REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ACER PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8372

Members:

BAUTISTA, *Chairperson*;
FABON-VICTORINO, and
RINGPIS LIBAN, JJ.

Promulgated:

JUN 23 2017
11:15 a.m.

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AMENDED DECISION

***Fabon-Victorino, J.*:**

For resolution are:

1. Petitioner's Omnibus Motion for Reconsideration dated April 26, 2016, without respondent's comment/opposition thereto despite directive; and

2. Respondent's Motion for Reconsideration dated April 29, 2016, to which petitioner filed a Comment[1] dated June 9, 2016.

On March 31, 2016, the Court promulgated a Decision[2], the dispositive portion of which reads as follows:

> **WHEREFORE**, the instant Petition for Review dated November 10, 2011 filed by petitioner Acer Philippines, Inc., is hereby **PARTIALLY GRANTED**.
>
> Consequently, the assessment issued by respondent Commissioner of Internal Revenue against

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[1] Docket (Vol. IV), pp. 2231-2235. Petitioner's Comment was admitted by the Court in the Resolution dated June 15, 2016, ibid. at pp. 2238-2239.
[2] Id. at pp. 2094-2121.

petitioner Acer Philippines, Inc. for taxable year 2005 covering deficiency Income Tax in the amount of ₱1,270,031.50 is hereby **CANCELLED AND SET ASIDE**. However, the assessment for taxable year 2005 covering deficiency Value-Added Tax is hereby **UPHELD IN PART**. Accordingly, petitioner is **DIRECTED TO PAY** respondent the amount of FIVE MILLION FIVE HUNDRED TWENTY-TWO THOUSAND TWO HUNDRED NINETY PESOS AND 45/100 (₱5,522,290.45), representing basic deficiency VAT and the corresponding twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Tax	₱ 4,417,832.36
25% Surcharge	1,104,458.09
Total	**₱5,522,290.45**

In addition, petitioner is **ORDERED TO PAY** (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱4,417,832.36 computed from January 25, 2006 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 amount of ₱5,522,290.45 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from April 21, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

On April 27, 2016, petitioner filed an Omnibus Motion for Reconsideration with Motion for New Trial to Accept Additional Evidence.[3] Despite directive, respondent did not file any comment or opposition to petitioner's motion.

On May 12, 2016, respondent filed his own Motion for Reconsideration[4] to which petitioner filed its Comment[5].

In the Resolution dated June 23, 2016,[6] the Court granted petitioner's motion to present additional evidence in support of its alleged additional input VAT claim on

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[3] Id. at pp. 2122-2149.
[4] Id. at pp. 2215-2223.
[5] See Note 1.
[6] Id. at pp. 2241-2245.

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importations. Consequently, the resolution on the two pending motions for reconsideration were held in abeyance.

On October 3, 2016, petitioner recalled to the witness stand the Court-commissioned Independent Certified Public Accountant (ICPA) **Ma. Luisa A. Caleon.** She testified that she examined the additional supporting documents submitted by petitioner, i.e., bank validated transaction tickets and authorities to debit, for the purpose of the present incident. Her examination revealed that of the ₱4,410,623.89 disallowed input VAT credits in the assailed Decision of March 31, 2016, the amount of ₱3,737,535.00 should be allowed as additional input taxes paid to the Bureau of Customs (BOC), leaving a balance of ₱673,088.89 as unsupported claim.

On November 2, 2016, petitioner filed its Supplemental Formal Offer of Evidence, which the Court resolved in the Resolution dated March 3, 2017. Hence, the pending motions for reconsideration filed by petitioner and respondent were submitted for resolution.

Petitioner's Omnibus Motion for Reconsideration

Petitioner claims that the assessment for deficiency VAT covering the 1st to the 4th quarters of TY 2005 is barred by the statute of limitations under Section 203 of the Tax Code. Petitioner explains that the quarterly VAT Returns covering the 1st,2nd ,3rd, and 4th quarters of TY 2005 were due for filing on April 25, 2005, July 25, 2005, October 25, 2005 and January 25, 2006, respectively, hence, respondent's right to assess petitioner for the 1st to the 3rd quarters of TY 2005 expired on 2008; and on January 2009 for the 4th quarter of same year. Thus, when the assessment was issued on January 14, 2009, respondent's right to assess deficiency VAT covering the said periods had already prescribed.

Petitioner also believes that respondent's right to *collect* the assessed VAT for the 4th quarter of TY 2005 had prescribed as well. Petitioner theorizes that since the assessment was issued on January 14, 2009, respondent had five (5) years or until January 13, 2014, within which to seek available administrative and judicial remedies to collect the assessed tax. Respondent however did not, thus, his right to collect is already time-barred.

Moreover, Revenue Officer (RO) Lito B. Batalla and Group Supervisor Marivel G. Bello who actually conducted the audit lacked the required authority since Letter of Authority (LOA) No. 2001-00028386 authorized only RO Teofilo Barbiran and Group Supervisor Jose Ma. L. Hernandez to conduct the investigation. Worse, no amended LOA transferring the said authority to RO Lito B. Batalla and Group Supervisor Marivel B. Bello was received by petitioner. On this ground, the assessment should be cancelled and withdrawn.

Finally, the presentation of bank transaction tickets and authorities justifies petitioner's entitlement to additional input VAT on its importations amounting to ₱3,737,535.00. Hence, the disallowed unsupported input VAT amounting to ₱4,410,623.89 in the assailed Decision should be further reduced to ₱673,088.89 (₱4,410,623.89 less ₱3,737,535.00).

Respondent's Motion for Reconsideration

Respondent contends that the Court lacks jurisdiction over the case as the Petition for Review was belatedly filed. He states that under Section 228 of the Tax Code, petitioner had thirty (30) days from receipt of the adverse decision he or his duly authorized representative rendered to seek judicial review. Allegedly, petitioner received the denial of its protest by Regional Director (RD) Jaime B. Santiago on March 25, 2011, thus it had until April 24, 2011 to file an appeal with the Court in Division. However, petitioner waited until November 10, 2011 to file its Petition for Review thereby depriving the Court of jurisdiction to entertain the same.

For respondent, the instant petition was also premature. He posits that: 1) Section 228 of the Tax Code gives respondent or his legally authorized representative 180 days to decide a taxpayer's protest, reckoned from the submission of supporting documents; and 2) if the said 180-day period expired without any appeal from the taxpayer, the only remedy is for the latter to await the adverse ruling on the protest and appeal it within 30 days from receipt thereof.

In the present case, RD Santiago allegedly received petitioner's protest with supporting documents on September 29, 2009, thus, the 180-day period to decide the said protest lapsed on March 25, 2010. On April 15, 2011, or after the lapse of the 180-day period, petitioner elevated its protest with respondent when its sole available remedy was to await the decision on its protest and file an appeal with the CTA within 30 days from receipt thereof. Petitioner erroneously counted the 180-day period from April 15, 2011 and filed a judicial appeal on November 10, 2011, which was fatal to its cause.

In reply, petitioner, citing portions of the assailed Decision, counters that: 1) the instant petition was filed within the reglementary period under Section 228 of the Tax Code; and 2) the Court has jurisdiction over its Petition for Review.

THE RULING OF THE COURT

First, the issue of the Court's jurisdiction has been laid to rest in the assailed Decision of March 30, 2016, specifically in pages 8 to 12 thereof. It was clearly discussed that 180-day period to decide petitioner's protest commenced on April 15, 2011 when petitioner elevated its protest with respondent who had until October 12, 2011 to act on it. There being no action taken by respondent, petitioner had 30 days or until November 12, 2011 to seek judicial intervention with this Court. In fine, the instant Petition for Review was timely filed on November 10, 2011.

On whether respondent's right to assess deficiency VAT for the four quarters of TY 2005 is time-barred, Section 203[7]

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[7] **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

of the Tax Code provides that an internal revenue tax may be assessed within three (3) years from filing of a return or the last day prescribed by law for filing a return, whichever is later. Any assessment issued after the three-year prescriptive period is no longer valid and effective.[8]

Corollary to the foregoing, Section 114(A)[9] of the Tax Code provides that a person liable for VAT must file a quarterly VAT return within 25 days following the close of each taxable quarter.

To determine prescription, it is essential that the facts demonstrating the lapse of the prescriptive period be sufficiently and satisfactorily apparent on the record either in the allegations of the plaintiff's complaint, or otherwise established by the evidence.[10]

The following table shows the dates when petitioner's Quarterly VAT Returns were filed, the corresponding due dates for filing thereof and respondent's last day to assess deficiency VAT for the 1st to 4th quarters of TY 2005, thus:

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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.

[8] *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

[9] **SEC. 114. Return and Payment of Value-added Tax. –**

(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.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

[10] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue,* G.R. No. 181836, July 9, 2014.

Quarter of TY 2005	Periods Covered	Due Date for Filing of VAT Return	Actual Date of Filing	Exh.	Last day of the 3-Year Prescriptive Period to Assess
1st	January to March 2005	4/25/2005	4/21/2005	"J-1"	4/25/2008
2nd	April to June 2005	7/25/2005	7/26/2005	"J-2"	7/28/2008
3rd	July to September 2005	10/25/2005	10/24/2005	"J-3"	10/27/2008
4th	October to December 2005	1/25/2006	1/23/2006	"J-4"	1/26/2009

As shown in the above table, the three-year prescriptive period to assess deficiency VAT for the 1st to 4th quarters of TY 2005 commenced on April 25, 2005, July 26, 2005, October 25, 2005 and January 25, 2006, respectively. Counting three years from the said dates, respondent had until April 25, 2008, July 28, 2008,[11] October 27, 2008[12] and January 26, 2009[13], respectively, within which to assess petitioner for deficiency VAT for the 1st to 4th quarters of TY 2005. Thus, when the assessment for the deficiency VAT for the 1st to 3rd quarters TY 2005 was issued on January 14, 2009, prescription had already set in.

This is however not true with respect to the assessment for deficiency VAT covering the 4th quarter of TY 2005 as it was issued on January 14, 2009, or twelve (12) days before January 26, 2009, the last day for respondent to assess for the 4th quarter of TY 2005. Petitioner however insists that respondent's right to *collect* the corresponding amount had already prescribed as respondent did not exercise available administrative and judicial remedies to collect within the five (5)-year prescriptive period mandated in Section 222 of the NIRC, as amended.

Petitioner's submission is flawed.

In *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,*[14] the Supreme Court has ruled that when respondent validly issues an assessment

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[11] July 26, 2008 fell on a Saturday.
[12] October 25, 2008 fell on a Saturday.
[13] January 25, 2009 fell on a Sunday.
[14] G.R. No. 197515, July 2, 2014.

within the three (3) year prescriptive period, he has another three (3) years therefrom within which to collect the assessed tax by means of administrative and judicial remedies provided by law. The record shows that respondent issued the assessment against petitioner for deficiency VAT for the 4th quarter of TY 2005 on January 14, 2009. Therefore, respondent had until January 16, 2012[15], within which to exercise his authority to collect the assessed VAT.

But was respondent able to exercise his right to collect the assessed tax within the allowable period?

The case of *Commissioner of Internal Revenue vs. Philippine Global Communication, Inc.*[16] is enlightening. In this case, the Supreme Court considered the filing of the BIR's Answer with demand for payment of tax before this Court a way to collect the assessed tax, when no warrant of distraint and/or levy has been served upon the taxpayer nor any judicial proceedings has been initiated by the BIR, *viz*:

> xxx However, as there was no Warrant of Distraint and/or Levy served on the respondents nor any judicial proceedings initiated by the BIR, the earliest attempt of the BIR to collect the tax due based on this assessment was when it filed its Answer in CTA Case No. 6568 xxx

The record unveils the fact that respondent incorporated in his Answer a prayer for the payment of subject tax deficiency [17]. The said Answer was filed through registered mail on January 5, 2012, or eleven (11) days before January 16, 2012, or before prescriptive period to collect lapsed. In other words, respondent's right to collect the assessed VAT for the 4th Quarter of TY 2005 from petitioner has not prescribed.

Anent the alleged lack of a valid LOA of the persons who actually conducted the tax audit/investigation resulting in the issuance of the subject assessment, suffice it to say that the said issue was raised by petitioner for the first time

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[15] January 14 and 15, 2012 fell on a Saturday and Sunday, respectively.
[16] G.R. No. 167146, October 31, 2006.
[17] Docket (Vol. I), pp. 53-54.

in its Omnibus Motion for Reconsideration. It was not raised by petitioner in any of its previous pleadings or at any time during the trial of the case, thereby depriving respondent of a fair and reasonable opportunity to refute the same. Well-settled is the rule that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[18]

We now focus on the merits.

In the assailed Decision, a total amount of ₱1,700,700.00 was allowed as petitioner's valid input tax credits from importations made from the 1st to 4th quarters of TY 2005.[19] Out of the said amount, only ₱535,946.00.00 can be ascribed to the 4th Quarterly VAT Return as can be traced in the monthly Summary List of Import Transactions:

