REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

MCC TRANSPORT SINGAPORE PTE. LTD., *Petitioner,*	**CTA CASE NO. 9045**
-versus-	**Members:** **BAUTISTA,** Chairperson; **FABON-VICTORINO, RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	**Promulgated:** MAY 18 2018 9:19 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This is a Petition for Review[1] filed on May 14, 2015 by MCC Transport Singapore Pte. Ltd. against the Commissioner of Internal Revenue, praying for the cancellation of the assessment, as affirmed by the Final Decision on Disputed Assessment (FDDA) dated April 15, 2015, that found it liable for alleged deficiency value-added tax (VAT), including surcharge and interest, in the aggregate amount of Php25,772,734.83 for calendar year 2009.

The Facts

Petitioner MCC Transport Singapore Pte. Ltd. is a foreign corporation organized and existing under the laws of Singapore. It is engaged in international shipping of cargoes to and from the Philippines through its general shipping agent, Maersk Filipinas, Inc. Petitioner's registered address is c/o Maersk Filipinas, Inc., 9/F One E-Com Center, Harbor Drive corner Sunset Ave., Mall

[1] Docket, vol. 1, pp. 1-21.

of Asia Complex, Pasay City.[2] It is likewise registered as a taxpayer with the Bureau of Internal Revenue (BIR) on January 24, 2007, as evidenced by its Certificate of Registration No. 9RC0000373459.[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner electronically filed its Quarterly VAT Returns[4] on the following dates:

Period Covered	Date Filed/Paid
1st Quarter 2009	April 27, 2009
2nd Quarter 2009	July 21, 2009
3rd Quarter 2009	October 21, 2009
4th Quarter 2009	January 22, 2010

On September 15, 2010, Petitioner received from Respondent Letter of Authority ("LOA") No. 051-2010-00000270 dated September 13, 2010 informing Petitioner that BIR examiners were authorized to examine its books of account and other accounting records "for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009".[5]

Respondent issued Letter Notice No. 051-TRS-09-00-00024[6] dated May 24, 2011 with attached Details of Withholding Agents/Payors and Payees/Income Recipients Records, disclosing certain discrepancies as a result of a computerized matching conducted by the BIR on information provided by withholding agents against the VAT Returns of petitioner for calendar year 2009.[7]

[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 1, p. 257.
[3] Par. 3, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 257.
[4] Par. 1, Summary of Stipulated Facts, JSFI, docket, vol. 1, p. 261; Exhibits "P-10", "P-10.1", "P-10.2", and "P-10.3", docket, vol. 1, pp. 458-465.
[5] BIR Records, p. 2; Exhibit "R-2".
[6] Exhibit "P-1", docket, vol. 1, pp. 421-430.
[7] Par. 2, Summary of Stipulated Facts, JSFI, docket, vol. 1, p. 262; Par. 4, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 258.

Petitioner replied via Letter[8] dated August 4, 2011, stating that it had no transactions with the withholding agents or third parties as indicated in the Letter Notice.

On December 27, 2013, petitioner received the Preliminary Assessment Notice (PAN) dated December 26, 2013 with attached Details of Discrepancies,[9] assessing petitioner for deficiency VAT in the amount of Php23,125,134.46, representing the basic tax, fifty percent (50%) surcharge and deficiency interest for calendar year ended December 31, 2009 and finding that petitioner had undeclared sales/receipts amounting to Php83,886,643.55.[10]

Petitioner protested the PAN through a Letter[11] on January 10, 2014.

On January 22, 2014, petitioner received the Formal Assessment Notice (FAN) with attached Details of Discrepancies and Assessment Notice No. VT-ELA4967/LA43131/LN024-09-14-095, all dated January 21, 2014.[12]

On February 20, 2014, petitioner protested the FAN through a Letter[13] dated February 17, 2014, requesting the reconsideration of respondent's finding of undeclared of sales.[14]

On March 7, 2014, petitioner received a reply from respondent dated March 4, 2014, which advised petitioner that the entire tax docket, together with its letter of protest, was forwarded to Revenue District Office (RDO) No. 51 – Pasay City for reconsideration.[15]

On March 31, 2014, petitioner received from the Officer-in Charge (OIC) Revenue District Officer of RDO No. 51 – Pasay City a letter informing petitioner that the case was reassigned to a new Revenue Officer and a new Group Supervisor and requesting petitioner to submit to the named Revenue Officer the documents in support of the protest to the FAN.[16]

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[8] Exhibit "P-2", docket, vol. 1, pp. 431-437.
[9] Exhibits "P-3" and "P-3-1", docket, vol. 1, pp. 438-439.
[10] Par. 3, Summary of Stipulated Facts, JSFI, docket, vol. 1, p. 262; Par. 5, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 258.
[11] Par. 6, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 258; Exhibit "P-4", docket, vol. 1, pp. 440-441
[12] Par. 4, Summary of Stipulated Facts, JSFI, docket, vol. 1, p. 262; Par. 7, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 258; Exhibits "P-5", "P-6", and "P-7", docket, vol. 1, pp. 451-453.
[13] Exhibit "P-8", docket, vol. 1, pp. 454-456.
[14] Par. 8, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 258.
[15] Par. 9, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 258.
[16] Par. 10, Summary of Admitted Facts, JSFI, docket, vol. 1, pp. 258-259.

On April 16, 2015, petitioner received the FDDA with attached Details of Discrepancies[17], both dated April 15, 2015, finding petitioner liable for the assessed deficiency VAT for calendar year 2009 in the amount of Php25,772,734.83, allegedly representing basic tax, 50% surcharge, and interest.[18]

Petitioner then filed the present Petition for Review before the Court on May 14, 2015.

Respondent filed his Answer[19] on July 6, 2015, interposing the following Special and Affirmative Defenses:

> "**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**
>
> 4. She reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;
>
> 5. Petitioner was assessed for deficiency value-added tax (VAT) for taxable year 2009, for the reason that during the administrative investigation of its tax case by the respondent CIR, petitioner failed to substantiate or controvert by substantial evidence the BIR factual findings, as stated and shown under the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) dated December 26, 2013, Formal Assessment Notice (FAN) and Assessment Notice No. VT-ELA4967/LA4313/LN024-09-14-095 both dated January 21, 2014, as well as, the Details of Discrepancies attached to the Final Decision on Disputed Assessment (FDDA) dated April 15, 2015, which are briefly discussed hereunder, viz:
>
>> a.) Petitioner was found to have an undeclared sales/receipts not subjected to VAT in the amount of Php83,886,643.55 for taxable year 2009, as reflected in the computerized matching conducted by the BIR on the purchases made by its customers/withholding agents against its total sales/receipts declared in its VAT returns for 2009. Hence, the assessment was made pursuant to Title IV, Section 105 and 108 of the NIRC of 1997, as amended;

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[17] Exhibits "P-49" and "P-50", docket, vol. 2, pp. 525-527.

[18] Par. 5, Summary of Stipulated Facts, JSFI, docket, vol. 1, p. 262; Par. 11, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 259.

[19] Docket, vol. 1, pp. 64-71.

> b.) Petitioner was found during reinvestigation, that its VAT returns for 2009 submitted to the BIR with Summary List of Sales in support of its contention that it has No sales transaction with the third party sources – Nippon Yusen Kaisha, Kawasaki Kisen Kaisha, Ltd. and MOF Company Inc., revealed that: (1) the Summary List of Sales (SLS) was not in accordance with the format prescribed under Section 4.114-3 of Revenue Regulations No. 16-2005, as amended, and (2) the SLS attached to the VAT returns of MCC Transport Philippines Inc., reflects the Taxpayer Identification Number (TIN) of MCC Transport Singapore PTE LTD, hence, inconsistent.

6. Respondent fully complied with the due process requirements mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, and further amended by Revenue Regulations No. 18-2013, when the subject Preliminary Assessment Notice (PAN) dated December 26, 2013, Formal Assessment Notice (FAN) and Assessment Notice No. VT-ELA4967/LA4313/LN024-09-14-095 both dated January 21, 2014, and Final Decision on Disputed Assessment (FDDA) dated April 15, 2015 were issued to herein petitioner. The BIR records clearly show that petitioner were fully appraised of the legal and factual bases on how and why the BIR has arrived such a findings and conclusions assessing petitioner a deficiency VAT for taxable year 2009, and was duly afforded an opportunity to controvert such findings of the respondent when petitioner was able to file a letter protests against the said PAN and FAN.

To begin with, petitioner had knowledge of the investigation being conducted by the BIR on its tax liabilities for taxable year 2009 since way back in September 2010, petitioner received a <u>Letter of Authority No. LOA-051-2010-00000270 dated September 13, 2010</u> for the examination of all its internal revenue taxes for taxable year 2009; that on <u>May 27, 2011</u>, it received a <u>Letter Notice No. 051-TRS-09-00-00024 dated 24 May 2011</u>, affording it the opportunity to reconcile the findings of the BIR on the discrepancy of its gross sales/receipts after a computerized matching conducted by the BIR on the purchases made by its customers/withholding agents against its total sale/receipts declared in its VAT returns for taxable year 2009; that subsequently, petitioner received certain

