REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***THIRD DIVISION***

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|---|---|
| **NEXT MOBILE, INC.,** | **CTA CASE NO. 7970** |
| *Petitioner,* | Members: |
| -versus- | **BAUTISTA,** *Chairperson*<br>**PALANCA-ENRIQUEZ,** and<br>**COTANGCO-MANALASTAS,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** | **Promulgated:** |
| *Respondent.* | MAR 25 2013<br>[signature] 1:48 p.m. |

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# DECISION

**COTANGCO-MANALASTAS, *J.*:**

The Petition for Review filed by Next Mobile, Inc. (petitioner) on September 10, 2009 is seeking the nullification of the Final Decision of the Bureau of Internal Revenue (BIR) that found petitioner liable for deficiency value-added tax (VAT) for taxable year 2005 in the aggregate amount of P2,785,754.67.

## STATEMENT OF FACTS

Petitioner Next Mobile, Inc. is a domestic corporation organized under Republic Act Nos. 7301 and 7940, with principal office address at Next Mobile Building, 2244 España Avenue, Sampaloc, Manila.[1]

On the other hand, respondent is the head of the Bureau of Internal Revenue, holding office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On January 14, 2009, respondent issued a Formal Letter of Demand with Final Assessment Notices (FAN) for deficiency VAT and expanded withholding tax against petitioner for taxable year 2005.[2]

In a letter dated March 5, 2009, petitioner formally protested the assessment.[3]

After the BIR's review of the report of re-investigation covering all internal revenue taxes for taxable year 2005, on August 11, 2009, petitioner received the decision of the BIR on its protest which reduced the deficiency VAT payable to P2,785,754.67.[4] Thus, on September 10, 2009, petitioner filed this Petition for Review.

In her Answer[5] filed on October 19, 2009, respondent interposed the following special and affirmative defenses:

> "6. The subject assessments are valid and correct and the petitioner has the burden of proof to impugn their validity (Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647). Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671); and assessments duly made by a BIR examiner and approved by her superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 547).
>
> 7. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is

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[1] Par. 1, Relevant Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 289
[2] Par. 5, Relevant Stipulated Facts, JSFI, docket, p. 290; Exhibits "A", "A-1", and "A-2"
[3] Par. 6, Relevant Stipulated Facts, JSFI, docket, p. 290; Exhibit "B"
[4] Par. 7, Relevant Stipulated Facts, JSFI, docket, p. 290; Exhibit "C"
[5] Docket, pp. 263-266

wrong but also that the taxpayer is right (Tan Guan vs. Court of Appeals, et. al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation, Co., 107 Phil. 967 [1960]).

8. All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue; the taxpayer must prove the contrary (*Commissioner of Internal Revenue v. Antonio Tuason, Inc., 173 SCRA 397; Commissioner of Internal Revenue v. Construction Resources of Asia, Inc., 145 SCRA 671).*

9. Petitioner filed *false VAT returns*, hence, respondent's right to assess is within ten (10) years from the date of the discovery of falsity pursuant to Section 222 (a) of the 1997 Tax Code, thus;

> 'Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –*
>
> *In the case of a false xxx xxx return with intent to evade tax xxx, the tax may be assesses (sic) or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of falsity xxx xxx'*

10. The assessments were issued in the regular course and within the reglementary period to assess provided by law."[6]

On October 21, 2009, the Court issued a Notice of Pre-Trial Conference setting the case for pre-trial conference on November 19, 2009.[7]

Meanwhile, petitioner filed its Reply on November 3, 2009, alleging that it did not file false VAT returns, contrary to respondent's allegation and that this Court has jurisdiction over the case pursuant to Republic Act No. 1125, as amended.[8]

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[6] Docket, pp. 264-265
[7] Docket, p. 267
[8] Docket, pp. 268-271

Petitioner's Pre-Trial Brief[9] and respondent's Pre-Trial Brief[10] were both filed on November 16, 2009.

On December 9, 2009, the parties filed their Joint Stipulation of Facts and Issues[11], which was later approved in a Resolution[12] dated December 29, 2009. In the same Resolution, the pre-trial conference was considered terminated.

Thereafter, trial proceeded, giving both parties the opportunity to present their respective documentary and testimonial evidence.

Petitioner presented Exhibits "A" to "UU-1", which were later admitted as part of the evidence for petitioner as per Resolutions dated April 13, 2011[13] and June 3, 2011[14]. On the other hand, respondent presented Exhibits "1" to "48-a", which were later admitted via Resolution dated June 21, 2011, with the exception of Exhibits "37" and "37-a" which were denied admission for respondent's failure to present the original document for comparison and Exhibit "10" which was denied admission for respondent's failure to identify the same in Court.[15]

The case was submitted for decision on August 16, 2012, after petitioner submitted its Memorandum[16] on July 30, 2012 and respondent filed her Memorandum[17] on August 10, 2012.

## STATEMENT OF ISSUES

The parties submitted the following issues[18] for this Court's disposition:

"1. Whether the FAN was issued within the 3-year prescriptive period.

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[9] Docket, pp. 273-279
[10] Docket, pp. 281-284
[11] Docket, pp. 289-292
[12] Docket, p. 301
[13] Docket, pp. 539-540
[14] Docket, p. 567
[15] Docket, pp. 664-665
[16] Docket, pp. 674-690
[17] Docket, pp. 692-700
[18] Stipulated Issues, JSFI, docket, p. 291

2. Whether Next Mobile is liable for deficiency VAT in the total amount of P2,785,754.67 for taxable year 2005.

3. Whether Next Mobile is liable for 20% interest on the alleged deficiency VAT.

4. Whether Next Mobile is liable for compromise penalty.

5. Whether Next Mobile filed false VAT returns for taxable year 2005 that will warrant the application of the 10-year prescriptive period."

**RULING OF THE COURT**

*Understatement of VATable sales/collections; False return; Prescription of period to assess tax.*

On the issue of prescription, as raised in the first and fifth stipulated issues, petitioner contends that the right of respondent to assess it of deficiency VAT for the first, second, and third quarters of the year 2005 had already lapsed pursuant to Section 203 of the NIRC of 1997, as amended, which states:

> "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 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."

Corollary thereto, Section 114(A) of the NIRC of 1997 provides:

> "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."

Based on the foregoing, the three-year period to assess commences from the date of actual filing of the return or from the last day prescribed by law for the filing of such return, whichever comes later. In the case of VAT, the filing of the Quarterly VAT Return must be made within twenty-five (25) days after the close of the taxable quarter. Hence, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed by law for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

Applying Section 114(A) of the NIRC of 1997, respondent had until the following dates within which to assess petitioner for deficiency VAT:

| Exhibit | Return Filed | Date Filed | Last Day to File Return | Last Day to Assess |
|---|---|---|---|---|
| "O" | 1st Quarter | April 25, 2005 | April 25, 2005 | April 25, 2008 |
| "Q" | 2nd Quarter | July 27, 2005 | July 25, 2005 | July 27, 2008 |
| "R" | 3rd Quarter | October 25, 2005 | October 25, 2005 | October 25, 2008 |
| "S" | 4th Quarter | September 27, 2006 | January 25, 2006 | September 27, 2009 |

However, respondent alleged in her Answer to the Petition for Review that petitioner filed false VAT returns and thus invoked the 10-year period of limitation within which to assess as provided in Section 222(a) of the NIRC of 1997, as amended, which states:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time

> within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

From the foregoing, there are three exceptions to the period of limitation of assessment, namely; (1) filing of false return, (2) filing of fraudulent return with intent to evade tax, and (3) failure to file a return. The tax may be assessed or a proceeding in court for the collection of such tax may be begun without assessment at any time within ten years after the discovery of the falsity, fraud or omission.

In this case, respondent claims that there were portions of petitioner's sales which were not subjected to VAT. In other words, there is deviation from the truth, which is too substantial to be ignored to the prejudice of the government and which renders the VAT return false within the purview of Section 222(a) of the NIRC of 1997, as amended.[19]

Thus, in resolving whether there was indeed falsity in the return, the Court shall examine the findings made by respondent in the assessment in comparison with the VAT returns filed by petitioner for taxable year 2005.

Respondent computed the deficiency VAT assessment for taxable year 2005 in the amount of P2,785,754.67[20] as follows:

| | | |
|---|---|---|
| Collection Subject to VAT | | P 328,593,864.00 |
| Less: Revenue not subject to VAT | | |
| Share on interconnection income | P 2,353,090.00 | |
| Roaming Revenue | 11,188,547.00 | |
| Zero-rated | 300,579.81 | 13,842,216.81 |
| **Vatable Revenue** | | **P 314,751,647.19** |
| | | |
| Output Tax | | P 31,475,164.72 |
| Less: Undisputed input tax | | 28,708,038.44 |
| VAT Payable | | 2,767,126.28 |
| Less: VAT paid | | 1,176,735.31 |
| **Deficiency VAT** | | P **1,590,390.97** |

[19] Respondent's Memorandum filed on August 10, 2012, docket, p. 697
[20] Exhibit "C"

| | | |
|---|---|---|
| **Add: Penalties** | | |
| **Interest (1-26-06 to 9-30-09)** | **P 1,170,363.70** | |
| **Compromise** | **25,000.00** | **1,195,363.70** |
| **Total VAT Payable** | | **P 2,785,754.67** |

The basic deficiency VAT of P1,590,390.97 arose from respondent's finding that petitioner's VATable revenues amounted to P314,751,647.19 instead of the amount of P298,847,736.50 reflected per petitioner's VAT returns; hence, an under-declaration in the amount of P15,903,910.69[21].

In arriving at the VATable revenues of P314,751,647.19, respondent computed petitioner's sales collections, net of VAT, for the year 2005 in the amount of P328,593,864.00 based on the sales and accounts receivable balances reflected in petitioner's audited financial statements, as shown below[22]:

| | Sales Net of VAT | Inclusive of VAT | Collections Net of VAT |
|---|---|---|---|
| Accounts Receivable, Beginning | | 472,436,546.00 [23] | |
| Sales | 318,158,534.00[24] | 349,974,387.40 | |
| Total | | 822,410,933.40 | |
| Collection | | 361,453,250.40 | 328,593,864.00 |
| Accounts Receivable, End | | 460,957,683.00 [25] | |

After deducting the amount of P13,842,216.81, representing petitioner's revenues not subject to VAT from the total collections of P328,593,864.00, respondent came up with petitioner's alleged VATable revenues in the amount of P314,751,647.19. The latter figure was then compared with the amount of P298,847,736.50 reported per VAT returns resulting in an undeclared VATable sales collections of P15,903,910.69 upon which a ten percent (10%) deficiency VAT in the amount of P1,590,390.97 was imposed.

[21] Erroneously indicated in Exhibit "C" as P62,605,513.90
[22] Exhibit "C"
[23] BIR Records, p. 20, Notes to Financial Statements, no. 4
[24] BIR Records, p. 16, Notes to Financial Statements, no. 12
[25] BIR Records, p. 20, Notes to Financial Statements, no. 4

Notably, petitioner was not able to present documentary evidence to explain the discrepancy of P15,903,910.69. This fact was admitted by petitioner in its Memorandum[26] and in the Supplemental Judicial Affidavit[27] of petitioner's Director for Finance, Mr. Patricio S. Carlos, thus:

> "Q.5: How can you explain then the remaining difference in revenue in the amount of Php15,903,910.69?
>
> A: As I mentioned in the Affidavit, the Final Assessment Notice ('FAN') was received by Next Mobile only on 6 February 2009. At that time, since more than three (3) years have lapsed from the filing of the quarterly VAT returns of Next Mobile for 2005, Next Mobile did not anymore retain records pertinent to VAT. Thus, Next Mobile cannot now substantiate with sufficient documents the reason why the remaining Php15,903,910.69 should not be included in the gross receipts subject to VAT.
>
> Furthermore, when Next Mobile was preparing its Protest against the FAN, Next Mobile cannot anymore access a segment of its information technology ('IT') system and retrieve therefrom the relevant documents that could have sufficiently explained the foregoing discrepancy.
>
> In any case, even if the amount of the alleged undeclared revenue is correct, Next Mobile is still not liable for any deficiency VAT for the year 2005."

In view of the above-stated computation of respondent which resulted in undeclared gross receipts in the amount of P15,903,910.69, and considering further petitioner's failure to present evidence to refute the existence of the said undeclared gross receipts, the Court therefore agrees with respondent's findings that there was an understatement of petitioner's VAT sales collections in 2005.

In the case of *Aznar vs. Court of Tax Appeals and Collector of Internal Revenue*[28], a false return has been defined as a deviation from the truth or fact, whether intentional or not, to wit:

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[26] Docket, p. 684, par. 19.3
[27] Exhibit "UU"

[28] G.R. No. L-20569, August 23, 1974

> "(W)e believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, 'falsity', 'fraud', and 'omission'. That there is a difference between **'false return'** and 'fraudulent return' cannot be denied. While the first merely implies **deviation from the truth, whether intentional or not,** the second implies intentional or deceitful entry with intent to evade the taxes due."

