Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

TYCO INFORMATION SOLUTIONS CORP.,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1426
(CTA Case No. 8592)

x--x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TYCO INFORMATION SOLUTIONS CORP.,
Respondent.

CTA EB No. 1436
(CTA Case No. 8592)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:
APR 03 2018 2:21 p.m.

x--x

DECISION

CASANOVA, J.:

Before this Court are consolidated Petitions for Review separately filed by Tyco Information Solutions Corp. ("Tyco Corp." for brevity) on March 10, 2016, docketed as CTA EB No. 1426[1], and by the Commissioner of Internal Revenue ("CIR" for brevity), on March 11,

[1] CTA EB No. 1426, En Banc Rollo, pp. 6-15.

2016, docketed as CTA EB No. 1436[2]. Both petitions seek the reversal and setting aside of the Decision[3] (assailed Decision) dated October 2, 2015, and Resolution[4] (assailed Resolution) dated January 29, 2016, both rendered by the Court of Tax Appeals Third Division in CTA Case No. 8592, entitled *"Tyco Information Solutions Corp. vs. Bureau of Internal Revenue."*

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder, to wit:

Decision dated October 2, 2015:

"**WHEREFORE**, the Petition for Review dated December 21, 2012 filed by Tyco Information Solutions Corp. is **PARTIALLY GRANTED**. The assessment issued by respondent [CIR] against petitioner [Tyco Corp.] for taxable year 2006 covering deficiency income tax and value-added tax is hereby **MODIFIED**. Accordingly, petitioner is **ORDERED TO PAY** the amount of THIRTEEN MILLION NINE HUNDRED FIFTY-TWO THOUSAND TWO HUNDRED FOUR PESOS AND THIRTY-FOUR CENTAVOS (P3,952,204.34) representing deficiency income tax and value-added tax for taxable year 2006, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	**Basic Tax**	**25% Surcharge**	**Total**
Income Tax	P7,490,159.41	P1,872,539.85	P9,362,699.26
Value-added Tax	3,671,604.06	917,901.02	4,589,505.08
Total	**P11,161,763.47**	**P2,790,440.87**	**P13,952,204.34**

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

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax and value-added tax computed from the dates indicated below until full payment

[2] CTA EB No. 1436, En Banc Rollo, pp. 5-18.
[3] Annex "A" to the Petition for Review, EB No. 1426, En Banc Rollo, pp. 17-35.
[4] Annex "C" to the Petition for Review, EB No. 1426, En Banc Rollo, pp. 40-44.

thereof pursuant to Section 249 (B) of the NIRC of 1997, as amended:

	Basic Tax	**20% Deficiency Interest Computed from**
Income Tax	P7,490,159.41	April 15, 2007
Value-added Tax	P3,671,604.06	January 25, 2007

b) Delinquency interest at the rate of 20% per annum on the total amount of P13,952,204.34 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 26, 2012 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended.

SO ORDERED."

Resolution dated January 29, 2016:

"**WHEREFORE,** the Partial Motion for Reconsideration of petitioner [Tyco Corp.], as well as the Motion for Partial Reconsideration of respondent [CIR], both dated October 20, 2015, are hereby **DENIED**, for lack of merit.

SO ORDERED."

Tyco Information Solutions Corp. is a domestic corporation duly organized, registered and existing under the laws of the Philippines with principal office at 4th Floor Philcox Bldg., 172 Salcedo St., Legaspi Village, Makati City.[5]

On the other hand, Commissioner of Internal Revenue is the duly appointed Commissioner of the Bureau of Internal Revenue, mandated by law to enforce and implement the provisions of the National Internal Revenue Code, as amended. He holds office at the BIR National Office Building, located along Agham Road, Diliman, Quezon City. He may be served with summons and other court processes at the Legal Division, 2/F BIR Building, No. 313 Sen. Gil Puyat Ave., Makati City.[6]

[5] Par. 1, The Parties, Petition for Review, CTA EB No. 1426, En Banc Rollo, p. 6.
[6] Par. 6, Parties, Petition for Review, CTA EB No. 1436, En Banc Rollo, p. 6.

The facts[7] of the case, as narrated by the CTA Third Division in the assailed Decision, are as follows:

> "On September 26, 2007, petitioner [Tyco Corp.] received Letter of Authority No. LOA 2001 00069487 dated September 25, 2007, authorizing the examination of its books of account and other accounting records covering taxable year 2006.
>
> Petitioner also received on the same day respondent's [CIR] First Request for Presentation of Records dated September 25, 2007. This was followed by the Second Request for Presentation of Records and the Final Notice which petitioner received on October 15, 2007 and on November 20, 2007, respectively.
>
> Respondent later issued a Notice of Informal Conference dated April 27, 2009 indicating that petitioner was liable for deficiency IT and VAT.
>
> On December 18, 2009, respondent issued the Preliminary Assessment Notice (PAN), assessing petitioner deficiency IT and VAT, as follows:

I. INCOME TAX				
Taxable Income				₱ 1,118,741.84
Add:	Adjustments per Audit			
	Disallowed Purchases (Cost of Sales)			
		a. United Global Stylus Trading, Inc. (Schedule 1)	₱ 29,884,445.61	
		b. Eurosales Corporation (Schedule 2)	8,661,194.61	
		c. ERRB Buy and Sell Trading, Inc. (Schedule 3)	6,255,625.00	44,801,265.26
Adjusted Taxable Income				₱ 45,920,007.10
Income tax Due				₱ 16,072,002.49
Less:	Tax Credits:			
	Tax Payments		₱ 227,528.16	
	Creditable Tax Withheld at Source		164,031.16	391,559.32
Basic Deficiency Income Tax Due				₱ 15,680,443.17
Add:	50% Surcharge			7,840,221.58
	Interest (04.16.07 - 01.12.10)			8,609,207.70
TOTAL AMOUNT DUE				**₱ 32,129,872.45**
II. VALUE ADDED TAX				
Taxable Receipts per VAT Returns				₱ 52,255,906.11
Output Tax Due				₱ 5,832,444.59

[7] Pages 2-6 of the October 2, 2015 Decision, Annex "A" to the Petition for Review, CTA EB No. 1426, En Banc Rollo, pp. 18-22.

Less:	Input Tax		
	Input Tax for the period	₱ 5,686,277.83	
	Less: Disallowed Input Tax (Schedule 4)	4,948,142.75[8]	738,135.08
VAT due			₱ 5,094,309.51
Less: VAT Payments			146,166.76
VAT Due			₱ 4,948,142.75
Surcharge Add: (50%)			2,474,071.38
Interest (01.26.07-01.12.10)			2,933,638.61
Total Amount Due			**₱10,355,852.74**

On January 21, 2010, petitioner received Assessment Notices dated January 19, 2010 together with the Formal Assessment Notice (FAN) with the corresponding Details of Discrepancies, reiterating petitioner's deficiency IT and VAT.

On February 18, 2010, petitioner sent its protest letter dated February 16, 2010 to Regional Director Jaime B. Santiago.

On November 26, 2012, petitioner received from respondent a Letter dated November 16, 2012, reiterating its alleged tax deficiency of P15,680,443.17 and P4,948,142.75 for IT and VAT, respectively, exclusive of increments.

This prompted petitioner to file the instant Petition for Review on December 21, 2012.

On April 10, 2013, the Court received respondent's Answer with Motion to Dismiss filed through registered mail on April 4, 2013.

In the Resolution dated July 3, 2013, the Court denied respondent's Motion ruling that petitioner's administrative protest was valid and the decision issued by RDO Gerry O. Dumayas through the Letter dated November 16, 2012 is appealable to the CTA. This ruling was affirmed in the Resolution of September 11, 2013 which denied respondent's Motion for Reconsideration.

On November 25, 2013, the parties submitted their Joint Stipulation of Facts on the basis of which a Pre-Trial Order was issued on December 19, 2013.

During trial, petitioner presented its President **Jerick Co.** He testified that petitioner is engaged in the business of

[8] In the Details of Discrepancies attached with the Formal Assessment Notice, the input tax is ₱4,948,142.74.

supplying IT products and services to its customers obtained from its suppliers.

The filing of the instant case was triggered by respondent's denial of petitioner's protest against its Formal Assessments. In October 2007, petitioner received an LOA from respondent for the examination of its books of account and other accounting records for the year 2006. After the examination, petitioner was assessed deficiency taxes due to the disallowance of purchases the supporting invoices of which failed to comply with the NIRC requirements. The purchases also appeared to be excessive, implausible, and fictitious as the suppliers were found to be fictitious.

To dispute such findings, the witness presented the respective BIR Certificates of Registration and Secretary's Certificates of its suppliers to show their existence and that they had business dealings with petitioner for the supply of IT products and services. He likewise presented delivery receipts allegedly to prove that these suppliers delivered goods and services to petitioner. The addresses of these suppliers are indicated in the invoices or delivery receipts. These suppliers were referred by other players in the industry and were able to deliver the goods as required indicating that they are legitimate.

He further testified that petitioner's suppliers themselves submitted letters-reply to the BIR examiner contesting the finding that their companies were fictitious. It is highly improbable that petitioner will be able to sell computer products and services amounting to more than fifty million pesos without making any purchases from such suppliers.

As to the respondent's finding that the subject purchases were excessively priced hence implausible, the witness admitted that petitioner has no evidence to show the prices of other suppliers in the market. He explained that petitioner's requirements are unique and can only be supplied by the three (3) suppliers.

He is intrigued by the fact that the very same examiner who disallowed the purchases of goods and services for the year 2006 allowed similar purchases from the same three (3) suppliers for the subsequent years and held they were legitimate transactions.