BIR Letters giving it another opportunity to present its side and to submit evidence to refute the said BIR findings; that on December 27, 2013, petitioner received a Preliminary Assessment Notice (PAN) dated December 27, 2013, assessing the latter a deficiency VAT, pursuant to Letter of Authority No. LOA-051-2010-00000270 dated September 13, 2010 and Letter Notice No. 051-TRS-09-00-00024 dated 24 May 2011; that on January 10, 2014, petitioner filed a Letter Protest against the said Preliminary Assessment Notice (PAN) dated December 27, 2013 issued by the BIR; that later on January 22, 2014, petitioner received a Formal Assessment Notice (FAN) and Assessment Notice No. VT-ELA4967/LA4313/LN024-09-14-095 both dated January 21, 2014, assessing the latter a deficiency value-added tax (VAT) in the amount of Php23,296,125.32, pursuant to Letter of Authority No. LOA-051-2010-00000270 dated September 13, 2010 and Letter Notice No. 051-TRS-09-00-00024 dated 24 May 2011; that on February 20, 2014, petitioner filed a Letter Protest against the said Formal Assessment Notice (FAN) and Assessment Notice No. VT-ELA4967/LA4313/LN024-09-14-095 both dated January 21, 2014

Hence, premised from the foregoing, it is evident that the requirements of due process in taxation are satisfactorily complied with by the respondent, pursuant to Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, and further amended by Revenue Regulations No. 18-2013.

7. Settled is the rule that **the essence of due process in taxation is the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense**. Thus, in the case of ***Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006, citing Estares v. Court of Appeals, G.E. No. 144755, June 8, 2005, 459 SCRA 601,*** the Supreme Court aptly stated that:

> 'It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. In ***Batongbakal v. Zafra, G.R. No. 141806, January 17, 2005, 448 SCRA 399, 410,*** the Court held that:

/v

> 'There is no question that the 'essence of due process is a hearing before conviction and before an impartial and disinterested tribunal' but due process as a constitutional precept does not, always and in all situations, require a trial-type proceeding. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. 'To be heard' does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.' (Emphasis Supplied)

8. Likewise, in the case of ***IDS LOGISTICS (PHILS.), INC., vs. CIR, C.T.A. CASE NO. 7540. May 20, 2010,*** citing the ruling in ***Bank of the Philippine Islands vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 7397, April 9, 2008,*** the Court of Tax Appeals thoroughly discussed **<u>the due process rule in taxation</u>**, as follows:

> 'Revenue Regulations No. 12-85 provides for the procedure covering the Administrative Protests on Assessments of the BIR. Under the said Revenue Regulations, a post-reporting notice is sent to the taxpayer for an informal conference when there are findings of deficiency taxes. Subsequent to this notice is the issuance of the pre-assessment notice upon the findings of the Commissioner that an assessment for deficiency taxes should be issued. However, such pre-assessment notice may or may not be protested by the taxpayer. In fact, Section 5 of the same Revenue Regulation provides that 'In the event that the taxpayer fails to respond to the pre-assessment notice within the prescribed period . . . he should be informed of such fact and the report of investigation should be given due course.'
>
> The essential elements of due process are notice and opportunity to present one's side. To begin with, petitioner had knowledge of the investigation being conducted by the BIR on its tax liabilities for the taxable years 1982-1986, as evidence by the letter of respondent addressed to petitioner dated

> September 25, 1986 and received by petitioner on September 26, 1986. The said letter, in fact, requested for an informal conference on the matter and requested further that petitioner submits documentary evidence to support its stand.

As the facts would demonstrate, **petitioner was never deprived of due process as it was fully appraised of the legal and factual bases of the assessment issued against it; which enabled petitioner to substantially protest the arguments and issues raised. It is sufficient that there is notice to the taxpayer of the legal and factual bases of the assessment and to the Court, this is substantial compliance of what is mandated by Section 228 of the NIRC. Thus, so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.**

Although a pre-assessment notice is required to be issued to petitioner, however, failure on the part of respondent to issue the same cannot be considered as a violation of petitioner's right to due process. It may be required but the issuance of a pre-assessment notice is not indispensable. This finds support in the fact that a taxpayer is not obligated to protest a pre-assessment notice. And even the failure of the taxpayer to protest a pre-assessment notice does not result in the finality of the assessment against it. This Court in the case of ***Security Bank Corporation vs. Commissioner of Internal Revenue*** corroborates the foregoing and explained the significance and effects of a preliminary assessment notice (PAN) vis-à-vis a final assessment notice (FAN), in the following manner:

> 'It must be emphasized that a protest to the preliminary assessment notice is not the same as the protest required to be filed as an answer to the final assessment notice. In fact, a preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the preliminary assessment notice final and unappealable. What is clear from Section 319-A of the Tax Code of 1977, as amended, is that failure on the part of the taxpayer to protest or reply to a preliminary assessment notice paves the way for the issuance of a final assessment notice. However, evident under the said Section is that failure on the part of the taxpayer

> to file a valid administrative protest through a request for reconsideration or reinvestigation on the final assessment notice, shall result in the finality of the said FAN.'
>
> What the law demands is the issuance of a final assessment notice which should be formally protested to by petitioner; otherwise, the same becomes final and executory. Hence, when petitioner received the final assessment notice and duly protested the same, petitioner's right to due process was properly protected and observed.' (Emphasis supplied)

Based on the foregoing, **<u>what the law demands is the issuance of a Final Assessment Notice which should be formally protested to by petitioner; otherwise, the same becomes final and executory</u>**.' (Emphasis supplied)

9. Pursuant to Section 222 (a) of the 1997 Tax Code, it is clearly provided that in case of a <u>false</u> or fraudulent return with intent to evade tax or failure to file a return the tax maybe assessed, or a proceeding in court for the collection of such tax maybe begun without assessment at any time within ten (10) years after the discovery of the falsity, fraud, or omission.

In the instant case, granting without admitting that petitioner indeed filed the required tax returns for income and VAT returns with the BIR, however, it is evident that petitioner failed to report its sales/receipts in the amount of Php83,886,643.55 which exceeded 30% of that declared in cash VAT returns. Hence, such VAT returns of petitioner were deficient and did not disclose the truth regarding the correct amount of income subject to tax, thus, it rendered the subject returns as 'false' within the contemplation of Section 222 of the 1997 Tax Code. As such, petitioner may be assessed for deficiency VAT for taxable year 2009 within ten (10) years from the discovery of said falsity. hence, such deficiency VAT assessment of petitioner for taxable year 2009 has not yet prescribed.

A return is considered **'false',** where the falsity or 'deviation' from the truth would place the government at a disadvantage so as to prevent the assessment and collection of the correct amount of taxes by its lawful agents. ***(Aznar vs. Court of tax Appeals, 56 SCRA 519).***

10. The assessments issued against petitioner for deficiency VAT for taxable year ended December 31, 2009 was made in accordance with law and regulations.

11. The deficiency VAT assessment issued by the respondent CIR to herein petitioner is prima facie presumed correct and made in good faith. Petitioner has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, the said VAT assessment will not be disturbed. Hence, all presumptions are in favor of the correctness of the subject tax assessment issued by the respondent. *(Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil. 290; Sy Po, vs. CTA, G.R. 81446, August 18, 1988; Dayrit, vs. Cruz, L-39910, September 26, 1988; Cagayan Robina Sugar Milling Co., vs. CA, G.R. 122451, October 12, 2000). Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (Delta Motors Co., vs. CIR, CAT Case No. 3782, May 21, 1986; CIR vs. CA, G.R. Nos. 104151 and 105563, March 10, 1995).*"

The Pre-Trial Conference was scheduled on October 20, 2015. [20] Respondent's Pre-Trial Brief[21] was filed on August 26, 2015; while Petitioner's Pre-Trial Brief[22] was filed on September 3, 2015.

The parties filed their Joint Stipulation of Facts and Issues[23] on November 5, 2015. Subsequently, the Court issued a Pre-Trial Order[24] on January 11, 2016.

Petitioner presented Ms. Maria Teresa S. Gonzales[25] and Mr. Jerome Antonio B. Constantino[26], the Court-commissioned Independent Certified Public Accountant (CPA), as its witnesses.

On April 27, 2016, petitioner filed its Formal Offer of Evidence[27], offering Exhibits "P-53", "P-54", "P-1", "P-2", "P-3", "P-3-1", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-10.1", "P-10.2", "P-10.3", "P-11", "P-

[20] Resolution dated September 2, 2015, docket, vol. 1, p. 88.
[21] Docket, vol. 1, pp. 80-86.
[22] Docket, vol. 1, pp. 231-240.
[23] Docket, vol. 1, pp. 257-265.
[24] Docket, vol. 1, pp. 302-312.
[25] Minutes of the hearing dated February 9, 2016, docket, vol. 1, p. 313.
[26] Minutes of the hearing dated April 5, 2016, docket, vol. 1, p. 365.
[27] Docket, vol. 1, pp. 403-420.

12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-71", "P-71-a", "P-55", "P-55-a", "P-56", "P-57", "P-58", "P-59.1" to "P-59.6", "P-60.1" to "P-60.6", "P-61.1" to "P-61.164", "P-62", "P-63.1" to "P-63.2", "P-64.1" to "P-64.27", "P-65.1" to "P-65.6", "P-66", "P-67.1" to "P-67.4", "P-68.1" to "P-68.4", "P-69", and "P-70.1" to "P-70.3", as its documentary evidence. Respondent failed to file his comment thereto.[28]

In the Resolution[29] dated June 7, 2016, the Court admitted Exhibits "P-53", "P-1", "P-3", "P-3-1", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-10.1", "P-10.2", "P-10.3", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-71", "P-71-a", "P-55", "P-55-a", "P-56", "P-57", "P-58", "P-59.1" to "P-59.6", "P-60.1" to "P-60.6", "P-61.1" to "P-61.3", "P-61.5", "P-61.26", "P-61.28" to "P-61.33", "P-61.36" to "P-61.38", "P-61.40" to "P-61.49", "P-61.51" to "P-61.61", "P-61.64", "P-61.66" to "P-61.142", "P-61.144" to "P-61.145", "P-61.147" to "P-61.159", "P-62", "P-63.1" to "P-63.2", "P-64.1" to "P-64.27", "P-65.1" to "P-65.6", "P-66", "P-67.1" to "P-67.4", "P-68.1" to "P-68.4", "P-69", and "P-70.1" to "P-70.3", as petitioner's documentary evidence.

The Court, however, denied the admission of Exhibits "P-54", "P-2", "P-61.4", "P-61.6" to "P-61.25", "P-61.27", "P-61.34" to "P-61.35", "P-61.39", "P-61.50", "P-61.62" to "P-61.63", "P-61.65", "P-61.143", "P-61.146", and "P-61.160" to "P-61.164".

Petitioner filed a Motion for Partial Reconsideration (of the Resolution dated 7 June 2016 on Petitioner's Formal Offer of Evidence)[30] on July 7, 2016. Respondent failed to file his comment thereto.[31]

In the Resolution[32] dated August 15, 2016, the Court partially granted petitioner's Motion for Partial Reconsideration (of the Resolution dated 7 June 2016 on Petitioner's Formal Offer of Evidence) and accordingly admitted Exhibits "P-53-a" and "P-2". The Court still denied the admission of Exhibits "P-61.4", "P-61.6" to "P-61.25", "P-61.27", "P-61.34" to "P-61.35", "P-61.39",

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[28] Records Verification dated May 13, 2016, docket, vol. 2, p. 542.
[29] Docket, vol. 2, pp. 547-548.
[30] Docket, vol. 2, pp. 559-567.
[31] Records Verification dated July 28, 2016, docket, vol. 2, p. 586.
[32] Docket, vol. 2, pp. 626-629.

"P-61.50", "P-61.62" to "P-61.63", "P-61.65", "P-61.143", "P-61.146", and "P-61.160" to "P-61.164".

Respondent presented Revenue Officer (RO) Karen Joy D. Lutching as his witness on November 14, 2016.[33]

Respondent filed his Formal Offer of Evidence[34] through registered mail on December 7, 2016 and received by the Court on January 4, 2017, offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-22", "R-8", "R-9", "R-9-a", "R-9-b", "R-10", "R-10-a", "R-11", "R-11-a", "R-12", "R-12-a", "R-13", "R-13-a", "R-14", "R-14-a", "R-15", "R-15-a", "R-16", "R-16-a", "R-17", "R-17-a", "R-18", "R-18-a", "R-19", "R-19-a", "R-20", "R-20-a", "R-20-b", "R-21", "R-21-a", "R-23", and "R-23-a" as his documentary evidence. Petitioner filed its Comment (To Respondent's Formal Offer of Evidence)[35] through registered mail on December 23, 2016 and received by the Court on January 4, 2017.

In the Resolution[36] dated January 11, 2017, the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-9-a", "R-9-b", "R-10", "R-10-a", "R-11", "R-11-a", "R-12", "R-12-a", "R-13", "R-13-a", "R-14", "R-14-a", "R-15", "R-15-a", "R-16", "R-16-a", "R-17", "R-17-a", "R-18", "R-18-a", "R-19", "R-19-a", "R-20", "R-20-a", "R-20-b", "R-21", "R-21-a", "R-22", "R-23", and "R-23-a" as respondent's documentary evidence.

Petitioner recalled Ms. Maria Teresa S. Gonzales[37] as rebuttal witness on February 20, 2017.

Petitioner's Formal Offer of Rebuttal Evidence[38] was filed on March 1, 2017, offering Exhibits "P-75", "P-75-a", "P-72", "P-73", and "P-74" as its additional documentary evidence. Respondent failed to file his comment thereto.[39] Thereafter, the Court admitted Exhibits "P-75", "P-75-a", "P-72", "P-73", and "P-74" in the Resolution[40] dated March 17, 2017.

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[33] Minutes of the hearing dated November 14, 2016, docket, vol. 2, p. 630.
[34] Docket, vol. 2, pp. 643-651.
[35] Docket, vol. 2, pp. 653-657.
[36] Docket, vol. 2, pp. 661-662.
[37] Minutes of the hearing dated February 20, 2017, docket, vol. 2, p. 676.
[38] Docket, vol. 2, pp. 679-682.
[39] Records Verification dated March 14, 2017, docket, vol. 2, p. 695.
[40] Docket, vol. 2, pp. 697-698.

Petitioner filed its Memorandum[41] on May 8, 2017. On the other hand, respondent failed to file his memorandum.[42] The case was then declared submitted for decision on June 14, 2017.[43]

The Issues

The parties submitted the following issues for this Court's resolution:[44]

1. Whether or not respondent failed to observe due process in the issuance of the assessment in violation of Section 228 of the Tax Code and respondent's own rules and regulations;

2. Whether or not petitioner is liable to pay the total amount of Php25,772,734.83 (inclusive of surcharges and interest), as deficiency VAT for calendar year ended December 31, 2009; and

3. Whether or not the assessment is already barred by prescription.

Discussion/Ruling

The Court has jurisdiction over the present case.

The Court shall first determine the timeliness of the filing of the present Petition for Review in accordance with Section 228 of the NIRC of 1997, as amended, which provides as follows:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx

[41] Docket, vol. 2, pp. 699-735.
[42] Records Verification dated May 30, 2017, docket, vol. 2, p. 746.
[43] Resolution dated June 14, 2017, docket, vol. 2, p. 754.
[44] JSFI, docket, vol. 1, p. 261.

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Pursuant to Section 228 of the NIRC of 1997, petitioner has thirty (30) days from receipt of the FAN within which to file its administrative protest and another thirty (30) days from receipt of respondent's decision or from the lapse of one hundred eighty (180)-day period within which to file its Petition for Review with the Court.

Petitioner received the FAN with attached Details of Discrepancies and Assessment Notice No. VT-ELA4967/LA43131/LN024-09-14-095 on January 22, 2014. Petitioner had 30 days from January 22, 2014 or until February 21, 2014 within which to file its administrative protest. Thus, petitioner timely filed its administrative protest against the FAN on February 20, 2014.

Thereafter, petitioner received the FDDA dated April 15, 2015 with attached Details of Discrepancies, finding petitioner liable for the assessed deficiency VAT for calendar year 2009 in the amount of Php25,772,734.83, representing basic tax, 50% surcharge and interest on April 16, 2015. Counting

30 days from April 16, 2015, petitioner had until May 18, 2015[45] within which to file its Petition for Review with the Court. Hence, the Petition for Review filed by petitioner on May 14, 2015 was clearly filed within the 30-day prescriptive period.

Petitioner's assessment has no factual and legal basis.

The Court shall now proceed to discuss the merits of the case.

Based on the FDDA, respondent assessed petitioner of deficiency VAT amounting to Php25,772,734.83, inclusive of interest and surcharge, for the year ended December 31, 2009, computed as follows:[46]

VATable Receipts per VAT Return		Php 7,108,001.37
Add: Undeclared Sales/Receipts not subjected to VAT		83,886,643.55
Total VATable Sales		**Php90,994,644.92**
Output Tax Due		Php 10,919,357.39
Less: Input Tax per VAT Returns		-
VAT Due		Php 10,919,357.39
Less: VAT payments per returns		852,960.16
Basic Tax Due		**Php10,066,397.23**
Add: 50% Surcharge	Php5,033,198.62	
Interest (01.26.10 to 02.24.14)	10,673,138.98	15,706,337.60
Total Amount Due		**Php25,772,734.83**

As stated in the Details of Discrepancies[47], the undeclared sales/receipts not subjected to VAT was derived from the partial tally of the computerized matching conducted by the BIR on the amounts of purchases of the alleged customers or withholding agents of petitioner against the sales declared in the VAT Returns submitted by petitioner; and the difference amounting to Php83,886,643.55, as computed below, was then assessed in accordance with Title IV, Sections 105 and 108 of the NIRC of 1997, as amended:

[45] May 16, 2015 fell on a Saturday.
[46] Exhibit "P-49", docket, vol. 2, pp. 525-526.
[47] Exhibit "P-50", docket, vol. 2, p. 527.

Gross Sales per Alphalist of payors to one and the same payee		Php91,000,948.54
Less: Gross Sales per tax returns filed		
Zero Rated Sales per returns	Php 6,303.62	
Vatable Sales per returns	7,108,001.37	7,114,304.99
Undeclared Sales/Receipts		**Php 3,886,643.55**

Based on the records, the Gross Sales per Alphalist of payors to one and the same payee amounting to Php91,000,948.54 were made to the following:[48]

Name of Withholding Agent	Gross Sales Income Receipt per Alphalist
Ajinomoto Phils. Corp.	Php 2,520.00
CEVA Logistics Phils. Inc.	16,284.50
Damco Phils Inc.	539.91
Damco Phils Inc.	2,283.30
DSG Sons Group Inc.	6,278.56
General Tuna Corp.	221,837.50
H & E Industries Inc.	30,096.00
Jumao-as Socorro Maribao	7,415.52
JVS Worldwide inc.	20,250.00
Kawasaki Kisen Kaisha Ltd	6,022,779.50
Loopex Packaging Products Inc.	6,683.00
Magnolia Inc.	21,500.90
MOF Company Inc.	5,776,225.00
Monde Nissin Corp.	1,410.00
Nippon Yusen Kaisha	77,478,171.00
Phil. Gold Processing & Refining Corp.	87,177.19
Plastmann Industrial Corp.	6,195.40
Santillan Walter Solis	6,064.00
Simon Enterprises Inc.	1,344.00
Southeast Asia Food Inc.	2,520.00
Starfire Co. Inc.	5,050.00
Stronghold Steel Corp.	5,995.80
Superball Marketing Corp.	5,031.00
Transcontainer (TCL) Phils. Inc.	81,225.08
Trust International Paper Corp.	51,000.00
Trust International Paper Corp.	111,239.50
Unilever Phils Inc.	570,025.63
Unilever RFM Ice Cream, Inc.	436,993.75
Universal Leaf Phils. Inc.	11,330.50

[48] Docket, vol. 1, pp. 422-423.

Zulueta Imelda Sy	5,482.00
Total	**Php 91,000,948.54**

Petitioner denies that it had transactions with the entities listed in the BIR's Details of Discrepancies. Moreover, petitioner argues that the assessment is void because respondent failed to observe due process in the issuance of the assessment in violation of Section 228 of the NIRC of 1997, as amended, and respondent's own rules and regulations. Petitioner likewise insists that respondent's assessment was based on mere presumptions and unverified and inaccurate information and not on actual facts.

Petitioner further asserts that in spite of its denial of the alleged undeclared sales in its response to the BIR Letter Notice and submission of the breakdown of its sales, respondent hastily issued the PAN and subsequently the FAN to which the findings are the same with that of the Letter Notice. Petitioner contends that the FAN only states that petitioner has undeclared sales in its VAT Returns based on computerized matching of the information provided by third-party sources. Petitioner avers that respondent, without verifying the accuracy of the third-party information used in the computer matching, immediately concluded that the VAT Returns submitted by petitioner for the calendar year 2009 are false.

Petitioner also claims that respondent should first notify the taxpayer of his findings through the pre-assessment notice and inform the taxpayer in writing of the law and the facts on which the assessment is made, otherwise the assessment shall be void.

The Court agrees with petitioner.

To reiterate, respondent purportedly found petitioner to have undeclared sales/receipts not subjected to VAT derived from the partial tally of the computerized matching conducted by the BIR on the amounts of purchases of the alleged customer or withholding agents of petitioner against the sales declared in the VAT Returns submitted by petitioner, and the difference amounting to Php83,886,643.55 was then assessed in accordance with Sections 105 and 108 of the NIRC of 1997, as amended.

However, records do not show that the information provided by the BIR were verified.

In her attempt to investigate, respondent's witness, RO Karen Joy D. Lutching, attested that she sent Confirmation Letters[49] to those customers of petitioner for them to reply and to confirm the veracity of the data per Letter Notice of the BIR involving their purchases made from petitioner.[50]

Records show that only the letters sent to customers "Kawasaki Kisen Kaisha, Ltd."[51], "Starfire Co., Inc."[52], and to "Transcontainer (TCL) Philippines, Inc."[53] had return cards from the addressee. All others only have registry receipt, which the Court finds insufficient to prove that the Confirmation Letters were actually received by the addressees.

Upon examination of the BIR Confirmation Letters, the Court notes that the letter to "Kawasaki Kisen Kaisha, Ltd." has a confirmation reply but the details regarding the TIN and authority or title of the signatory are lacking. Hence, the Court cannot verify if the person who received and confirmed the same is indeed a representative from "Kawasaki Kisen Kaisha, Ltd." and an authorized signatory.

As a result, only the purported sales transactions made to "Starfire Co., Inc." (Php5,050.00) and "Transcontainer (TCL) Philippines, Inc." (Php81,225.08) with an aggregate amount of Php86,275.08 appear to have been verified. Furthermore, considering that petitioner was not able to account for the undeclared sales/receipts from these third-party sources, the same may be a proper subject of a deficiency VAT assessment. All other items of assessment are considered void and shall be cancelled as respondent failed to secure the required certifications or confirmations from the third-party sources. Although Section 6(B) of the NIRC of 1997, as amended, authorizes the BIR to assess proper tax on the best evidence obtainable, the law, however, provides that the assessment must be based on actual facts.

In the case of *Keansburg Marketing Corporation (KMC) vs. Commissioner of Internal Revenue*[54], a comparison of petitioner's sales per Third-party information (TPI) and sales per Summary List of Sales (SLS) showed that therein petitioner had undeclared sales from its customers in the amount of Php9,596,358.14; and an assessment for deficiency VAT was issued against it pursuant to Section 106 of the NIRC of 1997, as amended, to wit:

[49] Exhibits "P-13" to "P-42", docket, vols. 1 and 2, pp. 472-504; BIR Records, p. 283-323.
[50] Judicial Affidavit of RO Karen Joy D. Lutching, 23 Q&A, Exhibit "R-23"; TSN, November 14, 2016, p. 14.
[51] Exhibit "R-10", BIR Records, p. 313.
[52] BIR Records, p. 312; Exhibit "P-33", docket, vol. 1, p. 492.
[53] BIR Records, p. 311, Exhibit "P-37", docket, vol. 1, p. 498.
[54] CTA Case No. 9076, January 5, 2018.

Sales per particular Customers (TPI)	Php12,862,162.63
Sales per Declared SLS	3,265,804.49
Undeclared Sales	**Php 9,596,358.14**

KMC argued that the method employed by respondent in securing data from the BIR-TPI, which were compared with the figures appearing on its SLS, violates Revenue Memorandum Order (RMO) No. 04-03, which requires the BIR to verify the allegations stemming from TPI through externally sourced data. The BIR admitted that the Summary List of Purchases (SLPs) received by the BIR were not verified with externally sourced data to check its correctness. Likewise, respondent did not secure the required certifications or confirmation from the alleged third-party sources to support the integrity of the amounts per BIR-TPI data. Hence, the assessment for the undeclared sales was cancelled.

In the recent *En Banc* case of *Commissioner of Internal Revenue vs. G&W Architects, Engineers and Project Consultants, Co.*[55], the Court of Tax Appeals *En Banc* affirmed that undeclared purchases resulting from **unverified** third-party information matching cannot hold water.

Notably, RMO No. 04-03 recognizes the need to verify the amounts reflected in the Quarterly report with other externally sourced data in ascertaining the taxpayer's under-declaration of revenues or overstatement of costs and expenses, if any. The pertinent portions of RMO No. 04-03 are quoted hereunder:

> "The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.
>
> The RELIEF System was created to support third-party information program and voluntary assessment program of the Bureau through the cross-referencing of third-party information from the taxpayer's Summary List of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.

[55] CTA EB No. 1572 (CTA Case No. 8604), February 23, 2018.

> The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information with other externally sourced data will detect under-declaration of revenues/over-declaration of cost and expenses, thus, resulting to greater tax potential."

Moreover, in the case of *Fax n Parcel, Incorporated vs. Commissioner of Internal Revenue*[56], as affirmed by the Court of Tax Appeals *En Banc*[57], this Court ruled that although tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be, to wit:

> "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 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.
>
> 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

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[56] CTA Case No. 7415, November 22, 2011, citing *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.
[57] CTA EB No. 883, February 14, 2013.

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.*"

It is a legal truism that as a general rule, tax assessments are presumed to be correct. However, assessments should not be based on presumptions no matter how reasonable or logical the presumption might be. In order to withstand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[58]

As mentioned, only the purported sales transactions made to "Starfire Co., Inc." (Php5,050.00) and "Transcontainer (TCL) Philippines, Inc." (Php81,225.08) with an aggregate amount of Php86,275.08 appear to have been verified. Nevertheless, the assessment on the same shall also be cancelled on account of prescription.

Having failed to establish that Petitioner's tax returns were fraudulent with the intent to evade tax, the three (3) year prescriptive period under Section 203 of the NIRC applies.

Considering that the said total undeclared amount represents only 1.21% (Php81,225.08 ÷ Php7,114,304.99) of the total declared sales of petitioner, respondent clearly failed to demonstrate that petitioner had filed a fraudulent return with the intent to evade tax. Since there is no substantial under-declaration and/or fraud to speak of, Section 203 of the NIRC of 1997, as amended, will apply and the prescriptive period of three (3) years will govern.

Records show that petitioner filed its VAT Returns for the four (4) quarters of calendar year 2009 on the following dates:

Period Covered	Date Filed/Paid
1st Quarter 2009	April 27, 2009
2nd Quarter 2009	July 21, 2009
3rd Quarter 2009	October 21, 2009

[58] *Fax n Parcel, Incorporated vs. Commissioner of Internal Revenue,* CTA EB No. 883, February 14, 2013.

4th Quarter 2009	January 22, 2010

Section 203 of the NIRC of 1997, as amended, provides that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return or when the return was filed, whichever is later. A return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. Thus, respondent had the following dates within which to issue the 2009 deficiency VAT assessment:

Period Covered	**Date Filed/Paid**	**Last Day to File as Required by Law[59]**	**Last Day to Assess**
1st Quarter 2009	April 27, 2009	April 25, 2009	April 27, 2012
2nd Quarter 2009	July 21, 2009	July 25, 2009	July 25, 2012
3rd Quarter 2009	October 21, 2009	October 25, 2009	October 25, 2012
4th Quarter 2009	January 22, 2010	January 25, 2010	January 25, 2013

Considering that the FAN was received by petitioner only on January 22, 2014, the same was clearly issued beyond the 3-year prescriptive period allowed by law. Hence, respondent's deficiency VAT assessment for calendar year 2009 is null and void.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated April 15, 2015, assessing petitioner for deficiency value-added tax, including surcharge and interest, in the aggregate amount of Php25,772,734.83 for the year ended December 31, 2009 is **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[59] 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. xxx

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
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.

ROMAN G. DEL ROSARIO
Presiding Justice