REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10566

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

SEP 09 2025

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DECISION

FERRER-FLORES, J.:

The **Petition for Review** prays for the Court to order the cancellation and withdrawal of respondent's assessment against petitioner for alleged deficiency value-added tax (VAT) for the period January 1, 2014 to June 30, 2014, in the total amount of **₱656,446,244.25**, inclusive of interest.[1]

THE PARTIES

Petitioner Fort Bonifacio Development Corporation is a domestic corporation, duly organized and existing under Philippine law with office address at 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City, Philippines. It is primarily engaged in the development of a 440-hectare area in Fort Bonifacio for residential, commercial, business, mixed development, institutional, recreational, tourism, sports, amusement, people movers, security systems, and other purposes, and it is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 004-707-554-000, and with the Philippine Economic Zone Authority (PEZA).[2]

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[1] Statement of the Case, Pre-Trial Order dated September 12, 2022, Docket – Vol. 2, p. 723.

[2] Par. 1.1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket - Vol. 2, p. 695.

Respondent is the duly appointed **Commissioner of Internal Revenue (CIR)** vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of his office, including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, other tax laws, and rules and regulations. He may be served summons, pleadings, and other processes of this Court at his office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Petitioner received the Letter of Authority (LOA) No. eLA201100086820 dated October 3, 2014 from the BIR Large Taxpayers Service (LTS),[4] authorizing Revenue Officers (ROs) Margie Padre, Ivy Claudette Puno and Group Supervisor (GS) Mariesol Girang to examine petitioner's books of accounts and other accounting records for VAT for the period January 1, 2014 to June 30, 2014, signed by Officer-In-Charge (OIC) – Assistant Commissioner of the Large Taxpayers Service, Nestor S. Valeroso.[5]

Subsequently, on March 17, 2017, petitioner received the Preliminary Assessment Notice (PAN) dated March 16, 2017 – from the LTS, proposing to assess petitioner for deficiency VAT in the total amount of ₱657,831,579.82, inclusive of interests and compromise penalties, for January 1, 2014 to June 30, 2014.[6]

On April 10, 2017, petitioner then received the Formal Letter of Demand (FLD) dated April 10, 2017.[7] The FLD assessed petitioner alleged deficiency VAT for the first semester of 2014 in the total amount of ₱664,868,918.41, inclusive of interests and compromise penalties, broken down as follows:[8]

Tax Type	Basic Tax Due	Interest	Total
VAT	428,104,763.97	236,689,154.44	**664,793,918.41**
Compromise Penalties	75,000.00		**75,000.00**
		Total	**664,868,918.41**

3 Par. 1.2, Admitted Facts, JSFI, Docket – Vol. 2, p. 696.
4 Exhibit "P-4", Docket – Vol. 2, pp. 884 to 886; Exhibit "R-1", BIR Records (Exhibit "R-8"), p. 3.
5 Par. 1.3, Admitted Facts, JSFI, Docket – Vol. 2, p. 696.
6 *Id.*; Exhibit "P-5", Docket – Vol. 2, pp. 887 to 905; Exhibit "R-4", BIR Records (Exhibit "R-8"), pp. 311 to 330.
7 Exhibit "P-6", Docket – Vol. 2, pp. 906 to 927; Exhibit "R-5", BIR Records (Exhibit "R-8"), pp. 334 to 355.
8 Par. 1.5, Admitted Facts, JSFI, Docket – Vol. 2, p. 696.

Thereafter, on May 10, 2017, petitioner filed its letter dated May 9, 2017 (Request for Reinvestigation) with the BIR.[9]

On June 1, 2021, respondent issued the Final Decision on Disputed Assessment (FDDA), which was received by petitioner on June 2, 2021.[10] The FDDA assessed petitioner with alleged deficiency VAT for the period from January 1, 2014 to June 30, 2014 in the total amount of ₱656,446,244.25, inclusive of interest, broken down as follows:[11]

Tax Type	Basic Tax Due	Interest	Total
VAT	316,098,785.16	340,347,459.09	**656,446,244.25**

PROCEEDINGS BEFORE THIS COURT

The present *Petition for Review* was filed on July 1, 2021.[12]

Respondent then filed his *Answer* on November 29, 2021,[13]

In the Resolution dated December 16, 2021,[14] the case was referred to mediation at the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA), and the parties were ordered by the Court to immediately proceed and to personally appear or through their authorized representative at the PMC-CTA on February 10, 2022. The PMC-CTA, however, later issued the *Back to Court* Report on March 1, 2022,[15] stating that mediation was refused by petitioner.

Respondent then transmitted the *BIR Records* of the present case on May 27, 2022.[16]

The Pre-Trial Conference was set and held on June 23, 2022.[17] Prior thereto, *Petitioner's Pre-Trial Brief* was filed on June 20, 2022,[18] while

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9 Exhibit "P-7", Docket – Vol. 2, pp. 928 to 937.
10 Exhibit "P-8", *Id.* at 938 to 942; Exhibit "R-7", BIR Records (Exhibit "R-8"), pp. 773 to 782.
11 Par. 1.6, Admitted Facts, JSFI, Docket – Vol. 2, p. 697.
12 Docket – Vol. I, pp. 6 to 38.
13 *Id.* at 275 to 295.
14 *Id.* at 297 to 298.
15 *Id.* at 311.
16 *Ex- Parte Compliance* dated May 27, 2022, Docket – Vol. I, pp. 316 to 317.
17 Resolution dated March 14, 2022, Docket – Vol. I, pp. 309 to 310; Minutes of the hearing held on, and Order dated, June 23, 2022, Docket – Vol. I, pp. 346 and 353 to 355, respectively.
18 Docket – Vol. I, pp. 324 to 335.

respondent submitted his *Compliance* on June 21, 2022,[19] attaching his *Pre-Trial Brief*.[20]

In the meantime, on June 28, 2022, petitioner filed its *Urgent Motion to Suspend Collection of Tax Liability ("Urgent Motion")*,[21] to which respondent failed to file his comment.[22] At the hearing held for the said *Urgent Motion* on July 21, 2022, petitioner presented the testimony of its Comptroller, Ms. Anna Lisa P. Mesina.[23]

Subsequently, petitioner filed its *Formal Offer of Evidence (In support of Petitioner's Urgent Motion to Suspend Collection of Tax Liability ["Urgent Motion"])* on August 5, 2022,[24] to which respondent filed his *Comment (On Petitioner's Formal Offer of Evidence dated 5 August 2022)* on August 10, 2022.[25]

On August 16, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[26] which was admitted and approved by the Court in the Order dated August 25, 2022,[27] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on September 12, 2022.[28]

Trial ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Winnie C. Ramos,[29] petitioner's Assistant Tax Manager; (2) Ms. Mesina,[30] petitioner's Comptroller; and, (3) Mr. Joel M. Ganalon,[31] the Court-commissioned Independent Certified Public Accountant (ICPA).[32]

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19 Docket – Vol. I, pp. 338 to 339.
20 *Id.* at 341 to 344.
21 *Id.* at 378 to 395.
22 Records Verification Report dated August 30, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 721.
23 Exhibit "P-26", Docket – Vol. I, pp. 359 to 372; Minutes of the hearing held on, and Order dated, July 21, 2022, Docket – Vol. 2, pp. 499 to 501.
24 Docket – Vol. 2, pp. 505 to 513.
25 *Id.* at 716 to 718.
26 *Id.* at 695 to 703.
27 *Id.* at 720.
28 *Id.* at 723 to 732.
29 Exhibit "P-18", Docket – Vol. I, pp. 246 to 263; Minutes of the hearing held on, and Order dated, September 22, 2022, Docket – Vol. 2, pp. 747, and 749 to 750, respectively.
30 Exhibit "P-26", Docket – Vol. I, pp. 359 to 372; Minutes of the hearings held on, and Orders dated, September 22, 2022 and January 24, 2023, Docket – Vol. 2, pp. 747, 749 to 750, 858, and 861 to 862, respectively.
31 Exhibit "P-19", Docket – Vol. 2, pp. 832 to 850; Minutes of the hearing held on, and Order dated, January 24, 2023, Docket – Vol. 2, pp. 858, and 861 to 862, respectively.
32 *Oath of Commission* dated September 22, 2022, Docket – Vol. 2, p. 748; Minutes of the hearing held on, and Order dated, September 22, 2022, Docket – Vol. 2, pp. 747, and 749 to 750, respectively.

The *Report* of the said ICPA was submitted on November 8, 2022.[33]

On February 23, 2023, petitioner filed its *Formal Offer of Evidence*,[34] to which respondent filed his *Comment/Opposition (On Petitioner's Formal Offer of Evidence)* on March 9, 2023.[35] In the Resolution dated August 4, 2023,[36] the Court admitted petitioner's offered exhibits, except Exhibits "P-11-EEEE-18" and "P-11-EEEE-40", for not being found in the records.

Petitioner then filed a *Motion for Reconsideration (Re: Resolution dated August 04, 2023)* on September 4, 2023,[37] to which respondent filed his *Comment/Opposition (Re: Motion for Reconsideration dated 1 September 2023)* on October 9, 2023.[38] In the Resolution dated May 27, 2024,[39] the Court denied petitioner's *Motion for Reconsideration (Re: Resolution dated August 04, 2023)*.

