

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BASF PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 10221

Members:

- versus -

BACORRO-VILLENA, Acting Chairperson, and
CUI-DAVID, Jr.

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 03 2022

x - - - - -

DECISION

BACORRO-VILLENA, Jr.:

At bar is a Petition for Review¹ filed on 05 December 2019 by BASF Philippines, Inc. (**petitioner/BASF**) pursuant to Rule 8, Section 3(a)² of the Revised Rules of the Court of Tax Appeals (RRCTA). It seeks the nullification of the Final Decision on Disputed Assessment (FDDA) dated 28 October 2019³, finding petitioner liable in the total amount of ₱9,504,600.81, inclusive of interest and penalty, allegedly

¹ Division Docket, Volume I, pp. 7-91, including annexes.

² **SEC. 3. Who may appeal; period to file petition.** – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal [R]evenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

³ Exhibit “P-9”, Division Docket, Volume II, pp. 719-727.

representing its deficiency value-added tax (VAT) for the taxable period of 01 January 2016 to 30 June 2016.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 11/F HHIC Bldg. 1128 University Park, North Bonifacio Global City, Fort Bonifacio, Taguig City.⁴ It is primarily engaged in the business of production, manufacture, sale, exportation, importation, marketing, and distribution of basic chemicals and chemical products and the provision of related services.⁵

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) and vested with authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (**BIR**).

FACTS OF THE CASE

On 04 January 2017, petitioner received a copy of Letter of Authority No. eLA201200036456/AUD/R01/008972/2016⁶ dated 12 December 2016 (**Original 2016 LOA**) issued by Clavelina S. Nacar, Officer-in-Charge of the BIR Revenue Region No. 8 (Makati City), authorizing Revenue Officer (**RO**) Imelda N. Sumagaysay (**Sumagaysay**) and Group Supervisor (**GS**) Ricaredo O. Balderas (**Balderas**) to examine petitioner's books of account and other accounting records for VAT for the taxable period of 01 January 2016 to 30 June 2016.⁷

⁴ Paragraph (Par.) 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (**JSFI**), *id.*, p. 519.

⁵ Par. 3, *id.*

⁶ Exhibit "P-1", *id.*, pp. 675-676.

⁷ Par. 4, *id.*, pp. 519-520.

On 15 November 2018, petitioner received a copy of the Preliminary Assessment Notice⁸ (PAN) dated 14 November 2018, finding petitioner liable for deficiency VAT in the aggregate amount of ₱75,602,398.60, inclusive of interest.⁹

On 29 November 2018, petitioner filed its Protest Letter¹⁰ (PAN Protest) dated 21 November 2018 against the PAN.¹¹ On 03 January 2019, petitioner received a copy of the Formal Assessment Notice¹² (FAN) and Assessment Notice No. VT-eLA-36456-16-18-841¹³ both dated 20 December 2018.¹⁴ On 29 January 2019, or within thirty (30) days from receipt of the FAN and assessment notice, petitioner filed its Protest Letter¹⁵ (FAN Protest) against the FAN.¹⁶

On 14 March 2019, or within 60 days from the filing of the FAN Protest, petitioner wrote respondent a letter¹⁷ informing the latter that the documents submitted with the FAN Protest are sufficient to support its claims.¹⁸ However, respondent requested additional documents from petitioner, to which the latter complied with.¹⁹

On 07 November 2019, petitioner received the FDDA²⁰ and Amended Assessment Notice No. VT-eLA-35811-16-19-082²¹, both dated 28 October 2019, granting petitioner's request for reinvestigation but demanding payment of deficiency VAT of ₱9,504,600.81, inclusive of interest.²² In the FDDA, respondent assessed petitioner for deficiency VAT computed as follows:

⁸ Exhibit "P-2", id., pp. 677-687.
⁹ Par. 5, Summary of Admitted Facts, JSFI, id., p. 520.
¹⁰ Exhibit "P-3", id., pp. 688-694.
¹¹ Par. 6, Summary of Admitted Facts, JSFI, id., p. 520.
¹² Exhibit "P-4", id., pp. 695-704.
¹³ Exhibit "P-5", id., p. 705.
¹⁴ Par. 7, Summary of Admitted Facts, JSFI, id., p. 520.
¹⁵ Exhibit "P-6", id., pp. 706-715.
¹⁶ Par. 8, Summary of Admitted Facts, JSFI, id., p. 520.
¹⁷ Exhibit "P-7", id., p. 716.
¹⁸ Par. 9, Summary of Admitted Facts, JSFI, id., p. 520.
¹⁹ See Exhibit "P-8", id., pp. 717-718.
²⁰ Supra at note 3.
²¹ Exhibit "P-10", Division Docket, Volume II, p. 728.
²² Par. 10, Summary of Admitted Facts, JSFI, id., p. 520.

x-----x

Value Added Tax		
Vatable Sales per Return		₱226,978,022.50
Add/(Less): Adjustments		
Undeclared Sales due to TPI (Schedule 1)	6,057,561.18	
Unsupported Zero-Rated Sales (Schedule 2)	-	
Unaccounted Sales due to undeclared importation	40,379,240.91	46,436,802.09
Vatable Sales per Audit		273,414,824.59
Output (12%)		32,809,778.95
Less: Allowable Input Tax per Audit		
Allowable Input Tax per Return	87,554,578.00	
Add/(Less) Adjustments:		
Disallowed input tax (Annex C)	(698,242.59)	
Excess/Deferred input tax to be carried forward per return	(60,317,215.30)	26,539,120.11
VAT Payable/(Excess Input Tax)		6,270,658.84
Less: VAT Paid		-
Basic Deficiency Value-Added Tax		6,270,658.84
Add: Interests (7/26/16 to 12/31/17) 20%	1,797,016.20	
Interests (1/1/2018 to 11/29/2018) 20%	1,436,925.77	3,233,941.97
TOTAL AMOUNT DUE		₱9,504,600.81

Moreover, in a letter dated 12 May 2019²³, respondent informed petitioner that: (1) GS Balderas was transferred to Revenue District Office (RDO) No. 47-East Makati; and, (2) the VAT assessment was assigned to RO Sumagaysay under the supervision of the new GS, Rebecca Pandapatan (Pandapatan). Pursuant to the reassignment, LOA No. LOA-Vo8-2019-00000245/eLA201600035811 dated 22 April 2019²⁴ was issued, authorizing RO Sumagaysay and GS Pandapatan to examine petitioner’s books of account and other accounting records for VAT assessment for the period of 01 January 2016 to 30 June 2016.

PROCEEDINGS BEFORE THE SECOND DIVISION

On 05 December 2019, disagreeing with the BIR’s action against it, petitioner filed the instant Petition for Review²⁵ before the Court. It prayed for the setting aside and/or cancellation of the alleged

²³ Exhibit “P-11”, id., p. 729.
²⁴ Exhibit “P-12”, id., p. 730.
²⁵ Supra at note 1.

deficiency VAT assessment of ₱9,504,600.81 (as stated in the FDDA dated 28 October 2019) for being devoid of factual or legal basis.

Later, the Court granted respondent's request²⁶ for an additional time to file an answer to the petition, which the Court granted.²⁷ On 31 January 2020, respondent filed the Answer to petitioner's Petition for Review.²⁸

On 10 February 2020, the Court issued a Notice of Pre-Trial Conference²⁹ and the pre-trial proper proceeded on 12 March 2020. Still later, respondent filed the Pre-Trial Brief³⁰, while petitioner filed the Judicial Affidavit³¹ of its witness and its Pre-Trial Brief³² on 06 March 2020 and 09 March 2020, respectively.

Still later, the case was referred to mediation³³ but the parties decided not to have the case mediated.³⁴ The Court then continued with the pre-trial conference on 16 September 2020.³⁵ On the said date, the parties were granted twenty (20) days within which to file their Joint Stipulation of Facts and Issues (JSFI).³⁶ On 06 October 2020, the parties submitted their JSFI.³⁷

On 15 October 2020, the Court issued a Pre-Trial Order³⁸, adopting the parties' JSFI and setting the hearing dates. Meanwhile, or on 23 October 2020, petitioner filed a Supplemental Judicial Affidavit of its lone witness.³⁹

In the trial that ensued thereafter, petitioner's lone witness, Leonardo B. Aldueza, Jr. (Aldueza), testified through his Judicial

²⁶ See Motion for Additional Time to File Answer, Division Docket, Volume I, pp. 93-95.

²⁷ See Order dated 08 January 2020, id., p. 97.

²⁸ Id., pp. 99-103.

²⁹ Id., pp. 105-106.

³⁰ Filed on 03 March 2020, Id., pp. 109-112.

³¹ See Submission filed on 06 March 2020, with attached Judicial Affidavit of Leonardo B. Aldueza, Jr. (in lieu of Direct Examination), id., pp. 113-470, including annexes.

³² Id., pp. 471-482.

³³ See Order dated 12 March 2020, Division Docket, Volume II, p. 486.

³⁴ See PMC-CTA Form 6, No Agreement to Mediate dated 13 July 2020, id., p. 491.

³⁵ See Resolution dated 20 July 2020, id., p. 493.

³⁶ See Order dated 16 September 2020, id., p. 496.

³⁷ Id., pp. 519-530.

³⁸ Id., pp. 543-558.

³⁹ See Submission dated 23 October 2020, with attached Supplemental Judicial Affidavit of Leonardo B. Aldueza, Jr. (in lieu of Direct Examination), id., pp. 573-632, including annexes.

x-----x

Affidavit and Supplemental Affidavit that: (1) respondent’s VAT deficiency assessment as reflected in the FDDA has no factual and legal bases; (2) petitioner was deprived of the opportunity to dispute the alleged undeclared sales when respondent failed to provide a detailed breakdown of the alleged undeclared sales arising from third party information (TPI); (3) there are no undeclared sales to Ma. Juliana Sambo Escobinas, Transitions Optical Philippines, and JQ Estates Corporation as they were not petitioner’s customers; (4) the undeclared importations during the month of January 2016 were reported in October 2016, or soon after petitioner received the documents proving the said importations; (5) the alleged undeclared importations during the period of 01 January 2016 to 30 June 2016 included samples and laboratory equipment, which could not result to sales subject to VAT because these were not held for sale; (6) the input VAT of ₱698,242.59 were properly substantiated through the corresponding VAT invoices or official receipts (ORs); (7) respondent disallowed the application of petitioner’s excess input VAT of ₱60,317,215.30 against the alleged deficiency output VAT without explaining the legal or factual basis for such disallowance; (8) the Bureau of Customs (BOC) only issued to petitioner’s customs broker, photocopies of the import entry declarations (IEDs) corresponding to the importations that are subject of the deficiency VAT assessment; and, (9) petitioner was not able to locate or generate the originals or original computer printouts of the IEDs, lease agreements, and invoices issued by certain suppliers despite exerting diligent and earnest efforts.

No cross examination was conducted.

Subsequently, on 01 December 2020, petitioner filed its Formal Offer of Evidence (FOE), consisting of Exhibits “P-1” to “P-41”, inclusive of sub-markings.⁴⁰ In the Comment⁴¹, respondent objected to the admission of Exhibits “P-20”, “P-20-1”, “P-36-1” to “P-36-10”, “P-37-1” to “P-37-105” and “P-38-1” to “P-38-1-1”⁴² for being mere photocopies.

⁴⁰ Id., pp. 643-672.
⁴¹ Filed on 09 December 2020, id., Volume III, pp. 1128-1130
⁴²

Exhibit	Description
“P-20”	Contract of Lease dated 18 March 2014 between Petitioner and JQ Estates Corporation.
“P20-1”	Addendum To Contract of Lease dated 24 April 2015.
“P-36-1” to “P-36-10”	Various Import Entry Declarations.

Likewise, respondent objected to the admission of the secondary evidence of the same exhibits for petitioner’s failure to allege that its witness has personal knowledge of the loss and destruction of the originals of the said exhibits.

In the Resolution dated 20 January 2021⁴³, the Court admitted all of petitioner’s exhibits, with a minor note that the descriptions for Exhibit “P-39-A” and “P-39-B” were interchanged.⁴⁴

On the other hand, at the hearing held on 10 March 2021⁴⁵, respondent presented her lone witness, RO Pandapatan, who testified through her Judicial Affidavit.⁴⁶ RO Pandapatan stated that: (1) she holds the position of RO IV; (2) pursuant to LOA-Vo8-2019-00000245/eLA201600035811 dated 22 April 2019⁴⁷, she was authorized to reinvestigate petitioner’s books of accounts and other accounting records for VAT purposes for the period of 01 January 2016 until 30 June 2016; (3) she submitted a memorandum report containing the result of the reinvestigation and validation of the FAN protest; and, (4) based on the audit result, petitioner is still liable for VAT deficiency in the amount of ₱9,504,600.81 for the said period.

No cross examination was conducted. 

“P-37-1” to “P-37-105”	Various Import Entry Declarations.
“P-38-1”	Adessa Corporation Invoice No. 9579.
“P-38-1-1”	Adessa Corporation Invoice No. 9580.

⁴³ Division Docket, Volume III, pp. 1133-1134.

⁴⁴

Exhibit	Description in the FOE	Description in the actual document
“P-39-A”	2015 4 th Quarter VAT Return: Item 29 described as Total Amount Payable (Overpayment).	2015 4 th Quarter VAT Return: Item 23A described as Input Tax on Purchases of Capital Goods Exceeding P1Million Deferred for the Succeeding Period.
“P-39-B”	2015 4 th Quarter VAT Return: Item 23A described as Input Tax on Purchases of Capital Goods Exceeding P1 Million Deferred for the Succeeding Period.	2015 4 th Quarter VAT Return: Item 29 described Total Amount Payable (Overpayment).

⁴⁵ See Order dated 10 March 2021, Division Docket, Volume III, p. 1154.

⁴⁶ See Submission filed on 08 February 2021, with attached Judicial Affidavit of Rebecca P. Pandapatan, id., pp. 1138-1146.

⁴⁷ Exhibit “R-1”, BIR Records, p. 573.

On 04 May 2021, respondent filed his or her FOE, consisting of Exhibits “R-1” to “R-3”, inclusive of sub-markings.⁴⁸ On the other hand, petitioner filed its Comment/Opposition⁴⁹ to respondent’s FOE wherein it objected to the admission of all the exhibits for failure of the latter’s witness to identify them.

In the Resolution dated 16 June 2021⁵⁰, the Court admitted all of respondent’s evidence and noted that Exhibit “P-3” and its sub-marking, “P-3-a”, (originally offered as Judicial Affidavit of Imelda N. Sumagaysay; and name and signature of Imelda N. Sumagaysay, respectively) pertains to the Judicial Affidavit of Rebecca P. Pandapatan and her name and signature in the said affidavit. In the same Resolution, the Court directed both parties to file their respective memoranda within 30 days from notice.

Petitioner filed its Memorandum on 23 July 2021⁵¹ while respondent filed his or her Memorandum on 19 July 2021.⁵² In the Resolution dated 16 November 2021⁵³, the case was submitted for decision.

ISSUE

As the parties so stipulated⁵⁴, the main issue for this Court’s determination is -

WHETHER PETITIONER BASF PHILIPPINES, INC. IS LIABLE FOR DEFICIENCY VALUE-ADDED TAX (VAT) FOR THE PERIOD 01 JANUARY 2016 TO 30 JUNE 2016 IN THE AGGREGATE AMOUNT OF ₱9,504,600.81, INCLUSIVE OF INCREMENTS.

⁴⁸ Division Docket, Volume III, pp. 1155-1158.

⁴⁹ Id., pp. 1161-1164.

⁵⁰ Id., pp. 1168-1169.

⁵¹ Id., pp. 1170-1191.

⁵² Id., pp. 1194-1199.

⁵³ Id., p. 1203.

⁵⁴ Stipulation of Issues, JSFI, id., Volume II, p. 521.

ARGUMENTS

In support of the instant petition, petitioner insists that the deficiency VAT assessment is void because it was carried out in violation of its constitutional and administrative right to due process of law. Petitioner forwards the following arguments:

1. Respondent failed to indicate the definite amount of tax liability in the FAN and in the FDDA in violation of Section 228⁵⁵ of the NIRC of 1997, as amended.

Petitioner alleges that the phrase appearing on the FAN and FDDA “the interest and the total amount due will have to be adjusted if paid beyond the date specified therein”, is defective. Citing the cases of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*⁵⁶ (**Fitness by Design**) and *Commissioner of Internal Revenue v. Megabucks Merchandising Corp.*⁵⁷, petitioner contends that the Supreme Court has held that the use of similar statements in the FAN and/or Formal Letter of Demand (FLD) is not enough to satisfy the requirement on the definiteness of the amount of the tax liability, thus rendering the corresponding assessments as void.

2. Petitioner claims that except for updating the amount of the accrued interest, the FAN simply reiterated the assessment findings in the PAN, without addressing any of the legal and factual arguments raised in the PAN Protest. To bolster this claim, petitioner cites the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*⁵⁸ (**Avon Products**) wherein the Supreme Court denounced this kind of practice by the CIR.

⁵⁵ **SEC. 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:

...
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.

⁵⁶ G.R. No. 215957, 09 November 2016.

⁵⁷ CTA EB No. 1974, 12 February 2020.

⁵⁸ G.R. Nos. 201398-99, 03 October 2018.

3. Assuming that the FAN and FDDA were validly issued, the assessment is still devoid of any factual and legal basis because:
 - a. The FAN failed to explain why respondent disallowed the application of petitioner's excess input tax carried forward to succeeding periods in the amount of ₱60,317,215.30, to cover the assessed deficiency VAT;
 - b. Respondent assumed that the alleged undeclared sales arising from TPI (amounting to ₱6,057,561.18) was correct despite the lack of confirmation from the third-party customers. Moreover, respondent failed to provide an itemized breakdown of the alleged undeclared sales of petitioners to the said third-party customers;
 - c. Some of the third-party customers listed (Ma. Juliana Sambo Escobinas, JQ Estates Corporation, Transitions Optical Philippines, and Zablan Korina Suares) are not petitioner's customers;
 - d. The alleged undeclared sales arising from undeclared importation (amounting to ₱40,379,240.91) are the result of: (1) timing differences; and, (2) some importations (laboratory equipment and samples that were used in trials) were not held for sale; and,
 - e. The disallowed input tax of ₱698,242.59 were duly supported by VAT invoices and ORs.

Respondent, on the other hand, counters that petitioner cannot assail the TPI's correctness and the proper validation procedures of the BIR. The copies obtained from TPI is for the BIR'S internal records only and after validation, such discrepancies were shared with petitioner through the issuance of PAN and FAN, with schedules of reconciliation. It was petitioner's failure to provide corroborative proof of its declaration in the VAT return (that it was duly supported by their Summary List of Sales [SLS]) that served as the basis for the deficiency assessment.

For the alleged timing difference in the importation, respondent argues that the same is not applicable if it cannot be supported,

sufficiently by the detailed general ledgers. In addition, the original importation documents and invoices were not presented, hence, there was no way to validate the alleged timing difference. Moreover, petitioner's claims that some of the importations consisted of laboratory equipment and samples used in trials should not be given weight since it failed to prove them.

For the disallowed input tax of ₱698,242.59, respondent alleges that comparison of petitioner's Summary List of Purchases (SLP) and the sales invoices and/or ORs issued by the suppliers, reveals that it did not conform with the invoicing requirement prescribed under Section 110(A)(1)⁵⁹ of the NIRC of 1997, as amended.

Lastly, respondent maintains that the excess input tax must not be applied against the VAT deficiency because this shall be carried over to the next succeeding period as provided under Revenue Regulations (RR) No. 16-2005.⁶⁰

RULING OF THE COURT

Before the Court proceeds to resolve the issue in the case at bar, it deems propitious to first determine the timeliness of petitioner's administrative and judicial appeals as this is determinative of the Court's jurisdiction.

Section 228 of the NIRC of 1997, as amended, provides:

...

SEC. 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:

...

⁵⁹

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[.]

⁶⁰

Consolidated Value-Added Tax Regulations of 2005.

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.⁶¹

...

The aforequoted Section 228 of the NIRC of 1997, as amended, is implemented by RR No. 12-99⁶², as amended by RR No. 18-2013.⁶³ Relevant portions of Section 3.1.4 of RR No. 18-2013 are quoted below, as follows:

...

SEC. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

...

3.1.4 Disputed Assessment. — ...

...

⁶¹ Emphasis supplied.

⁶² Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

⁶³ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within **sixty (60) days from date of filing of his letter of protest**, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

...

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: **(i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.**⁶⁴

...

Based on the foregoing provisions, a taxpayer may either: **(1) appeal to this Court within 30 days from after the expiration of the 180-day period from the date of submission by the taxpayer of the required documents within 60 days from the date of filing of the protest; or, (2) await the final decision of respondent's duly authorized representative on the disputed assessment and within 30 days from receipt of a copy thereof: (i) elevate its protest through request for**

⁶⁴

Italics in the original text and emphasis supplied.

reconsideration to respondent; or, (ii) appeal such decision to this Court.

In this case, the following are the pertinent dates in determining the timeliness of the instant Petition for Review:

Date	Action
03 January 2019 ⁶⁵	Petitioner received the FAN and the Assessment Notice dated 20 December 2018. ⁶⁶
29 January 2019 ⁶⁷	Petitioner filed the FAN Protest ⁶⁸ requesting for reinvestigation addressed to the Regional Director of Revenue Region No. 8- Makati City within the 30-day reglementary period.
07 November 2019 ⁶⁹	Petitioner received the FDDA and the Assessment Notice dated 28 October 2019. ⁷⁰
05 December 2019 ⁷¹	Petitioner filed a Petition for Review within 30 days from the receipt of the FDDA and Assessment Notice.

Considering that petitioner’s present action is consistent with Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, the instant Petition for Review was thus timely filed and the Court may properly exercise its jurisdiction.

We shall now proceed to resolve the parties’ assigned issue and its incidents, in *seriatim*.

THE SUBJECT DEFICIENCY VALUE-ADDED TAX (VAT) ASSESSMENT IS VALID AS PETITIONER WAS ACCORDED ADMINISTRATIVE DUE PROCESS.

⁶⁵ Supra at note 14.
⁶⁶ Exhibits “P-4” and “P-5”, supra at notes 12 and 13.
⁶⁷ Supra at note 16.
⁶⁸ Exhibit “P-6”, supra at note 15.
⁶⁹ Supra at note 22.
⁷⁰ Exhibits “P-9” and “P-10”, supra at notes 3 and 21.
⁷¹ Supra at note 1.

Petitioner asserts that the deficiency VAT assessment is void as it was done in violation of its constitutional and administrative right to due process. In this regard, petitioner claims that respondent failed to observe mandatory procedures during the audit of its books of accounts, such as: (1) failing to indicate in the FAN the definite amount of tax liability; and, (2) failing to explain in the FAN the specific factual and legal basis relied upon by respondent for rejecting petitioner's arguments.

- A. THE FINAL ASSESSMENT NOTICE (FAN) AND FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) CONTAINED A DEFINITE AMOUNT OF TAX LIABILITY WITH DEFINITE DUE DATE.

Petitioner contends that the VAT assessment is void in accordance with the doctrine in the *Fitness by Design* case since the tax liability remains indefinite.

We disagree.

The facts of the instant case are not in all fours with *Fitness by Design* as to warrant its application herein. In *Fitness by Design*⁷², the Supreme Court noted that the amount in the FAN remained indefinite as the same was subject to modification, depending on the date of the taxpayer's payment. The wordings in the FAN there is quoted herein, as follows:

...

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

...

⁷²

Supra at note 56; Emphasis and underscoring in the original text and italics supplied.

The Supreme Court also emphasized that the FAN there did not contain due dates, thus, it held:

...

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

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

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remain unaccomplished.⁷³

...

On the contrary, the pertinent portion of the FAN in the case at bar reads:

...

*Please take note that the interest and the total amount due will have to be adjusted if paid beyond the date specified therein.*⁷⁴

...

In herein case, the FAN clearly indicates that the *interest*, which forms part of the *total amount due*, will only be adjusted if the taxpayer pays *beyond* the deadline or due date provided (which is 21 January 2019⁷⁵). Insofar as the total amount indicated in the FAN is concerned, it is undeniable that **the amount of deficiency VAT plus interest is definite and certain on the due date provided therein.** This remains to be the fact despite a warning from the BIR that additional interest (consequently affecting the total amount due) shall continue 

⁷³ Supra at note 56; Citations omitted, emphasis and underscoring supplied, and italics in the original text.

⁷⁴ Supra at note 12; Italics in the original text and underscoring supplied.

⁷⁵ Exhibit "P-5", supra at note 12.

to accrue *beyond* the due date. It is then not fair to fault the BIR for reminding the taxpayer of the consequences of a delayed settlement.

In determining the validity of the assessment, what is crucial is the definiteness of the amount indicated in the FAN with respect to the deadline or due date provided. If the FDDA satisfies substantially both requirements, then the FDDA could not be wanting nor can the assessment be deemed as void. While it is true that the computation of interest may not yet appear definite, the same is only logical as BIR could not reasonably be expected to know or foresee when the taxpayer will actually settle the tax obligation. Therefore, to set aside the entire assessment on the basis of the indefiniteness not of the amount of deficiency taxes *but of the interest* that may accrue (*beyond* the deadline of payment) is in discord with the wisdom behind the Supreme Court's pronouncement in *Fitness by Design*.

B. THE FACTUAL AND LEGAL BASES
FOR THE ASSESSMENT ARE
INCORPORATED IN THE SUBJECT
VALUE-ADDED TAX (VAT)
ASSESSMENT.

Petitioner, citing *Avon Products* case, likewise asserts that the FAN lacks the required factual and legal bases since the FAN simply reiterated the assessment findings stated in the PAN – without addressing any of the legal and factual arguments raised by petitioner in its PAN Protest.

In *Avon Products*⁷⁶, the Supreme Court agreed with Avon that the CIR deprived demonstrably the petitioner therein of administrative due process. The relevant portion of the decision reads:

...

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,

⁷⁶ Supra at note 58; Citations omitted, emphasis and underscoring supplied.

DECISION

Page 18 of 48

X-----X

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.

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 under declaration 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[s] 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**.

...

Similarly, in this case, **despite Avon's submission of its explanations and pieces of evidence to the assessments**, the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple."

...

As can be gleaned from the foregoing, the BIR violated Avon's right to due process when it disregarded the latter's pieces of evidence



from the PAN's issuance until the release of the Collection Letter, which was ultimately appealed before this Court and the Supreme Court. Such is not the case here. In the case at bar, respondent took time to evaluate and consider the pieces of evidence that petitioner submitted. In fact, in the FDDA dated 28 October 2019⁷⁷, Regional Director (RD) Glen A. Geraldino (**Geraldino**), after taking into account the pieces of evidence submitted by petitioner, reduced the basic deficiency VAT from ₱54,167,076.57 *per* PAN and FAN to ₱6,270,658.84. Moreover, the following portions of the FDDA clearly show that respondent considered petitioner's assertions, allegations, documents, and other pieces of evidence, viz:⁷⁸

...

In your letter, you disagreed with our findings for the reason that this assessment was merely based on comparison of the Company's Sales per Summary List of Sales (SLS) and the third-party information (TPI) thus resulting to undeclared sales. You further state that the BIR failed to provide you with sufficient details as to the invoice date and amount made through TPI on which the assessment was based. Moreover, you reiterated that such assessment is in violation of BASF's right to due process, hence, should be cancelled for being void when you were not provided with copies of the confirmation letter sent to customers obtained from TPI with discrepancies on undeclared sales.

Upon reinvestigation, *your disagreement on the above finding is without merit* and your allegation that such were merely based on comparisons between the SLS and TPI data from its sources is untenable. The rule on TPI's refer to compliance with Revenue Memorandum Order (RMO) Nos. 30 2003, 46-2004 and 4-2004 formed part of the Audit Procedures that were undertaken hence, such details furnished by the National Office bearing the month it was reported to whom such Purchases/Sales were made were captured on a per company or TIN basis. ...

...

Your failure to show valid proof that your declaration in the VAT return is supported by your filed SLS on a covered period made us sustain our assessment.

However, each and every item are discussed below regarding your explanations:

⁷⁷ Supra at note 3.

⁷⁸ See Details of Discrepancies dated 28 October 2019, Division Docket, Volume II, pp. 721-724.

X-----X

- (1) Agri Biz Co - you claimed that P41,518.50 was reported in July but *no SLS was provided* however, you failed to reconcile the amount of P3,076,573.50 you reported in the SLS vs TPI.
- (2) Ma Juliana Sambo Escobinas - you denied that she is your customer.
- (3) Everland Agri [Corp.] - you failed to reconcile.
- (4) JQ Estate Corp. - you claimed that this is a return of security deposit through your Issuance of a Collector's Receipt; apparently, JQ Estate has utilized for his claimed input tax which made you liable for value added tax.
- (5) New Aga Alta Agri Corp. - you refer to previous SLS with *no proof*,
- (6) Transitions Optical Phils. - you denied that it is your customer where you based your no reply to the BIR's letter of confirmation. Your presumption is in contrast with the BIR's no reply status.
- (7) Zablan Korina Suares - you claimed that she is not a customer which we found that the taxpayer is doing business under the name of Rankor Agricultural Trading. When you are quick to assume that she is not your customer, you reported a Sale of P503,589.66 It is noticeable that you *failed to reconcile with your records*.

...

In reply, please be informed that the proof of zero rate sales were *already requested in our list of requirements* for submission and that these documents were reiterated during the course of our audit in your office and since *no proof of zero rated sales were submitted*, an assessment has been made. However, upon reinvestigation, you *were able to substantiate and proved that they comply with zero rating sales thus, this assessment is hereby cancelled*.

...

In your letter, you contested that you failed to account in your VAT returns the amount of P189,661,511.00 for the period January 1 to June 30, 2017 and stressed that you were able to reconcile the difference on the periods where it was duly reported. You further emphasized that what is clear from the findings is that the Company did not overstate the input taxes claimed on importation and such delays in recording the importation did not result in a loss to the government and no deficiency VAT should result. *You likewise stated that there was no undeclared sales by the Company.* ...

...

You further contested that the importations in question were reported in the SLI in the following semesters since you claimed that substantiation requirements are complied with. You further elaborated in your letter that proper internal control dictates that



importation, including the input tax credits paid thereon, should be recorded only when the importation documents to support the importation are in order which the company has been practicing since there is no basis for recording transaction. You again stressed that, for internal control purposes, the accounting system of the company dates the accounting entries at the time of entry (in the books?) and not on the date of the documents. Under this sound accounting practice, it is to be expected that importations in 1st semester of 2016 will be recorded only in the 2nd semester. In your justification, such timing difference will self-correct and does not in any way prejudice the government because the input tax credit claim was delayed and not advanced.

In reply, *your claim that the alleged undeclared importations were reported on the second semester, during the month of July, 2016, was verified and considered in the adjustment except for January importations allegedly reported in October because dates are too far to be considered. Be it noted that we never presumed any figure in the assessment of deficiency tax, in this case, it is based on the Summary List of Importations (SLI) for the quarters or semester under audit.*

...

In your letter, you reiterated that the company adopts the practice of recording the transaction and the related input tax credit only when the complete documents are turned over to Finance Department. You cited that it is extremely cumbersome and grossly unreasonable for the BIR to require the company to do a cut-off of input tax credits at every end of the quarter and amend the pertinent VAT returns when it is allowed by law to carry over any unused input taxes to the subsequent quarters.

In reply, the BIR is mandated to review, audit, investigate in accordance with the letters of authority on the taxpayer's compliance and adherence to the tax laws and regulations; such has been the basis of our assessment. However, upon reinvestigation, *you were able to support your claimed input tax thus our assessment has been decreased to P698,242.59 from the original amount of P1,419,899.84.*⁷⁹

...

Thus, We find that the subject VAT assessment contains the required factual and legal bases, and petitioner was sufficiently informed of the reasons behind the assailed FDDA. Consequently,

petitioner was accorded administrative due process as contemplated in *Avon Products*⁸⁰, to wit:

...
Administrative due process is anchored on fairness and equity in procedure. **It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself.** Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.
...

Having disposed of the legal issues, the Court shall now discuss the validity of each item assessed.

Respondent assessed petitioner with a deficiency VAT of ₱9,504,600.81, inclusive of interest, for the taxable period of 01 January 2016 to 30 June 2016. The basic deficiency VAT of ₱6,270,658.84 can be broken down as follows:

Adjustment	Tax Base	Deficiency VAT
1. Undeclared sales due to TPI	₱6,057,561.18	₱726,907.34
2. Unaccounted sales due to undeclared importation	40,379,240.91	4,845,508.91
3. Disallowed input tax	-	698,242.59
Total Basic Deficiency VAT		₱6,270,658.84

1. UNDECLARED SALES DUE TO
THIRD PARTY INFORMATION
(TPI)

Petitioner claims that the subject deficiency tax assessments based on TPI are void for being based on mere presumptions and unverified data. Thus, failure to validate such TPI (on which the alleged discrepancies were based) rendered the assessment void for lack of factual basis. ↴

⁸⁰ Supra at note 58; Citations omitted and emphasis supplied.

Respondent, on the other hand, argues that petitioner cannot assail the TPI's correctness since the certifications obtained from the latter are for the internal records of respondent only. The discrepancies, if any, are shared to taxpayers only through the PAN and FAN, with schedules for reconciliation. Respondent further argues that he or she validated the information used in the assessment in accordance with Revenue Memorandum Order (**RMO**) Nos. 04-2003 and 46-2004.

We agree with petitioner.

In the implementation of the Reconciliation of Listings for Enforcement (**RELIEF**) system, RMO No. 04-2003⁸¹ states:

...

I. BACKGROUND

The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (**RELIEF**) System.

The **RELIEF** System was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.

The **RELIEF** System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. **The consolidation and matching of information with other externally sourced data will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential.**⁸²

...

⁸¹ Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002.

⁸² Emphasis and underscoring supplied.

Corollarily, the procedures to be followed for TPI discrepancy are laid down by RMO No. 46-2004⁸³, which provides:

...

III. PROCEDURES

...

Action on Protested LNs due to TPI discrepancy

The **Revenue Officer** assigned to handle the Letter Notice **shall**:

1. Evaluate the merits of the taxpayer's Protest by:
 - 1.1 Requiring the taxpayer to submit the necessary schedules and supporting documents to substantiate his claims.
 - 1.2 Reconciling the Schedule of Sales/Local Purchases submitted by the taxpayer against the Details of Taxpayer's Customers/Suppliers' Records (DTCS) culled from the Quarterly Summary List of Sales/Purchases submitted by taxpayer's suppliers and customers, respectively.
 - 1.3 Reconciling the Schedule of Importation submitted by the taxpayer against the Details of Importation with Return Information Matching (DIRIM) culled from data provided by the Bureau of Customs (BOC).
 - 1.4 Checking for the propriety of the transactions reflected in the schedules submitted by the taxpayer by validating against source documents (e.g. sales invoice, official receipts, import entry declarations, etc.).
2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.
3. **Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.**
 - 3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:
 - 3.1.1 **Prepare "Confirmation Requests"** (using the format prescribed in Annex "C" of RMO No. 30-2003 to be )

⁸³ Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS[.]

3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

- a. **Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source** (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);
- b. **Secure a sworn statement from the TPI source** thru the RDO/LTDO/LTAID having jurisdiction over the same; and,
- c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.⁸⁴

...

Based on the foregoing provisions, in assessment proceedings, if there arises TPI discrepancies, the taxpayer is required to submit schedules and reconciliations to substantiate its claims. In addition, the taxpayer is required to execute a sworn statement to attest the veracity and authenticity of the schedules and documents presented/submitted. On the other hand, BIR is required to obtain sworn statements from TPI sources to attest the veracity of the data provided. To obtain the sworn statements, BIR must first send confirmation requests to the third-party sources, or coordinate with

⁸⁴ Emphasis and underscoring supplied.

the RDO, who has jurisdiction over the third-party sources, to course through the confirmation requests to the latter.

In this case, the BIR pointed out that confirmation letters were sent to validate and verify the TPI amount. Moreover, the BIR also mentioned that the confirmation letters contain a statement that *“if our Office does not receive any response from you within five (5) days from receipt of such correspondence, we will consider the figures in the TPI as true and correct”*.⁸⁵ Thus, respondent claims, the foregoing statement already satisfies the confirmation/verification requirement of the RMOs.

We disagree.

RMO No. 13-2012⁸⁶, which lays down the guidelines and procedures in handling Letter Notices (LNs) generated through TPI data matching programs such as the RELIEF System for SLS and SLP under RMO No. 30-2003⁸⁷, as amended, states:

...

IV. GUIDELINES AND PROCEDURES

...

D. Investigating Offices

...

9. Send a Confirmation Request from TPI sources attesting to the veracity of the data included in the LN package (Annexes "I" and "I-1").

If no response from the TPI source after the lapse of five (5) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. **However, if there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO shall send the Confirmation Request to the taxpayer through registered mail with Registered Return Card and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step.** The

⁸⁵ See Details of Discrepancies, Division Docket, Volume II, p. 722.

⁸⁶ Revised Guidelines and Procedures in Handling Letter Notices Generated Through Third-Party Information Data Matching with Tax Returns.

⁸⁷ Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes.

RO shall recommend the issuance of an eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales. In case the TPI source/s is/are located outside of the jurisdiction of the investigating office, the RO shall recommend to the concerned RD/ACIR-LTS the issuance of eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales.

If the TPI source did not agree with the discrepancy reflected in the LN (DTCSR/DIRIM/DWAPR), he/she/it must be required to execute a Sworn Statement to that effect and state his/her/its true and correct sales/purchases (Annexes "J" and "J-1"). The RO shall recommend the issuance of an eLA and the filing of a perjury case against the TPI source for the erroneous declaration in the submitted SLS/SLP/information return or supplying incorrect information. In case the TPI source/s is/are located outside of the jurisdiction of the investigating office, the RO shall recommend to the concerned RD/ACIR-LTS the issuance of eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales.⁸⁸

...

As can be gleaned from the foregoing, if the TPI source/s is/are located outside of the jurisdiction of the investigating or sending office, the BIR Confirmation Letters must be duly supported by registered return cards.

Here, although there are confirmation letters⁸⁹ attached to the BIR Records, respondent did not offer them as evidence. Basic is the rule that the party alleging has the burden of substantiating his or her allegation by preponderance of evidence. Any allegation or assertion not so substantiated is, at best, a self-serving statement or declaration which is inadmissible in evidence for being hearsay.⁹⁰

Section 34 of Rule 132 of the Rules of Evidence, as amended by A.M. No. 19-08-15-SC⁹¹, provides:

⁸⁸ Emphasis and underscoring supplied.

⁸⁹ BIR Records, pp. 233-237.

⁹⁰ *Victory Liner Inc. v. Court of Appeals, et al.*, G.R. No. 125034, 30 July 1998.

⁹¹ 2019 PROPOSED AMENDMENTS TO THE REVISED RULES ON EVIDENCE.

...
Sec. 34. *Offer of Evidence.* — The Court **shall consider no evidence which has not been formally offered.** The purpose for which the evidence is offered must be specified.⁹²
...

Thus, this Court cannot give credence to respondent’s bare claim nor can this Court give probative weight to the pieces of evidence which the parties in the case themselves did not offer.

Assuming *ex gratia in argumenti* that these confirmation letters (allegedly given to the third-party sources) were presented and formally offered in evidence, they will still not suffice to prove respondent’s claim that they followed the requirements laid down in the RMOs.

Firstly, not all customers were given confirmation letters. *Per* the FDDA’s Details of Discrepancies, only four (4) out of seven (7) customers⁹³ were given the said confirmation letters.

Secondly, only the confirmation letter⁹⁴ addressed to Everland Agri Corporation (**Everland**) dated 18 September 2018 was received allegedly by the addressee on 26 September 2018 (as shown by the signature of a certain Nixon Lim, who is allegedly Everland’s President).

Lastly, no registered return cards can be found in the BIR Records although the addressees of the confirmation letters are located outside of the jurisdiction of the investigating office (*i.e.*, Revenue Region No. 8 – Makati) in contravention of RMO No. 13-2012, to wit:

Customer	Address <i>per</i> Confirmation Letter
Everland Agri Corporation	Villa Abrille Street, Barangay 30-C Davao City 8000 ⁹⁵
Zablan Korinna Suarez (Rankor Agri Trading)	L-Cortez Street, San Nicolas Poblacion, Concepcion, Tarlac 2316 ⁹⁶

⁹² Emphasis supplied.
⁹³ See Details of Discrepancies, Division Docket, Volume II, p. 721.
⁹⁴ BIR Records, p. 237.
⁹⁵ Id.

X-----X

New Naga Alta Agri Corporation	376-379 G/F Supermarket, Daraga, Naga City 4400 ⁹⁷
Agri Biz Co. of GS, Inc.	Angkalian Building, National Highway Barangay Lagao, Gen. Santos City 9500 ⁹⁸

Based on the foregoing, the Court can only conclude that respondent failed to comply with his or her own regulations, thus resulting in an assessment arising from or based on unverified information.

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*⁹⁹, the Supreme Court ruled that for an assessment to stand judicial scrutiny, it must be based on facts supported by credible evidence. We quote:

...

We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.

However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the

⁹⁶ Id., p. 236.

⁹⁷ Id., p. 235.

⁹⁸ Id., p. 233.

⁹⁹ G.R. No. 136975, 31 March 2005; Citations omitted, italics in the original text, emphasis and underscoring supplied.

determination of the Commissioner contained in a deficiency notice disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.

...

Thus, the computations of the EIIB and the BIR on the quantity and costs of the importations of the respondent in the amount of P105,761,527.00 for 1987 have no factual basis, hence, arbitrary and capricious. **The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*, in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.**¹⁰⁰

...

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.¹⁰¹

For lack of factual and legal bases, the deficiency VAT assessment corresponding to the alleged undeclared sales due to TPI should then be cancelled.

2. UNACCOUNTED SALES DUE TO
UNDECLARED IMPORTATION

In the assailed FDDA, respondent alleges that a comparison of the importations reported on petitioner's VAT returns *vis-à-vis* the data that the BOC furnished resulted in an undeclared importation of P26,650,299.00. Using the Cost Ratio Method, the grossed-up value of the undeclared importation resulted in a corresponding undeclared

¹⁰⁰ Emphasis and underscoring supplied.

¹⁰¹ *The Collector of Internal Revenue (now Commissioner) v. Benipayo*, G.R. No. L-13656, 31 January 1962.

sales of ₱40,379,240.91. These undeclared sales should then be subjected to 12% output VAT, thus, resulting in a deficiency VAT assessment. To quote respondent's arguments in the FDDA:

...

When the examiner imputed the unreported importations in the SLI [Summary List of Importations], it means that there was payment of the taxable portion and the corresponding input tax thereon but there was no declaration in the SLI. Since there was payment, it connotes that there was a source of funds where payment comes from. Further, this case of unreported importation is a clear manifestation of the very essence of accounting, where costs and expenses are the requisites of sales because there could be no sales if there are no items to be sold. Thus, items in the SLI can be the items which can be the basis of sales, if correctly reported.

...

On the other hand, petitioner argues that the alleged undeclared importation (amounting to ₱40,379,240.91) was the result of timing differences.

In this particular respect, respondent's assessment appears unwarranted.

It is undisputed that petitioner is a domestic corporation engaged in the business of production, manufacture, sale, exportation, importation, marketing, and distribution of basic chemicals and chemical products and the provision of related services.¹⁰² Thus, petitioner is engaged in the sale of goods and services. Sections 106 and 108 of the NIRC of 1997, as amended, provide:

...

SEC. 106. Value-added Tax on Sale of Goods or Properties. –

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to **twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.**

...

¹⁰²

Supra at note 5.

The term '**gross selling price**' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

...

(B) *Transactions Deemed Sale.* — The following transactions shall be deemed sale:

- (1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;
- (2) Distribution or transfer to:
 - (a) Shareholders or investors as share in the profits of the VAT-registered persons; or
 - (b) Creditors in payment of debt;
- (3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and
- (4) Retirement from or cessation of business with respect to inventories of taxable goods existing as of such retirement or cessation.

...

SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to **twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.**

...

The term '**gross receipts**' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.¹⁰³

...

As can be gleaned from the foregoing, for the *sale of goods* (tangible or intangible objects that have value) to be subject to 12% VAT, the following must be present:

1. **An actual or deemed sale of goods or properties for a valuable consideration;**
2. Undertaken in the course of trade or business;
3. Not subject to zero percent (0%) VAT under Section 106(A)(2) of the NIRC of 1997, as amended, special law, or international agreement; and,
4. Not exempt from VAT under Section 109 of NIRC of 1997, as amended, special law, or international agreement.

As to *sale of services*, the following must likewise concur:

1. The service must be performed or is to be performed in the course of trade or business in the Philippines;
2. For a **valuable consideration actually or constructively received;**
3. Not subject to zero percent (0%) VAT under Section 108(B) of the NIRC of 1997, as amended, special law, or international agreement; and,
4. The service is not exempt from VAT under Section 109 of NIRC of 1997, as amended, special law, or international agreement.

Such being the case, in the imposition or assessment of output VAT, it must be clear that there was a sale, either: (1) an actual or deemed sale for sale of goods and/or properties; or, (2) a valuable consideration actually or constructively for sale of services. Hence, no imposition or assessment of output VAT can arise from an alleged undeclared sales arising from under-declaration of importation.

To clarify, importation refers to the act of bringing in of goods from a foreign territory into Philippine territory.¹⁰⁴ Importation is imposed an input VAT of 12% (pursuant to Section 107¹⁰⁵ of the NIRC of

¹⁰⁴ Section 102(z), Chapter 2, Title 1 of Republic Act No. 10863.

¹⁰⁵ SEC. 107. *Value-added Tax on Importation of Goods.* —

X-----X

1997, as amended). If respondent is alleging that petitioner has undeclared importation, logically it can only argue that petitioner did not pay the corresponding input VAT. However, nonpayment of input VAT does not translate to nonpayment of output VAT. One cannot presume that what were imported were immediately sold. A sales transaction can only be proved if the same is duly supported by documentary evidence such as invoices (for sale of goods) or ORs (for sale of services). Absent such proof, the alleged undeclared importation cannot be presumed to have resulted to undeclared sales.

With the foregoing, the Court thus finds that it was error for respondent to have assessed or concluded that the undeclared importation would lead automatically to unreported sales. The deficiency VAT assessment corresponding to the alleged unaccounted sales due to undeclared importation shall thus be cancelled.

3. DISALLOWED INPUT TAX

Respondent assessed petitioner for a deficiency VAT of ₱698,242.59 for its failure to comply with the invoicing requirements under Section 113 of the NIRC of 1997, as amended, as implemented by RR No. 16-2005. The deficiency VAT is broken down as follows:

Name of Supplier	Purchase Amount	Input VAT	Reason for Disallowance
ADESSA CORPORATION	₱82,062.50	₱9,847.50	PO only no valid receipt
ADVENTURE TECHNOLOGY OUTFITTERS	173,196.42	20,783.57	SI 50-12/18/15 out of period
BPI CENTURY TOKYO RENTAL CORP	30,044.00	3,605.28	OR16282 7/4/16 out of date
BPI CENTURY TOKYO RENTAL CORP	30,044.00	3,605.28	OR16548 9/1/16 out of date
BPI MS INSURANCE CORP.	156,235.58	18,748.27	No OR only garbo. 156472; no.156473 4/29 NOT NAMED
BPI MS INSURANCE CORP.	127,189.67	15,262.76	gen agent receipt 156474 5/3; OR NOT NAMED
CONVERGE INFORMATION AND	10,000.00	1,200.00	Statement of Account

(A) In General. — There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to twelve percent (12%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: *Provided*, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any.

x-----x

COMM			only
DIGITAL INTERFACE	24,982.14	2,997.86	12/7/15 out of date 24,982.14
DSV AIR AND SEA INC.	2,955.42	354.65	OR31015-12/10/15 out of date
FEDERAL EXPRESS PACIFIC INC.	500.00	60.00	OR392881 12/3/15 out of date
HANDPICKED TRADING	294,833.33	35,380.00	Sl120 69642.00 Non VAT 2/16
HANDPICKED TRADING	174,107.17	20,892.86	Non VAT
HARBEST AGRIBUSINESS CORPORATION	62,340.00	7,480.80	Sl72563 12/5/15 out of date
HENRYS PROFESSTONAL PHOTO	18,302.67	2,196.32	Sl55012 12/3/15 out of period
HOPE AND FAITH MANPOWER AGENCY	124,722.42	14,966.69	Non VAT
HOPE AND FAITH MANPOWER AGENCY	14,200.00	1,704.00	Non VAT
HOPE AND FAITH MANPOWER AGENCY	287,776.67	34,533.20	Non VAT
HOPE AND FAITH MANPOWER AGENCY	65,710.83	7,885.30	Non VAT
HOPE AND FAITH MANPOWER AGENCY	221,119.58	26,534.35	Non VAT
HOPE AND FAITH MANPOWER AGENCY	88,020.08	10,562.41	Non VAT
IMAGEWORLD DIGITAL PRINTING INC.	20,089.25	2,410.71	PO12/3/15 no valid OR
INTERNATIONAL HEAVY EQUIPMENT C	81,522.33	9,782.68	Sl2902 12/17/15; Sl2853 11/27/15 out of date
LANE MOVING AND STORAGE	73,348.42	8,801.81	not valid claim
LANE MOVING AND STORAGE	75,131.67	9,015.80	billing statement only
ORCHARD GOLF COUNTRY CLUB INC.	32,264.97	3,871.80	SOA no valid OR WITH VALID OR (P44,542.86)
ORCHARD GOLF COUNTRY CLUB INC.	4,500.00	540.00	SOA no valid OR
ORCHARD GOLF COUNTRY CLUB INC.	9,000.00	1,080.00	SOA no valid OR
ORCHARD GOLF COUNTRY CLUB INC.	4,500.00	540.00	SOA no valid OR
PINNACLE DISTRIBUTORS, INC.	48,437.50	5,812.50	Sl10335 11/25/15 out of date
ROMULO LAW OFFICES	3,900.00	468.00	SOA only 10,000.00 3/7/16
SM APPLIANCE CENTER	167,638.42	20,116.61	unsupported
SM APPLIANCE CENTER	123,897.25	14,867.67	unsupported
SM APPLIANCE CENTER	167,638.42	20,116.61	unsupported
STAFF SEARCH ASIA SERVICE	2,991,691.83	359,003.02	Non VAT - VAT OR#162 FOR P1,401,958.42)
TRADETON CORPORATION	26,785.75	3,214.29	Sl41637 12/7/15 - out of period
TOTAL	P5,818,688.29	P698,242.59	

Petitioner contends that the following transactions substantially complied with the invoicing requirements:



x ----- x

Name of Supplier	Purchase Amount	Input VAT	Reason for Disallowance	Exhibit
ADESSA CORPORATION	₱82,062.50	₱9,847.50	PO only no valid receipt	"P-38-1" and "P-38-1-1"
BPI MS INSURANCE CORP.	156,235.58	18,748.27	No OR only garano. 156472; no.156473 4/29 NOT NAMED	"P-38-2" to "P-38-2-18"
BPI MS INSURANCE CORP.	127,189.67	15,262.76	gen agent receipt 156474 5/3; OR NOT NAMED	"P-38-3" to "P-38-3-6"
CONVERGE INFORMATION AND COMM	10,000.00	1,200.00	Statement of Account only	"P-38-4"
ORCHARD GOLF COUNTRY CLUB INC.	4,500.00	540.00	SOA no valid OR	"P-38-5"
ORCHARD GOLF COUNTRY CLUB INC.	4,500.00	540.00	SOA no valid OR	"P-38-6"
STAFF SEARCH ASIA SERVICE	2,991,691.83	359,003.02	Non VAT - VAT OR#162 FOR P1,401,958.42)	"P-38-7"
TOTAL	₱3,376,179.58	₱405,141.55		

Moreover, petitioner argues that the out-of-period invoices and ORs must not be disallowed as it is not claiming a VAT refund and the government is not prejudiced since claim is only delayed (and not advanced).

We disagree with petitioner's arguments.

Section 110¹⁰⁶ of the NIRC of 1997, as amended, provides that an input tax evidenced by a VAT invoice (for sale of goods) or OR (for sale of services) shall be creditable against the output tax.

In relation thereto, Section 113(A) of the same law provides for the invoicing requirements of the VAT invoice and OR, viz:

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

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

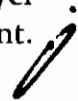
¹⁰⁶ **SEC. 110. Tax Credits.** —
(A) *Creditable input Tax.* —
(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax[.]

- (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);
- (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 shown 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 involves 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 shown 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.
- (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
- (4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

...



The said provision was further implemented by Sections 4.113-1(A) and (B) of RR No. 16-2005¹⁰⁷ which state:

...

SEC. 4.113-1. Invoicing Requirements. -

(A) A VAT-registered person shall issue: --

- (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.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

...

(B) Information Contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

- (1) A statement that the seller is a VAT-registered person, followed by his TIN;
- (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT: **Provided, That:**

...

- (a) The amount of tax shall be shown as a separate item in the invoice or receipt;
- (b) If the sale is exempt from VAT, 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%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;
- (d) If the sale involves 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

¹⁰⁷

Supra at note 60.

calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt: The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

- (3) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

...

Corollarily, Section 237 of the NIRC of 1997, as amended, states:

...

SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. — All persons subject to an internal revenue tax **shall**, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service**: *Provided, however,* That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which **shall** show the **name, business style, if any, and address of the purchaser, customer or client**: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the **invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.**¹⁰⁸

...

To summarize the foregoing requirements, in order for the input VAT to be creditable against the output tax, the following information shall be indicated in the VAT invoices and/or ORs:

1. A statement that the seller is a VAT-registered person, followed by its TIN (Section 4.113-1(B)(1) of RR No. 16-05); 

- 2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT, provided that (a) the amount of tax shall be shown as a separate item in the invoice or receipt, (b) if the sale is exempt from VAT, the term "VAT exempt sale" shall be written or printed prominently on the invoice or receipt, or (c) if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt; (d) if the sale involves 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 breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale (Section 4.113-1(B)(2)(a-d) of RR No. 16-05);
- 3. In the case of sales in the amount of one thousand pesos (₱1,000) or more, where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client (Section 4.113-1(B)(3) of RR No. 16-05);
- 4. Date of transaction (Section 237 of the NIRC of 1997, as amended); and,
- 5. Quantity, unit cost and description of merchandise or nature of service (Section 237 of the NIRC of 1997, as amended).

Based on the verification of the Court, We are constrained to uphold the disallowance of ₱403,962.56, due to the reasons set forth below:

Name of Supplier	Purchase Amount	Unsubstantiated Input VAT	Exhibit	Per Court's verification
ADESSA CORPORATION	₱82,062.50	₱9,847.50	"P-38-1" and "P-38-1-1"	No TIN and incomplete registered address
BPI MS INSURANCE CORP.	156,235.58	18,748.27	"P-38-2" to "P-38-2-18"	Not under the registered name of petitioner. The
BPI MS	127,189.67	15,262.76	"P-38-3" to "P-	

x-----x

INSURANCE CORP.			38-3-6"	name indicated is ORIX RENTAL CORPORATION.
CONVERGE INFORMATION AND COMM	10,000.00	21.01	"P-38-4"	Only ₱1,178.99 amount of input VAT was substantiated
ORCHARD GOLF COUNTRY CLUB INC.	4,500.00	540.00	"P-38-5"	Not under the registered name of petitioner. The name indicated is Mr. Ronald Panganiban Mercado.
ORCHARD GOLF COUNTRY CLUB INC.	4,500.00	540.00	"P-38-6"	
STAFF SEARCH ASIA SERVICE	2,991,691.83	359,003.02	"P-38-7"	OR was previously proffered and was already considered by the BIR in the assailed FDDA ¹⁰⁹
TOTAL	₱3,376,179.58	₱403,962.56		

As to petitioner's input VAT supported by out-of-period VAT invoices or ORs, Q-1 and A-1 of Revenue Memorandum Circular (RMC) No. 42-2003¹¹⁰ is instructive:

...

Q-1: In case the supporting documents (invoices/receipts) evidencing the sources of input tax credits were issued outside the taxable period covered by the claims (out-of-period claims), can the input taxes generated therefrom still be credited upon verification that the same have not yet been claimed?

A-1: Out-of-period claims may be allowed provided that they comply with all the following requirements, viz:

1. That the VAT invoices/receipts are issued within the taxable year that the claim was made;
2. That the VAT invoices/receipts cover transactions for the same taxable year;

¹⁰⁹ Annex C of the Formal Assessment Notice dated 20 December 2018, Division Docket, Volume II, p. 704. The said amount was still included in the computation under said Annex. In Annex C of the Formal Demand on Disputed Assessment, the said amount is no longer included. See Annex C, id., p. 727.

¹¹⁰ Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

x-----x

- 3. That they have not been claimed in any other quarter of the same or different taxable year; and
- 4. The invoices/receipts are not claimed in any period ahead of the actual date of the said invoices/receipts.

It is to be emphasized that provided the VAT invoices/receipts are claimed within the taxable year, any excess input taxes generated therefrom can be carried over to the following taxable year.
(Invoice is the supporting document for the claim of input tax on purchase of goods whereas official receipt is the supporting document for the claim of input tax on purchase of services)[.]¹¹¹

...

A careful scrutiny of petitioner’s out-of-period claims would reveal that none complied with the aforesaid requirements, to wit:

Name of Supplier	Purchase Amount	Input VAT	Reason for Disallowance	Per Court’s verification
ADVENTURE TECHNOLOGY OUTFITTERS	173,196.42	20,783.57	SI 50-12/18/15 out of period	VAT invoices/receipts are issued outside the taxable year that the claim was made
BPI CENTURY TOKYO RENTAL CORP	30,044.00	3,605.28	OR16282 7/4/16 out of date	Invoices/receipts are claimed in ahead of the actual date of the said invoices/receipts
BPI CENTURY TOKYO RENTAL CORP	30,044.00	3,605.28	OR16548 9/1/16 out of date	
DIGITAL INTERFACE	24,982.14	2,997.86	12/7/15 out of date 24,982.14	VAT invoices/receipts are issued outside the taxable year that the claim was made
DSV AIR AND SEA INC.	2,955.42	354.65	OR31015-12/10/15 out of date	
FEDERAL EXPRESS PACIFIC INC.	500.00	60.00	OR392881 12/3/15 out of date	
HARBEST AGRIBUSINESS CORPORATION	62,340.00	7,480.80	SI72563 12/5/15 out of date	
HENRYS PROFESSTONAL PHOTO	18,302.67	2,196.32	SI55012 12/3/15 out of period	
INTERNATIONAL HEAVY EQUIPMENT C	81,522.33	9,782.68	SI2902 12/17/15; SI2853 11/27/15 out of date	
PINNACLE DISTRIBUTORS, INC.	48,437.50	5,812.50	SI10335 11/25/15 out of date	
TRADETON	26,785.75	3,214.29	SI41637 12/7/15 -	

¹¹¹ Emphasis in original text and underscoring supplied.

x-----x

CORPORATION			out of period	
TOTAL	P499,110.23	P59,893.23		

It bears noting that our VAT system is invoice-based, i.e., taxation relies on sales invoices or official receipts.¹¹² Also, Section 237 of the NIRC of 1997, as amended, uses the word “shall” which is imperative and operates to impose a duty which may be enforced.¹¹³ Every time a VAT invoice or OR is issued, regardless of whether it will be utilized as a tax credit against output VAT or for VAT refund, the invoicing requirements apply. Basic is the principle that where the law does not distinguish, neither should the courts distinguish. *Ubi lex non distinguit, nec nos distinguere debemus*.¹¹⁴ Thus, the taxpayer is duty-bound to ensure full compliance with the invoicing requirements.

4. “DISALLOWED” EXCESS INPUT
TAX CARRIED OVER TO THE
SUCCEEDING PERIOD.

Petitioner contends that respondent failed to explain why the latter disallowed the application of petitioner’s excess input tax credit carried forward to succeeding periods in the amount of ₱60,317,215.30 against the deficiency basic VAT of ₱6,270,658.84.

We find petitioner’s contention bereft of merit.

The disallowance of excess input tax carry-over is not disallowance *per se*. It is employed so as not to disrupt the amount of deficiency tax being assessed for the period. To illustrate, if respondent did not reflect the “disallowance” in the computation of basic deficiency VAT, the FDDA would have shown the following:

Taxable sales per Returns		₱226,978,022.50
Add/(Less): Adjustments		
Undeclared sales due to TPI	₱6,057,561.18	
Unaccounted sales due to undeclared importation	40,379,240.91	46,436,802.09
Total Vatable Sales		273,414,824.59

¹¹² Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue, G.R. No. 197663, 14 March 2018.
¹¹³ Filipino v. Macabuhay, G.R. No. 158960, 24 November 2006.
¹¹⁴ Spouses Plopenio v. Department of Agrarian Reform, et al., G.R. No. 161090, 04 July 2012.

x-----x

Output Tax Due	12%	32,809,778.95
Allowable input tax per return	87,554,578.00	
Less:		
Disallowed input tax	698,242.59	86,856,335.41
Basic Deficiency VAT		₱(54,046,556.46)

Based on the foregoing, this would eliminate the deficiency VAT for the period. Hence, if the total allowable input tax is not reduced by the excess input tax carried over to subsequent periods, a portion of the excess input tax that should have been carried forward and utilized in the subsequent period would be utilized and offset against the basic deficiency VAT (which would contradict the premise that the tax benefit from excess input tax carried over redounds to the subsequent period).

Moreover, the decision to “not disallow” or reduce the total allowable input tax would put additional burden on the taxpayer to amend subsequent returns to remove the excess input tax already utilized. Additional burden would also be imposed upon the BIR to monitor the decisions of this Court to make sure that utilized excess tax credits are not being utilized again in the subsequent periods. This is an outright disregard of the basic principle in tax law that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.¹¹⁵ Evidently, to countenance petitioner’s theory of automatically applying the input VAT **already** carried over to succeeding period (and may have already been exhausted) against its assessed basic deficiency VAT would give rise to confusion and abuse, rendering ineffective our tax assessment and collection system.

Furthermore, petitioner failed to proffer any evidence to establish sufficiently that it did not utilize the initial input tax carried over of ₱60,317,215.30 to the succeeding period. Thus, if the Court were to allow this without ascertaining that such excess input tax carried over is still available, taxpayers may end up benefiting twice from it, i.e., tax credit against output VAT in the subsequent periods and payment for deficiency VAT at the expense of the government.

¹¹⁵ *Commissioner of Internal Revenue v. Algue, Inc., et al.*, G.R. No. L-28896, 17 February 1988.

With the foregoing disquisition, this Court finds petitioner liable of basic deficiency VAT of ₱697,063.60, computed as follows:

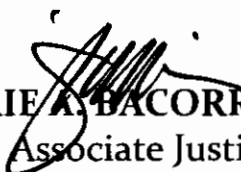
<i>Per FDDA</i>		
Undeclared sales due to TPI	₱726,907.34	
Unaccounted sales due to undeclared importation	4,845,508.91	
Disallowed input tax	698,242.59	₱6,270,658.84
<i>Per Court's Determination</i>		
Less:		
Undeclared sales due to TPI	726,907.34	
Unaccounted sales due to undeclared importation	4,845,508.91	
Substantiated input tax	1,178.99	5,573,595.24
Adjusted Basic Deficiency VAT		₱697,063.60

WHEREFORE, the foregoing premises considered, the instant Petition for Review filed on 05 December 2019 by petitioner BASF Philippines, Inc. is hereby **PARTIALLY GRANTED**. The deficiency value-added tax (VAT) assessment shall be adjusted as a result. Accordingly, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of **₱1,321,651.68**, representing basic deficiency VAT, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until 31 December 2017, as determined below:

Basic Deficiency VAT	₱697,063.60
Surcharge (25%)	174,265.90
Total Amount Due	₱871,329.50
Deficiency Interest (20%) from July 26, 2016 to December 31, 2017	
VAT - 7/26/16 to 12/31/17 (₱697,063.60 x 20% x 524 days/ 365 days)	200,143.19
Delinquency Interest (20%) from July 26, 2016 to December 31, 2017	
VAT - 7/26/16 to 12/31/17 (₱871,329.50 x 20% x 524 days/ 365 days)	250,178.99
Total Amount Due as of December 31, 2017	₱1,321,651.68

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from 01 January 2018 until full payment thereof, pursuant to Section 249(C)¹¹⁶ of the NIRC of 1997, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by Revenue Regulations No. 21-2018¹¹⁷, on basic deficiency VAT, inclusive of the 25% surcharge, amounting to **₱871,329.50**.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:


LANEE S. CUI-DAVID
Associate Justice

¹¹⁶ **Sec. 249. Interest.** –

...

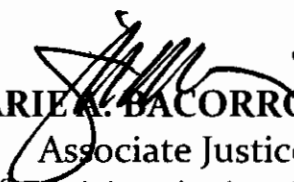
(C) *Delinquency Interest.* – In case of failure to pay:

- (1) The amount of the tax due on any return required to be filed, or
- (2) The amount of the tax due for which no return is required, or
- (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

¹¹⁷ Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law).

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ROMAN G. DEL ROSARIO
Presiding Justice