Exhibit No.	OR No.	Date	VAT Amount	Traced to
Q-1.15	57676	9/6/2005	₱40,807.00	October 2005 Summary List of Import Transactions[20]
Q-1.16	122267302	3/15/2005	1,721.00	
Q-1.17	122726387	3/28/2005	779.00	
Q-1.18	58359	9/12/2005	3,616.00	
Q-1.19	58970	9/15/2005	14,026.00	
Q-1.20	59371	9/16/2005	12,775.00	
Q-1.21	60415	9/26/2005	4,646.00	
Q-1.22	60416	9/26/2005	8,111.00	
Q-1.23	126347821	9/14/2005	3,608.00	
Q-1.24	61162	9/30/2005	54,921.00	
Q-1.26	61627	10/4/2005	6,574.00	
Q-1.29	62396	10/10/2005	5,776.00	
Q-1.32	63643	10/19/2005	10,151.00	
Q-1.34	126351127	9/15/2005	2,718.00	
Q-1.43	126736653	9/30/2005	518.00	
W-18	127940382	11/9/2005	1,014.00	November 2005 Summary List of Import Transactions[21]
W-51	127303924	10/17/2005	1,991.00	
W-60	127944894	11/10/2005	2,278.00	
W-73	127196535	10/6/2005	3,124.00	
W-92	BDO Transfer Trans. Ticket	11/9/2005	356,792.00	
			₱535,946.00	

To establish the amount of ₱3,737,535.00 representing the additional input taxes incurred on its importations,

[18] *Mendoza, et al. vs. Bautista,* G.R. No. 143666, March 18, 2005.
[19] Decision dated March 30, 2016, pp. 23 to 25.
[20] Exhibit I, docket (Vol. II), pp. 963 to 964.
[21] Exhibit I, ibid. at p. 965.

petitioner presented various validated bank transaction tickets and letters of authority to debit[22] which the ICPA summarized in her report.[23] However, out of the ₱3,737,535.00 claimed input tax, only those pertaining to the 4th quarter of TY 2005 in the aggregate amount of ₱1,779,397.00 shall be allowed as additional input tax to be credited against its output tax liability for the same quarter of same year, broken down as follows:

Exhibit	BDO Transaction Ticket/Ref No.	Date	Input VAT
Z-20, Z-21	7343195	October 18, 2005	₱ 1,452,172.00
Z-23, Z-24	247653	December 23, 2005	327,225.00
		Total	**₱ 1,779,397.00**

Thus, having duly proved its entitlement to the amount of ₱1,779,397.00 representing the additional input VAT that it paid to the BOC for the 4th quarter of TY 2005, a further reduction of petitioner's basic deficiency VAT to ₱3,634,040.47 is in order, computed as follows:

Vatable sales per 4th Quarterly VAT Return		₱110,119,172.60
Add: Undeclared sales	₱ 72,084.70	
Unaccounted sources of cash treated as undeclared income	-	72,084.70
Total Vatable sales and receipts per investigation		₱110,191,257.30
Output tax per investigation		₱ 11,019,125.73
Less: Input tax credits		
Input tax carried over from previous quarter	₱3,614,464.32	
Domestic purchases - capital goods	12,845.75	
Domestic purchases - other than capital goods	702,590.47	
Domestic purchases – services	657,861.74	
Allowable Importations - goods other than capital goods as found by the Court		
Per Decision dated March 31, 2016	535,946.00	
Per petitioner's supplemental evidence	1,779,397.00	
Total		7,303,105.28
VAT payable for the 4th Quarter		₱ 3,716,020.45
Less: VAT paid per 4th Quarterly VAT Return		81,979.98
Basic deficiency VAT		**₱ 3,634,040.47**

[22] Exhibits Z-2, Z-3, Z-5, Z-6, Z-8, Z-9, Z-11, Z-12, Z-14, Z-15, Z-17, Z-18, Z-20, Z-21, Z-23 and Z-24, docket (Vol. IV), pp. 2266 to 2295.
[23] Exhibit Z, ibid. at p. 2260.

WHEREFORE, the Omnibus Motion for Reconsideration dated April 26, 2016 filed by petitioner Acer Philippines, Inc. is **PARTIALLY GRANTED**.

Consequently, the assessment issued by respondent Commissioner of Internal Revenue against petitioner Acer Philippines, Inc. for taxable year 2005 covering deficiency Income Tax in the amount of ₱1,270,031.50 is hereby **CANCELLED AND SET ASIDE.** However, the assessment for taxable year 2005 covering deficiency Value-Added Tax is **UPHELD IN PART**. Accordingly, petitioner is **DIRECTED TO PAY** respondent the amount of **FOUR MILLION FIVE HUNDRED FORTY-TWO THOUSAND FIVE HUNDRED FIFTY PESOS AND 59/100** (**₱4,542,550.59**), representing basic deficiency VAT and the corresponding twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Deficiency Value-Added Tax	₱ 3,634,040.47
Surcharge	908,510.12
Total	**₱4,542,550.59**

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

a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT of ₱3,634,040.47 computed from January 25, 2006 until full payment thereof pursuant to Section 249(B) of the NIRC, as amended; and

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱4,542,550.59 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from April 21, 2011 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

On the other hand, the Motion for Reconsideration dated April 29, 2016 filed by respondent Commissioner of Internal Revenue is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
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 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