Furthermore, in the case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr., et al.*[29], the High Court ruled that even assuming that the return merely failed to reflect the true or actual amount without fraud on the part of the taxpayer, in other words, there is merely falsity in the return, the prescriptive period to assess the correct taxes is ten years from the discovery of the falsity. The pertinent portion of the said Decision reads:

> "It is true that in a query dated 24 August 1989, Altonaga, through his counsel, asked the Opinion of the BIR on the tax consequence of the two sale transactions. Thus, the BIR was amply informed of the transactions even prior to the execution of the necessary documents to effect the transfer. Subsequently, the two sales were openly made with the execution of public documents and the declaration of taxes for 1989. However, these circumstances do not negate the existence of fraud. As earlier discussed those two transactions were tainted with fraud. And even assuming *arguendo* that there was no fraud, **we find that the income tax return filed by CIC for the year 1989 was false. It did not reflect the true or actual amount gained from the sale of the Cibeles property** xxx.
>
> As stated above, **the prescriptive period to assess the correct taxes in case of false returns is ten years from the discovery of the falsity**. xxx" (*Emphases supplied*) /

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[29] G.R. No. 147188, September 14, 2004

In the present case, the understatement in petitioner's VATable sales collections in 2005 makes petitioner's VAT returns for the said year false. Accordingly, the ten-year prescriptive period applies and not the three-year prescriptive period as alleged by petitioner.

*A record of sufficient input VAT in the books of a taxpayer is not a bar to having the said taxpayer assessed for deficiency output VAT.*

The Court does not agree with petitioner's line of reasoning that even assuming it was liable for deficiency VAT it had more than enough input VAT to which the deficiency VAT may be credited against and respondent should have simply credited the same amount of unutilized input VAT against the subject deficiency VAT assessment; and since petitioner had sufficient input VAT which was not credited/applied against any output VAT (for 2005 and the succeeding years), it should not be held liable for deficiency output VAT.[30]

*First*, respondent is not authorized to automatically credit or offset unutilized input VAT, or any claims a taxpayer may have from the government, against a deficiency VAT assessment or any existing tax liability. Such practice is not sanctioned by any law or rules in this jurisdiction. Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of an assessment. He must be informed of the facts and the law upon which the assessment is made. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.[31]

*Second*, a record of excess and unutilized input VAT in petitioner's books, sufficient to cover its tax liabilities, does not

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[30] Docket, pp.686-688.
[31] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

bar respondent from issuing deficiency VAT assessment/s against petitioner. In this case, the subject deficiency VAT assessment against petitioner arose from "underdeclaration of sales subject to Value Added Tax pursuant to Sec. 108 of the NIRC"[32]. The presence of unutilized input VAT sufficient to cover the subject deficiency VAT assessment, does not change that fact that petitioner had undeclared VATable sales/collections in 2005 in the amount of P15,903,910.69 upon which a 10% deficiency VAT may be imposed, and that this understatement in VATable sales/collections makes petitioner's VAT returns for 2005 false.

The existence of sufficient unutilized input VAT and the matter having the same credited against or subtracted from the subject deficiency VAT assessment, can only be viewed by this Court, at most, as a probable mode by which the subject deficiency VAT assessment can be paid/settled; but it is not a valid ground that would warrant the nullification or cancellation of the subject FAN and Final Decision.

*Propriety of crediting the claimed 2005 input VAT against the subject deficiency VAT assessment to pay for/settle tax liability.*

As earlier mentioned, petitioner's assertion as to the sufficiency of its unutilized input VAT can only be viewed by this Court, at most, as a probable mode by which the subject deficiency VAT assessment can be paid/settled; but not as valid ground to nullify or cancel the subject FAN and Final Decision. Accordingly, the Court deems it prudent address this looming question, *viz:*

> May petitioner credit or offset its claimed 2005 excess and unutilized input VAT against the subject deficiency VAT assessment of P1,590,390.97, in order to pay for/settle said tax liability?

Petitioner's Quarterly VAT Return for the fourth quarter of 2005 shows that petitioner had excess and unutilized input

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[32] Exhibit "A"

VAT in the amount of P255,847,304.73[33]. Respondent, as reflected in the Formal Letter of Demand[34], acknowledged that petitioner had excess and unutilized input VAT in the same amount "to be carried over next year".

To prove that the input VAT of P255,847,304.73 reflected in the PAN and FAN has substantially remained unutilized since 2005, petitioner presented its Quarterly VAT Returns for the first quarter of 2006 up to the second quarter of 2010. Based on the said Quarterly VAT Returns, petitioner's VAT transactions for the said period may be summarized as follows:

| **Output Tax Due** | |
|---|---|
| **2006**[35] | 22,686,364.90 |
| **2007**[36] | 16,393,939.32 |
| **2008**[37] | 12,154,086.01 |
| **2009**[38] | 823,509.08 |
| **2010**[39] | 336,067.53 |
| **Total** | **52,393,966.84** |

The table illustrates that even if the 2005 input VAT of P255,847,304.73 were utilized, credited or offset against the output tax due of petitioner from 2006 to 2010 amounting to P52,393,966.84, there still remains a substantial unutilized input VAT sufficient to pay for/settle petitioner's deficiency output VAT of P1,590,390.97 assessed on undeclared VATable sales/ collections.

After a conscientious study of the relevant laws, rules, and jurisprudence applicable in this instance, the Court is contrained to rule that petitioner may not credit or offset the 2005 input VAT of P255,847,304.73 reflected in the PAN and

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[33] Exhibit "S"
[34] Exhibit "A"
[35] Exhibits "AA", "BB", "CC", and "DD"
[36] Exhibits "EE", "FF", "GG", and "HH"
[37] Exhibits "II", "JJ", "KK", and "LL"
[38] Exhibits "MM", "NN", "OO", and "PP"
[39] Exhibits "QQ" and "RR"

FAN against the subject deficiency VAT assessment of P1,590,390.97 to pay for/settle its tax liability?

Under the NIRC of 1997, specifically Section 110, the rule is that **any input tax shall be creditable against the output tax only if it is evidenced by a VAT invoice or official receipt**. Quoted below is the relevant portion of the said provision:

> "SEC. 110. Tax Credits. —
>
> "(A) Creditable Input Tax. —
>
> "(1) Any **input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions **shall be creditable against the output tax**: xxx" (Emphasis supplied)

Consistent with the foregoing is Section 4.110-8 of Revenue Regulations No. 16-2005, otherwise known as the "Consolidated Value-Added Tax Regulations of 2005", *viz*:

> "SEC. 4.110-8 *Substantiation of Input Tax Credits.* --
>
> (a) **Input taxes for** the importation of goods or the **domestic purchase of goods, properties or services** is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the Final Withholding VAT, **must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:**
>
> (1) xxx
>
> (2) For domestic purchase of goods and properties – **invoice showing the information required under Secs. 113 and 237 of the Tax Code**
>
> (3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
>
> (4) For the purchase of services – **official receipt showing the information required under Secs. 113 and 237 of the Tax Code.**

xxx"

In this case, petitioner failed to present and offer in evidence any VAT invoice or official receipt to support the claimed excess and unutilized input VAT which petitioner seeks to be credited or charged against its deficiency VAT liability.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[40]

Furthermore, it bears to stress that this Court is a court of record[41] and as such it is "required to conduct a formal trial *(trial de novo)* where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration."[42] As cases filed before this Court are litigated de novo, party-litigants are mandated to prove every minute aspect of their cases.[43]

Hence, petitioner's input VAT, not being supported by any VAT invoice or official receipt, cannot be credited or charged against its deficiency VAT liability.

*Deficiency Interest*

The imposition of deficiency interest is in order pursuant to Sec. 249 (B) of the 1997 NIRC. Section 249 (B) is clear on the imposition of deficiency interest in the event that the taxpayer is held liable for deficiency taxes, *viz*:

> "SEC. 249. Interest. —
>
> (A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may

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[40] *Milagros E. Amores vs. HOR Electoral Tribunal,* G.R. No. 189600, June 29, 2010.
[41] Section 8, Republic Act No. 1125 (AN ACT CREATING THE COURT OF TAX APPEALS).
[42] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007; and Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.
[43] Dizon vs. Court of Tax Appeals, et al., G.R. No. 140944, April 30, 2008.

> be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof."

**WHEREFORE**, premises considered, the *Petition for Review* filed by Next Mobile Inc. is hereby **DENIED**.

Accordingly, the assessment for deficiency VAT issued by respondent Commissioner of Internal Revenue against petitioner for taxable year 2005 is hereby **AFFIRMED**. Petitioner is **ORDERED** to **PAY** respondent the amount of ONE MILLION FIVE HUNDRED NINETY THOUSAND THREE HUNDRED NINETY AND 97/100 PESOS (P1,590,390.97) representing deficiency value-added tax for taxable year 2005.

In addition, petitioner is liable to pay deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT in the amount of P1,590,390.97 computed from January 26, 2006, until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997.

The compromise penalty of P25,000.00, originally imposed by respondent is hereby excluded there being no compromise agreement between the parties.

**SO ORDERED.**

**AMELIA R. COTANGCO- MANALASTAS**
Associate Justice

**WE CONCUR:**

**LOVELL R. BAUTISTA**
Associate Justice

***(Retired)***
**OLGA PALANCA-ENRIQUEZ**
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.

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII 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