REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,	**CTA *EB* NO. 1961** *(CTA Case No. 9045)*
Petitioner,	
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY,**
-versus-	**FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
MCC TRANSPORT SINGAPORE PTE. LTD.,	Promulgated:
Respondent.	**JUL 14 2020** 2:55 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8[2] of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[3] seeking the reversal and setting aside of the Decision promulgated on 18 May 2018 and the Resolution dated 12 October 2018, both rendered by the Special Third Division ("Court in Division"), and to render a new judgment ordering respondent to pay the deficiency Value-Added Tax ("VAT") in the aggregate amount of

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[1] See Petition for Review; *Rollo*, pp. 5-47, with annexes.

[2] "SECTION 3. *Who May Appeal; Period to File Petition.* —

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

[3] A.M. No. 05-11-07-CTA, 22 November 2005.

₱25,772,734.83 for taxable year 2009 plus surcharge and delinquency and deficiency interests.[4]

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (hereinafter referred to as the "Tax Code") or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

Meanwhile, respondent MCC Transport Singapore Pte. Ltd., is a foreign corporation duly organized and existing under the laws of Singapore. It is engaged in international shipping of cargoes to and from the Philippines through its general shipping agent, Maersk Filipinas, Inc., with registered office address at c/o Maersk Filipinas, Inc., 9/F One E-Com Center, Harbor Drive corner Sunset Ave., Mall of Asia Complex, Pasay City.[6]

The Facts

Respondent electronically filed its Quarterly VAT Returns for taxable year 2009 on the following dates:

Period Covered[7]	**Date Filed and Paid[8]**
1st Quarter 2009	27 April 2009
2nd Quarter 2009	21 July 2009
3rd Quarter 2009	21 October 2009
4th Quarter 2009	22 January 2010

On 15 September 2010, respondent received Letter of Authority ("LOA") No. LOA-051-2010-00000270, dated 13 September 2010, authorizing BIR examiners to examine its books of account and other accounting records for all internal revenue taxes for the period 1 January 2009 to 31 December 2009.[9]

Thereafter, petitioner issued Letter Notice No. 051-TRS-09-00-00024, dated 24 May 2011, with attached Details of Withholding Agents/Payors and Payees/Income Recipients Records. In the said Letter Notice, petitioner disclosed that per the BIR's computerized/third-party matching, it noted

4 See Prayer in the Petition for Review; *Rollo*, p. 15.
5 See The Facts in the Decision; *Rollo*, p. 21.
6 *Id.*, pp. 20-21.
7 *Id.*, p. 21.
8 *Ibid.*
9 *Ibid.*

certain discrepancies between respondent's sales/receipts in its VAT returns vis-à-vis the information provided by respondent's withholding agents for taxable year 2009.[10]

In its Letter Reply, dated 4 August 2011, respondent explained that it had no transactions with the withholding agents identified by the BIR in the Letter Notice.[11]

Subsequently, respondent received the Preliminary Assessment Notice ("PAN"), dated 26 December 2013, with attached Details of Discrepancies on 27 December 2013. In the PAN, the BIR found respondent to have undeclared sales/receipts amounting to ₱83,886,643.55 and consequently found it liable for deficiency VAT in the amount of ₱23,125,134.46, representing the basic tax, fifty percent (50%) surcharge, and deficiency interest for taxable year 2009.[12]

Respondent filed its Protest to the PAN on 10 January 2014.[13]

Thereafter, petitioner issued the Formal Assessment Notice ("FAN") with attached Details of Discrepancies and Assessment Notice No. VT-ELA4967/LA43131/LN024-09-14-095 on 21 January 2014, which was received by respondent on 22 January 2014.[14]

On 20 February 2014, respondent filed a Letter, dated 17 February 2014, seeking reconsideration of the FAN.[15]

Petitioner replied through a Letter, dated 4 March 2014, which was received by respondent on 7 March 2014. In the Letter, petitioner advised respondent that its entire tax docket, together with its Letter, were forwarded to Revenue District Office ("RDO") No. 51-Pasay City for reconsideration.[16]

On 31 March 2014, respondent received from the Officer-in-Charge ("OIC") Revenue District Officer of RDO No. 51-Pasay City a letter informing respondent that the case was reassigned to a new Revenue Officer and a new Group Supervisor and requesting the same to submit to the named Revenue Officer the documents in support of the protest to the FAN.[17]

On 16 April 2015, respondent received the Final Decision on Disputed Assessment ("FDDA") with attached Details of Discrepancies, both dated 15 April 2015, finding respondent liable for deficiency VAT in the aggregate amount of ₱25,772,734.83 for taxable year 2009 representing basic tax, 50% surcharge, and interest.[18]

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[10] *Ibid.*
[11] *Id.*, p. 22.
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid.*
[17] *Ibid.*
[18] *Id.*, p. 23.

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Aggrieved, respondent filed a Petition for Review before the Court in Division on 14 May 2015.[19]

On 18 May 2018, the Court in Division promulgated the assailed Decision[20] cancelling and withdrawing the FDDA, dated 15 April 2015, as follows:

> "**WHEREFORE,** premises considered, the Petition for Review is **GRANTED.** Accordingly, the Final Decision on Disputed Assessment dated April 15, 2015, assessing petitioner for deficiency value-added tax, including surcharge and interest, in the aggregate amount of ₱25,772,734.83 for the year ended December 31, 2009 is **CANCELLED** and **WITHDRAWN.**"

In cancelling and withdrawing the FDDA, the Court in Division ruled that the third-party information to which the assessment is based was not verified by the BIR except for respondent's two (2) sales transactions totaling to ₱86,275.08. However, even if the said amount was verified, the Court in Division still cancelled the assessment, since the FAN was received by the respondent beyond the 3-year prescriptive period.

Further, the Court in Division explained that the 10-year prescriptive period does not apply in this case since the petitioner failed to prove that the respondent filed a fraudulent return with intent to evade taxes.

Thereafter, on 7 June 2018, the petitioner filed his Motion for Reconsideration.[21] Meanwhile, respondent filed its "Comment (to Respondent's Motion for Reconsideration dated 7 June 2018)" on 13 July 2018.[22]

On 12 October 2018, the Court in Division issued the assailed Resolution[23] denying petitioner's Motion for Reconsideration for lack of merit. The dispositive portion is hereby quoted, to wit:

> "**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit."

On 30 October 2018, petitioner filed a Motion for Extension of Time to File Petition for Review,[24] which was granted by the Court *En Banc.*[25]

On 15 November 2018, petitioner filed the instant Petition for Review.[26] However, he failed to attach a copy of Revenue Delegation Authority Order ("RDAO") Nos. 3-2006 and 02-2007 which show the

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[19] *Ibid.*
[20] *Id.*, p. 19-42.
[21] See Resolution; *Rollo*, p. 44.
[22] *Ibid.*
[23] *Rollo*, pp. 44-47.
[24] *Id.*, pp. 1-3.
[25] See Minute Resolution; *Rollo*, p. 4.
[26] *Rollo*, pp. 5-47, with annexes.

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authority of Regional Director Glen A. Geraldino to act and on behalf of petitioner. Hence, the Court *En Banc*, in a Resolution dated 14 December 2018, ordered petitioner to submit a copy of the said RDAOs.[27]

In compliance with the 14 December 2018 Resolution, the petitioner belatedly filed a Manifestation with Motion to Admit with the attached RDAOs on 15 January 2019.[28]

Thereafter, the Court *En Banc* issued a Resolution dated 11 February 2019, directing respondent to file its Comment within ten (10) days from receipt of the said Resolution. The Court *En Banc* also manifested in the same Resolution that it will decide on whether it will give due course to the instant Petition only after respondent's submission of its Comment or upon the expiration of the period given for filing.[29]

Respondent submitted its Comment (to Petitioner's Petition for Review dated 6 November 2018) on 11 March 2019.[30]

On 17 March 2019, the Court *En Banc* referred the case for mediation pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[31]

Subsequently, on 24 May 2019, the parties filed their No Agreement to Mediate, dated 23 May 2019, stating that they have decided not to have their case mediated by the Philippine Mediation Center Unit-Court of Tax Appeals.[32]

Considering the decision of the parties not to mediate, the Court *En Banc* issued a Resolution dated 18 June 2019 directing them to file their respective memoranda.[33]

On 30 July 2019, the petitioner filed a manifestation stating that he is adopting the arguments he raised in his Petition for Review as his Memorandum.[34] Meanwhile, the respondent filed its Memorandum on 31 July 2019.[35]

On 11 September 2019, the Court *En Banc* promulgated a Resolution submitting the case for decision.[36] Hence, this Decision.

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[27] *Id.*, pp. 50-51.
[28] *Id.*, pp. 52-61.
[29] *Id.*, pp. 62-64.
[30] *Id.*, pp. 65-84.
[31] *Id.*, pp. 86-87.
[32] *Id.*, pp. 88-92
[33] *Id.*, pp. 94-95.
[34] *Id.*, pp. 96-98.
[35] *Id.*, pp. 100-136.
[36] *Id.*, pp. 139-140.

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The Issues[37]

WHETHER THE COURT IN DIVISION ERRED IN CANCELLING AND WITHDRAWING THE FDDA DATED 15 APRIL 2015 ASSESSING RESPONDENT FOR DEFICIENCY VAT INCLUDING SURCHARGE AND INTEREST, IN THE AGGREGATE AMOUNT OF ₱25,772,734.83 FOR TAXABLE YEAR 2009 DUE TO ALLEGED PRESCRIPTION AND FOR PETITIONER'S FAILURE TO SECURE THE REQUIRED CERTIFICATIONS OR CONFIRMATION FROM THE THIRD PARTY SOURCES.

Arguments of the Parties

Petitioner's Arguments[38]

Petitioner argues that although he did not secure the certifications or confirmations from the third-party information sources to support the information it gathered from the computerized/third-party matching, the absence of such confirmation did not affect the validity of the assessment. He insists that nowhere in ***Revenue Memorandum Order ("RMO") No. 04-2003 or 46-2004*** does it state that the absence of said certifications or confirmations renders the assessment void.

Petitioner also alleges that since the lack of certifications or confirmations do not render the assessment void, his assessment finding respondent to have undeclared sales/receipts amounting to ₱83,886,643.55 should be sustained, and since his assessment exceeds 30% of respondent's declared sales/receipts in its VAT returns, the same should be considered as a false return which triggers the applicability of the ten (10) year prescriptive period.

Respondent's Counter-Arguments[39]

Respondent alleges that the instant Petition for Review raises no new issue and should be denied outright. Respondent maintains that petitioner's arguments are identical to the ones it raised in his Motion for Reconsideration which were already denied by the Court in Division in its assailed Resolution and Decision.

Further, respondent insists that the assessment is void since petitioner failed to observe the necessary due process in the issuance of the assessment,

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[37] See Issues for Resolution in the Petition for Review: *Rollo*, pp. 9-10.
[38] See Petition for Review; *Rollo*, pp. 5-47, with annexes.
[39] See Memorandum; *Rollo*, pp. 100-137.

in violation of ***Section 228 of the Tax Code*** which requires the assessment to be based on facts. Respondent explains that petitioner's assessment is based on unverified and inaccurate third party information which renders the assessment void.

Finally, respondent argues that petitioner's allegation that it substantially underdeclared its sales/receipts is false and is without factual basis. It insists that the applicable prescriptive period should only be three (3) years, and since the FAN was issued beyond the said three (3) year period, the assessment has already prescribed.

The Ruling of the Court

The data gathered by the BIR from the third-party information source should be verified in order to render the assessment valid.

The contention of the petitioner that the validity of the assessment is not affected by the absence of the certifications or confirmations from the third-party sources to validate the amounts obtained by the BIR from its computerized/third-party matching is wrong and without merit.

The pertinent portions of ***RMO No. 04-2003 and 46-2004*** state:

> "Revenue Memorandum Order No. 4-2003
>
> Subject: Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002
>
> xxx xxx xxx
>
> I. Background
>
> The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.
>
> The RELIEF System was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.
>
> The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. **The consolidation**

and matching of information <u>with other externally sourced data</u> will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential."

"Revenue Memorandum Order No. 46-04

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

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III. PROCEDURES

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Action on Protested LNs due to TPI discrepancy

The Revenue Officer assigned to handle the Letter Notice shall:

1. Evaluate the merits of the taxpayer's Protest by:

1.1 Requiring the taxpayer to submit the necessary schedules and supporting documents to substantiate his claims.

1.2 Reconciling the Schedule of Sales/Local Purchases submitted by the taxpayer against the Details of Taxpayer's Customers/Suppliers' Records (DTCS) culled from the Quarterly Summary List of Sales/Purchases submitted by taxpayer's suppliers and customers, respectively.

1.3 Reconciling the Schedule of Importation submitted by the taxpayer against the Details of Importation with Return Information Matching (DIRIM) culled from data provided by the Bureau of Customs (BOC).

1.4 Checking for the propriety of the transactions reflected in the schedules submitted by the taxpayer by validating receipts, import entry declarations, etc.).

2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.

<u>3. Obtain Sworn Statements from TPI sources (Annexes "B" and "C").</u>"[40]

Although the said RMOs do not explicitly state that the absence of the confirmation or certification renders the assessment void, the abovementioned provisions confirm that the BIR is required to verify the amounts it obtained from its computerized/third-party matching by securing confirmation or

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[40] Emphasis supplied.

certification from the third-party information source, or from externally sourced data.

Without accomplishing the aforementioned, 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.

As ruled by the Supreme Court in ***Commissioner of Internal Revenue v. Hantex Trading Co., Inc.***[41] an assessment, in order to stand judicial scrutiny, must be based on facts supported by credible evidence. The relevant portions of the said case are hereby quoted, as follows:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. **Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence**.
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> xxx xxx xxx
>
> Thus, the computations of the EIIB and the BIR on the quantity and costs of the importations of the respondent in the amount of P105,761,527.00 for 1987 have no factual basis, hence, arbitrary and capricious. **The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in Collector of Internal Revenue v. Benipayo, in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.**"[42]

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[41] G.R. No. 136975, 31 March 2005.
[42] Emphasis supplied.

Furthermore, the issue raised by the petitioner is not novel and has been resolved by this court in ***Commissioner of Internal Revenue v. G&W Architects, Engineers and Project Consultants, Co.***,[43] where it was ruled:

> "The assessment being based on unverified information, this Court could not just recklessly take it hook, line and sinker, absent any substantiation.
>
> **Petitioner likewise failed to show that he complied with the guidelines set forth in RMO No. 46-04, which requires the execution and presentation of sworn statements from third-party informants to attest to veracity of the schedules and data on which the assessment is based. There being no verification, the reliability of such information is questionable.**
>
> **Moreover, while there is a presumption of correctness of assessment issued by [Petitioner], it is an elementary rule that being a mere presumption, the same cannot be made to rest on another presumption which is [Petitioner's] presumption that the under-declared purchases translated and would automatically result in profit, undeclared income or additional taxable sales which would in turn increase [Respondent's] income tax and VAT liability.**"

In this case, out of respondent's alleged undeclared sales/receipts assessment totaling to ₱83,886,643.55, the Court in Division, upon examination, ruled that petitioner was only able to verify two sales transactions made to Starfire Co., Inc. and Transcontainer Philippines, Inc., with the aggregate amount of ₱86,275.08.

At this juncture, the Court can only consider these transactions as valid undeclared sales/receipts assessment of the petitioner.

Petitioner failed to establish that respondent's VAT returns were fraudulent, with intent to evade.

As discussed above, the petitioner was only able to verify its undeclared sales/receipts assessment up to the amount of ₱86,275.08, which only represents 1.21% (₱86,275.08/₱7,108,001.37) of the total declared sales of the respondent. Given this, the petitioner failed to prove that there is substantial under-declaration and or fraud under Section 222 of the Tax Code. Hence, the three (3) year prescriptive period under Section 203 of the Tax Code must apply.

Under Section 203 of the Tax Code, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return or when the return was filed, whichever is later. Hence, based on this provision, the petitioner had the following dates to assess the respondent, as follows:

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[43] CTA E.B. No. 1572, 23 February 2018

Period Covered[44]	Date Filed and Paid[45]	Last Day to File as Required by Law	Last Day to Assess
1st Quarter 2009	27 April 2009	25 April 2009	27 April 2012
2nd Quarter 2009	21 July 2009	25 July 2009	25 July 2012
3rd Quarter 2009	21 October 2009	25 October 2009	25 October 2012
4th Quarter 2009	22 January 2010	25 January 2010	25 January 2013

Considering that the FAN was only received by respondent on 22 January 2014, the same was clearly issued beyond the 3-year prescriptive period allowed by the Tax Code.

Given the foregoing, we uphold the ruling of the Court in Division finding petitioner's deficiency VAT assessment for calendar year 2009 null and void.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision promulgated on 18 May 2018 and the Resolution dated 12 October 2018 are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[44] See The Facts in the Decision; *Rollo*, p. 21.
[45] *Ibid.*

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, 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