer Amelita J. Domingo;[35] and (3) Chief Revenue Officer Carmen Grace L. Comoda.[36]

Respondent filed his Formal Offer of Evidence[37] on February 8, 2018, which was resolved by the Court on May 8, 2018, thereby admitting all of respondent's exhibits.[38]

Petitioner and respondent filed their Memorandum on July 2, 2018[39] and July 9, 2018,[40] respectively. Thus, the case was considered submitted for decision on July 16, 2018.[41]

ISSUE

The parties submit the following issue for the Court's decision:

> Whether or not petitioner is liable to pay Value-Added Tax or Advance Value-Added Tax.[42]

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[30] Docket, pp. 184-188.
[31] Docket, Resolution dated March 28, 2017, pp. 204-205.
[32] Docket, Motion for Partial Reconsideration (of Resolution dated March 28, 2017), pp. 233-237.
[33] Docket, Resolution dated September 29, 2017, pp. 247-248.
[34] Docket, Judicial Affidavit of Revenue Officer Markneil S. Collado, pp. 198-202; Minutes of Hearing on October 23, 2017, p. 249.
[35] Docket, Judicial Affidavit of Revenue Officer Amelita J. Domingo, pp. 210-216; Minutes of Hearing on January 31, 2018, p. 254.
[36] Docket, Judicial Affidavit of Chief Revenue Officer Carmen Grace L. Comoda, pp. 226-231; Minutes of Hearing on January 31, 2018, p. 254.
[37] Docket, pp. 256-267.
[38] Docket, Resolution dated May 4, 2018, pp. 278-279.
[39] Docket, Memorandum For Petitioner, pp. 293-305.
[40] Docket, Memorandum (For Respondent), pp. 308-322.
[41] Docket Resolution dated July 16, 2018, p. 323.
[42] Docket, JSFI, p. 169.

Petitioner's Arguments

Petitioner argues that it is a tax-exempt entity, being a *bona fide* agricultural cooperative, based on Section 109(r) [renumbered as section 109 (L)] of the NIRC, and Articles 60 and 61 of the Philippine Cooperative Code of 2008.[43] Petitioner states that sales by agricultural cooperatives duly registered with the Cooperative Development Authority (CDA) to their members, as well as the sale of their produce, whether in its original state or processed form, to non-members, are exempt from VAT. Based on this, petitioner states that it is exempt from the payment of VAT for withdrawing their refined sugar from the sugar mill.

Petitioner also states that all its refined sugar withdrawals made in 2005 were covered by the Authorization Allowing Release of Refined Sugar (AARRS), issued by the BIR Revenue District Officer (RDO). In line with the presumption of regularity in the performance of duties of public officers, the issuance of the AARRS in favor of ANAPI presupposes that the cooperative submitted to the BIR the complete documentary requirements for application, including the quedans in its name. Petitioner further states that respondent was not able to present any proof to the contrary except baseless and unsubstantiated allegations that the refined sugar was not owned by petitioner ANAPI.

Petitioner ANAPI concludes that the issuance of the AARRS in its favor is proof that ANAPI was not required to file VAT returns or pay VAT, and at the same time, it is also proof of ANAPI's ownership over the refined sugar withdrawn from the mill.

ANAPI also argues that as a duly organized cooperative in good standing, it is exempt from paying internal revenue taxes and filing of returns. Petitioner states that the assessment notices were issued only in 2010 and 2011 for taxable year 2005, thus, the assessment was issued beyond the three-year prescriptive period and is null and void. ANAPI also posits that that application of Section 222 of the NIRC providing for a ten-year prescriptive period for assessment counted from the discovery of the omission to file a return is not applicable to

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[43] Republic Act No. 9520.

ANAPI, since as a tax-exempt entity, it is not under obligation to file VAT returns.

Respondent's Counter-Arguments

Respondent states that petitioner failed to file any VAT return for taxable year 2005, as such, the applicable provision is Section 222(a) which provides that the period to make an assessment may be made within ten (10) years after discovery of the falsity, fraud or omission. In the instant case, the counting of the ten-year prescriptive period shall be reckoned from the discovery of the omission, specifically at the time of issuance of the Preliminary Assessment Notice on December 22, 2010 and Formal Letter of Demand and Assessment Notice on January 14, 2011.

Respondent also states that petitioner is liable for deficiency VAT. Respondent states that to be exempt from payment of VAT upon removal of the refined sugar, a cooperative must own or produce the sugar. However, respondent states that its investigation revealed that petitioner did not own the raw sugar cane produce, as shown by the sugar quedans which are not in the name of the cooperative.

Respondent further states that ANAPI presented no argument nor competent records to dispute the assessment for deficiency expanded withholding tax.

Finally, respondent states that the assessment should be given full weight and credit in the absence of proof submitted by petitioner to the contrary. All presumptions are in favor of the correctness of tax assessments.

RULING OF THE COURT

The petition has merit.

The Petition for Review was timely filed.

Under the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments.[44] Said appeal may be availed of by filing a petition for review with the CTA within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the CIR to act on the disputed assessments.[45]

In the instant case, petitioner received the Decision of the CIR dated June 21, 2016 on June 29, 2016. Counting thirty (30) days therefrom, petitioner had until July 29, 2016 to file its appeal with the Court. Thus, the Petition for Review filed on July 28, 2016 was timely filed.

The assessments should be cancelled for lack of legal and factual basis.

At the outset, the Court notes that several items of the assessment have already been cancelled by the CIR, in its Decision dated June 21, 2016, as follows:

> ...The assessment for deficiency expanded withholding tax, ad valorem penalties (1601E), ad valorem penalties (1601C), compromise penalty for failure to file BIR Form 1604-CF and E, compromise penalty for failure to withhold expanded withholding tax, and compromise penalty to file BIR Form 1601E and 1601C in the amounts of P5,574.56, P1,795.60, P1,534.82, P3,000.00, P1,500.00, and P7,600.00 respectively, is hereby cancelled and withdrawn.[46]

Thus, what remains are the assessment for deficiency VAT amounting to Php37,011,743.21 and compromise penalty for failure to file VAT returns in the amount of Php50,000.00.

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[44] Rule 4 Jurisdiction of the Court
Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, xxx.

[45] Rule 8 Procedure in Civil Cases
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 xxx may appeal to the Court by petition for review filed within thirty days 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. xxx

[46] BIR Records, Exhibit "R-12", p. 417.

The assessment for deficiency VAT is computed in the FLD,[47] as follows:

ADVANCE VALUE-ADDED TAX			
No. of LKG per BIR data			191,963.30
Rate per LKG			850.00
Gross Value-Sugar Sales			163,168,805.00
Output Tax	163,168,805.00	10%	16,316,880.50
Less: Input Tax			-
VAT Payable			16,316,880.50
Less: Payments made			-
Deficiency VAT			16,316,880.50
Add: Surcharge		4,079,220.13	
Interest (1.25.06 to 2.28.11)	1.01831	16,615,642.58	20,694,862.71
TOTAL AMOUNT DUE			37,011,743.21

The Details of Discrepancies[48] explain the assessment as follows:

> The assessment was based on the Authorization Allowing the Release of Refined Sugar (AARS) issued to you on the withdrawal of refined sugar without payment of Advance VAT. The assessment was made on best evidence obtainable pursuant to Section 6(B) of the national Internal Revenue Code, as amended, for your failure to submit the following:
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> 1. Books of Accounts and its supporting documents;
>
> 2. List of Buyers;
>
> 3. Documents to prove that your Cooperative is a producer (Listings of Official Warehouse Receipt Quedan showed the Names of Planters, they being the holders of Planters Code or Plantation Audit No., therefore, you are not the planter-producer and your role was only to market the produce of the planters.)
>
> Moreover, your financial statements failed to prove that indeed you incurred production expenses that would make you a co-producer as per your allegation.
>
> Based on the foregoing, hereunder are the assessed deficiency taxes and penalties:

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[47] BIR Records, Exhibit "R-9", p. 167.
[48] BIR Records, Exhibit "R-9", p. 169.

DEFICIENCY VALUE ADDED TAX

> Per BIR data, you had withdrawn 191,963.30 LKG of refined sugar for the taxable year 2005 without payment of Advance VAT, thus deficiency VAT was assessed in the total amount of P37,011,743.21, inclusive of penalties. The assessment was based on Revenue Regulations (RR) No. 29-2002 dated December 9, 2002, as amended by Revenue Regulations No. 2-2004 dated January 2, 2004. Surcharge and interest were imposed pursuant to Sections 248(A) and 249(A) of the National Internal Revenue Code (NIRC), as amended. Section 4.115(b) of RR 16-2005 further enunciated the imposition of surcharge, interest and other penalties to VAT liabilities determined per audit.

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*,[49] the Supreme Court discussed the interplay of the presumption in favor of the correctness of assessments and the presence of sufficient evidence.

> 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 record-keeping requirements of the NIRC.
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> 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

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[49] G.R. No. 136975, March 31, 2005.

> 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.* (*Italics in the original*)

Applying the foregoing, the Court finds the assessment against ANAPI to be bereft of factual basis.

First, the assessment is based on "BIR data" with respect to the amount of 191,963.30 LKG of sugar upon which the alleged deficiency VAT is computed. However, respondent did not attach nor show the breakdown of this alleged 191,963.30 LKG of sugar, neither did respondent explain how it computed this total amount.

Second, there is also an allegation that petitioner is not the producer of the withdrawn sugar based on an alleged Listings of Official Warehouse Receipt Quedan. However, respondent did not provide the said Listing nor did respondent provide a breakdown or schedule of the sugar quedans which are not in the name of petitioner and its related withdrawals from the sugar mill.

The absence of this alleged Listing is made more glaring by the testimony of respondent's own witness, Revenue Officer Markneil S. Collado, during cross-examination, as follows:

> ATTY. TAN:
> Are you sure about the statement made, Mr. Witness, that the Quedans were not issued in the name of Anapi?
>
> WITNESS:
> I am actually basing my evaluation on the Bureau of Internal Revenue (BIR) records and the final decision which indicates the part of the audit states that not all of the sugar quedans are under the name of Anapi but under the name of the members thereof.
>
> ATTY. TAN:
> And you were never able to see such allegations made by the Bureau of Internal Revenue (BIR) regarding the fraudulent transactions.

WITNESS:
I'm sorry, sir?

ATTY. TAN:
You were never able to see the said documents claimed by the Bureau of Internal Revenue (BIR) that the quedans were never in the name of Anapi?

WITNESS:
Yes, because I was not part of the audit.[50]

Finally, petitioner was able to present the AARS[51] issued to it by the BIR. Petitioner's witness testified as follows:

Q30. Is Petitioner required to file returns and pay for Advance Value Added Tax?
A30. No. Petitioner is a tax exempt cooperative. It is exempt from the filing of returns and payment of Advance Value Added tax. Moreover, the cooperative was issued by the BIR AARRS for the withdrawal of the refined sugar for 2005.

Q31. What do you mean [by] AARRS?
A31. That refers to the Authorization Allowing Release of Refined Sugar. It is an authorization issued by the BIR to allow tax exempt cooperatives to withdraw refined sugar from the mill without the need to file or pay for Advance Value Added Tax.[52]

Respondent's own witness also testified that the issuance of the AARS requires the submission of the sugar quedans in ANAPI's own name, *to wit*:

ATTY. TAN:
Mr. Witness, is it correct that before the Bureau of Internal Revenue (BIR) would issue the authorization allowing the release of refined sugar, the quedan must be presented first to the Bureau of Internal Revenue (BIR). Isn't it correct?

WITNESS:
Yes, sir.

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[50] Transcript of Stenographic Notes (TSN), Hearing on October 23, 2017, pp. 14-15.
[51] Docket, Exhibits "P-6" to "P-35", pp. 131-160.
[52] Docket, Exhibit "P-36" Judicial Affidavit, pp. 103-111.

ATTY. TAN:
And your authorization allowing the release of refined sugar can only be issued if the quedan is in the name of the cooperative?

WITNESS:
The authorization allowing the release of sugar may only be issued if there is indeed a claim on the part of the Anapi that it owns the sugar. However, that is not the case because eventually the revenue officers found out that the sugar quedans are not actually in the name of Anapi. Well, there were variations because sometimes the plantation audit numbers are different from the TINS and that some of the sugar quedans are under the name of the members of the cooperative. So, because of the findings the regional office found out that indeed Anapi does not own the sugar being refined...(interrupted)

ATTY. TAN:
So, are you saying that there was issuance of authorization of release of refined sugar despite the fact that the cooperative is not owner of sugar quedans?

WITNESS:
At first, there was an impression that Anapi is the owner of the sugar that is why the AARS was issued, but eventually upon audit it was found that the sugar is not own[ed] by Anapi but by the member thereof, and that the ownership of the sugar on the part of Anapi was not established.

ATTY. TAN:
Mr. witness, are you familiar of how the sugar quedan looks like?

WITNESS:
I am not really familiar how it looks like, sir.

ATTY. TAN:
Mr. witness, for your information, in the sugar quedan there you can find the name of the planter or the person responsible for the sugar cane milled in the sugar central. Now, Mr. witness, when the Bureau of Internal Revenue (BIR) issued those authorization[s] allowing the release of refined sugar, the name of the owner of the sugar refined is actually the cooperative. Again, Mr. witness, are you telling us that there was something irregular in the Bureau

of Internal Revenue (BIR) when they issued the authorization allowing of (*sic*) release of refined sugar when as you claimed it was not owned by the cooperative?

WITNESS:
That I couldn't affirm, Sir because I haven't had a chance to evaluate the application for AARS of Anapi.

ATTY. DORIA:
Your Honors, the question is not covered by the direct examination of the witness.

JUSTICE CASTAÑEDA:
We allow the cross. Proceed.

ATTY. TAN:
Now, Mr. witness, what is the purpose of the issuance of the authorization allowing of release of refined sugar? What is the purpose why the Bureau issues authorization allowing release of refined sugar?

WITNESS:
That is because Anapi is the owner of the Sugar Quedan, allegedly.

ATTY. TAN:
And why does the Bureau of Internal Revenue (BIR) issues (*sic*) such authorization in the first place?

WITNESS:
It is for the release of refined sugar from the refinery, from Lopez Sugar Corporation. That is a clearance on the part of Anapi for it to be able to withdraw.

JUSTICE CASTAÑEDA:
All right. In the case of the withdrawal of the sugar, do you have to present the sugar quedans before the authorization is issued?

WITNESS:
Yes, Your Honors.

JUSTICE CASTAÑEDA:
Proceed.

ATTY. TAN:
Mr. witness, isn't it that your authorization allowing for release of refined sugar is issued for tax exempt

entities without the need to pay for value added tax (VAT), isn't that correct?

WITNESS:
Yes, sir.

ATTY. TAN:
Now in the case of Anapi, the petitioner here, all the transactions made or the withdrawal from [Lopez] Sugar Central were issued with their corresponding authorization allowing release of refined sugar?

WITNESS:
Yes, sir.

ATTY. TAN:
Isn't it that the authorization or the AARS for brevity is actually the proof that the petitioner is exempt from payment of advance value added tax (VAT)?

WITNESS:
It is a proof that it is exempt but that is still subject to audit by the regional office.

ATTY. TAN:
And in your audit, you are claiming that there were variations or supposedly fraudulent transactions?

WITNESS:
Based on the Bureau of Internal Revenue (BIR) records there was indeed a finding that some of the sugar quedans are not in the name of Anapi but rather under the name of its beneficiary or members.

ATTY. TAN:
Are you sure about the statement made, Mr. witness, that the quedans were not issued in the name of Anapi?

WITNESS:
I am actually basing my evaluation on the Bureau of Internal Revenue (BIR) records and the final decision which indicates the part of the audit states that not all of the sugar quedans are under the name of Anapi but under the name of the members thereof.[53]

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[53] TSN, Hearing on October 23, 2017, pp. 10-15.

It is clear that the AARS were issued upon presentation of the sugar quedans, among other requirements, showing that the sugar is owned by ANAPI. Despite this, respondent alleges that ANAPI does not own the sugar withdrawn from the refinery. However, respondent failed to submit sufficient and competent evidence to support its allegation that the sugar quedans were not in the name of ANAPI. Respondent also failed to submit the listing allegedly showing the different plantation audit numbers or TINs which would prove that ANAPI is not the owner of the refined sugar. Absent sufficient evidence to support the assessment, the presumption of correctness no longer applies. Thus, the assessments have no factual basis nor sufficient supporting evidence, and must therefore be cancelled.

WHEREFORE, the instant Petition for Review is **GRANTED**. The assessment for deficiency value-added tax, expanded withholding tax, ad valorem and compromise penalties for taxable year 2005 amounting to Php37,082,748.19 are hereby **CANCELLED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

J. C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
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.

J. C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice