REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

EUROFRAGANCE PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 10169**
	Members:
- versus -	**DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 29 2023, 9:30 AM

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DECISION

REYES-FAJARDO, *J.*:

We are called upon to rule on the Petition for Review filed on September 23, 2019, which seeks to annul, reverse, and set aside the Commissioner of Internal Revenue's Final Decision on Disputed Assessment (FDDA) dated July 30, 2019, finding Eurofragance Philippines, Inc. liable for deficiency Value-Added Tax (VAT), amounting to ₱3,492,741.09, inclusive of interest, covering January 1, 2017 to June 30, 2017.[1]

FACTS

Petitioner Eurofragance Philippines, Inc. is a corporation duly organized and existing under Philippine[2] laws, to engage in, conduct, and carry on the business of buying, marketing, selling, and distributing at wholesale, insofar as may be permitted by law, all kinds of goods, commodities, wares, and merchandise of every kind

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1 See Par. 1.1, Petition for Review. Docket (Vol. I), p. 6.

2 Exhibit "P-1." Docket (Vol. II), pp. 715-741.

and description and carrying the trademark or tradename "Eurofragance," such as, but not limited to, flavours, fragrances, cosmetics, foods, and household supplies, and commodities registered under such trademark or tradename, with principal office address at CRT Building 8414 Dr. A. Santos Avenue, Barangay BF Homes, Sucat, Parañaque City, Metro Manila.[3]

Respondent Commissioner of Internal Revenue is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with, among other powers and duties, the responsibility of collecting all national internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On January 29, 2018, Regional Director Glen A. Geraldino (RD Geraldino), issued Letter of Authority (LOA) No. eLA201500085271,[5] authorizing Revenue Officer Roderick Abad, and Group Supervisor Annabeth Gutierrez, to examine petitioner's books of accounts and other accounting records for VAT, for the periods January 1, 2017 to June 30, 2017.

On January 29, 2018, RD Geraldino also issued LOA No. eLA201500085394, [6] authorizing GS Annabeth Gutierrez (GS Gutierrez), and RO Kayla Monica Vargas (RO Vargas), to examine petitioner's books of accounts and other accounting records for VAT, covering the same period. LOA No. eLA201500085394 replaced LOA No. eLA201500085271 because RO Roderick Abad was transferred to another office of the BIR.[7]

On November 19, 2018, petitioner received an undated Preliminary Assessment Notice (PAN),[8] containing the proposed assessment for deficiency VAT, amounting to ₱3,248,043.81, inclusive of interest, covering January 1, 2017 to June 30, 2017.[9]

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3 See Par. 1.1, Stipulation of Facts, Joint Stipulation of Facts and Issue (JSFI). Docket (Vol. I), p. 594.
4 See Par. 1.2, Stipulation of Facts, JSFI. *Id.* at p. 595.
5 Exhibit "P-2." Docket (Vol. II), pp. 743-744.
6 Exhibit "P-3." *Id.* at p. 746.
7 Exhibit "R-3." Folder 1, BIR Records, p. 2.
8 Exhibit "P-6." Docket (Vol. II), pp. 754-756.
9 Par. 1.3, Stipulation of Facts, JSFI. Docket (Vol. I), p. 595.

On December 4, 2018, petitioner filed with the BIR, a letter of even date,[10] seeking reconsideration of the disallowances made by the BIR, reflected in the PAN.

On December 12, 2018, petitioner received[11] the Formal Assessment Notice (FAN) dated December 7, 2018,[12] issued by respondent, covering January 1, 2017 to June 30, 2017. The FAN assessed petitioner of deficiency VAT, inclusive of interest, in the total amount of ₱3,278,407.71:

Deficiency VAT	₱2,716,377.95
Interest	562,029.76
Total Amount Due	**₱3,278,407.71**[13]

On December 21, 2018, petitioner protested the FAN by way of a Request for Reinvestigation.[14]

On January 29, 2019, petitioner received the BIR's letter, granting the Request for Reinvestigation. Accordingly, the former was directed to submit supporting documents within sixty (60) days from the date of filing of its administrative protest.[15]

On February 15, 2019, the BIR received[16] petitioner's transmittal letter, submitting documents in support of its Request for Reinvestigation.[17]

On August 23, 2019, petitioner received[18] respondent's FDDA[19] dated July 30, 2019, denying its Protest to the FAN. Said FDDA sustained the deficiency VAT assessment embodied in the FAN, with adjustment on the interest, computed as follows:

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10 Exhibit "P-7." Docket (Vol. II), pp. 758-760.
11 Par. 1.4, Stipulation of Facts, JSFI. Docket (Vol. I), p. 595.
12 Exhibit "P-33." *Id.* at pp. 812-815.
13 Par. 1.6, Stipulation of Facts, JSFI. *Ibid.*
14 Exhibit "P-34." Docket (Vol. II), pp. 817-825.
15 Exhibit "P-35." *Id.* at p. 827.
16 Par. 1.8, Stipulation of Facts, JSFI. Docket (Vol. I), p. 595.
17 Exhibit "P-36." Docket (Vol. II), pp. 829-847.
18 Par. 1.9, Stipulation of Facts, JSFI, Docket (Vol. I), p. 595.
19 Exhibit "P-37." Docket (Vol. II), pp. 1044-1047.

Deficiency VAT	₱2,716,377.95
Interest	776,363.14
Total Amount Due	**₱3,492,741.09**[20]

On September 23, 2019, petitioner filed a Petition for Review, docketed as CTA Case No. 10169,[21] to which respondent posted his Answer[22] on December 17, 2019.

In the Hearing held on November 19, 2020, Krista V. Bambao was commissioned as Independent Certified Public Accountant (ICPA). Additionally, a Pre-Trial Conference was held, whereby: (1) the parties agreed to submit their JSFI; and (2) the Court scheduled the marking of their respective evidence, and presentation of their respective witnesses.[23]

On December 7, 2020, the parties submitted their JSFI,[24] which became the basis of the Pre-Trial Order.[25]

During trial, petitioner presented: (1) Ms. May V. Heramia,[26] its Chief Finance Officer; and (2) ICPA Bambao,[27] as its witnesses.