In the meantime, per its Resolution dated November 28, 2023,[40] the Court partially granted petitioner's *Urgent Motion to Suspend Collection of Tax Liability*, enjoining and prohibiting respondent from implementing the *Warrant of Distraint and/or Levy* (WDL) and the *Warrants of Garnishment*, and ordering respondent and any of his officers and/or employees to cease and desist from committing any and all acts to collect on petitioner's alleged deficiency VAT assessment subject of this case.

On December 13, 2023, respondent filed his *Motion for Reconsideration (Re: Resolution dated 28 November 2023)*[41] via registered mail, to which petitioner filed its *Comment on Respondent's Motion for Reconsideration Dated 13 December 2023*, on February 12, 2024.[42] In the Resolution dated March 27, 2024,[43] the Court denied respondent's *Motion for Reconsideration (Re: Resolution dated 28 November 2023)* for lack of merit.

For his part, respondent presented the testimony of RO Ivy Claudette C. Puno.[44]

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33 Exhibit "P-12", Docket – Vol. 2, pp. 753 to 822.
34 Docket – Vol. 2, pp. 867 to 877.
35 Docket – Vol. 3, pp. 1064 to 1066.
36 *Id.* at 1072 to 1075.
37 *Id.* at 1076 to 1080.
38 *Id.* at 1117 to 1119.
39 *Id.* at 1184 to 1187.
40 *Id.* at 1122 to 1139.
41 *Id.* at 1151 to 1159.
42 *Id.* at 1171 to 1176.
43 *Id.* at 1179 to 1182.
44 Exhibit "R-9", Docket – Vol. 3, pp. 1056 to 1061; Minutes of the hearing held on, and Order dated, November 28, 2023, Docket – Vol. 3, pp. 1140 to 1142.

On December 11, 2023, respondent filed his *Formal Offer of Evidence*,[45] to which petitioner failed to file its comment.[46] In the Resolution dated May 27, 2024,[47] the Court admitted all of respondent's offered exhibits.

Respondent filed a *Manifestation* on January 26, 2024,[48] stating that he will adopt the arguments stated in the *Answer* in place of the *Memorandum*; while the *Petitioner's Memorandum* was filed on August 22, 2024.[49]

The case was considered submitted for decision on September 9, 2024.[50]

THE STIPULATED ISSUE

The parties stipulated the following issue for this Court's resolution, viz.:

> Whether or not petitioner is liable to pay the amount of Php656,446,244.25 for deficiency Value-Added Tax, including compromise penalty for the period January 1, 2014 to June 30, 2014, plus 25% surcharge and 20% deficiency and delinquency interest for late payment, pursuant to Section 249(C) of the NIRC of 1997, as amended; and delinquency interest at the rate of 12% per annum from January 1, 2018 until the amount is fully paid pursuant to Section 249(C) of the NIRC of 1997, in relation to Section 249(A) of the same Code, as amended by the Tax Reform for Acceleration and Inclusion (TRAIN) Law.[51]

Petitioner's arguments:

Petitioner argues that the deficiency tax assessments are null and void as they were issued in violation of its right to due process. Petitioner posits that the assessment is void since respondent's FLD and FDDA are not final demands for payment and petitioner's tax liability remains indefinite. Petitioner, thus, claims that the assessment is void since respondent's FLD

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45 Docket – Vol. 3, pp. 1143 to 1149.
46 Records Verification dated February 13, 2024 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1177.
47 *Id.* at pp. 1184 to 1187.
48 *Id.* at 1163 to 1165.
49 *Id.* at 1196 to 1224.
50 Minute Resolution dated September 9, 2024, Docket – Vol. 3, p. 1225.
51 Issues, JSFI, Docket – Vol. 2, p. 697.

and FDDA failed to clearly state the law and facts on which the assessments are made; and that the assessments have no factual and legal bases.

Respondent's counter-arguments:

In his *Answer*, respondent contends that the Court's power of judicial review over his decisions on disputed assessments is by nature exclusive and appellate; hence, petitioner should not be allowed to raise issues for the first time on appeal. For respondent, the assessment notices provide for the demand for payment of the tax deficiency of petitioner and the audit examination was properly conducted; thus, the resulting assessments are valid. Assuming *arguendo* that respondent failed to indicate the definite total deficiency tax liability of petitioner, the amount of deficiency tax must not be nullified in its entirety. Respondent posits that the assessments were made in accordance with prevailing laws and rules, and that the recent decisions of the Court regarding the technicalities on respondent's letters and notices should not be applied retroactively. Finally, respondent maintains that petitioner is liable for deficiency VAT for the period January 1, 2014 to June 30, 2014 and compromise penalty.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

The FDDA is void for failure to indicate a fixed and definite amount of tax liability to be paid by petitioner.

Petitioner argues that the FLD and FDDA are invalid because it is not a definite demand for payment of tax due and petitioner's alleged tax liabilities remain indefinite.

We agree only insofar as the FDDA is concerned.

An assessment "refers to the determination of amounts due from a person obligated to make payments."[52] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR

[52] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.

on the taxpayer for the settlement of a **due tax liability that is there definitely set and fixed.**[53]

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*,[54] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> **An assessment contains not only a computation of tax liabilities, but also a demand for payment <u>within a prescribed period</u>.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx.
>
> xxx xxx xxx
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period.** Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment. *(Emphases added)*

As a corollary, in *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (*Fitness By Design* case),[55] the Supreme Court again emphasized the importance of the issuance of a valid formal assessment, *i.e.*, that it must be a demand for payment of the taxes described, within a specific period, and that the amount of tax liability for which the taxpayer is accountable must be definite, viz.:

> ...**the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**
>
> xxx xxx xxx
>
> **The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provided for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also <u>includes a demand for payment within a period prescribed</u>. <u>Its main purpose is to determine the amount that a taxpayer is liable to pay</u>.**

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[53] *Adamson, et al. vs. Court of Appeals, et al., et seq.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[54] G.R. No. 128315, June 29, 1999.
[55] G.R. No. 215957, November 9, 2016.

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xxx xxx xxx

A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and **must demand payment of the taxes described therein <u>within a specific period</u>**.'

The disputed Final Assessment Notice is not a valid assessment.

First, **<u>it lacks the definite amount of tax liability for which respondent is accountable</u>. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. <u>An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed</u>.' <u>Although the disputed notice provides for the computation of respondent's tax liability, the amount remains indefinite</u>. <u>It only provides that the tax due is still subject to modification, depending on the date of payment</u>.** Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*** (Emphasis Supplied)

Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. **The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment**:

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished.**

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. **The total amount depended upon when**

> **respondent decides to pay. <u>The notice, therefore, did not contain a definite and actual demand to pay</u>.**
>
> **Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality.** Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. **Tax collection should be premised on a valid assessment**, which would allow the taxpayer to present his or her case and produce evidence for substantiation. *(Emphases and underscoring added)*

In this case, the FDDA[56] provides in part, as follows:

> ***It is requested that your aforesaid deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision.*** *(Emphasis added)*

Notably, the FDDA does not indicate a valid due date for payment. In particular, the due date reflected in the *Assessment Notice* is "March 31, 2021",[57] although the same was only issued on "01 JUN 2021",[58] and received by petitioner on June 2, 2021.[59] Clearly, the prescribed due date stated therein for the payment of the alleged deficiency tax already lapsed when the FDDA and the corresponding *Assessment Notice* were received by petitioner, making it impossible for petitioner to comply with. It is as if the due date therein "remained unaccomplished", thus, negating compliance with the requirement that the assessment must contain a demand for payment within a prescribed period.

To be sure, as held in the *Fitness By Design* case, an assessment must demand payment of the taxes described therein within a *specific period.*

Considering that the subject *Assessment Notice* accompanying the FDDA failed to properly indicate the due date when the subject deficiency tax must be paid, no proper demand thereof within a specific period was validly made.

Hence, the FDDA dated June 1, 2021, wherein respondent failed to provide the definite amount of tax to be paid and to state the valid due date for the payment of the subject deficiency tax in the attached *Assessment Notice* is void.

[56] Exhibit "P-8", Docket – Vol. 2, at p. 941; Exhibit "R-7", BIR Records (Exhibit "R-8"), at p. 779.
[57] Exhibit "P-8", Docket – Vol. 2, at p. 942.
[58] *Ibid.*
[59] Exhibit "P-8", Docket – Vol. 2, pp. 938 to 942; Exhibit "R-7", BIR Records (Exhibit "R-8"), pp. 778 to 782.

Nonetheless, it is already settled that a decision of respondent on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result in the invalidity of the other.[60] Considering the infirmity of the FDDA does not affect the validity of the FLD, and that the latter does not suffer from the same defect as the FDDA, the same should stand as valid.

Petitioner is liable for deficiency VAT for the period January 1, 2014 to June 30, 2014.

In the FLD dated April 10, 2017, with attached *Details of Discrepancies* and *Audit Result/Assessment Notice*,[61] petitioner was assessed for deficiency VAT and compromise penalty for the period January 1, 2014 to June 30, 2014, in the aggregate amount of ₱664,868,918.41, inclusive of increments, summarized as follows:

VAT		
Receipts subjected to VAT per VAT Returns		₱ 7,758,789,738.66
Add: Adjustments/Disallowances		
Undeclared Sales per SLS vs TPI	₱ 34,967,422.79	
Unaccounted Source of Cash	11,905,623.26	
Unsupported Non-VAT Official Receipt per OR Listing	668,295,679.54	
Undeclared Sales from sale of property	380,900,000.00	1,096,068,725.59
		₱ 8,854,858,464.25
Output tax thereon		₱ 1,062,583,015.71
Less: Allowable Input Tax		
Allowable Input Tax per VAT Returns	₱545,900,531.98	
Less: Disallowances/Adjustments		
Disallowed Input Tax - Unsupported Input Tax per SLP vs TPI	7,196,217.98	
Disallowed input tax per TN Verification	176,088.41	
Unsupported Presumptive Input Tax	265,357,459.18	
Overclaimed Input Tax - Sources of Input per FS vs VAT Return	23,846,751.32	249,324,015.09
VAT Due		₱ 813,259,000.62
Less: VAT Payments		385,154,236.65
Basic Deficiency VAT		₱ 428,104,763.97
Add: Interest (July 26, 2014 to April 30, 2017)		236,689,154.44
TOTAL DEFICIENCY VALUE-ADDED TAX		**₱ 664,793,918.41**
ADMINISTRATIVE PENALTY		
Compromise Penalty – Failure to file and/or pay any internal revenue tax at the time or times required by law or regulation	₱ 50,000.00	

[60] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et seq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

[61] Exhibit "P-6", Docket – Vol. 2, pp. 906 to 927; Exhibit "R-5", BIR Records (Exhibit "R-8"), pp. 334 to 355.

Compromise Penalty – Failure to make, file or submit the complete SLP or supply correct and accurate information therein at the time required	25,000.00	75,000.00
TOTAL AMOUNT DUE		**₱ 664,868,918.41**

The following items, which are discussed in detail hereafter, comprise the subject assessment:

a)	Undeclared Sales per Summary List of Sales (SLS) vs. Third Party Information (TPI)	₱ 34,967,422.79
b)	Unaccounted Source of Cash	₱ 11,905,623.26
c)	Unsupported Non-VAT Official Receipt (OR) per OR Listing	₱ 668,295,679.54
d)	Undeclared Sales from sale of property	₱ 380,900,000.00
e)	Disallowed Input Tax - Unsupported Input Tax per SLP vs TPI	₱ 7,196,217.98
f)	Disallowed input tax per TIN Verification	₱ 176,088.41
g)	Unsupported Presumptive Input Tax	₱ 265,357,459.18
h)	Overclaimed Input Tax - Sources of Input per Financial Statements (FS) vs VAT Return	₱ 23,846,751.32

a. <u>Undeclared Sales per SLS vs. TPI – ₱34,967,422.79</u>

Based on the comparison of petitioner's SLS and TPI, respondent found alleged undeclared sales of ₱34,967,422.79:[62]

Per SLS	₱ 191,380,312.54
Per TPI	226,347,735.33
Discrepancy – Undeclared Sales	**₱ 34,967,422.79**

Petitioner argues that the assessment has no factual and legal basis and that respondent did not provide copies or details of the confirmation letters to petitioner to validate the TPI.

Petitioner's argument has legal basis. It correctly cited pertinent portions of Revenue Memorandum Order (RMO) No. 46-2004 issued on September 2, 2004,[63] which states:

III. PROCEDURES

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Action on Protested LNs due to TPI discrepancy

[62] Schedule 1, "Annex – A", Exhibit "P-6", Docket – Vol. 2, pp. 912 to 914, and Exhibit "R-5", BIR Records (Exhibit "R-8"), pp. 347 to 349.

[63] SUBJECT: Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

xxx xxx xxx

3. **Obtain Sworn Statements from TPI sources (Annexes 'B' and 'C') attesting to the veracity of the data provided.**

xxx xxx xxx

4. Provide the taxpayer a brief 'grace period' (no more than ten [10] days) to reconcile the figures in his Sworn Statement against those of the TPI source. *(Emphasis added)*

The above-mentioned provision confirms that the BIR is required to verify the amounts it obtained from its computerized/third-party matching by securing confirmation or certification from the TPI source.

Respondent avers that it sent confirmation letters to petitioner's customers to support the TPI.[64] Records show that respondent indeed sent confirmation letters to the TPI sources.[65] However, examination of the subject documents reveals that only Store Specialist Inc. certified its purchases in the amount of ₱64,123,923.79 as opposed to petitioner's declared sales from the same customer of ₱56,259,936.35, showing a discrepancy of ₱7,863,987.44.[66]

The rest of the confirmation letters are not certified by the TPI sources. To stress, without obtaining sworn statements from TPI sources, the data gathered from the computerized/third party matching are left unverified, and the resulting assessment is void for lack of factual and legal basis based on the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*,[67] wherein the Supreme Court held that, in order to be valid, an assessment must be based on actual facts supported by credible evidence.

In any event, petitioner claims that timing differences in the reporting of taxable purchases by third parties as against the reporting of sales by petitioner, and inaccurate or erroneous reporting on the part of certain third parties are the reasons for the discrepancies. In the case of petitioner's sales to its customer Store Specialist, Inc., the latter allegedly erred in "reporting of input taxes on payments of security deposits or reimbursable claims or event sponsorship payments that were directly used for the event expenses. These were covered with non-VAT official receipts (ORs) and the TPIs should not have reported the purchases as input tax credits in its VAT

64 Par. 39, *Answer*, Docket – Vol. I, p. 287.
65 BIR Records (Exhibit "R-8"), pp. 567 to 575.
66 *Id.* at 573 to 574.
67 G.R. No. 136975, March 31, 2005.

reporting. Other payments include security deposits, reimbursement of real property taxes (RPT) and construction bonds, which are all not subject to VAT and were covered by non-VAT ORs."[68]

The Court-commissioned ICPA, however, reports that he was not able to verify the TPI "because the information provided by the BIR does not present the breakdown on a per transaction level of the amounts and transaction references".[69] As an alternative way to verify any unrecorded sales, the ICPA compared petitioner's gross taxable sales per general ledger (GL) with the amount reported in its quarterly VAT Returns as shown in Annex 1-13 of the ICPA Report. He then traced the amounts recorded in petitioner's gross taxable sales GL account and cash receipts schedule to the related VAT supporting documents of the various customers identified in the BIR assessment. This resulted in a discrepancy of ₱1,832,235.97, which shows that petitioner reported sales that are lower than those indicated in the VAT supporting documents.[70]

Be that as it may, both petitioner and the ICPA failed to substantiate the security deposits, reimbursement of RPT and construction bonds paid by Store Specialist, Inc., which are allegedly covered by non-VAT ORs.

Thus, this assessment item should be adjusted to the amount of ₱7,863,987.44, representing the discrepancy between petitioner's SLS and the amount certified by its customer Store Specialist Inc. per confirmation letter sent by respondent.

b. <u>Unaccounted source of cash – ₱11,905,623.26</u>

After comparing petitioner's Summary List of Purchases (SLP) against the sales declarations per third parties, respondent found that the amounts per TPI are larger than those in petitioner's SLP. Respondent then assessed petitioner of an alleged unaccounted source of cash amounting to ₱11,905,623.26:[71]

Per TPI	₱ 32,715,544.25
Per SLP	20,809,920.99
Discrepancy – Unaccounted source of cash	**₱ 11,905,623.26**

[68] Pars. 35 to 40, *Petition for Review*, Docket – Vol. I, pp. 15 to 16.
[69] Verification of the alleged unrecorded sales, Exhibit "P-12", Docket – Vol. 2, p. 784.
[70] Exhibit "P-12", Docket – Vol. 2, at pp. 784 to 785. Refer also to Q&A No. 13 to 14, Exhibit "P-19", Docket – Vol. 2, pp. 835 to 836.
[71] Schedule 2, "Annex – A", Exhibit "P-6", Docket – Vol. 2, p. 915, and Exhibit "R-5", BIR Records (Exhibit "R-8"), p. 346.

As previously discussed, respondent is required to verify the amounts it obtained from its computerized/third-party matching by securing confirmation or certification from the TPI source. If unverified, the resulting assessment is void for lack of factual and legal basis.

Further, respondent's findings of petitioner's under-declaration of purchases does not, by itself, necessarily result in the imposition of VAT. What is critical to be shown in the imposition or assessment of VAT is that the taxpayer is paid or ought to be paid an amount of money or its equivalent, in consideration of a sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, the VAT is imposed on the sale, not on the purchases. Moreover, even if these alleged unaccounted purchases are to be treated as unaccounted sources of cash, which are subject to output VAT, the same will be offset by recording the equivalent payments as expenses or purchases from which input tax credits may be claimed. Hence, no additional VAT will result from the said transactions.

While all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on mere presumptions no matter how reasonable or logical the presumption might be.[72] In order to stand 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.[73]

For lack of factual basis, the deficiency VAT assessment arising from petitioner's alleged unaccounted source of cash of ₱11,905,623.26 should be cancelled.

c. *<u>Unsupported Non-VAT Official Receipt per OR Listing – ₱668,295,679.54</u>*

Respondent's verification disclosed that petitioner's non-VAT receipts per summary of ORs amounting to ₱668,295,679.54 are unsupported.[74]

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[72] *The Collector of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation, et al.*, G.R. No. L-46644, September 11, 1987.

[73] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, supra.

[74] Schedule 3, "Annex – A", Exhibit "P-6", Docket – Vol. 2, pp. 916 to 922, and Exhibit "R-5", BIR Records (Exhibit "R-8"), pp. 339 to 345.

Petitioner avers that the bulk of this assessment item pertains to sales to PEZA-registered entities enjoying zero-rated and/or exempt transactions; hence, not subject to 12% VAT.[75]

In support of its protest to the FLD, petitioner submitted to respondent *Certificates of Registration* and *Certifications* issued by the PEZA to the following customers, amounting to ₱252,949,473.75, viz.:

PEZA Certificate/ Certification (Exhibit "R-8")	**Customer Name**	**Amount** (Annex 3-1, Exhibit "P-12")[76]
pp. 403 to 404	ANTHEM SOLUTIONS, INC.	₱ 43,170,278.07
pp. 401 to 402	C3/CUSTOMERCONTACTCHANNELS PHILIPPINES, LTD.	93,639,495.12
p. 400	DATA HORIZON PHILS, INC.	651,491.56
p. 399	HATCHASIA.COM, INC.	5,460,446.10
pp. 397 to 398	IP CONVERGE DATA SERVICES, INC.	5,488,737.26
p. 395	LOGICA (PHILIPPINES) INC.	12,279,046.74
pp. 392-394	NEC TELECOM SOFTWARE PHILS., INC.	6,415,299.24
pp. 388 to 389	REAL PROPERTY INNOVATIVE SOLUTIONS, INC.	2,465,440.00
pp. 386 to 387	SHORE SOLUTIONS, INC.	4,740,182.51
pp. 380 to 381	ST. LUKE'S MEDICAL CENTER, INC.	32,439,879.25
pp. 384 to 385	TERADATA GCC (PHILIPPINES), INC.	22,525,459.83
pp. 382 to 383	TOWERS WATSON GLOBAL BUSINESS SERVICES, INC.	23,673,718.07
	TOTAL	**₱ 252,949,473.75**

Respondent's examiners considered the *Certificates of Registration* and *Certifications* issued by the PEZA to be sufficient in their memorandum report dated January 21, 2021.[77]

The ICPA reports that the remaining assessment for unsupported non-VAT ORs could comprise of either the following or just portions thereof, to wit:[78]

Particulars	**Reference**	**Amount**
Sale of Development Rights (Alpha Plus Property Holdings)	*Annex 3-2-A*	₱ 174,832,000.00
Construction Bond (various)	*Annex 3-2-B*	90,050,788.37
Security Deposits (various)	*Annex 3-2-C*	32,731,416.57
St. Luke's Medical Center SOA Adjustments	*Annex 3-2-D*	30,384,445.00

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[75] Par. 46, *Petition for Review*, Docket – Vol. 1, p. 18.
[76] USB (Exhibit "P-11").
[77] Exhibit "R-6", BIR Records (Exhibit "R-8"), pp. 732 to 749.
[78] Exhibit "P-12", Docket – Vol. 2, at p. 792.

RPT reimbursements (various)	*Annex 3-2-E*	10,241,896.60
Principal loan repayment (Bonifacio Transport Corporation)	*Annex 3-2-F*	5,507,207.34
Adjustments	*Annex 3-2-G*	(79,681.99)
	Total	**₱ 343,668,071.89**

Petitioner submitted various ORs,[79] *Statements of Account* (SOAs),[80] and journal entries from its computerized accounting system (CAS)[81] to support petitioner's non-VAT receipts. An examination by the Court shows that the following are supported by the aforementioned documents, viz.:

Supported by Official Receipts (Exhibits "P-11-CCCC-1" to "P-11-CCCC-125" and "P-11-CCCC-128" to "P-11-CCCC-271")

Customer Name	Amount	Nature
ACTIVATIONS ADVERTISING	₱ 50,000.00	Security Deposits
AFFINITY HEALTH & WELLNESS	538,902.00	Construction Bond
ALPHA PLUS PROPERTY HOLDI	174,832,000.00	Sale of Development Rights
ALVEO LAND CORP. (OFFICE)	(0.01)	Adjustments
AMERICAN MOTORCYCLES,	10,000.00	Security Deposits
ANTHEM SHOPPES INC.	20,000.00	Security Deposits
ARIA RESTAURANT CONCEPTS INC.	-	Adjustments
ARMYNAVY BURGER AND BURRI	9,743.32	Adjustments
ATLASSIAN PHILIPPINES, IN	748,128.00	Construction Bond
AYALA CORPORATION - HONDA	596,250.00	Security Deposits and RPT reimbursements
AYALA GREENFIELD DEVELOPM	591,255.00	Construction Bond and Security Deposits
AYALA PROPERTY MANAGEMENT	(25,366.77)	Adjustments
B + B STUDIO	22,477.26	Security Deposits
BANCO DE ORO UNIBANK INC	127,562.50	RPT reimbursements
BANK OF THE PHILIPPINE IS	5,895.63	Security Deposits
BASES CONVERSION DEV'T. A	167,567.20	Security Deposits
BELAGUA CORPORATION (FULL	367,092.00	RPT reimbursements and Security Deposits
BEYOND FORT GLOBAL INC.	(0.02)	Adjustments
BF CORPORATION	64,650.00	Security Deposits
BGNORTH PROPERTIES INC.	16,007,200.37	Security Deposits, RPT reimbursements and Construction Bond
BGSOUTH PROPERTIES, INC.	18,523,600.00	Construction Bond
BGWEST PROPERTIES, INC.	30,000.00	Construction Bond
BONIFACIO ESTATE SERVICES	-	Adjustments
BONIFACIO GAS CORPORATION	29,345.77	Security Deposits and Adjustments

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79 Exhibits "P-11-CCCC-1" to "P-11-CCCC-271", USB (Exhibit "P-11").
80 Exhibits "P-11-DDDD-1" to "P-11-DDDD-137", USB (Exhibit "P-11").
81 Exhibits "P-11-EEEE-1" to "P-11-EEEE-17", "P-11-EEEE-19" to "P-11-EEEE-39", and "P-11-EEEE-41" to "P-11-EEEE-54", USB (Exhibit "P-11").

BONIFACIO HOTEL VENTURES	250,125.00	RPT reimbursements
BONIFACIO TRANSPORT CORP	4,889,583.93	Principal loan repayment (Bonifacio Transport Corporation)
BREWS AND BLUES INC.	833,160.00	Security Deposits
BRITISH CHAMBER OF COMMER	90,000.00	Security Deposits
BRITISH UNITED	10,000.00	Security Deposits
CAG LEARNING SYSTEMS, INC.	-	Adjustments
CASUAL CLOTHING	50,000.00	Security Deposits
CATS MOTORS, INC.	28,906.25	RPT reimbursements
CELINE MARKETING CORPORATION	(6,095.49)	Adjustments
CHEFS AT THE FORT, INC.	-	Adjustments
CINCO CORPORATION	351,150.00	Construction Bond and Security Deposits
CITIMAX GROUP INC.	7,100,000.00	Construction Bond and Security Deposits
CLARKSVILLE FOOD INC.	1,000,000.00	Construction Bond
COFFEE MASTERS, INC. (SEA	(0.01)	Adjustments
CREACTIVATIONS, INC	100,000.00	Security Deposits
CREATIVE LAB INC.	(17,857.14)	Adjustments
DAIICHI PROPERTIES INC.	13,000,000.00	Construction Bond
DATEM, INC.	7,000,000.00	Construction Bond
DEL MONTE PHILIPPINES, IN	(3,466,111.80)	Security Deposits
DRAUGHT GASTRO-PUB, INC.	351,812.10	Security Deposits
EASTERN TELECOMMUNICATION	68,250.00	Construction Bond and Security Deposits
ERICKA ALEXANDRIA	10,000.00	Security Deposits
EST. CUE, INC.	-	Adjustments
ESTIMA, INC.	30,000.00	Security Deposits
EVENTECHNIQUE INC.	10,000.00	Security Deposits
EVERY NATION LEADERSHIP I	-	Adjustments
EXPERCS INC.	(0.05)	Adjustments
FAMILY VACCINE	80,850.00	Security Deposits
FOODPARKS BY RAINTREE. IN	69,513.00	Security Deposits
FORT STRIP, INC.	922,747.83	Security Deposits and RPT reimbursements
FORTE SHOWROOM - DIMENSIO	802,420.20	Construction Bond and Security Deposits
FORTHINKER INC.	50,000.00	Security Deposits
FRESH HEALTHY JUICE BOOST	86,650.00	Security Deposits
GEARHEAD INC. (JBL)	-	Adjustments
GLOBAL ASIA	20,000.00	Security Deposits
GLOBAL CITY AUTO SALES IN	105,000.00	Security Deposit and RPT reimbursements
GOURDO'S INC. (2001010097	86,193.00	Security Deposits
GREEN TEE INC. UNITED COL	-	Adjustments
GREENLIFE ORGANICS,	10,000.00	Security Deposits
GRUPO ATHLETICA INC.	1,762,794.00	Security Deposits

H & F RETAIL CONCEPTS INC	(8,996.00)	Adjustments
HAPPY LEMON GROUP PHILS I	522,288.00	Construction Bond and Security Deposits
HINGE INQUIRER PUBLICATIO	30,000.00	Security Deposits
HW-ANGS, INC.	50,000.00	Security Deposits
ICONIC ADVANTAGE INT'L.,	-	Adjustments
IKKORYU FUKUOKA RAMEN INC	1,033,344.00	Construction Bond and Security Deposits
INTELLIGENT BEAUTY SKIN S	86,369.25	Security Deposits
IP VENTURES, INC.	92,164.03	Security Deposits
JALA PELOS INC.	799,119.00	Construction Bond
JOLLIBEE FOODS CORPORATION	313,000.22	Security Deposits and RPT reimbursements
JUST FOR KIDS, INC. (LITT	66,370.19	Security Deposits
KARLA ROCHELLE	30,000.00	Security Deposits
KATSURAMEN, INC.	1,596,097.50	Construction Bond
KENRICH SIDEFAME CORP	(45,000.00)	Adjustments
KICHITORIA FOODS CORPORAT	1,301,664.00	Construction Bond and Security Deposits
KIMUKATSU, INC.	548,650.66	Security Deposits
KLAB CYSCORPIONS, INC.	(0.05)	Adjustments
LINEARGROUP PHILS INC.	(0.01)	Adjustments
L'OPERA INC.	64,642.80	Security Deposits
LOVING LOKAL RESTAURANT I	296,900.40	Security Deposits
M2.O COMMUNICATIONS, INC.	30,000.00	Security Deposits
MAKATI DEVELOPMENT CORPOR	4,000,000.00	Security Deposits
MANCOR PERFORMANCE CLINIC	87,500.01	RPT reimbursements
MANILA WATER TOTAL	90,405.00	Security Deposits
MASTER SPORTS CORP.	-	Adjustments
MAXICUISINE, INC.	126,877.05	Construction Bond
MC HOME DEPOT (FORT BONIF	2,486,369.84	RPT reimbursements
MCTEVES LAUNDRY SERVICES	96,714.24	Construction Bond and Security Deposits
MDC BUILDPLUS, INC.	4,796.31	Adjustments
MEGAWIDE CONSTRUCTION COR	1,000,000.00	Security Deposits
MELVILLE REALTY CORP. (MO	238,960.00	Security Deposits and RPT reimbursements
MERCATO CENTRALE PHILIPPI	30,000.00	Security Deposits
MR. FRANKS HOTDOG & NACHO	191,986.66	Construction Bond and Security Deposits
MY MAMOU FOOD CONCEPTS IN	21,225.60	Security Deposits
NATION BROADCASTING CORP.	130,437.50	RPT reimbursements
NEW BOMBAY FOODS INC.	14,452.50	Security Deposits
NEW GOLDEN CITY BUILDERS	12,000,000.00	Construction Bond
NEW KANLAON CONSTRUCTION	408,800.68	Security Deposits and RPT reimbursements
NITRO ASIA COMPANY INC.	57,261.20	Security Deposits

NO LIMITS FOODS INCORPORA	1,000,000.00	Security Deposits
ORICA PHILIPPINES, INC.	54,477.90	Security Deposits
PACIFIC LICENSING STUDIO	100,000.00	Security Deposits
PETALUMA PROPERTIES INC.	255,125.00	RPT reimbursements
PHILIPPINE ARMY	10,000.00	Security Deposits
PHILIPPINE FAMILYMART CVS	481,896.00	Construction Bond and Security Deposits
PHILIPPINE NATIONAL BANK	432.76	Security Deposits
PHILIPPINE SAVINGS BANK -	102,316.43	Construction Bond and Security Deposits
PINOY DINER CORPORATION	64,156.50	Security Deposits
PRU LIFE INSURANCE CORP.	1,925,576.50	Construction Bond and Security Deposits
QUORUM INTERNATIONAL INC.	30,000.00	Security Deposits
RALPH'S WINES & SPIRITS	14,940.00	Security Deposits
RED RIBBON BAKESHOP, INC.	45,625.00	RPT reimbursements
REGAL ENTERTAINMENT,	30,000.00	Security Deposits
RUSTAN COFFEE CORP. - STA	337,620.00	RPT reimbursements
SABRE CONSTRUCTION & DEV'	29,125.00	RPT reimbursements
SCOTTLAND INC. (THE SPA)	285,404.00	RPT reimbursements and Security Deposits
SENSERV ENTERPRISE	-	Adjustments
SIETE COMIDA CORPORATION	(0.10)	Adjustments
SIMPLY MOVING	50,000.00	Security Deposits
SNAPSNACK FOODS CORP.	250,277.40	Security Deposits
SOUTH STAR DRUG INC.	14,399.91	Security Deposits
SPORTS PLEX PHILS. INCORP	(0.01)	Adjustments
ST. LUKE'S MEDICAL CENTER	30,599,560.00	RPT reimbursements and St. Luke's Medical Center SOA Adjustments
STORE SPECIALIST INC.	9,601,565.10	Construction Bond, Security Deposits and RPT reimbursements
SUNVISION CABLE, INC.	-	Adjustments
SUYEN CORP.	246,179.48	Security Deposits and RPT reimbursements
THE BURGERS UNLIMITED INC	-	Adjustments
THE IDEAFIRST COMPANY, IN	20,000.00	Security Deposits
TIME CONCEPTS SALES, INC.	-	Adjustments
TRIMARK BHS VENTURES, INC	54,364.50	Security Deposits
UNIGLOBE TRAVELWARE CO.	146,556.00	Security Deposits
UP JUNIOR MARKETING ASSOCIATION	20,000.00	Security Deposits
UR'E ADPORTAL SOLUTIONS	50,000.00	Security Deposits
VA BENE PASTA DELI	875,328.00	Security Deposits and Construction Bond
VODKATEKA, INC.	141,006.60	Security Deposits
W GLOBAL REALTY, INC.	376,204.41	RPT reimbursements
W OFFICES, INC.	375,187.50	RPT reimbursements
WHITEPLANET INC.	114,300.00	Security Deposits

WHOLELIVING CORPORATION	1,622,592.00	Construction Bond and Security Deposits
WINGKING FOOD STATION	10,800.00	Security Deposits
WUMACO INC.	311,307.20	Security Deposits and RPT reimbursements
YELLOW CAB PIZZA CO	67,453.10	Security Deposits
TOTAL	**₱ 325,901,569.83**	

Supported by Statements of Account

Exhibit No.	Customer Name	Amount	Nature
"P-11-DDDD-23"	CATS MOTORS, INC.	₱ 57,812.50	RPT reimbursements
"P-11-DDDD-35"	FORT STRIP, INC.	154,137.50	RPT reimbursements
"P-11-DDDD-59"	L'OPERA INC.	-	
"P-11-DDDD-68"	MANCOR PERFORMANCE CLINIC	-	
"P-11-DDDD-113"	SR METALS INC	86,179.36	Security Deposits
"P-11-DDDD-123"	UNIGLOBE TRAVELWARE CO. I	51,750.00	RPT reimbursements
	TOTAL	**₱ 349,879.36**	

Supported by Journal Entries

Exhibit No.	Customer Name	Amount	Nature
"P-11-EEEE-9" and "P-11-EEEE-11"	BGWEST PROPERTIES, INC.	₱ 16,349,900.82	Construction Bond and RPT reimbursements
"P-11-EEEE-12" and "P-11-EEEE-13"	BRAND ON DEMAND	60,000.00	Security Deposits
"P-11-EEEE-24"	EQUIPMENT RENTAL	50,000.00	Security Deposits
"P-11-EEEE-29"	GERMAN-PHILIPPINE CHAMBER	100,000.00	Security Deposits
"P-11-EEEE-41"	PERCEPTIONS	50,000.00	Security Deposits
"P-11-EEEE-42"	PET CITY HOBBY	50,000.00	Security Deposits
"P-11-EEEE-46"	SATCHMIGROUP INC.	30,000.00	Security Deposits
"P-11-EEEE-48"	SUYEN CORPORATION	30,000.00	Security Deposits
	TOTAL	**₱ 16,719,900.82**	

Considering that the foregoing documents submitted by petitioner show that the transactions were not subject to 12% VAT, these amounts should be deducted from respondent's assessment and only the amount ₱72,374,855.78 should be retained for being unsupported, computed as follows:

Unsupported Non-VAT Official Receipt per OR Listing		₱ 668,295,679.54
Less: Supported by PEZA certificates of registration and certifications	₱ 252,949,473.75	
Supported by ORs	325,901,569.83	

Supported by SOAs	349,879.36	
Supported by Journal Entries	16,719,900.82	595,920,823.76
Adjusted unsupported Non-VAT ORs per OR Listing		**₱ 72,374,855.78**

d. *Undeclared sales from sale of property – ₱380,900,000.00*

Respondent found a discrepancy in petitioner's sale of property by comparing the amount per deed of sale against the zonal valuation, computed as follows:[82]

	Deed of Sale	**Zonal Value**	**OR**
Per square meter	₱ 30,000.00	₱ 100,000.00	₱ 29,068.90
	5,370.00 sqms.	5,370.00 sqms.	5,370.00 sqms.
Total Selling Price	₱161,100,000.00	₱ 537,000,000.00	₱ 156,100,000.00
Less: Declared per OR	156,100,000.00	156,100,000.00	
Undeclared Sales	₱ 5,000,000.00	**₱ 380,900,000.00**	

In its protest to the FLD, petitioner explained that the foregoing amount pertained to the transaction with Alpha Plus Property Holdings Corp. (Alpha Plus) but claimed that it did not sell a piece of land, but that Alpha Plus purchased an additional development right as regulated by the City Government of Taguig, which subjects certain development restrictions based on the approved masterplan. Essentially, petitioner "sold to Alpha Plus air rights taken from its lots to be transferred to the lot of Alpha Plus so it could construct taller buildings (i.e. with more allowable gross floor area or 'GFA') on Alpha Plus' lots in BGC".[83]

To support the foregoing, petitioner submitted to respondent the *Agreement on Assignment of Lease* between petitioner and Alpha Plus and the approval of transfer of development rights issued by the City of Taguig,[84] and the ORs pertinent to the transaction.[85]

Respondent's examiners considered petitioner's explanation and recommended to cancel the subject assessment item:[86]

> It was found that per Deed of Sale executed by both parties, the selling price was P30,000.00 per square meter for the lot with a total area of 5,370 square meters, hence, it resulted to a selling P156,100,000.00. The difference of P5,000,000.00 was already subjected to VAT on September

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[82] Schedule 4, "Annex – A", Exhibit "P-6", Docket – Vol. 2, p. 923, and Exhibit "R-5", BIR Records (Exhibit "R-8"), p. 338.
[83] Exhibit "P-7", Docket – Vol. 2, at pp. 930 to 931.
[84] Exhibit "R-8", BIR Records, pp. 371 to 375.
[85] *Id.* at 378 to 379.
[86] Exhibit "R-6", *Id.* at 744 to 745.

10, 2013, evidenced by the Official Receipt attached on page 689. Hence, the assessment on this item is hereby cancelled.

Based on the documents submitted, petitioner is able to prove that the transaction did not involve the sale of a piece of land but only additional development right; hence, use of the corresponding zonal value is not necessary. The Court finds respondent's examiners' recommendation to be in order; thus, this assessment item should be cancelled.

e. *Disallowed Input Tax - Unsupported Input Tax per SLP vs. TPI – ₱7,196,217.98*

Respondent's verification of petitioner's SLP revealed that the purchases therein exceed the declared sales of the suppliers as reflected in the gathered TPI, consequently, the overclaimed input tax for said excess purchases should be disallowed. The amount ₱7,196,217.98 is computed as:[87]

Purchases per SLP	₱ 154,933,157.06
Per TPI	116,206,476.86
Overclaimed purchases	₱ 38,726,680.20
Unsupported purchases – No TPI	21,241,802.96
Total	₱ 59,968,483.16
VAT rate (12%)	0.12
Unsupported input tax	**₱ 7,196,217.98**

The BIR Records show that respondent sent confirmation letters to the TPI sources.[88] An examination of the subject documents, however, reveals that only the following customers certified the respective amounts of sales to petitioner:[89]

Name of Customer	Amount Certified (For January – June 2014)	Other Remarks
Professional Maintenance Group	₱ 8,336,835.89	₱ 633,044.30 (Zero-rated Sales)
McCann World Group Philippines Inc.	₱ 5,418,276.89	₱ 182,120.04 (For July – October 2014)
TOTAL	**₱ 13,755,112.78**	

The rest of the confirmation letters that are not certified by the TPI sources are left unverified, and the resulting assessment is void for lack of

87 Schedule 5, "Annex – A", Exhibit "P-6", Docket – Vol. 2, p. 924, and Exhibit "R-5", BIR Records (Exhibit "R-8"), p. 337.
88 BIR Records (Exhibit "R-8"), pp. 691 to 692 and 694 to 714.
89 *Id.* at 711 to 714.

factual and legal basis. To reiterate, in order to be valid, an assessment must be based on actual facts supported by credible evidence.[90]

Petitioner avers that there are timing differences and error in recording of the TPI.[91] Said allegation, however, was not substantiated and proven by petitioner.

Thus, from respondent's schedule of unsupported purchases and computation of unsupported input tax, only the amount ₱730,500.31 should be retained as an assessment item:

	SLP	TPI	Difference
Professional Maintenance Group Inc.	₱14,417,452.33	₱ 8,336,835.89	₱ 6,080,616.44
McCann Worldgroup Philippines Inc.	5,425,163.00	5,418,276.89	6,886.11
Total	₱19,842,615.33	₱13,755,112.78	₱ 6,087,502.55
VAT rate (12%)			0.12
Unsupported input tax			**₱ 730,500.31**

f. <u>Disallowed input tax per TIN Verification – ₱176,088.41</u>

Respondent found that petitioner allegedly claimed input tax on purchases from non-VAT registered and unregistered taxpayer amounting to ₱176,088.41, broken down as follows:[92]

Registered Name	Purchases	Input Tax
8mm Media Concepts Co	₱ 29,464.25	₱ 3,535.71
8mm Media Concepts Co	(29,464.25)	(3,535.71)
Daniel Tan Photography	40,178.58	4,821.43
Empress Cool Airconditioning	-	-
Empress Cool Airconditioning	-	-
Marcelo J Capalungan Jr	246,428.58	29,571.43
Personnel Management Assoc of the Phils	439.17	52.70
Rollstar General Contractor	466,071.42	55,928.57
Rollstar General Contractor	714,285.67	85,714.28
TOTAL	₱ 1,467,403.42	**₱ 176,088.41**

The Court examined petitioner's SLPs[93] and found the same purchases listed therein.

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90 Refer to *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, supra.
91 Exhibit "P-12", Docket – Vol. 2, at pp. 794 to 795.
92 Schedule 6, "Annex – A", Exhibit "P-6", Docket – Vol. 2, p. 925, and Exhibit "R-5", BIR Records (Exhibit "R-8"), p. 336.
93 Exhibits "P-11-B-1" to "P-11-B-6", USB (Exhibit "P-11").

Relative thereto, petitioner submitted ORs of the foregoing purchases of services,[94] which was examined by the ICPA. Further examination by the Court shows that purchases from Daniel Tan Photography and Marcelo J. Capalungan, Jr. are supported by non-VAT ORs,[95] purchase from Personnel Management Association of the Philippines is unsubstantiated, and purchases from Rollstar General Contractor (Rollstar) are supported by VAT-registered ORs, to wit:

Exhibit No.	Vendor Name	Net of VAT	Input Tax
"P-11-FFFF-4"	Rollstar General Contractor	₱ 466,071.42	₱ 55,928.57
"P-11-FFFF-5"	Rollstar General Contractor	714,285.67	85,714.28
	TOTAL	**₱ 1,180,357.09**	**₱ 141,642.85**

Moreover, Rollstar's ORs were printed with BIR Authority to Print issued in the year 2013 and was valid until 2018.[96] Thus, only input taxes in the adjusted amount of ₱34,445.56 should be disallowed, computed as follows:

Disallowed input tax per TIN verification	₱ 176,088.41
Less: Purchases supported by VAT-registered ORs	141,642.85
Adjusted disallowed input tax	**₱ 34,445.56**

g. *Unsupported Presumptive Input Tax – ₱265,357,459.18*

Respondent disallowed petitioner's claimed presumptive input tax (PIT) amounting to ₱265,357,459.18[97] for being unsupported.[98]

The ICPA reports that petitioner's PIT came from the effectivity of Republic Act (R.A.) No. 7716 on January 1, 1996 when VAT was imposed for the first time on the sale of real properties. Upon the effectivity of R.A. No. 8424 on January 1, 1998, the provision on transitional input tax credits was retained.[99]

Petitioner argues that its entitlement to the PIT on its land acquisition has long been settled by the Supreme Court in several cases involving herein

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[94] Exhibits "P-11-FFFF-1" to "P-11-FFFF-5", *Id.*
[95] Exhibits "P-11-FFFF-1" to "P-11-FFFF-3", *Id.*
[96] Exhibits "P-11-FFFF-4" to "P-11-FFFF-5", *Id.*
[97] Line 20D, Exhibit "P-9-e", Docket – Vol. 2, p. 949.
[98] Schedule 7, "Annex – A", Exhibit "P-6", Docket – Vol. 2, p. 926, and Exhibit "R-5", BIR Records (Exhibit "R-8"), p. 335.
[99] Exhibit "P-12", Docket – Vol. 2, at pp. 801 to 802.

petitioner. In all cases which have already become final, the Supreme Court decided in favor of petitioner.[100] The Court finds the same in order.

Petitioner submitted its inventory list of properties as of February 29, 1996,[101] in accordance with Revenue Regulations (RR) No. 7-95.[102] The claimed transitional/presumptive input tax, which was reported in January and February 1996,[103] came from its purchase of land from the government computed as follows:[104]

Total land area (214 hectares)	2,140,000.00 sqm.
Acquisition cost per sqm	x ₱ 33,283.88
Total land acquisition cost	₱ 71,227,503,200.00
Presumptive Input tax rate	8%
Presumptive Input tax	**₱ 5,698,200,256.00**

Utilization of the foregoing transitional/PIT credits started in the 4th quarter 1996 in the amount of ₱28,413,783.00.[105] Succeeding utilization of petitioner's PIT is summarized herein, to wit:[106]

SC Case No.	Tax Period	Amount
G.R. No. 181092	4th Quarter - 1996	₱ 269,340,469.45
G.R. No. 173425	1st Quarter - 1997	359,652,009.47
G.R. No. 175707	2nd Quarter - 1997	486,355,846.78
G.R. No. 170680	3rd Quarter - 1997	347,741,695.74
G.R. No. 167606	4th Quarter - 1997	15,036,891.26
G.R. No. 180035	1st Quarter - 1998	77,151,020.46
	Total	**₱ 1,555,277,933.16**

In the year 1999, petitioner's PIT was reduced or adjusted by ₱1,704,134,656.00 in view of the reconveyance of properties to the Bases Conversion Development Authority (BCDA) pursuant to an *Agreement* with the latter dated September 17, 1999.[107] Hence, by the end of the TY 1999, petitioner's PIT balance is ₱2,170,849,772.00.[108]

In tracing the movements in the subject PIT, the ICPA noted that petitioner "first claim[s] as credits against current output VAT, any amount of input VAT from current period purchases. Thus, any current period

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[100] Exhibit "P-7", *Id.* at 931.
[101] Exhibit "P-20", USB (Exhibit "P-11").
[102] SUBJECT: Consolidated Value-Added Tax Regulations.
[103] Exhibits "P-16-a" and "P-16-b", Docket – Vol. 2, pp. 1026 to 1027.
[104] Exhibit "P-12", *Id.* at 803.
[105] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2009. Refer also to Exhibit "R-8" (BIR Records), pp. 576 to 640.
[106] Exhibit "P-12", Docket – Vol. 2, at p. 804.
[107] Exhibits "P-21-A" to "P-21-C", USB (Exhibit "P-11").
[108] Exhibit "P-11-T, *Id.*

output VAT, in excess over the current period input VAT will then be allowed as offset against the PIT balance."[109]

The following shows petitioner's output tax and the corresponding input taxes offset against it until the 3rd quarter of the TY 2003, to wit:

Exhibit No.	TY 2000	Input Tax -Current Purchases	Output tax
"P-11-U"	1st Quarter	₱ 26,746,353.83	₱ 15,365,729.32
"P-11-V"	2nd Quarter	104,389,211.68	106,152,166.06
"P-11-W"	3rd Quarter	20,372,872.59	52,537,888.03
"P-11-X"	4th Quarter	15,488,331.40	20,378,288.94
	Total	**₱ 166,996,769.50**	**₱ 194,434,072.35**
Output tax still due – to be offset against PIT			₱ 27,437,302.85
PIT, beginning balance			₱ 2,170,849,772.00
PIT, ending balance			**₱ 2,143,412,469.15**

Exhibit No.	TY 2001	Input Tax - Current Purchases	Output tax
"P-11-Y"	1st Quarter	₱ 19,235,660.17	₱ 258,369,395.84
"P-11-Z"	2nd Quarter	20,896,259.91	37,526,701.59
"P-11-AA"	3rd Quarter	17,450,550.31	41,970,952.30
"P-11-BB"	4th Quarter	9,984,999.56	38,791,672.79
	Total	**₱ 67,567,469.95**	**₱ 376,658,722.52**
Output tax still due - charge to PIT			₱ 309,091,252.57
PIT, beginning balance			₱ 2,143,412,469.15
PIT, ending balance			**₱ 1,834,321,216.58**

Exhibit No.	TY 2002	Input Tax - Current Purchases	Output tax
"P-11-CC"	1st Quarter	₱ 16,524,342.33	₱ 96,595,890.16
"P-11-DD"	2nd Quarter	14,970,145.56	24,277,129.23
"P-11-EE"	3rd Quarter	8,022,592.30	54,849,861.42
"P-11-FF-2"	4th Quarter	4,897,629.49	5,180,526.68
	Total	**₱ 44,414,709.68**	**₱ 180,903,407.49**
Output tax still due – to be offset against PIT			₱ 136,488,697.81
PIT, beginning balance			₱ 1,834,321,216.58
PIT, ending balance			**₱ 1,697,832,518.77**

Exhibit No.	TY 2003	Input Tax – Current Purchases	Output tax
"P-11-GG"	1st Quarter	₱ 13,360,853.99	₱ 16,266,312.44
"P-11-HH"	2nd Quarter	10,859,599.57	11,876,906.19
"P-11-II"	3rd Quarter	14,770,812.20	18,527,553.59
	Total	**₱ 38,991,265.76**	**₱ 46,670,772.22**
Output tax still due – to be offset against PIT			₱ 7,679,506.46
PIT, beginning balance			₱ 1,697,832,518.77
PIT, ending balance			**₱ 1,690,153,012.31**

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[109] Exhibit "P-12", Docket – Vol. 2, at p. 807.

The ICPA also noted that petitioner did not report any PIT in the subsequent quarterly VAT returns until the 2nd quarter of 2014.[110] He, however, found that petitioner carried over input taxes in the amount of ₱617,068.84,[111] "which was carved out from the PIT balance xxx and claimed as credits against output VAT in the 4th quarter of 2003."[112]

Petitioner computed the amount of PIT claimed in the 2nd quarter of 2014 which is available for use as follows:[113]

	Area in sqm	Gross Amount	VAT
Original lot acquired	2,140,000	₱ 71,227,503,200.00	₱ 5,698,200,256.00
Return of 64 hectares	(640,000)	(21,301,683,200.00)	(1,704,134,656.00)
			₱ 3,994,065,600.00
Values of lot acquired from BCDA:			
City Center (10-1)		₱ 795,381,949.00	₱ 72,307,449.91
Cathedral Site		241,640,969.00	21,967,360.82
			₱ 94,274,810.73

Presumptive input VAT	₱ 3,994,065,344.00
Applied against output VAT	(746,533,097.38)
VAT on subsequent land delivered by BCDA	94,274,810.73
	₱ 3,341,807,057.35
Adjustments:	
VAT included in the standard cost of sold lots (2005-2012)	(1,521,171,665.01)
VAT Refund case	(1,555,277,933.16)
Available for use	**₱ 265,357,459.18**

The Court notes that the return of 64 hectares (640,000 sqm) of land and the lots acquired from BCDA are in accordance with petitioner's *Agreement* with BCDA dated September 17, 1999 as mentioned previously.[114] In computing for the PIT available for use, however, the Court notes a discrepancy of ₱256.00 (₱3,994,065,600.00 minus ₱3,994,065,344.00) in the adjusted PIT.

Following petitioner's computation, the PIT available as of the 2nd quarter of 2014 is only ₱262,639,089.19, computed as follows: [initials]

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110 Exhibit "P-12", Docket – Vol. 2, at p. 816.
111 Exhibit "P-11-JJ", USB (Exhibit "P-11").
112 Exhibit "P-12", Docket – Vol. 2, at p. 818.
113 Exhibit "P-24", USB (Exhibit "P-11").
114 Exhibit "P-21-A", USB (Exhibit "P-11").

Original lot acquired					₱ 5,698,200,256.00
Return of 64 hectares					(1,704,134,656.00)
Adjusted PIT					₱ 3,994,065,600.00
Add: VAT on subsequent land delivered by BCDA					94,274,810.73
Total					₱ 4,088,340,410.73
Less: Applied against output tax					
Per VAT Refund Cases SC Decisions:					
Tax Period	**G.R. No.**	**Amount**			
4th Quarter - 1996	158885	₱ 28,413,783.00			
4th Quarter - 1996	181092	269,340,469.45			
1st Quarter - 1997	173425	359,652,009.47			
2nd Quarter - 1997	175707	486,355,846.78			
3rd Quarter - 1997	170680	347,741,695.74			
4th Quarter - 1997	167606	15,036,891.26			
1st Quarter - 1998	180035	77,151,020.46	₱ 1,583,691,716.16		
Per quarterly VAT returns:					
1999		239,524,111.84			
2000		27,437,302.85			
2001		309,091,252.57			
2002		136,488,697.81			
2003		8,296,575.30	720,837,940.37		
VAT included in the standard cost of sold lots (2005-2012)			1,521,171,665.01		3,825,701,321.54
PIT Available for use					**₱ 262,639,089.19**

Considering that petitioner claimed the amount ₱265,357,459.18,[115] the difference of ₱2,718,369.99 (₱265,357,459.18 less ₱262,639,089.19) will be retained as a disallowance.

h. Overclaimed Input Tax - Sources of Input per FS vs. VAT Return – ₱23,846,751.32

Respondent compared petitioner's Audited Financial Statements (AFS) with VAT returns and found an alleged overclaimed input tax of ₱23,846,751.32, broken down as follows:[116]

Particulars		**Tax Base**
Cost of Real Estate Sold/Purchases		
Development Cost, beg.	₱ 1,116,634,000.00	
Development Cost, end	953,271,000.00	₱ 163,363,000.00
Cost of Services:		
Technical services and project management	₱ 39,956,000.00	
Repairs and maintenance	20,370,000.00	
Miscellaneous	5,289,000.00	65,615,000.00

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115 Line 20D, Exhibit "P-9-e", Docket – Vol. 2, p. 949.
116 Schedule 8, "Annex-A", Exhibit "P-6", Docket – Vol. 2, p. 927, and Exhibit "R-5", BIR Records (Exhibit "R-8"), p. 334.

Marketing and Selling Expenses				
Management fees			₱ 397,212,000.00	
Marketing fees			72,318,000.00	
			₱ 469,530,000.00	
Per Note 16				
Management & Marketing fees unpaid			(368,577.00)	469,161,423.00
General and Administrative Expenses				
Professional fees			₱ 67,424,000.00	
Estate Management fees			16,193,000.00	
Director's fees			-	
Utilities and water subsidy			3,362,000.00	
Insurance			2,505,000.00	
Communications			1,595,000.00	
Security		1,549,000.00		
Janitorial		1,353,000.00		
Repairs and maintenance			1,274,000.00	
Transportation			1,112,000.00	
Supplies			507,000.00	
Entertainment, amusement and rec.			320,000.00	
Others			9,943,000.00	104,235,000.00
Additions:				
Property and Equipment				12,263,000.00
Investment Property	Equipment		₱ 38,580,000.00	
	Construction in progress		3,472,819,000.00	3,511,399,000.00
				₱4,326,036,423.00
				0.12
Input tax per FS				**₱519,124,370.76**
Less: Input tax claimed per VAT Return				
July to December			₱(307,949,837.86)	
January to June			(258,868,035.54)	(566,817,873.40)
Overclaimed input tax - FS vs VAT Return				**₱(47,693,502.64)**
1st Semester				**₱(23,846,751.32)**
2nd Semester				(23,846,751.32)

Petitioner avers that the foregoing assessment is "arbitrary and relies heavily on presumption and inferences, as it was quite probable that certain items in the AFS were left out by the examiners resulting into the discrepancy when compared to the VAT Returns." According to petitioner, respondent's examiners did not consider Note 29 of its AFS, the supplemental information required by the BIR per RR No. 15-2010, which shows that petitioner's total input taxes for the year 2014 amount to ₱1,350,129,000.00.[117] Further, the apportioning of the amounts per periods covered by the LOA by simple division instead of actually determining which amounts pertain to which periods is purely speculative.[118]

[117] Exhibit "P-10", Docket – Vol. 2, at p. 1020.
[118] *Petitioner's Memorandum*, Docket – Vol. 3, at pp. 1221 to 1223.

The ICPA then made a comparison of the total input taxes per Note 29 with the quarterly VAT returns[119] and revealed the following:[120]

Particulars	Reference	Input Tax
Per Quarterly VAT Returns	Annex 7-1	₱1,339,222,971.92
Per Supplemental Information Required by the Bureau of Internal Revenue under RR No. 15-2010 in the 2014 AFS	Exhibit P-10	1,350,129,000.00
Discrepancy		**(₱ 10,906,028.08)**

From the foregoing, it is clear that petitioner's input taxes declared in its AFS exceed the amount reported in its quarterly VAT returns for TY 2014.

The Court finds for petitioner.

Pursuant to Section 5(A) of the NIRC of 1997, as amended, respondent has the power to obtain information in determining the liability of any person for any internal revenue tax by examining any book, paper, record, or other data which may be relevant or material to such inquiry. This means that all of petitioner's books and records and supporting documents can and should be examined by respondent so that the deficiency tax liability determined by the audit is said to be based on facts, not on assumptions.

In this case, respondent failed to ascertain the portion of petitioner's input taxes per AFS that pertain to the period January to June 2014. This information would have been obtained by examining petitioner's records and supporting documents. However, under the assumption that petitioner's purchases are distributed equally during the year, respondent's examiners divided the amounts picked out from the AFS by two to estimate the portion pertaining to the period January to June 2014. Thus, the resulting disallowance of allegedly over-claimed input taxes lacks factual basis and should be cancelled.

Petitioner is not liable for the compromise penalty imposed.

Respondent also imposed administrative penalties of ₱75,000.00, viz.:[121]

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119 Exhibits "P-9-a" to "P-9-l", Docket – Vol. 2, pp. 943 to 960.
120 Exhibit "P-12", Docket – Vol. 2, at p. 821.
121 Exhibit "P-6", Docket – Vol. 2, at pp. 906 and 909, and Exhibit "R-5", BIR Records (Exhibit "R-8"), pp. 352 and 355.

II. Administrative Penalty

Compromise Penalty - Failure to file and/or pay any internal revenue tax at the time or times required by law or regulation	₱ 50,000.00
Compromise Penalty - Failure to make, file or submit the complete SLP or supply correct and accurate information therein at the time required	25,000.00
Total	**₱ 75,000.00**

Such imposition, however, cannot be sustained. Under RMO No. 7-2015,[122] "compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer" in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[123] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be cancelled. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[124]

In sum, petitioner is liable for deficiency VAT for the period January to June 2014, in the total amount of ₱13,111,977.06, summarized below:

Receipts subjected to VAT per VAT Returns		₱7,758,789,738.66
Add: Adjustments/Disallowances		
Undeclared Sales per SLS vs. TPI	₱ 7,863,987.44	
Unsupported Non-VAT Official Receipt per OR Listing	72,374,855.78	80,238,843.22
		₱7,839,028,581.88
Output tax thereon		₱ 940,683,429.83
Less: Allowable Input Tax		
Allowable Input Tax per VAT Returns	₱ 545,900,531.98	
Less: Disallowances/Adjustments		
Disallowed Input Tax - Unsupported Input Tax per SLP vs. TPI	730,500.31	
Disallowed input tax per TIN Verification	34,445.56	
Unsupported Presumptive Input Tax	2,718,369.99	542,417,216.12
VAT Due		₱ 398,266,213.71
Less: VAT Payments		385,154,236.65
Basic Deficiency Value-Added Tax		**₱ 13,111,977.06**

[122] SUBJECT: The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

[123] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

[124] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

In addition to the foregoing basic deficiency taxes, petitioner is liable to a penalty of 25% surcharge imposed on the basic deficiency taxes pursuant to Section 248(A)(3) of the NIRC of 1997, which reads:

> SEC. 248. *Civil Penalties.* —
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx xxx xxx
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; xxx

Moreover, in accordance with Section 249(B) of the NIRC of 1997, as amended, petitioner is liable to pay deficiency interest at the rate of 20% per annum computed from the date prescribed for its payment until the full payment thereof. However, with the effectivity of R.A. No. 10963, otherwise known as the TRAIN Law, on January 1, 2018, the 20% deficiency interest shall be computed until December 31, 2017 only, while the rate of 12% per annum shall be imposed starting January 1, 2018 until full payment of the deficiency taxes due.

Notably, the TRAIN Law amended (i) the interest rates in Section 249 of the NIRC, as amended, (ii) the computation of deficiency interest from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the CIR, whichever comes earlier, and (iii) provides that the deficiency and delinquency interest prescribed under Subsections (B) and (C) thereof shall not be imposed simultaneously.

In the present case, the Assessment Notice bears the date April 30, 2017[125] as the time prescribed to pay the total amount due found in respondent's assessment.

Likewise, pursuant to Section 249(C) of the NIRC of 1997, as amended, petitioner is liable to pay delinquency interest at the rate of 12% per annum computed from May 1, 2017 until full payment thereof.

Thus, for the period January to June 2014, petitioner is liable to pay the aggregate amount of ₱28,581,157.39, consisting of basic deficiency VAT, surcharge, and deficiency and delinquency interests computed as of December 31, 2017 as follows:

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[125] Exhibit "P-6", Docket – Vol. 2, p. 910, and Exhibit "R-5", BIR Records (Exhibit "R-8"), p. 351.

Basic deficiency VAT	₱ 13,111,977.06
Add: 25% Surcharge	3,277,994.26
20% Deficiency Interest (July 26, 2014 to April 30, 2017) [₱13,111,977.06 x 20% x (1,010/365days)]	7,256,491.41
Total Amount Due – April 30, 2017	**₱ 23,646,462.73**
20% Deficiency Interest: (May 1, 2017 to December 31, 2017) [₱13,111,977.06 x 20% x (245/365days)]	1,760,238.02
20% Delinquency Interest: (May 1, 2017 to December 31, 2017) [₱23,646,462.73 x 20% x (245/365days)]	3,174,456.64
Total Amount Due – December 31, 2017	**₱ 28,581,157.39**

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, respondent's administrative penalties being imposed in the total amount of ₱75,000.00, as reflected in the Formal letter of Demand, for the period January 1, 2014 to June 30, 2014 is **CANCELLED** for lack of merit.

However, the deficiency value-added tax assessment for the period January 1, 2014 to June 30, 2014 is **UPHELD WITH MODIFICATIONS**. Hence, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱28,581,157.39** as of December 31, 2017, representing basic deficiency VAT, surcharge and interest, broken down as follows:

Basic deficiency VAT	₱ 13,111,977.06
Add: 25% Surcharge	3,277,994.26
20% Deficiency Interest (July 26, 2014 to April 30, 2017)	7,256,491.41
Total Amount Due – April 30, 2017	**₱23,646,462.73**
20% Deficiency Interest (May 1, 2017 to December 31, 2017)	1,760,238.02
20% Delinquency Interest (May 1, 2017 to December 31, 2017)	3,174,456.64
Total Amount Due – December 31, 2017	**₱28,581,157.39**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of 12% per annum on the total amount due of **₱23,646,462.73** as of April 30, 2017, as determined above, or equivalent to the amount of ₱7,774.18[126] per day, from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the National Internal Revenue Code of 1997, as amended by the Tax Reform for Acceleration and Inclusion Law, and implemented by Revenue Regulations No. 21-2018.

[126] ₱23,646,462.73 multiplied by 12% divided by 365 days.

Lastly, pursuant to Section 13 of Republic Act No. 9282, considering that this decision is partly favorable to the national government, the Bureau of Internal Revenue, through respondent, is hereby authorized to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of petitioner in sufficient quantity to satisfy the tax or charge with any increment thereto incident to delinquency.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

We Concur:

On leave
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Second Division Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Acting 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