As authorized in the Secretary's Certificate, he caused the filing of the instant Petition.

Petitioner's second witness **Chong Bernard Lu**, claimed that he is a businessman and Director of various businesses including World Balance, Inc., Ultrasonic Broadcasting Corp., certain restaurants in Makati, and an animation studio in Timog Avenue, Quezon City.

He testified that in 2006, he worked as a freelance middleman or one who scouts persons in need of certain products and looks for suppliers for that product. He earned a commission from the suppliers for every successful transaction. Petitioner was one of his clients, who, in 2006, needed IT products. Thus, he referred to it three (3) suppliers, namely, Euro Sales Corporation, United Global Stylus Corporation, and ERRV Buy and Sell Trading. He is familiar with these three (3) companies and vouched as to their existence but not as to their legitimacy.

He presumed that petitioner and the three (3) suppliers had several transactions because he was paid his referral commissions. However, being a mere middleman, he could not identify any documents pertaining to their transactions.

After petitioner rested, respondent presented Revenue Officer II **Dominador A. Callangan**, presently assigned at the National Investigation Division of the BIR but has been working in the said agency since 2003.

He was previously assigned at BIR RDO 47, East Makati. His duties included tax verification and post-audit examination of books of accounts and other accounting records of taxpayers to determine if any tax liability exists, and to report his findings and recommendations.

Pursuant to a Letter of Authority (LOA) with Request for presentation of records, received by petitioner on September 26, 2007, he conducted an investigation of the latter's internal revenue taxes for 2006. On October 15, 2007, petitioner received from respondent a Second Request for Presentation of Records. Despite receipt of the LOA, and the two (2) requests for presentation of records, petitioner failed to comply. Thus, a Final Notice dated September 25, 2007 was sent to petitioner which it received on November 20, 2007.

On April 27, 2009, a Notice of Informal Conference, detailing the bases of the finding for deficiency taxes was issued to petitioner.

On December 18, 2009, a Preliminary Assessment Notice (PAN) was issued to petitioner. This was followed by a Formal Assessment Notice (FAN) dated January 19, 2010, with Assessment Notices which petitioner received on January 21, 2010. Petitioner filed an unsigned 2-page protest on February 18, 2010.

After its formal offer of exhibits, respondent rested."

Tyco Corp. and CIR filed their respective Memoranda on September 5, 2014[9] and September 26, 2014[10]. Correspondingly, the case was submitted[11] for decision on October 2, 2014.

On October 2, 2015, the CTA Third Division promulgated the assailed Decision[12] partially granting Tyco Corp.'s Petition for Review.

Thus, Tyco Corp. and CIR filed, on October 21, 2015[13], their respective Motions for Partial Reconsideration, which were both denied in a Resolution[14] promulgated on January 29, 2016.

Aggrieved, Tyco Corp. and CIR filed their respective appeals, via Petition for Review, with the Court En Banc.

In a Minute Resolution[15] dated March 30, 2016, the Court En Banc consolidated CTA EB No. 1436 with CTA EB No. 1426, the case bearing the lower docket number.

In a Resolution[16] dated May 2, 2016, the Court En Banc ordered Tyco Corp. to submit the requisite proof of service of its Petition for Review and to file its Comment to CIR's Petition for Review within ten (10) days from receipt thereof. In the same Resolution, CIR was also

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[9] Division Docket, pp. 252-265.
[10] Division Docket, pp. 268-276.
[11] Resolution, Division Docket, p. 278.
[12] See Footnote No. 3.
[13] Division Docket, pp. 302-309 and pp. 312-318.
[14] See Footnote No. 4.
[15] CTA EB No. 1426, En Banc Rollo, pp. 48 and 48-A.
[16] CTA EB No. 1426, Ibid., pp. 50-53.

required to file his Comment, not a Motion to Dismiss, to Tyco Corp.'s Petition.

On May 20, 2016, Tyco Corp. filed a Motion for Extension of Time to File Comment to Petition for Review[17], praying for an additional period of ten (10) days from May 21, 2016, or until May 31, 2016, within which to file the said pleadings. The same was granted in a Minute Resolution[18] promulgated on May 27, 2016. CIR, on the other hand, filed his Comment to Petition for Review[19] on May 31, 2016.

However, the Records Verification[20] dated June 2, 2016 disclosed that Tyco Corp. failed to submit the required proof of service of its Petition. Thus, its Petition, docketed as CTA EB No. 1426, was considered as deemed not filed in a Resolution[21] promulgated on June 23, 2016. In the same Resolution, the Court En Banc gave due course on CIR's Petition and required both parties to submit their Memoranda within thirty (30) days from receipt thereof.

Consequently, Tyco Corp. filed on July 21, 2016 its Motion for Reconsideration[22] seeking the kind indulgence of the Court to reconsider its June 23, 2016 Resolution, in the interest of justice. It, likewise, attached therein the Affidavit of Proof of Service duly executed by its messenger who filed the Petition for Review on March 10, 2016.

In view of the foregoing, the CIR was required by the Court En Banc to file his comment/opposition to Tyco Corp.'s foregoing Motion for Reconsideration, as per Resolution[23] dated August 9, 2016.

On August 11, 2016, Tyco Corp.'s filed its Memorandum[24] in CTA EB No. 1426.

The CIR failed to file his comment/opposition to Tyco Corp.'s Motion for Reconsideration per Records Verification[25] dated September 28, 2016. By such reason, in a Resolution[26] promulgated on October 14, 2016, the Court En Banc granted Tyco Corp.'s Motion for Reconsideration

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[17] CTA EB No. 1426, En Banc Rollo, pp. 54-56.
[18] CTAS EB No. 1426, En Banc Rollo, pp. 57-57A.
[19] CTA EB No. 1426, En Banc Rollo, pp. 58-65.
[20] CTA EB No. 1426, En Banc Rollo, p. 66.
[21] CTA EB No. 1426, En Banc Rollo, pp. 68-70.
[22] CTA EB No. 1426, En Banc Rollo, pp. 71-77.
[23] CTA EB No. 1426, En Banc Rollo, pp. 79-81.
[24] CTA EB No. 1426, En Banc Rollo, pp. 79-90.
[25] CTA EB No. 1426, En Banc Rollo, p. 91.
[26] CTA EB No. 1426, En Banc Rollo, pp. 94-96.

dated July 21, 2016, set aside the Resolution dated June 23, 2016, gave due course to Tyco Corp.'s Petition, and required the CIR to file his Comment to Tyco Corp.'s Petition within ten (10) days from receipt thereof.

As per Records Verification[27] dated December 5, 2016, the CIR failed to file the required Comment. Thus, in a Resolution[28] dated January 3, 2017, the Court En Banc directed the parties to submit their respective Memoranda, with respect to CTA EB No. 1426, within a period of thirty (30) days from receipt of thereof, and noted Tyco Corp.'s Memorandum, with respect to CTA EB No. 1436, filed on August 11, 2016.

With the filing of Tyco Corp.'s Memorandum both in CTA EB No. 1436 and CTA EB No. 1426 on August 11, 2016 and February 14, 2017, respectively, and the Records Verification Report[29] of the Judicial Records Division dated March 6, 2017, stating that the CIR failed to file his Memorandum, in both cases, the above consolidated cases were submitted for decision[30] on April 5, 2017.

Hence, this Decision.

CTA EB No. 1426 (Tyco Corp.'s Petition for Review):

In its Petition, Tyco Corps. raised the following grounds for the consideration of the Court:

1. Tyco Corp. did not fail to substantiate its claimed income tax deductions in the amount of P21,400,454.55; and

2. The disallowance of input VAT in the amount of P3,671,604.06 was made in the absence of any evidence submitted by CIR, either testimonial or documentary.

CTA EB No. 1436 (CIR's Petition for Review):

In his Petition, CIR raised the following issues for the consideration of the Court:

[27] CTA EB No. 1426, En Banc Rollo, p. 97.
[28] CTA EB No. 1426, En Banc Rollo, pp. 99-101.
[29] CTA EB No. 1426, En Banc Rollo, p. 114.
[30] CTA EB No. 1426, En Banc Rollo, pp. 116-117.

1. The Revenue District Officer cannot issue decisions that are appealable to the Court of Tax Appeals since 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 Code administered by the Bureau of Internal Revenue is solely vested with the CIR.

2. Assuming that the Court of Tax Appeals has jurisdiction over the instant Petition filed by Tyco Corp.'s, the latter is still liable for the assessment stated in the Final Decision on Disputed Assessments dated November 16, 2012.

CTA EB No. 1426

The Court in Division correctly disallowed the claimed income tax deductions in the amount of P21,400,454.55

In this Petition, Tyco Corp. mainly argues that there is nothing in the NIRC, particularly Section 34 thereof, or in any BIR regulations that requires the date of the Authority to Print (ATP) to precede the date of transaction to be able to claim income tax deductions for business expenses since the ATP has nothing to do with the amount of the expense being deducted, or that the expense being deducted pertains to the conduct of the trade, business, or profession of the taxpayer. Thus, the disallowance in the amount of P21,400,454.55 on the ground that the purchases were made before the BIR ATP was issued, does not, accordingly, find basis in law.

It further avers that it should not be penalized for any errors in the sales invoices, since it has no participation in the preparation of the same.

We do not agree.

To begin with, while it may be true that the said sales invoices were issued without Tyco Corp.'s participation and control, it is the look out of the latter to require its suppliers of goods and services to issue pertinent VAT invoice which bear all the information required by the Tax Code and Revenue Regulations.

The table below reveals there were no duly registered sales invoices at the time the sales transactions were made because the ATP appearing on the said invoices were only issued on January 25, 2006, to wit:

Date of transaction	Date of issuance of the BIR Authority to Print	Sales Invoice	Amount
January 3, 2006	January 25, 2006	6416[1]	₱ 17,436,818.18
January 15, 2006	January 25, 2006	6423[1]	3,928,181.82
January 20, 2006	January 25, 2006	6430[1]	35,454.55
		Total	*₱21,400,454.55*

The Court En Banc also notes that Tyco Corp. failed to present any evidence to explain the aforesaid irregularities other than its bare assertion that "the antedating of the invoices were (sic) done by the supplier for reasons known only to the supplier."[31]

In view thereof, the said invoices covering the claimed income tax deduction of P21,400,454.55 shall still remain as disallowed.

The Court in Division correctly disallowed the input VAT in the amount of P3,671,604.06

Tyco Corp. proffers that the Court erred in disallowing the input VAT in the amount of P3,671,604.06 as the same was made by the Court without the benefit of any supporting documentary and testimonial evidence coming from the respondent.

The Court disagrees with the foregoing contention.

To begin with, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[32]

[31] Par. 22, Tyco Corp.'s Petition for Review, EB No. 1426, En Banc Rollo, p. 11.
[32] Commissioner of Internal Revenue vs. Traders Royal Bank, G.R. No. 167134, March 18, 2015, citing Sy Po vs. Court of Tax Appeals, 247 Phil. 487 (1988).

Considering that there was an allegation that purchases made by Tyco Corp. were unsupported, the latter, therefore, has the burden to overturn the same by substantiating all of its purchases for the subject taxable period in order to refute the subject tax assessment.

Moreover, being a court of record, the Court of Tax Appeals is bound to conduct a formal trial (trial de novo) where the parties to a case must present their respective evidence in support of their respective cases for the appreciation of the Court.[33] By such reason, there is nothing that stands in the way of the Court to determine on its own the correctness of the BIR's assessment and decision. It may, therefore, scrutinize, one by one, all documents submitted by the parties and can make its own determination of the taxpayer's tax liabilities.

Here, in disallowing the subject input VAT in the amount of P3,671,604.06, the Court in Division simply ruled based on its own assessment of the evidence presented. Thus, the Court En Banc affirms and finds no compelling reason to disturb the conclusions arrived at by the Court in Division in disallowing the input VAT in the amount of P3,671,604.06.

CTA EB No. 1436

The Court of Tax Appeals has jurisdiction over the instant case

CIR argues that the Revenue District Officer cannot issue decisions that are appealable to the Court of Tax Appeals on the ground that 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 Code administered by the Bureau of Internal Revenue is solely vested in the CIR.

We do not agree.

The Court in Division already resolved this matter in its Resolution[34] promulgated on September 11, 2013, to which We fully agree—

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[33] Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.
[34] Division Docket, pp. 113-116.

"Section 10(b) of the NIRC of 1997 provides, thus:

> SEC. 10. Revenue Regional Director.
> —Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
>
> (b) **Administer and enforce internal revenue laws, and rules and regulations, including the assessment and collection of all internal revenue taxes, charges and fees.** (Emphases supplied)

Based on the foregoing, a Regional Director of the BIR may authorize the assessment and collection of taxpayer's deficiency taxes within his/her jurisdiction.

In the instant case, Regional Director Jaime B. Santiago caused the issuance of the Final Assessment Notice dated January 19, 2010 against petitioner [Tyco Corp.]. He also informed petitioner that the entire docket, together with its protest letter dated February 16, 2010, would be forwarded to RDO No. 47 East Makati, headed by RDO Gerry Dumayas, for further verification, evaluation and necessary action. Clearly, the action taken by Regional Director Jaime B. Santiago was not only part of his authority but his duty to assess and collect the alleged deficiency taxes from petitioner over which he had jurisdiction.

Also significant to note is the letter issued by RDO Gerry Dumayas denying with finality petitioner's protest leaving no room for any doubt that it was final and appealable to the CTA, *viz:*

> x x x **This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof,** otherwise our said deficiency income and value added tax assessment shall become final, executory and demandable.

> **With such representation, respondent is already estopped from assailing its own declaration that the decision is final and appealable to the Court of Tax Appeals (CTA). The words 'final decision' and 'appeal', taken together led petitioner to believe that the Letter of Demand No. LA69487-06-10-0185 with Assessment Notices issued on January 19, 2010 was the final decision of the CIR on its letter-protest and that it had no other option but to appeal the same to the CTA."** (Emphases supplied)

In view thereof, Tyco Corp. had thirty (30) days from November 26, 2012 (the date it received the letter issued by RDO Gerry Dumayas denying with finality petitioner's protest), or until December 26, 2012, to appeal to the CTA the said adverse decision, pursuant to Section 228[35] of the 1997 NIRC, as amended. Thus, the Court of Tax Appeal is clothed with jurisdiction to take cognizance of Tyco Corp.'s Petition for Review filed on December 21, 2012.

The Court in Division correctly reduced Tyco Corp.'s tax liability for deficiency income tax and value-added tax

CIR lastly argues that, assuming that the Court of Tax Appeals has jurisdiction over the instant Petition filed by Tyco Corp., the latter is still liable for the assessment stated in the Final Decision on Disputed

[35] "SECTION 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

(a) x x x

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.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. 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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

"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.

Assessments dated November 16, 2012 since he was able to duly establish the existence of fraud in several purchases made by Tyco Corp., which, accordingly, justifies the disallowance of P44,801,265.26, as deduction from income, and the disallowance of 4,948,142.75 input VAT resulting from the said purchases.

Again, *We* do not agree.

Records show that the foregoing argument raised by CIR is mere rehash, in fact, quoted verbatim, of the argument raised by the latter in his Memorandum[36] and Motion for Partial Reconsideration[37] filed before the Court in Division, which has been amply considered and passed upon in the assailed Decision. The CIR also failed to point any specific error and conveniently overlooked the detailed explanation of the Court on the said matter. Thus, to discuss the said explanation of the Court anew is superfluity.

In sum, the Court En Banc finds no cogent reason to reverse the findings of the Court in Division.

WHEREFORE, premises considered, the instant Petitions for Review are **DENIED** for lack of merit. The assailed Decision and Resolution of the CTA-Third Division in CTA Case No. 8592 are **AFFIRMED,** with the following modifications, to wit:

> "**WHEREFORE,** the Petition for Review dated December 21, 2012 filed by Tyco Information Solutions Corp. is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for taxable year 2006 covering deficiency income tax and value-added tax is hereby **MODIFIED**. Accordingly, petitioner is **ORDERED TO PAY** the amount of **THIRTEEN MILLION NINE HUNDRED FIFTY-TWO THOUSAND TWO HUNDRED FOUR PESOS AND THIRTY-FOUR CENTAVOS** (₱13,952,204.34) representing deficiency income tax and value-added tax for taxable year 2006, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, as amended, computed as follows:

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[37] Division Docket, pp. 312-318.

Deficiency Tax	**Basic Tax**	**25% Surcharge**	**Total**
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Total	**₱11,161,763.47**	**₱2,790,440.87**	**₱13,952,204.34**

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

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax and value-added tax computed from the dates indicated below **until December 31, 2017** pursuant to Section 249 (B) of the NIRC of 1997, as amended:

	Basic Tax	**20% Deficiency Interest Computed from**
Income Tax	₱7,490,159.41	April 15, 2007
Value-added Tax	₱3,671,604.06	January 25, 2007

b) Delinquency interest at the rate of 20% per annum on the total amount of P13,952,204.34 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 26, 2012 **until December 31, 2017** pursuant to Section 249 (C) of the NIRC of 1997, as amended; and

c) **Delinquency interest at the rate of 12% on the unpaid amount (basic tax plus surcharge plus interests computed in (a) and (b) above) from January 1, 2018 until the amount is fully paid pursuant to the relevant provisions of the Republic**

<u>Act No. 10963[38] or more commonly known as the TRAIN Law, which took effect on January 1, 2018."[39]</u>

SO ORDERED

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[38] Section 249. Interest.—

(A) In General. There shall be assessed and collected on any unpaid amount of legal interest at the rate of **DOUBLE THE LEGAL INTEREST RATE FOR LOANS OR FORBEARANCE OF ANY MONEY IN THE ABSENCE OF ANY EXPRESS STIPULATION AS SET BY THE BANGKO SENTRAL NG PILIPINAS**, from the date prescribed for payment until the amount is fully paid, **PROVIDED THAT IN NO CASE SHALL THE DEFICIENCY AND DELINQUENCY INTEREST PRESCRIBED UNDER SUBSECTION (B) AND (C) HEREOF, BE IMPOSED SIMULTANEOUSLY**.'

(B) Deficiency Interest— Any deficiency in the tax due as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, **OR UPON ISSUANCE OF A NOTICE AND DEMAND BY THE COMMISSIONER OF INTERNAL REVENUE, WHICHEVER COMES EARLIER**. (with emphasis supplied on the amended provisions)

[39] Moog Controls Corporation-Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 9077, February 22, 2018.

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

TYCO INFORMATION SOLUTIONS CORP.,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1426
(CTA Case No. 8592)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TYCO INFORMATION SOLUTIONS CORP.,
Respondent.

CTA EB No. 1436
(CTA Case No.8592)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

APR 03 2018 2:21 p.m.

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I submit that Revenue District Officer (RDO) Gerry O. Dumayas is not authorized to issue the final decision on Tyco Information Solutions Corp.'s (Tyco) protest to the Final Assessment Notice (FAN) issued against it.

Revenue Administrative Order (RAO) No. 10-00 dated August 7, 2000 **defines the organization and functions** of Regional Offices including their divisions and Revenue District Offices down to their sections. RAO No. 10-00 pertinently reads in part:

III. FUNCTIONS:

A. **REGIONAL OFFICE shall:**

1. Administer and enforce internal revenue laws including the assessment and collection of all internal revenue taxes, charges and fees from taxpayers within the region's jurisdiction;

xxx

16. **Review, revise and/or approve all reports and other actions of the divisions/district offices under the Regional Office;**

xxx

B. Assessment Division shall:

xxx

5. **Review and act on all letters of protests, requests for reinvestigation and similar communications;**

xxx

REVENUE DISTRICT OFFICE shall:

xxx

8. **Conduct factual verification of requests for reconsideration/reinvestigation of protested cases within its jurisdiction**;

xxx

1. *Assessment Section* shall:

1.2. Conduct field audit investigation of tax cases;

1.3. **Conduct factual verification of requests for reconsideration/reinvestigation of protested cases within its jurisdiction**;

1.4. **Prepare and submit reports of investigation together with the corresponding dockets of taxpayers to Assessment Division of the Regional Office**;" (Boldfacing and underscoring supplied)

From the foregoing, it is evident that it is the **Revenue Regional Director** who is authorized under RAO No. 10-00 to review and act on all letters of protests; in contrast, the Revenue District Officer's duty is confined to factual verification of requests for reconsideration/reinvestigation and thereafter, submission of the corresponding reports to the Assessment Division of the Regional Office.

Revenue Memorandum Circular No. 11-14 clarifies that the term *"duly authorized representative"* of the Commissioner of Internal Revenue (CIR), for purposes of the issuance of, among others, the **Final Decision on Disputed Assessment**, shall refer to the **Revenue Regional Directors**, Assistant Commissioner-Large Taxpayers Service, and Assistant Commissioner-Enforcement and Advocacy Service, *viz.*:

> "(1) RR 12-99, as amended by RR 18-2013, provides that the Commissioner or his duly authorized representative shall issue the Preliminary Assessment Notice (PAN), Formal Letter of Demand/Final Assessment Notice (FLD/FAN) and Final Decision on Disputed Assessment (FDDA). **The term "duly authorized representative" therein refers to Revenue Regional Directors, Assistant Commissioner-Large Taxpayers Service, and Assistant Commissioner-Enforcement and Advocacy Service**." (Boldfacing supplied)

In the case at bar, the **February 26, 2010 Letter** which was allegedly the source of RDO Dumayas' purported authority to sign the final decision on Tyco's protest letter merely states that the entire tax docket of Tyco was **referred back to the Revenue District Officer for evaluation and necessary action** in view of the protest letter filed by Tyco on February 16, 2010. It states that the Revenue District Officer shall **submit a report on the result of reinvestigation** within thirty (30) days from receipt of the tax docket; and **submit proof/documents** to justify the cancellation of the assessment that will be dropped, if any, per reinvestigation. The **February 26, 2010 Letter** was not signed by Regional Director Jaime B. Santiago but by Assistant Regional Director Manuel V. Mapoy. **Nowhere in said February 26, 2010 Letter does it state that RDO Dumayas is granted the authority to issue the final decision on Tyco's protest letter to the FAN.**

Absent any valid authority to issue the final decision on Tyco's protest letter, it is my view that the November 16, 2012 Letter of RDO Dumayas which denied Tyco's protest letter to the FAN is a nullity.

Notwithstanding the nullity of the November 16, 2012 Letter of RDO Dumayas, the FAN issued against Tyco is not *ipso facto* rendered void as elucidated by the Supreme Court in ***Commissioner of Internal Revenue vs. Liquigaz Philippine Corporation.***[1] In *Liquigaz*, the taxpayer sought for the cancellation of the assessment on the ground of the invalidity of the FDDA for failing to state the facts on which the decision was based. **In holding that a void FDDA does not automatically render the assessment void**, the Supreme Court held:

> "**A void FDDA does not *ipso facto* render the assessment void**
>
> xxx xxx xxx
>
> Clearly, **a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other— unless the law or regulations otherwise provide**.
>
> Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that **failure of the FDDA to reflect the facts and law on which it is based will make the decision void. It, however, does not extend to the nullification of the entire assessment**.
>
> xxx xxx xxx
>
> The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.**
>
> **As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.**" (Boldfacing supplied)

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[1] G.R. No. 215534 and 215557, April 18, 2016.

Interestingly, while the Supreme Court in *Liquigaz* made a pronouncement that what was being appealed by the taxpayer before the CTA was effectively the *inaction* of the CIR on its protest, it nonetheless did not consider the petition to have been belatedly filed before the Court in Division. Yet, a simple perusal of the factual circumstances in *Liquigaz* reveals that the appeal to the CTA was filed beyond thirty (30) days from the lapse of the one hundred eighty (180)-day period within which the CIR should act on the protest.

Following the pronouncement in *Liquigaz*, and notwithstanding the filing of Tyco's petition with the Court in Division beyond thirty (30) days from the lapse of the one hundred eighty (180)-day period to act on the protest, I am of the opinion that the Court in Division properly took cognizance of the petition and resolved the same on the merits.

While I agree with the findings of the Court in Division which ordered Tyco to pay basic deficiency income tax and VAT, surcharge, plus deficiency and delinquency interests, **I submit that the pertinent provisions of Republic Act (RA) No. 10963 or otherwise known as the *"Tax Reform for Acceleration and Inclusion"*, which took effect on January 1, 2018, should be applied in determining the amount of Tyco's tax liability.**

Deficiency interest on tax is based on law. When the law is amended during the pendency of a case, and **there being a specific provision as to when the amendment becomes effective**, there is no reason for the Court not to apply the law as amended.

In the consolidated cases of *Republic of the Philippines vs. Hon. Jesus M. Mupas,*[2] *Republic of the Philippines vs. Philippine International Air Terminals Company, Inc.,*[3] *Takenaka Corporation and Asahikosan Corporation vs. Republic of the Philippines,*[4] *Philippine International Air Terminals Co., Inc. vs. Republic of the Philippines,*[5] the Supreme Court imposed the amended rate of interest immediately upon the effectivity of the corresponding amendment despite the fact that the purported cause of action has arisen before the amendment, and notwithstanding the absence of any provision stating that it should be applied either retroactively or prospectively. There was a "cut off" date made, however, that is - - by applying the old rate before the effectivity of the amendment and the new rate after such effectivity.

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[2] G.R. No. 181892, September 8, 2015.
[3] G.R. No. 209917, September 8, 2015.
[4] G.R. No. 209696, September 8, 2015.
[5] G.R. No. 209731, September 8, 2015.

Since there is no way to reasonably apply a cut-off date on deficiency interest because of the strikingly opposing rule on **rate of interest** and **mode of computation** between the old provision and the new provision, the logical approach is to apply the amended rate consistent with the intent of the RA No. 10963 to make it effective on January 1, 2018.

Parenthetically, Section 249 of the NIRC of 1997, as amended by RA No. 10963 (TRAIN law) categorically incorporates three (3) provisos that cannot be applied without setting aside the original version of Section 249 of the NRIC of 1997:

First, the TRAIN law proscribes the simultaneous imposition of deficiency interest and delinquency interest, which the old version allows;

Second, the TRAIN law prescribes a rate of double the legal interest rate for loans or forbearance of any money in the absence of express stipulation as set by the Bangko Sentral ng Pilipinas (which at present is 6% per annum), which is lower than the old version prescribing the rate of 20% per annum; and,

Third, deficiency interest is allowed to be computed from the date prescribed for its payment until the full payment thereof, **or upon issuance of a notice and demand by the CIR**, whichever comes earlier; while the old version confined its computation strictly from the date prescribed for its payment until the full payment thereof.

All told, I VOTE to: (i) PARTIALLY GRANT the Petition for Review filed by Tyco Information Solutions Corp.; (ii) DENY the Petition for Review filed by the Commissioner of Internal Revenue; (iii) AFFIRM the assessment for deficiency income tax and VAT **with modification relating to the imposition of deficiency and delinquency interest**; and (iv) ORDER Tyco Information Solutions Corp. to PAY the Bureau of Internal Revenue the amount of ₱13,952,204.34 representing deficiency income tax and VAT and the 25% surcharge under Section 248(A)(3) of the NIRC of 1997, as amended:

Tax Type	Basic	Surcharge	Total
Income Tax	₱ 7,490,159.41	₱ 1,872,539.85	₱ 9,362,699.26
VAT	3,671,604.06	917,901.02	4,589,505.08
Total	**₱ 11,161,763.47**	**₱ 2,790,440.87**	**₱ 13,952,204.34**

qn

In addition, ORDER Tyco Information Solutions Corp. to PAY:

a) Deficiency interest at the rate of 12% per annum on the basic deficiency income tax and VAT, computed from the date prescribed for payment as indicated below until **January 21, 2010**, the date of Tyco Information Solutions Corp.'s receipt of the Final Assessment Notice and Assessment Notices dated January 19, 2010, pursuant to Section 249(B) of the NIRC of 1997, as amended by RA No. 10963:

Tax Type	Basic	Deficiency Interest Computed From
Income Tax	₱ 7,490,159.41	April 15, 2007
VAT	3,671,604.06	January 25, 2007

b) Delinquency interest at the rate of 12% per annum on the total amount of P13,952,204.34 and on the 12% deficiency interest which have accrued as aforestated in item (a) above, computed from **February 19, 2010**, the due date appearing in the Final Assessment Notice and Assessment Notices, until the amount is fully paid, pursuant to Section 249(C) of the NIRC of 1997, as amended.

ROMAN G. DEL ROSARIO
Presiding Justice