On January 22, 2021, petitioner filed its Formal Offer of Documentary Evidence,[28] to which respondent posted his Comment/ Opposition on March 15, 2021.[29]

By Resolution dated July 7, 2021,[30] the pieces of evidence offered by petitioner were admitted, *except*:

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20 Par. 1.10, Stipulation of Facts, JSFI. Docket (Vol. I), p. 595.
21 *Id.* at pp. 6-30.
22 *Id.* at pp. 90-97.
23 Order dated November 19, 2020. *Id.* at pp 574-577.
24 *Id.* at pp. 594-602.
25 *Id.* at pp. 674-691.
26 Exhibit "P-59." *Id.* at pp. 182-210. See Order dated February 2, 2021, *id.* at pp. 673-673-A.
27 Exhibit "P-143." *Id.* at pp. 644-657. See Order dated February 2, 2021, *id.* at pp. 673 to 673-A.
28 Docket (Vol. II), pp. 695-713.
29 Docket (Vol. III), pp. 1209-1215.
30 *Id.* at pp. 1220-1222.

1. Exhibits "P-61" and "P-62," for failure of the exhibit formally offered and identified to correspond with the document actually marked; and,

2. Exhibits "P-108," "P-137," "P-138," and "P-139," for being provisionally marked by the ICPA.

On September 28, 2021, petitioner filed its Motion for Partial Reconsideration of the Resolution dated 7 July 2021,[31] seeking admission of its denied exhibits, to which respondent filed his Comment / Opposition on December 2, 2021.[32]

Through Resolution dated March 24, 2022, Exhibits "P-61," and "P-62" were admitted as petitioner's evidence. However, Exhibits "P-108," "P-137," "P-138" and "P-139," were still denied admission as petitioner's evidence, for failure to lay the bases for the presentation of secondary evidence.[33]

Respondent presented RO Kayla Monica P. Vargas as his sole witness.[34]

On June 6, 2022, respondent filed his Formal Offer of Evidence,[35] to which petitioner filed its Comment and/or Opposition on June 13, 2022.[36]

Under Resolution dated August 5, 2022,[37] all the pieces of evidence offered by respondent were admitted.

By Minute Resolution dated September 30, 2022,[38] this case was submitted for decision, taking into account: (1) Memorandum (For the Respondent), posted on September 12, 2022;[39] and (2) petitioner's Memorandum filed on September 16, 2022.[40]

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31 *Id.* at pp. 1223-1231.
32 *Id.* at pp. 1260-1262.
33 *Id.* at pp. 1267-1271.
34 Exhibit "R-11." Docket (Vol. I), pp. 139-153. See Minutes of the hearing held on, and Order dated, May 31, 2022, Docket (Vol. III), pp. 1272-1275.
35 Docket (Vol. III), pp. 1276-1281.
36 *Id.* at pp. pp. 1285-1296.
37 *Id.* at pp. 1300-1301.
38 *Id.* at p. 1340.
39 *Id.* at pp. pp. 1304-1312.
40 *Id.* at pp. 1315-1339.

ISSUE

Is petitioner liable for deficiency VAT covering the periods January 1, 2017 to June 30, 2017, in the total amount of ₱3,492,741.09, inclusive of interest and penalties?[41]

ARGUMENTS

Petitioner claims that respondent's FAN failed to address its points and explanations advanced on its letter-reply to the PAN. In view of such failure, the BIR violated its right to due process on assessment.

Assuming *arguendo* that respondent was able to address its defenses in the PAN, petitioner insists that it is not liable for the deficiency VAT assessment covering the periods January 1, 2017 to June 30, 2017, putting forward the following reasons:

> *First.* It duly paid input VAT on its purchases; hence, it is entitled under the law to use the same as tax credits against its output VAT.
>
> *Second.* Its claimed input VAT was duly substantiated and established.
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> *Third.* The 1997 National Internal Revenue Code (NIRC), as amended, and Revenue Regulations (RR) permit the use of input VAT as tax credits, even if the corresponding official receipts and/or invoices do not separately bill the VAT component thereof.
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> *Fourth.* The strict compliance requirement with the VAT invoicing rules under Section 113 of NIRC, as amended, only applies to VAT refund cases, and not to a deficiency VAT assessment.

To punctuate its arguments, petitioner believes that it is *not* liable for deficiency VAT covering the periods January 1, 2017 to June 30, 2017, inclusive of interest, in the total amount of ₱3,492,741.09.

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41 See Stipulation of the Issue, JSFI. Docket (Vol. I), p. 596.

On the other hand, respondent retorts that: (1) input taxes arising from non-compliant VAT ORs and/or invoices, may not be credited against output taxes; and (2) the factual and legal basis of the FDDA was satisfactorily disseminated to petitioner, consistent with petitioner's right to due process. By these premises, the deficiency VAT assessment for the periods January 1, 2017 to June 30, 2017, embodied in his FDDA, in the total amount of ₱3,492,741.09, issued against petitioner must be sustained.

RULING

The Petition is partially impressed with merit.

Foremost, do we have jurisdiction over this case?

Yes.

Section 7(a)(1) of Republic Act (RA) No. 1125,[42] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> ...[43]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[44] (RRCTA) clarified that the CTA in Division has jurisdiction over respondent or his authorized representative's decision involving

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[42] An Act Creating the Court of Tax Appeals.
[43] Boldfacing supplied.
[44] A.M. No. 05-11-07-CTA.

disputed assessments, among others.[45] For the decision of respondent or his duly authorized representatives to be elevated on appeal before the CTA in Division, there must first be a disputed assessment.[46] To properly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC, as amended, which states:

> Section 228. *Protesting of Assessment.* — ...
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> ...
>
> If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[47]

In turn, the validity of the administrative protest rests upon the meeting of two (2) conditions, namely: *first,* it must be filed within thirty (30) days from the receipt of the final assessment; and *second,* it must be in such form and manner as may be prescribed by implementing rules and regulations.[48] Section 3.1.4 of Revenue Regulations (RR) No. 18-2013, prescribes the form and manner of an administrative protest:

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45 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:
(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws, administered by the Bureau of Internal Revenue; (Boldfacing supplied)

46 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

47 Boldfacing supplied.

48 See *Commissioner of Internal Revenue v. Court of Tax Appeals - Third Division and Citysuper Incorporated,* G.R. No. 239464, May 10, 2021.

> 3.1.4 Disputed Assessment. – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (i) Request for reconsideration – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The **taxpayer shall state in his protest** (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) **the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.**
>
> ...

As it stands, the taxpayer has thirty (30) days from receipt of the final assessment to file a valid administrative protest, either by way of request for reconsideration or request for reinvestigation. If a request for reinvestigation was filed, the taxpayer has sixty (60) days from the filing of its request for reinvestigation to submit documents in support thereof. Upon the taxpayer's receipt of the FDDA, it has another thirty (30) days to appeal to the Court in Division.

Petitioner received respondent's FAN on December 12, 2018.[49] Counting thirty (30) days therefrom, petitioner had until January 11, 2019 to file an administrative protest thereto; thus, it timely protested the FAN, by way of request for reinvestigation on December 21, 2018.[50] Said protest, too, contained: (1) date of the FAN; (2) statement that it is a request for reinvestigation; (3) the factual and legal basis of said protest; (4) statement of supporting documents[51] in support thereof, *i.e.*, various certifications from petitioner's suppliers. Thus, petitioner filed a valid request for reinvestigation against the FAN.

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49 *Supra* note 11.
50 *Supra* note 14.
51 Pages 2-3, Petitioner's Protest on the FAN. *Supra* note 14.

On August 23, 2019, petitioner received respondent's FDDA.[52] Counting thirty (30) days therefrom, petitioner had until September 23, 2019[53] to seek judicial recourse. Therefore, petitioner's timely filing of the Petition for Review on September 23, 2019,[54] conferred us with jurisdiction over CTA Case No. 10169.

Next, was there violation of petitioner's right to due process, because the BIR wholly failed to consider: (1) its defenses raised in its letter-protest on the PAN; and (2) documents in support thereof, prior to issuance of the FAN?

No.

Section 228 of the NIRC, as amended, provides in part:

> SEC. 228. *Protesting of Assessment.* — ...
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> ...
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> ...

Ang Tibay v. Court of Industrial Relations (Ang Tibay)[55] explained that among the components for administrative due process are: *one,* the administrative tribunal or body must consider the evidence presented; and *two,* the administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

The two (2) components of administrative due process taken from *Ang Tibay* were utilized in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon).*[56] There, Avon Products Manufacturing, Inc. (APMI) advanced before the BIR, its defenses on the initial findings of the examining revenue officers, informal

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52 *Supra* notes 18 and 19.
53 The 30th day, *i.e.*, September 22, 2019, fell on a Sunday.
54 *Supra* note 21.
55 G.R. No. L-46496, February 27, 1940.
56 G.R. Nos. 201398-99, October 3, 2018.

conference, PAN, and FAN. However, the BIR failed to give explanation or discussion on AMPI's defenses in various segments of the assessment process. *Avon* decreed that the BIR flouted APMI's right to due process:

> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.
>
> **Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter** and supporting documents, and even met with revenue examiners to explain. **Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.**
>
> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.
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> **The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in**

> **this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**
>
> Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period." This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation No. 12-99.
>
> **It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**[57]

More recently, *Commissioner of Internal Revenue v. Unioil Corporation (Unioil)*[58] abridged the dictum in *Avon* in the following fashion:

> What we can refract from our ruling in Avon Products is that the CIR, in exercising its power to assess and collect taxes if these are owed, ought to give due consideration to the arguments and evidence submitted by the affected party.

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57 Boldfacing supplied.

58 G.R. No. 204405, August 4, 2021.

Dissimilar to *Avon* and *Unioil,* the BIR considered petitioner's defense and supporting documentation in its reply on the PAN, prior to issuance of the FAN.

We explain.

RO Vargas conducted an on-site inspection and audit on petitioner. The former informed the latter of her initial audit findings that petitioner's supporting documents relative to its purchases were invalid, because the VAT component was not separately billed by its suppliers.[59] Petitioner then secured various certifications from its suppliers.[60] RO Vargas and GS Gutierrez advised petitioner that said certifications from its suppliers may not be considered because the same were belatedly executed, and secured by petitioner.[61] The Details of Discrepancies pertaining to the PAN substantially reflected the reasons for the proposed deficiency VAT, previously explained to petitioner.[62] Precisely, the BIR's PAN[63] projected deficiency VAT, covering January 1 to June 30, 2017, as follows:

I. VALUE ADDED TAX			
Vatable Sales per Return			P155,597,567.83
Output Tax Due			P18,671,708.14
Less: Current Input Tax		P17,058,055.90	
Input tax deferred on capital goods exceeding 1M deferred for		577,442.79	
Total		P17,635,498.69	
Less: Input tax on purchase of capital goods exceeding 1M deferred for the succeeding period	₱ 488,917.36		
Disallowed Input Tax (Schedule 1)	2,716,377.95		
Excess Input VAT carried Over to Succeeding period	16,865.90	3,222,161.21	14,413,337.48
Vat Payable			₱ 4,258,370.66
Less: VAT Payments per Return			1,541,992.71
VAT Due			₱ 2,716,377.95

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59 Answer to Question No. 18, Judicial Affidavit of Ms. May V. Heramia (Exhibit "P-59"). Docket (Vol. I), p. 187.

60 See page 25, Transcript of Stenographic Notes of Hearing held on February 2, 2021.

61 Answer to Question No. 21, Judicial Affidavit of Ms. May V. Heramia (Exhibit "P-59"). Docket (Vol. I), pp. 187-188.

62 *Infra* note 63.

63 Exhibit "P-6." Docket (Vol. II), pp. 754-756.

Add: 20% Interest (07/26/17 to 12/31/17)	₱ 235,171.35	
12% Interest (01/01/18 to 11/29/18)	296,494.51	531,665.86
TOTAL AMOUNT DUE		**₱3,248,043.81**

Said PAN was then impugned by petitioner. Particularly, its letter dated December 4, 2018[64] insists that its suppliers declared and paid respective VAT in their transactions; thus, it purportedly incurred input VAT on its purchases, submitting various certifications from its suppliers to demonstrate its point:

> Moreover, we request your good office to consider the attached certifications issued by Eurofragance's suppliers attesting to the fact that they declared and paid respective VAT in their transactions with Eurofragance:
>
> ...
>
> The amounts subject of the certifications were reflected by Eurofragance's suppliers in their respectively Summary List of Sales. Thus, the transactions were rightfully declared as VATable sales by the suppliers; the respective VAT thereon was paid by Eurofragance; and ultimately, there are no tax leakages on the part of the government.

As we see it, the BIR did *not* totally snub petitioner's defenses and certifications relied upon in support of its reply to the PAN, different from what transpired in *Avon* and *Unioil.* Specifically, RO Vargas and GS Gutierrez made known the BIR's posture to petitioner even *prior* to the issuance of the PAN. Again, these are: *first,* petitioner's supporting documents relative to its purchases are invalid because the VAT component was not separately billed by its suppliers; and *second,* petitioner's suppliers belatedly executed, and petitioner tardily secured, the supporting certifications. By retelling the PAN's findings in the FLD/FAN,[65] the BIR simply voiced its unfaltering position it previously conveyed to petitioner. Therefore, we conclude that the BIR considerably adhered with due process aspect of the responsibility to give reason enunciated in Section 228 of the NIRC, as amended, as construed in *Avon* and *Unioil.*

Now, is petitioner liable for the BIR's deficiency VAT covering the periods January 1, 2017 to June 30, 2017?

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64 Exhibit "P-7." *Id.* at pp. 758-760.
65 Exhibit "P-33." *Id.* at pp. 812-815.

Yes, albeit, in part.

Respondent assessed petitioner for deficiency VAT, covering the periods January 1, 2017 to June 30, 2017, as follows:[66]

Taxable Sales per Return				₱155,597,567.83
Output Tax Due				₱ 18,671,708.14
Less: Current Input Tax			₱17,058,055.90	
Input tax deferred on capital goods exceeding P1Million from previous period			577,442.79	
Total			₱17,635,498.69	
Less:	Input tax on purchase of capital goods exceeding P1M deferred for the succeeding period	₱ 488,917.36		
	Disallowed Input Tax (Schedule 1)	2,716,377.95		
	Excess Input VAT carried Over to Succeeding Period	16,865.90	3,222,161.21	14,413,337.48
VAT Payable				₱ 4,258,370.66
Less:	VAT Payments per Return			1,541,992.71
VAT Due				₱ 2,716,377.95
Add: 20% Interest (07/26/17 to 12/31/17)			₱ 235,171.35	
12% Interest (01/01/2018 to 08/30/2019)			541,191.79	776,363.14
TOTAL AMOUNT DUE				**₱3,492,741.09**

What we can lift therefrom is that the deficiency VAT assessment was birthed by the BIR's disallowance of some of the input taxes credited by petitioner against its output taxes for periods January 1, 2017 to June 30, 2017. Such disallowance arose from the supposed failure of the following invoices and/or ORs pertaining thereto, to adhere with the substantiation and invoicing requirements under the law:[67]

DATE	REFERENCE	PAYEE	AMOUNT	REMARKS
1/17/17	PO2017-01-47	JARDINE DISTRIBUTION, INC.	124,821.43	VAT not separately billed
2/22/17	EPI-2016-015	JARDINE DISTRIBUTION, INC.	5,400.00	Provisional Receipt only
2/22/17	EPI-2016-171	COLORSTEEL SYSTEMS CORP.	3,331.05	Out of period Sales Invoice, Nov 2016
2/22/17	EPI-2016-201	JDAMANCIO ENTERPRISE	15,000.00	VAT not separately billed

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66 Exhibit "R-10," BIR Records, p. 1042; and Exhibit "P-37," Docket (Vol. II), p. 1044.

67 Exhibit "R-10," Folder 3, BIR Records, pp. 1039-1040; Exhibit "P-37", Docket (Vol. II), pp. 1045-1046.

2/22/17	EPI-2016-245	JDAMANCIO ENTERPRISE	20,040.00	VAT not separately billed
3/8/17	EPI-2016-246	JDAMANCIO ENTERPRISE	15,360.00	VAT not separately billed
3/8/17	PO2017-03-19	CONCEPCION-CARRIER AIR CONDITONING COMPANY	267,239.86	VAT not separately billed
3/15/17	EPI-2016-203	STEINTEK INCORPORATED	12,321.43	VAT not separately billed
3/15/17	PO2017-03-48	LAN ASTUTE LOGISTICS, INC.	1,599.03	OR dated 9/2/2016
3/22/17	PO2017-03-58	MERALCO - INPUT TAX-LOCAL SERVICES	1,430.17	Not under the name of TP
3/22/17	PO2017-03-65	BLUESTORM SECURITY AGENCY, INC	174.00	VAT not separately billed
3/22/17	PO2017-03-82	FAR EAST ASSOCIATES	26,666.67	VAT not separately billed, Incomplete Info
3/29/17	PO2017-03-86	PUNCH BUILDERS	95,154.15	VAT not separately billed
3/29/17	PO2017-03-96	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	68,857.83	VAT not separately billed
3/30/17	PO2017-03-102	RONIE DULMAN	3,857.14	Deposit slip only, without OR
3/31/17	PO2017-03-109	JANVE GUTIERREZ	2,035.71	VAT not separately billed
3/31/17	PO2017-03-114	JANVE GUTIERREZ	802.86	VAT NSB, Not under the name of TP
3/31/17	PO2017-03-118	BLUESTORM SECURITY AGENCY, INC	185.60	VAT not separately billed
3/31/17	PO2017-03-120	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	36,000.00	VAT not separately billed
4/5/17	PO2017-04-08	ACCRA LAW OFFICES	3,060.00	VAT not separately billed
4/20/17	PO2017-04-71	MERALCO - INPUT TAX-LOCAL SERVICES	1,606.19	Not under the name of TP per OR
5/24/17	PO2017-05-66	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	102,792.86	VAT not separately billed
5/24/17	PO2017-05-67	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	246,908.38	VAT not separately billed
6/7/17	PO2017-06-12	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	28,550.90	VAT not separately billed
1/11/17	PO2017-01-09	ROXAN CONSTRUCTION SUPPLY INC.	19,266.32	Incomplete information
1/17/17	PO2017-01-28	MOTECH AUTOMOTIVE EDUCATION CENTER INC	2,391.45	VAT not separately billed
1/17/17	PO2017-01-30	KONKRETE SOLUTION TECHNOLOGY, INC.	4,392.86	VAT not separately billed
1/26/17	EPI-2016-218	KONKRETE SOLUTION TECHNOLOGY, INC.	4,339.29	VAT not separately billed
1/26/17	EPI-JENKIN-O2017-01	ROXAN CONSTRUCTION SUPPLY INC.	28,877.68	Incomplete information
1/26/17	EPI-JENKIN-O2017-02	ROXAN CONSTRUCTION SUPPLY INC.	8,997.32	Incomplete information
1/26/17	PO2017-01-58	ROXAN CONSTRUCTION SUPPLY INC.	7,814.14	Incomplete information
1/26/17	EPI-2016-215	ZACO INDUSTRIAL ELECTRIC CORP.	1,534.29	Incomplete information
1/31/17	EPI-JENKIN-2017-008	DIAMOND STEEL INDUSTRIAL SALES	3,482.14	Incomplete info
1/31/17	PO2017-01-110	GLOBALNETWORKS SOLUTIONS, INC.	5,700.00	VAT not separately billed
2/1/17	EPI-JENKIN-2017-009	TERTEX INTERNATIONAL PHILS., INC.	2,678.57	VAT not separately billed
Sub-total 1			**1,172,669.32**	
2/15/17	EPI-2017-231	KONKRETE SOLUTION TECHNOLOGY, INC.	4,392.86	VAT not separately billed
2/28/17	EPI-2016-252	KONKRETE SOLUTION TECHNOLOGY, INC.	4,392.86	VAT not separately billed
3/8/17	EPI-2016-263	KONKRETE SOLUTION TECHNOLOGY, INC.	4,446.43	VAT not separately billed
3/10/17	EPI-2016-276	ORIENTAL CONSTRUCTION & ELECTRICAL SUPPLY CO., INC.	66,379.64	Incomplete information: TIN

3/15/17	EPI-2016-203	STEINTEK INCORPORATED	69,964.28	VAT not separately billed
3/15/17	EPI-2016-267A	ZACO INDUSTRIAL ELECTRIC CORP.	47,828.57	Incomplete information: TIN
3/15/17	EPI-2016-281	ENA CONSTRUCTION & SUPPLIES CORPORATION	2,383.96	Incomplete information: Address
3/15/17	EPI-JENKIN-2017-021	ENA CONSTRUCTION & SUPPLIES CORPORATION	3,178.61	Incomplete information: Address
3/22/17	EPI-2016-289	RONOH INDUSTRIAL EQUIPMENT REPAIR SERVCES INC.	4,285.71	VAT not separately billed
3/22/17	EPI-JENKIN-2017-018	DIAMOND STEEL INDUSTRIAL SALES	8,470.71	VAT not separately billed
3/29/17	EPI-JENKIN-2017-029	KONKRETE SOLUTION TECHNOLOGY, INC.	4,392.86	VAT not separately billed
3/29/17	PO2017-03-85	TAN BENG PENG RICHARD	1,130.58	VAT not separately billed
4/19/17	PO2017-04-31	FAIR HAVENS ENTERPRISE	80.35	Incomplete information
1/26/17	EPI-2016-217	RONOH INDUSTRIAL EQUIPMENT REPAIR SERVCES INC.	4,200.00	VAT not separately billed
2/15/17	PO2017-02-37	88 GECONSTRUCT CORP.	307,851.62	VAT not separately billed
3/14/17	PO2017-03-26	PUNCH BUILDERS	79,029.04	VAT not separately billed
3/15/17	PO2017-03-43	88 GECONSTRUCT CORP.	113,920.50	VAT not separately billed
3/29/17	PO2017-03-85	TAN BENG PENG RICHARD	3,217.99	Not under the name of TP,
4/10/17	PO2017-04-13	88 GECONSTRUCT CORP.	86,218.48	VAT not separately billed
5/17/17	PO2017-05-37	88 GECONSTRUCT CORP.	53,571.43	VAT not separately billed
5/24/17	PO2017-05-80	88 GECONSTRUCT CORP.	67,208.02	VAT not separately billed
6/7/17	PO2017-06-11	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	17,715.78	VAT not separately billed
6/27/17	PO2017-06-59	88 GECONSTRUCT CORP.	84,352.69	VAT not separately billed
4/5/17	EPI-2017-008	LUXEN LIGHTING COMPANY	31,626.00	VAT not separately billed
5/3/17	PO2017-05-05	88 GECONSTRUCT CORP.	82,495.48	VAT not separately billed
4/19/17	PO2017-04-30	MICROGENESIS BUSINESS SYTEMS	350,896.05	VAT not separately billed
5/31/17	PO2017-05-94	JARDINE SCHINDLER ELEVATOR CORPORATION	40,078.13	VAT not separately billed
TOTAL			**₱2,716,377.95**	

ABAKADA Guro Party List, et al. v. The Hon. Executive Secretary (ABAKADA) held that the right to credit input tax against the output tax is clearly a privilege created by law, a privilege that also the law can limit. It should be stressed that a person has no vested right in statutory privileges.[68] In this regard, the limitation referred to in *ABAKADA* is Section 110(A)(1) of the NIRC, as amended, which provides:

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

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[68] G.R. No. 168056, October 18, 2005.

(a) Purchase or importation of goods:

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has been actually paid.

...[69]

Pertinently, when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the provisions are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation. This is what is known as the plain meaning rule, as expressed in the maxim, *verba legis non est recedendum*, or from the words of a statute there should be no departure.[70]

Indeed, Section 110(A)(1) of the NIRC, as amended, unambiguously expresses the specie of input tax which may be credited or offset against output tax—one evidenced by a VAT invoice or OR, acquiescent with the substantiation requirements under the law. In reverse, if the input taxes: *first,* are *not* supported by a VAT invoice or OR; or, *second,* if supported by a VAT invoice or OR, but non-compliant with the substantiation requirements under the law, then such input taxes may *not* be credited or offset against output taxes. Section 113(A) and (B) of the same Code spells out the invoicing and substantiation requirements for VAT invoice or ORs:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

(A) Invoicing Requirements. - A VAT-registered person shall issue:

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69 Boldfacing supplied.
70 See *Dubongco, et al. v. Commission on Audit,* G.R. No. 237813, March 5, 2019.

> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> *(B) Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
>
> (a) The amount of the tax shall be known as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from value-added tax, the term VAT-exempt sale: shall be written or printed prominently on the invoice or receipt;
> (c) If the sale is subject to zero percent (0%) value-added tax, the term "*zero-rated sale*" shall be written or printed prominently on the invoice or receipt.
>
> (d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

Again, a fragment of petitioner's input taxes it credited against its output taxes were disallowed by the BIR in the sum of ₱2,716,377.95. We then scrutinized the pertinent ORs and sales invoices[71] issued by petitioner's suppliers, from which said input taxes originated. Our inspection yielded two (2) results, namely: *one,* the BIR is wrong in disallowing ₱2,525,107.63[72] worth of input taxes; and *two,* the BIR is correct in disallowing input taxes amounting to ₱191,270.32. Consider:

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71 Exhibits "P-65" to "P-136."

72 ₱843,726.84+₱1,681,380.79= ₱2,525,107.63. The specific breakdown is shown in pages 20-23 of this Decision.

First. Coral Bay Nickel Corporation v. Commissioner of Internal Revenue (CBNC)[73] ordained that a taxpayer has the right to request its supplier to issue a compliant receipt/invoice. Concomitant to said right is the obligation to check, whether the insertions/alterations were properly validated or countersigned by the authorized signatory.

The corrections and additions made by petitioner's suppliers on the pertinent invoices and ORs, *i.e.*, the indication of VAT as a separate item, petitioner's TIN and/or address, are supported by countersignatures, same with those of the authorized signatories appearing on said documents. Following *CNBC*, input taxes corresponding thereto, in the total amount of ₱843,726.84 must be allowed, as detailed below:

PAYEE PER FDDA	EXHIBIT NO.	ISSUANCE DATE	DOCUMENT NO.	Input VAT
88 GECONSTRUCT CORP.	P-65	16-Feb-17	OR No. 0002	₱ 307,851.62
88 GECONSTRUCT CORP.	P-66	17-Mar-17	OR No. 0003	113,920.50
88 GECONSTRUCT CORP.	P-67	11-Apr-17	OR No. 0004	86,218.48
88 GECONSTRUCT CORP.	P-68	17-May-17	OR No. 0007	53,571.43
88 GECONSTRUCT CORP.	P-69	02-Jun-17	OR No. 0008	67,208.02
88 GECONSTRUCT CORP.	P-70	27-Jun-17	OR No. 0009	84,352.69
88 GECONSTRUCT CORP.	P-71	05-May-17	OR No. 0006	82,495.48
ACCRA LAW OFFICE	P-72	27-Apr-17	OR No. 116111	3,060.00
FAR EAST ASSOCIATES	P-88	03-Feb-17	OR No. 0641	26,666.67
JANVE GUTIERREZ	P-92	29-Mar-17	OR No. 1797	2,035.71
JARDINE DISTRIBUTION, INC.	P-95	28-Feb-17	O.R. 0000001	5,303.57
ZACO INDUSTRIAL ELECTRIC CORP.	P-135	30-Jan-17	SI No. 0676	1,534.29
ROXAN CONSTRUCTION SUPPLY INC.	P-121	03-Jan-17	SI No. 36021	305.35
ROXAN CONSTRUCTION SUPPLY INC.	P-122	12-Jan-17	SI No. 36106	205.71
ROXAN CONSTRUCTION SUPPLY INC.	P-127	10-Jan-17	SI No. 36050	8,997.32
SUB-TOTAL				**₱ 843,726.84**

Second. True, the countersignatures and the signatures in some of the invoices and ORs of petitioner's suppliers are different.[74] Yet, petitioner's suppliers issued notarized certifications[75] confirming

[73] CTA EB Nos. 1269 and 1270, June 29, 2016.

[74] See immediately **succeeding** table for the specific invoices and ORs.

[75] Exhibits "P-8" to "P-32," and "P-38" to "P-54."

three (3) things, namely: (1) specific sales invoices or ORs issued by the supplier to petitioner with the invoice/receipt amount and VAT amount separately shown; (2) name of the authorized representative who counter-signed the corrections; (3) attestation that the VAT arising from the listed transactions were paid and declared, and are reflected in the Summary List of Sales attached to supplier's VAT return.

Significantly, invoices and ORs issued by petitioner's suppliers are proof of business transactions.[76] Being so, the disputable presumption set forth in Section 3(p)[77] and (q),[78] Rule 131 of the Rules of Court, as amended, find application. These are: *first,* private transactions have been fair and regular; and *second,* ordinary course of business has been followed. *Magsaysay Maritime Corporation, et al. v. Heirs of Buenaflor (MMC)*[79] explained the legal consequence of presumption *juris tantum,* in the following manner:

> A presumption may operate against an adversary who has not introduced proof to rebut it. The effect of a legal presumption upon a burden of proof is to create the necessity of presenting of evidence unless rebutted.

There was no showing by contrary proof, that the issuance of invoices, ORs, and notarized certifications by petitioner's suppliers were attended with irregularity, or stained with bad faith. Consistent with Section 3(p) and (q), Rule 131 of the Rules of Court, as amended, and *MMC,* we sustain the data encapsulated therein. Consequently, input taxes corresponding to said invoices and ORs, amounting to ₱1,681,380.79, supported by certifications, must likewise be allowed, tabled as follows:

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76 See *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue,* G.R. No. 191495, July 23, 2018.

77 **Section 3.** Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
...
(p) That private transactions have been fair and regular;

78 **Section 3.** Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
...
(q) That the ordinary course of business has been followed;

79 G.R. No. 227447, June 23, 2020, citing *Spouses Surtida v. Rural Bank of Malinao (Albay), Inc.,* G.R. No. 170563, December 20, 2006.

Corrections/ additions made, *i.e., the indication of VAT as a separate item; petitioner's TIN and/or address,* are supported with countersignatures that do <u>**not**</u> match the signatures of the original authorized representatives found in the sales invoices or official receipts	BLUESTORM SECURITY AGENCY, INC	P-73	19-Apr-17	OR No. 3189	₱ 174.00
	BLUESTORM SECURITY AGENCY, INC	P-74	07-Apr-17	OR No. 3224	185.60
	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	P-76	16-Mar-17	OR No. 0054181	267,239.86
	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	P-77	10-Apr-17	OR No. 0055016	68,857.83
	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	P-78	02-Jun-17	OR No. 0055132	36,000.00
	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	P-79	02-Jun-17	OR No. 0055130	102,792.86
	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	P-80	02-Jun-17	OR No. 0055131	246,908.38
	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	P-81	29-Sep-17	OR No. 0057682	28,550.90
	CONCEPCION-CARRIER AIR CONDITIONING COMPANY	P-82	29-Sep-17	O.R. No. 0057681	17,715.78
	DIAMOND STEEL INDUSTRIAL SALES	P-84	01-Mar-17	SI No. 40430	8,470.71
	FAIR HAVENS ENTERPRISE	P-87	05-Apr-17	SI No. 1268	80.35
	JARDINE SCHINDLER ELEVATOR COR	P-96	23-Jun-17	OR No. 0078679	40,078.13
	JDAMANCIO ENTERPRISE	P-97	24-Feb-17	OR No. 0101	15,000.00
	JDAMANCIO ENTERPRISE	P-98	24-Feb-17	OR No. 0100	20,040.00
	KONKRETE SOLUTION TECHNOLOGY, INC.	P-100	03-Feb-17	OR No. 0393	4,392.86
	KONKRETE SOLUTION TECHNOLOGY, INC.	P-101	03-Feb-17	OR No. 0394	4,339.29
	KONKRETE SOLUTION TECHNOLOGY, INC.	P-102	08-Mar-17	OR No. 0395	4,392.86
	KONKRETE SOLUTION TECHNOLOGY, INC.	P-103	22-Mar-17	OR No. 0398	4,392.86
	KONKRETE SOLUTION TECHNOLOGY, INC.	P-104	22-Mar-17	OR No. 0399	4,446.43
	KONKRETE SOLUTION TECHNOLOGY, INC.	P-105	25-Apr-17	OR No. 0372	4,392.86
	MICROGENESIS BUSINESS SYTEMS	P-110	12-May-17	OR No. 56490	350,896.05
	PUNCH BUILDERS	P-113	25-Apr-17	OR No. 0000003	95,154.15
	PUNCH BUILDERS	P-114	14-Mar-17	OR No. 0000002	79,029.04
	RONOH INDUSTRIAL EQUIPMENT REPAIR SERVICES INC.	P-116	24-Mar-17	OR No. 0098	4,285.71
	RONOH INDUSTRIAL EQUIPMENT REPAIR SERVICES INC.	P-117	01-Feb-17	OR No. 0084	4,200.00
	STEINTEK INC.	P-131	17-Mar-17	OR No. 0224	82,285.71
	TERTEX	P-134	03-Feb-17	SI No. 4617	2,678.57

	INTERNATIONAL PHILS., INC.				
	ROXAN CONSTRUCTION SUPPLY INC.	P-118	09-Jan-17	SI No. 36036	3,869.25
	ROXAN CONSTRUCTION SUPPLY INC.	P-119	04-Jan-17	SI No. 36052	7,681.61
	ROXAN CONSTRUCTION SUPPLY INC.	P-120	05-Jan-17	SI No. 36067	7,410.11
	ROXAN CONSTRUCTION SUPPLY INC.	P-128	10-Jan-17	SI No. 36040	2,648.68
	ROXAN CONSTRUCTION SUPPLY INC.	P-129	11-Jan-17	SI No. 36085	1,572.86
	ROXAN CONSTRUCTION SUPPLY INC.	P-130	12-Jan-17	SI No. 36101	3,592.60
	ROXAN CONSTRUCTION SUPPLY INC.	P-123	12-Jan-17	SI No. 36107	18,213.22
	ROXAN CONSTRUCTION SUPPLY INC.	P-124	12-Jan-17	SI No. 36108	5,390.89
	ROXAN CONSTRUCTION SUPPLY INC.	P-125	12-Jan-17	SI No. 36109	4,585.72
	ROXAN CONSTRUCTION SUPPLY INC.	P-126	13-Jan-17	SI No. 36122	482.14
	DIAMOND STEEL INDUSTRIAL SALES	P-83	24-Jan-17	SI No. 39671	3,482.14
	ORIENTAL CONSTRUCTION & ELECTRICAL SUPPLY CO., INC.	P-112	13-Mar-17	SI No. 753769	66,379.64
	ZACO INDUSTRIAL ELECTRIC CORP.	P-136	14-Mar-17	SI No. 0698	47,828.57
	ENA CONSTRUCTION & SUPPLIES CO	P-85	16-Mar-17	SI No. 0719	2,383.96
	ENA CONSTRUCTION & SUPPLIES CO	P-86	14-Mar-17	SI No. 0718	3,178.61
	GLOBALNETWORKS SOLUTIONS, INC.	P-89	26-Jan-17	SI No. 1646	2,742.86
	GLOBALNETWORKS SOLUTIONS, INC.	P-90	26-Jan-17	SI No. 1647	1,371.43
	GLOBALNETWORKS SOLUTIONS, INC.	P-91	27-Jan-17	SI No. 1650	1,585.71
SUB-TOTAL					**₱1,681,380.79**

Third. The BIR correctly disallowed input taxes amounting to ₱191,270.32, because the invoices and ORs pertaining thereto, failed to adhere with the invoicing requirements under Section 110(A), in relation to Section 113 of the NIRC, as amended, as interpreted in *ABAKADA*, exhibited below:

Reason for Disallowance	Payee/Supplier	Exhibit No.	Date issued	Document No.	Disallowed Input VAT
Purchase of service supported by an invoice instead of an OR	COLORSTEEL SYSTEMS CORP.	P-75	01-Mar-17	SI No. 03329	3,331.05
VAT per FDDA is ₱802.86 while that found in the supporting OR is only ₱293.40, thus, it cannot be ascertained whether the supporting OR pertains to the assessed transaction	JANVE GUTIERREZ	P-93	30-Mar-17	OR No. 1660049	802.86

Purchase of goods supported by an OR instead of an invoice	JARDINE DISTRIBUTION, INC.	P-94	03-Mar-17	OR No. 0074927	124,821.43
VAT not separately indicated	JDAMANCIO ENTERPRISE	P-99	24-Feb-17	OR No. 00105	15,360.00
VAT per FDDA is ₱1,599.03 while that found in the supporting OR is only ₱636.00, thus, it cannot be ascertained whether the supporting OR pertains to the assessed transaction	LAN ASTUTE LOGISTICS, INC.	P-106	17-Mar-17	OR No. 0001072	1,599.03
The authority of the person who countersigned the alterations or additions cannot be ascertained; petitioner's TIN was not indicated on the invoice; VAT per FDDA is ₱31,626.00 while that found per SI is ₱33,909.75	LUXEN LIGHTING COMPANY	P-107	06-Apr-17	SI No. 20699	31,626.00
Denied Exhibit	MERALCO - INPUT TAX-LOCAL SERVICES	P-108	29-Mar-17	OR No. 2182486	1,430.17
OR issued not under the name of petitioner	MERALCO - INPUT TAX-LOCAL SERVICES	P-109	25-Apr-17	OR No. 2250166	1,606.19
Purchase of goods supported by an OR instead of an invoice	MOTECH AUTOMOTIVE EDUCATION CENTER INC	P-111	21-Jan-17	OR No. 7083	2,391.45
Supporting document is a Non-VAT OR	RONIE DULMAN	P-115	31-Mar-17	OR No. 0000893	3,857.14
Payee's name per FDDA is Tan Beng Peng Richard while that shown per OR is Seascapes Resort, Inc.; VAT amount per FDDA is ₱1,130.58 while that shown per OR is ₱1,368.64	TAN BENG PENG RICHARD	P-132	19-Mar-17	OR No. 295812	1,130.58
OR issued not under the name of petitioner	TAN BENG PENG RICHARD	P-133	15-Mar-17	OR No. E-000-0000000060 22660	3,217.99
Overclaimed input VAT - Per FDDA ₱5,400.00 Per OR ₱5,303.57	JARDINE DISTRIBUTION, INC.	P-95	28-Feb-17	O.R. 0000001	96.43
Total					**₱191,270.32**

Penultimately, we are mindful of petitioner's theory that in a deficiency VAT assessment, the invoices and ORs emanating from its suppliers, need *not* comply with the substantiation requirements under Section 113 of the NIRC, as amended, along with its invocation of *Commissioner of Internal Revenue v. Euro-Philippines Airline Services,* *Inc. (EPASI)*,[80] as authority in support thereof. Yet, we find: (1) petitioner's theory implausible; and (2) *EPASI* is inapplicable here.

True, *EPASI* and this case both involve deficiency VAT assessments, issued by the BIR. However, the resemblance ends there. To be precise, the respective situations leading to the issuance thereof against the taxpayer in *EPASI* and petitioner are starkly different.

In *EPASI*, the deficiency VAT assessment stemmed from the imposition of 12% VAT on services rendered by therein taxpayer to British Airways PLC. It was then found that: (1) the former is a VAT-registered person; and (2) the latter is a person engaged in international air transport operations. In view thereof, the Supreme Court concluded that therein taxpayer's sale of services to British Airways PLC is subject to 0% VAT under Section 108(B)(4) of the NIRC, as amended. The High Tribunal added that non-compliance with the invoicing requirements under Section 113 of the same Code would *not* lead to automatic imposition of 12% VAT on said transaction.

Contrasted from *EPASI*, the deficiency VAT assessment here originated from the BIR's disallowance of some of the input VAT used by petitioner to offset its output VAT for the periods January 1, 2017 to June 30, 2017. The provision involved, too, to legally credit input VAT against output VAT, is Section 110(A) of the NIRC, as amended, and *not* Section 108(B)(4) of the same Code. Moreover, Section 110(A) of the NIRC, as amended, is explicit that "… input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof (substantiation requirements) … shall be creditable against the output tax…"

Owing to the disparity in factual milieu, provisions of law involved, and the root of the respective deficiency VAT assessments in *EPASI* and this case, they cannot be treated, much more, be adjudicated alike.

In precis, the extent of petitioner's liability for *basic* deficiency VAT covering the periods January 1, 2017 to June 30, 2017, is only ₱191,270.32.

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80 G.R. No. 222436, July 23, 2018.

WHEREFORE, the Petition for Review filed on September 23, 2019, by Eurofragance Philippines, Inc., is **PARTIALLY GRANTED**. The deficiency VAT assessment issued by respondent against petitioner covering the period January 1, 2017 to June 30, 2017 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent, the aggregate amount of **TWO HUNDRED NINETY-FIVE THOUSAND THREE HUNDRED SIXTY-EIGHT PESOS AND FIFTY-FOUR CENTAVOS (₱295,368.54),** inclusive of the 25% surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), and as implemented by RR No. 21-2018, computed as follows:

Basic Deficiency Value-Added Tax Due	₱ 191,270.32
25% Surcharge	47,817.58
20% Deficiency Interest (July 25, 2017 to Dec. 31, 2017)	
[₱191,270.32 x 20% x 159/365 Days]	16,664.10
12% Deficiency Interest (January 1, 2018 to Sept. 22, 2019)	
[₱191,270.32 x 12% x 630/365 Days]	39,616.54
Total Amount Due as of September 22, 2019	**₱ 295,368.54**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid amount of ₱295,368.54, as determined above, or equivalent to ₱97.11 per day,[81] computed from September 23, 2019 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as TRAIN, as implemented by RR No. 21-2018.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

81 ₱295,368.54 x 12%/365 days.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice