REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ALLEGRO MICROSYSTEMS PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8445

Members:

DEL ROSARIO, *P.J.*,
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

JUN 10 2015 ; 2:45 p.m.

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RESOLUTION

UY, *J.*:

For resolution is respondent's **"MOTION FOR PARTIAL RECONSIDERATION"** filed on March 6, 2015, with petitioner's **"COMMENT (On Motion for Partial Reconsideration dated 5 March 2015)"** filed on April 10, 2015, praying for the partial reconsideration and setting aside of this Court's Decision dated February 12, 2015, insofar as it cancelled and set aside a part of the subject income tax assessment, declaring that petitioner did not overstate its cost in the amount of ₱26,600,000.00.

The dispositive portion of the said Decision reads:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessment issued by respondent against the petitioner covering deficiency income tax for the fiscal year ended March 31, 2008 is hereby **MODIFIED**. Petitioner is hereby **ORDERED TO PAY** respondent the amount of ₱1,009,776.95, consisting of the basic income tax due and surcharge, computed as

follows:

Taxable Income per Return		₱ 101,790,902.00
Add: Purchases – unsupported/overclaimed	836,829.72	
Bad Debts – not ascertained to be worthless	1,471,232.73	2,308,062.45
Taxable Income		₱ 104,098,964.45
Income Tax Due		₱ 36,434,637.56
Less: Income Tax Due per Return		35,626,816.00
Deficiency Income Tax Due		₱ 807,821.56
Add: Surcharge (25%)		201,955.39
Total Deficiency Income Tax, including increments		₱ 1,009,776.95

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

(a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax of ₱807,821.56, computed from July 15, 2008 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount of ₱1,009,776.95, plus the 20% deficiency interest which have accrued under subparagraph (a) hereof, computed from February 27, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

In the instant Motion, respondent contends that this Court erred in partially granting the Petition for Review of petitioner when it declared that petitioner did not overstate its cost in the amount of ₱26,600,000.00. Respondent points out that in the parties' Joint Stipulation of Facts and Issues dated July 17, 2012 and this Court's Pre-Trial Order dated July 27, 2012, it is apparent that the parties judicially admitted the following:

"1.6. **<u>Import Entry & Internal Revenue Declaration</u>** ('IERD') No. 12998 dated 4 July 2007 indicates the **<u>landed cost of P2,955,974.10</u>**, and VAT in the amount of P354,716.89;

1.7. In the **<u>Summary List of Importations</u>** ('SLI') attached to AMPI's Quarterly VAT Return filed on 24 October 2007, the **<u>total landed cost of the importation covered by IEIRD No. 12998 dated 4 July 2006</u>**

reflected the amount of P29,555,974.10;

1.8. The difference between the figures in IEIRD No. 12998 and the SLI is P26,600,000.00;

1.9. AMPI paid VAT on the importation covered by IEIRD No. 12998 in the amount of P354,716.89."[1] *(Citation, emphases and underscoring provided by respondent)*

Respondent then asserts that: (1) the judicial admissions made by the parties are conclusive between them, and respondent need not present evidence to prove those facts; and (2) petitioner was already in estoppel.

Thus, respondent concludes that she was correct when she found that petitioner have an understatement of gross income due to overstatement of cost in the amount of ₱26,600,000.00, and assessed petitioner a deficiency income tax in the amount of ₱17,755,765.05.

Moreover, respondent opines that the Bureau of Internal Revenue examiner's assessment should be given full weight and credit, in the absence of proof submitted by a taxpayer to the contrary. According to respondent, all presumptions are in favor of the correctness of tax assessments.

On the other hand, petitioner argues that contrary to respondent's claim, petitioner made no judicial admission that it overstated its cost and understated its income to the extent of ₱26,600,000.00 for fiscal year ending March 31, 2008. Petitioner likewise asserts that the presumption of correctness does not apply as the assessment issued by respondent because it has no factual basis, and has been overcome by evidence to the contrary.

THE COURT'S RULING

The Motion for Partial Reconsideration lacks merit.

Without doubt, an admission made in a stipulation of facts at pre-trial by the parties is considered a judicial admission and, under

[1] Docket, p. 683.

the Rules of Court, requires no proof; and that the Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted.[2]

We likewise do not dispute the doctrine that estoppel is an equitable principle rooted in natural justice; for it is meant to prevent persons from going back on their own acts and representations, to the prejudice of others who have relied on them.[3]

However, respondent's invocation of the foregoing legal principles is misplaced.

It is true that the following facts were judicially admitted:

> "1.6. **Import Entry & Internal Revenue Declaration ('IERD') No. 12998 dated 4 July 2007 <u>indicates</u> the landed cost of ₱ 2,955,974.10**, and VAT in the amount of ₱354,716.89;
>
> 1.7. **In the Summary List of Importations ('SLI') attached to AMPI's Quarterly VAT Return filed on 24 October 2007, the total landed cost of the importation covered by IEIRD No. 12998 dated 4 July 2007 <u>reflected</u> the amount of ₱29,555,974.10**;
>
> 1.8. **The <u>difference</u> between the figures in IEIRD No. 12998 and the SLI is ₱26,600,000.00**;
>
> 1.9. AMPI paid VAT on the importation covered by IEIRD No. 12998 in the amount of ₱354,716.89."[4] *(Emphases and underscoring supplied)*

Nevertheless, We find it hard to agree with respondent in contending that on the basis of the foregoing judicial admissions, it is shown that petitioner has understated its gross income in the amount of ₱26,600,000.00 due to the overstatement of its cost.

A cursory reading of the said judicial admissions would reveal

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[2] *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.

[3] *Philippine Realty and Holdings Corporation vs. Ley Construction and Development Corporation, etseq.*, G.R. Nos. 165548 and 167879, June 13, 2011.

[4] Pars. 1.6 to 1.9, Joint Stipulation of Facts and Issues, Docket, pp. 154 to 155.

that what were judicially admitted are the facts that the landed cost in the amount of ₱2,955,974.10 is **"indicated"** in IERD No. 12998; that the amount of ₱29,555,974.10, which represents the landed cost covered by the same IERD, is **"reflected"** in the SLI; and that the difference between the said amount is ₱26,600,000.00. Nothing more.

The word "indicate" means to *"give a knowledge of; show as something existing or taking place; point out; show; suggest"*;[5] while the term "reflect", which is practically the same as the said word "indicate", connotes *"to make apparent"* or *"to show"*.[6]

Thus, simply put, the judicially admitted facts are merely that the amounts ₱2,955,974.10 and ₱29,555,974.10 are shown in IERD No. 12998 and the said SLI, respectively, resulting to a difference of ₱26,600,000.00. This difference is then explained by petitioner's witness, Mr. Ronald B. De La Rosa, that *"the amount of ₱29,555,974 being referred to by the Respondent is the result of the inadvertent inclusion of an additional '5' in the landed cost of IEIRD No. 12998 as indicated in the SLI"*,[7] which testimony was never disputed by respondent, either by cross-examination[8] or by contrary evidence. Correspondingly, as We have decreed in the assailed Decision, considering the contents of the said IEIRD, being the source document, vis-à-vis of the subject SLI, coupled with the said testimony, We find that the true amount for the subject importation is ₱2,955,974.10, and not ₱29,555,974.10. Such being the case, there is no finding of understatement of income in this case in the amount of ₱26,600,000.00.

Lastly, the presumption of correctness in favor of the correctness of a tax assessment is not an absolute rule. In *Commissioner of Internal Revenue vs. Hantex Trading, Co. Inc.*,[9] the Supreme Court said:

> "**We agree with the contention of the petitioner that, <u>as a general rule</u>, 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

[5] The Attorney's Pocket Dictionary 1981, p. 243.
[6] The Merriam-Webster Dictionary 2005, p. 418.
[7] Exhibit "O" (Q28-A28, Affidavit of Ronald B. Dela Rosa dated 30 July 2012), Docket, pp. 167 to 168.
[8] See Transcript of Stenographic Notes at the hearing held on August 2, 2012.
[9] G.R. No. 136975, March 31, 2005.

> 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.
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> **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.***" *(Emphases and underscoring supplied)*

In this case, upon the introduction of IERD No. 12998, as the source document indicating the real amount of landed cost of the subject importation, and of the above-stated undisputed testimony of Mr. De La Rosa, such proof made the deficiency income tax assessment, insofar as the effect of the finding of understatement in the amount of ₱26,600,000.00 is concerned, utterly without foundation. Thus, the presumption of correctness of a tax assessment does not apply in this instance.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice