



**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

CTA CASE NO. 11094

**EURO AUTOCARS, INC. DOING
BUSINESS UNDER THE NAME
AND STYLE OF LAMBORGHINI
MANILA AND BENTLEY
MANILA,**

Petitioner,

NOTICE OF DECISION

- versus -

**THE COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

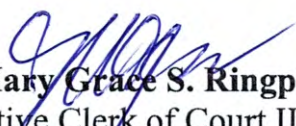
ATTY. FRANCIS GIDEON G. NAPUTO
Bureau of Internal Revenue
Legal Division, Revenue Region 8B
2nd Floor, BIR Revenue Regional Office Building
No. 313 Gil Puyat Ave., Makati City

EMMANUEL C. ALCANTARA AND ASSOCIATES LAW OFFICES
5th Floor, SGV I Building
6760 Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **August 11, 2026**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 24, 2026.**


Atty. Mary Grace S. Ringpis
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

EURO AUTOCARS, INC.
DOING BUSINESS UNDER
THE NAME AND STYLE OF
LAMBORGHINI MANILA
AND BENTLEY MANILA,

Petitioner,

CTA CASE NO. 11094

Members:

BACORRO-VILLENA, Acting Chairperson, and
CUI-DAVID, *Jl.*

- versus -

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 11 2026 3:30PM

x ----- x

DECISION

BACORRO-VILLENA, *Jl.*:

At bar is a Petition for Review¹ filed by petitioner Euro Autocars, Inc. Doing Business Under the Name and Style of Lamborghini Manila and Bentley Manila (**petitioner**) pursuant to Section 3(a)(1),² Rule 4³

¹ Filed on 02 March 2023, Division Docket, pp. 6-213, with attached exhibits.

² SEC. 3. *Cases within the jurisdiction of the Court in Division.* — ...

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

³ JURISDICTION OF THE COURT.

and Section 4(a),⁴ Rule 8⁵ of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal and cancellation of respondent Commissioner of Internal Revenue's (**respondent's/CIR's**) Final Decision dated 20 January 2023⁶ (**Final Decision**), denying petitioner's protest against the assessment demanding payment for alleged deficiency value-added tax (VAT) and compromise penalty for the taxable period from 01 January 2014 to 30 June 2014 in the aggregate amount of **₱78,320,162.12**, inclusive of increments.

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 28th Street corner 11th Avenue, Bonifacio Global City (**BGC**), Taguig City, Philippines.⁷ It is registered with the Securities and Exchange Commission (**SEC**) under Company Registration No. CS201117672.⁸ It is also registered with the Bureau of Internal Revenue (**BIR**) under Taxpayer Identification No. (**TIN**) 008-139-308-000.⁹

As its Amended Articles of Incorporation¹⁰ (**AOI**) show, petitioner's primary purpose is to engage in the business of acquiring, leasing, selling, transferring, generally dealing in, renovating, and servicing all types of new and used motor vehicles, and any parts or accessories used in connection therewith, and to engage in the business of purchasing, acquiring, owning, selling, and generally dealing in all types of supplies used by all types of European motor vehicles. 

⁴ **SEC. 4. Where to appeal; mode of appeal.** —

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

⁵ PROCEDURE IN CIVIL CASES.

⁶ Exhibit "P-22"/Exhibit "R-6", BIR Records, pp. 1314-1335.

⁷ See Petitioner's Amended Articles of Incorporation (**AOI**), Exhibit "P-2", Division Docket, pp. 453-458.

⁸ See Petitioner's Securities and Exchange Commission (**SEC**) Certificate of Filing of Amended Articles of Incorporation (**AOI**) with Company Registration No. CS201117672 dated 05 March 2020, Exhibit "P-1", id., p. 452.

⁹ See Bureau of Internal Revenue (**BIR**) Certificate of Registration (**COR**) dated 06 October 2011, Exhibit "P-3", id., p. 464.

¹⁰ Supra at note 7, p. 453.

Respondent, on the other hand, is the CIR, who is vested by law with the authority to enforce and implement the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other related statutes and implementing rules and regulations. Respondent holds office at the Office of the CIR, BIR National Building, Quezon City, and is represented in this case by counsel, Atty. Francis Gideon G. Naputo (**Atty. Naputo**), whose office address is at the BIR Legal Division, Region 8B, 2nd Floor, BIR Revenue Regional Office Building No. 313, Gil Puyat Ave., Makati City.¹¹

FACTS OF THE CASE

On 05 March 2015, petitioner received a Letter of Authority (LOA) dated 02 March 2015¹² with Reference No. LOA-VO8-2015-00000015, issued by Revenue Region (**RevReg**) No. 8-Makati City, through then Regional Director (**RD**) Jonas DP. Amora (**Amora**). The LOA authorized Revenue Officer Pauline Lydia Reyes (**RO Reyes**) and Group Supervisor Renan Plata (**GS Plata**) to examine petitioner's books of accounts and other accounting records pertaining to VAT liabilities for the period from 01 January 2014 to 30 June 2014. The LOA likewise required petitioner make available all relevant books, records, and supporting documents necessary for the conduct of the audit and examination.¹³

On 31 May 2016, petitioner received the Preliminary Assessment Notice (**PAN**) dated 30 May 2016 with Details of Discrepancies and Annexes,¹⁴ assessing petitioner for deficiency VAT in the aggregate amount of ₱117,105,875.33, inclusive of interest.¹⁵

Subsequently, on 01 July 2016, petitioner received the Assessment Notices¹⁶ (**ANs**) and the Formal Assessment Notice¹⁷ (**FAN**) with Details of Discrepancies, all dated 27 June 2016, signed by RD Amora. Through these issuances, respondent demanded payment of the aggregate amount of ₱119,327,674.32, inclusive of increments, representing alleged 

¹¹ Paragraph 3, Joint Stipulation of Facts and Issues (**JSFI**), Division Docket, p. 358.

¹² Exhibit "P-15"/Exhibit "R-1", BIR Records, Folder No. 1, p. 3.

¹³ Par. 3.2, III. Statement of the Facts and of the Case, JSFI, Division Docket, p. 359.

¹⁴ Exhibit "P-16"/Exhibit "R-3", BIR Records, Folder No. 2, pp. 370-380.

¹⁵ Basic Tax Due of ₱84,775,177.50 and Interest of ₱32,330,697.83; Par. 3.3, III. Statement of the Facts and of the Case, JSFI, Division Docket, p. 359.

¹⁶ Exhibit "R-4", BIR Records, Folder No. 2, pp. 386-387.

¹⁷ Exhibit "P-17", id., pp. 381-385.

deficiency VAT and compromise penalty for the taxable period from 01 January 2014 to 30 June 2014.¹⁸

On 29 July 2016, petitioner filed a Protest (Request for Reinvestigation)¹⁹ against the FAN with the Office of the RD of RevReg No. 8-Makati City.²⁰

Thereafter, through a Letter dated 22 August 2016²¹ signed by RD Amora, the BIR informed petitioner that it had granted the Protest (Request for Reinvestigation). The BIR likewise directed petitioner to submit all relevant supporting documents within sixty (60) days from the filing of the said Protest to facilitate the reinvestigation of the assessment.²²

On 21 June 2017, petitioner received the Amended ANs²³ and the Final Decision on Disputed Assessment²⁴ (FDDA) with Details of Discrepancies and Annexes, all dated 19 June 2017 and signed by RD Glen A. Geraldino (**Geraldino**). Through these issuances, respondent demanded payment of the aggregate amount of ₱78,320,162.12, inclusive of surcharge and interest, representing alleged deficiency VAT and compromise penalty, detailed as follows:²⁵

Tax Type	Basic	Surcharge	Interest	Total
VAT	₱47,741,117.91	₱-	₱28,566,192.20	₱76,307,310.11
Increments on Late Remittance	-	1,482,928.81	444,923.20	1,927,852.01
Compromise Penalty	85,000.00	-	-	85,000.00
Total	₱47,826,117.91	₱1,482,928.81	₱29,011,115.40	₱78,320,162.12

¹⁸ Total Deficiency VAT of ₱119,242,674.32 (inclusive of interest) and Compromise Penalty of ₱85,000.00; Par. 3.4, III. Statement of the Facts and of the Case, JSFI, Division Docket, p. 359.

¹⁹ Exhibit "P-18", BIR Records, Folder No. 2, pp. 388-416.

²⁰ Par. 3.5, III. Statement of the Facts and of the Case, JSFI, Division Docket, p. 359.

²¹ BIR Records, Folder No. 2, p. 464.

²² Par. 3.6, III. Statement of the Facts and of the Case, JSFI, Division Docket, p. 359.

²³ Exhibit "R-5", BIR Records, Folder No. 5, pp. 1277-1278.

²⁴ Exhibit "P-20", id., pp. 1267-1276.

²⁵ Par. 3.7, III. Statement of the Facts and of the Case, JSFI, Division Docket, p. 359.

On 20 July 2017, petitioner filed a Protest (Request for Reconsideration) against the FDDA²⁶ with the Office of the CIR (OCIR), addressed to then CIR Caesar R. Dulay (**Commissioner Dulay**), assailing the FDDA.²⁷

Thereafter, on 01 February 2023, petitioner received respondent's Final Decision²⁸ promulgated on 20 January 2023, denying the Protest against the FDDA and demanding payment in the aggregate amount of ₱78,320,162.12, inclusive of surcharge and interest, representing alleged deficiency VAT and compromise penalty for the taxable period from 01 January 2014 to 30 June 2014.²⁹

PROCEEDINGS BEFORE THE COURT

On 02 March 2023, within thirty (30) days from receipt of the Final Decision, petitioner filed the instant Petition for Review³⁰ before the Second Division,³¹ docketed as CTA Case No. 11094. On 14 March 2023, the Court issued Summons³² to respondent directing him or her to submit an Answer within 30 days from service. Respondent received the said Summons on 16 March 2023.³³

After the Second Division granted respondent an extension of time to file an Answer,³⁴ respondent filed the same *via* registered mail on 15 May 2023.³⁵ In the Answer, respondent raised the following special and affirmative defenses: (1) petitioner is liable for deficiency VAT based on gross receipts that were not subjected to VAT, namely — (a) participation fees from marketing events, (b) initial customer deposits; (c) payments for second-hand trade-in units; (d) insurance claims; and (e) special plate processing fees; (2) petitioner is liable for deficiency VAT arising from undeclared sales of second-hand units deemed sold; (3) petitioner is liable for deficiency VAT arising from the

²⁶ Exhibit "P-21", BIR Records, Folder No. 2, pp. 505-509.

²⁷ Par. 3.8, III. Statement of the Facts and of the Case, JSFI, Division Docket, p. 359.

²⁸ Exhibit "P-22"/Exhibit "R-6", *supra* at note 6.

²⁹ Par. 3.9, III. Statement of the Facts and of the Case, JSFI, Division Docket, p. 360.

³⁰ *Supra* at note 1.

³¹ The Second Division is composed of Associate Erlinda P. Uy (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lane S. Cui-David, as Members. Division Docket, p. 214.

³² See Notification dated 20 March 2023, *id.*, p. 215.

³³ See Resolution dated 10 May 2023, *id.*, p. 221.

³⁴ See Answer dated 15 May 2023, *id.*, pp. 222-235.

undeclared sale of a Lamborghini Aventador; (4) petitioner is liable for deficiency VAT arising from undeclared sales of unaccounted inventory deemed sold; (5) petitioner is liable for deficiency VAT arising from undeclared sales corresponding to undeclared output VAT; (6) petitioner is liable for deficiency VAT arising from the disallowance of input taxes on current purchases; (7) petitioner is liable for deficiency VAT arising from input tax carried over to the succeeding period; and (8) respondent did not violate petitioner's right to due process by assessing increments for the late remittance of VAT in the FDDA dated 19 June 2017.

On 26 May 2023, the Second Division set the case for a Pre-Trial Conference on 03 October 2023.³⁶ Petitioner filed its Pre-Trial Brief³⁷ on 12 September 2023, while respondent filed his or her Pre-Trial Brief³⁸ on 28 September 2023.

Subsequently, in view of the reorganization of the three (3) Divisions of the Court effective 29 May 2023,³⁹ the present case was transferred to the First Division.⁴⁰

In the Resolution dated 14 July 2023,⁴¹ the First Division ordered respondent's counsel, Atty. Naputo, to show cause why he should not be cited for indirect contempt for failing to comply with the Court's directive in the Resolution dated 10 May 2023,⁴² which required respondent to elevate the entire BIR Records of the case within ten (10) days from the filing of the Answer. The First Division likewise ordered Atty. Naputo to comply with the said directive within 10 days from notice.

In compliance therewith, on 25 July 2023, Atty. Naputo filed a "Compliance with Manifestation (Transmittal of BIR Records with Profuse Apologies),"⁴³ thereby transmitting the entire BIR Records of 

³⁶ See Notice of Pre-Trial Conference dated 26 May 2023, id., pp. 237-238.

³⁷ Id., pp. 252-261.

³⁸ Id., pp. 264-268.

³⁹ See Notice dated 29 May 2023, id., p. 239.

⁴⁰ The First Division is composed of Presiding Justice Roman G. Del Rosario (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lane S. Cui-David, as Members.

⁴¹ Division Docket, p. 242.

⁴² Supra at note 34.

⁴³ Division Docket, pp. 244-247, with attached Table of Contents.

the case consisting of 1343 pages in five (5) folders. The First Division noted the same and found Atty. Naputo's explanation sufficient in its Resolution dated 31 August 2023.⁴⁴

During the Pre-Trial Conference on 03 October 2023, the First Division granted the parties twenty (20) days within which to file their Joint Stipulation of Facts and Issues (JSFI).⁴⁵ Accordingly, on 19 October 2023, the parties filed their JSFI.⁴⁶ The First Division approved said JSFI and deemed the pre-trial terminated in its Resolution dated 07 November 2023.⁴⁷ In the same Resolution, the First Division likewise set the hearing for the commissioning of the Independent Certified Public Accountant (ICPA) and the initial presentation of petitioner's evidence, particularly the testimony of its witness, Ma. Racquel S. Aquino (**Aquino**) on 06 February 2024.⁴⁸

On 24 November 2023, the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) filed a Mediation Schedule dated 20 November 2023,⁴⁹ informing the Court that the parties had executed an Agreement to Mediate Form and that the mediation conference was scheduled for 29 November 2023.

In the Resolution dated 14 December 2023,⁵⁰ the First Division deemed petitioner to have waived its right to present an ICPA for failing to file a Motion to Commission an ICPA, as reflected in the Records Verification dated 16 November 2023.⁵¹ The First Division likewise noted the Mediation Schedule filed by the PMC-CTA and cancelled the hearing for the commissioning of the ICPA.

Thereafter, in a Minute Resolution dated 12 January 2024,⁵² the First Division granted the Request for Extension⁵³ signed by Mediator (Ret.) Justice Amelia R. Cotangco-Manalastas (**Justice Cotangco-**

⁴⁴ Id., pp. 249-251.

⁴⁵ See Minutes of the Hearing and Order, both dated 03 October 2023, id., pp. 343-345 and 348-350, respectively.

⁴⁶ Id., pp. 357-366.

⁴⁷ Id., pp. 382-383.

⁴⁸ Id.

⁴⁹ Id., p. 385.

⁵⁰ Id., pp. 389-390.

⁵¹ Id., p. 384.

⁵² Id., p. 392.

⁵³ Id., p. 391.

Manalastas) and the parties' respective counsels. Consequently, the First Division allowed the parties a non-extendible period of 30 days, reckoned from 29 December 2023, or until 28 January 2024, within which to continue mediation proceedings and attempt to reach an amicable settlement.⁵⁴

On 23 January 2024, the First Division issued the Pre-Trial Order,⁵⁵ directing that the trial proceed on 06 February 2024 for the presentation of petitioner's evidence and on 13 August 2024 for the presentation of respondent's evidence.

In a Minute Resolution dated 06 February 2024,⁵⁶ the First Division noted and granted the parties' "Joint Manifestation and Motion,"⁵⁷ which prayed for the suspension of the proceedings for at least 30 days. Accordingly, the First Division reset the initial presentation of petitioner's evidence to 14 May 2024.⁵⁸

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimony of its sole witness, Aquino.

During the 14 May 2024 hearing,⁵⁹ Aquino testified that: (1) as petitioner's Accounting Officer, she supervises compliance with pertinent laws, government rules and regulations, payment of taxes, licenses, and fees, and the preparation and documentation of petitioner's business transactions for audit and accounting purposes; (2) petitioner is a domestic corporation primarily engaged in acquiring, leasing, selling, transferring, renovating, servicing, and otherwise dealing in new and used motor vehicles, including their parts, accessories, and supplies, particularly those for European motor vehicles; (3) petitioner is duly registered with the BIR for income tax (IT), VAT, expanded withholding tax (EWT)/other withholding taxes, and withholding tax on compensation (WTC); (4) she coordinated the BIR examination of petitioner's books of accounts and accounting

⁵⁴ See Minute Resolution dated 12 January 2024, *supra* at note 52.

⁵⁵ Division Docket, pp. 398-414.

⁵⁶ *Id.*, p. 420.

⁵⁷ *Id.*, pp. 416-419.

⁵⁸ See Minute Resolution dated 13 May 2024, *id.*, p. 423.

⁵⁹ See Minutes of the Hearing and Order, both dated 14 May 2024, *id.*, pp. 427-429 and 431-432, respectively.

records for the period from 01 January 2014 to 30 June 2014, as well as the filing of petitioner's protest against the resulting deficiency tax assessments; (5) petitioner's company records show that it timely filed its Monthly and Quarterly VAT returns and paid the taxes due thereon for the period in question; (6) based on petitioner's 2014 Audited Financial Statements (AFS), petitioner did not treat some of the disputed items which the BIR assessed as income and, therefore, did not report them as such in its financial statements; (7) on 05 March 2015, petitioner received the BIR's LOA authorizing RO Reyes and GS Plata to examine petitioner's books of accounts and accounting records for VAT for the period in question; (8) on 31 May 2016, petitioner received the PAN assessing deficiency VAT and compromise penalty in the total amount of ₱117,105,875.33; (9) on 01 July 2016, petitioner received the FAN demanding payment of ₱119,327,674.32, inclusive of increments, representing deficiency VAT and compromise penalty for the period in question; (10) on 29 July 2016, petitioner, through its external advisor, Reyes Tacandong & Co. (RT&Co.), filed a Protest requesting reinvestigation of the FAN with the Office of the RD of RevReg No. 8-Makati City; (11) the BIR granted petitioner's request for reinvestigation and required petitioner to submit supporting documents within 60 days from the filing of the Protest; (12) on 27 September 2016, petitioner filed a Supplemental Protest Letter and submitted documents in support of its Protest; (13) on 21 June 2017, petitioner received the FDDA dated 19 June 2017, demanding payment of deficiency VAT in the aggregate amount of ₱78,320,162.12, inclusive of increments, for the period in question; (14) on 20 July 2017, petitioner assailed the FDDA by filing a Protest/Request for Reconsideration with the OCIR; and (15) on 01 February 2023, petitioner received respondent's Final Decision demanding payment of the total amount stated in the FDDA.⁶⁰

On cross-examination, Aquino confirmed that petitioner submitted supporting documents in connection with its request for reinvestigation. However, when asked whether petitioner submitted contracts, agreements, and other evidence to support its claim that participation fees from marketing events, payments for second-hand trade-in units, insurance claims, and other similar items did not

⁶⁰ See Judicial Affidavit of Ma. Racquel S. Aquino dated 02 March 2023, Exhibit "P-23", id., pp. 38-213, with attached exhibits.

constitute gross receipts subject to VAT, she replied that she was unsure and could not accurately confirm the same.⁶¹

Petitioner did not conduct any redirect examination.⁶²

In response to the Court's clarificatory questions, Aquino stated that she could not recall whether petitioner submitted additional documents to the BIR, apart from those enumerated in her Judicial Affidavit in support of petitioner's request for reinvestigation. Stated differently, she could not confirm whether petitioner submitted only the documents she expressly identified. She later acknowledged that other employees of petitioner participated in the audit investigation or dealt with the BIR; hence, she would not know whether they submitted additional documents to the BIR.⁶³

On 23 May 2024, after completing the presentation of its testimonial evidence, petitioner filed its "Formal Offer of Evidence"⁶⁴ (FOE), consisting of Exhibits "P-1" to "P-23-1", inclusive of sub-markings. On 29 May 2024, respondent filed a Manifestation⁶⁵ stating that he or she has no objection to the admission of the offered exhibits.

Meanwhile, on 05 June 2024, the First Division noted the Mediator's Report,⁶⁶ filed on 29 May 2024 and signed by Justice Cotangco-Manalastas (Ret.), which stated that the mediation proceeding was unsuccessful, and set the presentation of respondent's evidence to 11 September 2024.⁶⁷

In the Resolution dated 23 July 2024⁶⁸ (FOE Resolution), the First Division admitted all of petitioner's exhibits. The Court likewise reiterated that respondent's initial presentation of evidence shall proceed on 11 September 2024.

⁶¹ TSN dated 14 May 2024, pp. 8-11.

⁶² Id., p. 11.

⁶³ Id., pp. 12-14.

⁶⁴ Division Docket, pp. 443-450.

⁶⁵ Id., pp. 517-518.

⁶⁶ Id., p. 519.

⁶⁷ See Minute Resolution dated 05 June 2024, id., p. 529.

⁶⁸ Id., pp. 536-537.

On 04 February 2025, following two (2) Court-initiated continuances,⁶⁹ the hearing for respondent's initial presentation of evidence proceeded. At the said hearing before the First Division,⁷⁰ respondent presented his or her lone witness, RO Reyes, who testified that: (1) at the time of the execution of her Judicial Affidavit, she was the Chief of the Large Taxpayers VAT Audit Unit (LT VAU); (2) she was assigned as RO of the VAU of RevReg No. 8-Makati on 12 August 2012; (3) her primary duties and responsibilities include, among others, the tax verification and examination of a taxpayer's books of accounts and other accounting records to determine VAT liabilities for a particular taxable period in order to collect the correct amount of VAT and to recommend the assessment of any deficiency VAT due; (4) she received an LOA dated 02 March 2015, signed by RD Amora, authoring her to conduct the examination of petitioner's books of accounts and other accounting records for the period from 01 January 2014 to 30 June 2014; (5) the said LOA with attached Notice for the Presentation/Submission of Documents/Records was served on petitioner on 05 March 2015; (6) she prepared a Memorandum Report recommending the issuance of the PAN; (7) on 31 May 2016, the PAN with attached Details of Discrepancies, signed by RD Amora, was served on petitioner; (8) for failure to file a protest to the PAN, the BIR served on petitioner the FAN with ANs, also signed by RD Amora, demanding the payment of deficiency VAT in the total amount of ₱119,242,674.32 (inclusive of interest) and compromise penalty of ₱85,000.00; (9) petitioner filed a Protest against the FAN with ANs; (10) after reinvestigation, respondent, through RD Geraldino, issued an FDDA with amended ANs, demanding payment of the aggregate amount of ₱78,320,162.12, inclusive of surcharge and interest, representing alleged deficiency VAT and compromise penalty for the period in question; (11) petitioner filed a Request for Reconsideration of the FDDA with amended ANs before the OCIR; and (12) on 20 January 2023, respondent, through then Commissioner Romeo D. Lumagui, Jr. (**Commissioner Lumagui**), issued the herein assailed Final Decision (on the Request for Reconsideration), demanding payment of the total amount indicated in the FDDA with amended ANs.⁷¹

⁶⁹ See Notices of Resetting dated 09 September 2024 and 29 October 2024, id., pp. 538 and 541, respectively.

⁷⁰ See Minutes of the Hearing and Order, both dated 04 February 2025, id., pp. 545-547 and 549-550, respectively.

⁷¹ See Judicial Affidavit of Revenue Officer Pauline Lydia M. Reyes dated 22 September 2023, Exhibit "R-7", id., pp. 269-273.

On cross-examination, RO Reyes stated that the BIR arrived at the gross receipts not subjected to VAT, amounting to ₱122,652,541.91, based on source documents consisting of acknowledgment receipts (ARs), official receipts (ORs), and sales invoices (SIs). As to the ARs, she confirmed that these were non-VAT ARs. When asked about the increments on late remittance amounting to ₱1,927,852.01, she clarified that the BIR assessed the same only after reinvestigation; hence, the PAN and FAN did not reflect this item.⁷²

Respondent did not conduct any redirect examination.⁷³

In addressing the Court's clarificatory questions, RO Reyes declared that she personally served the PAN, issued on 30 May 2016, on petitioner at its office along EDSA, near PGA Cars, and that petitioner received the same on 31 May 2016 through a certain Chesa Galvez (Galvez), its finance coordinator. She also noted that the amounts of deficiency VAT assessed in the PAN and FAN were practically the same. However, the amount assessed in the FDDA differed from that stated in the FAN because the BIR reduced the deficiency VAT assessment after petitioner submitted some of the required documents.⁷⁴

On 11 February 2025, respondent filed *via* LBC his or her FOE⁷⁵ consisting of Exhibits "R-1" to "R-7-1", inclusive of sub-markings. On 14 February 2025, petitioner filed its Comment/Opposition⁷⁶ thereto.

In the Resolution dated 07 May 2025,⁷⁷ the First Division provisionally admitted respondent's belatedly filed FOE, in the interest of justice and to avoid undue prejudice to the government's cause, and likewise admitted all of respondent's exhibits. In the same Resolution, the First Division likewise granted the parties a period of 30 days within which to file their respective memoranda. 

⁷² TSN dated 04 February 2025, pp. 11-13.

⁷³ Id., p. 13.

⁷⁴ Id., pp. 14-18.

⁷⁵ See "Motion to Admit Formal Offer of Exhibits [FOE]," Division Docket, pp. 553-559, with attached FOE.

⁷⁶ Id., pp. 561-565.

⁷⁷ Id., pp. 575-578.

In compliance with the Court's directive, petitioner filed its Memorandum⁷⁸ on 19 June 2025. Respondent, on the other hand, failed to file a memorandum despite due notice.⁷⁹ Accordingly, on 08 August 2025, the First Division considered the case submitted for decision.⁸⁰

ISSUE

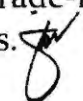
As the parties so stipulated,⁸¹ the main issue for this Court's determination is —

WHETHER PETITIONER EURO AUTOCARS, INC. DOING BUSINESS UNDER THE NAME AND STYLE OF LAMBORGHINI MANILA AND BENTLEY MANILA IS LIABLE TO PAY FOR DEFICIENCY VALUE-ADDED TAX (VAT) IN THE AGGREGATE AMOUNT OF ₱78,320,162.12, INCLUDING INCREMENTS, INTERESTS AND COMPROMISE PENALTY FOR THE PERIOD FROM 01 JANUARY 2014 TO 30 JUNE 2014.

ARGUMENTS

PETITIONER'S ARGUMENTS

In support of its claim that respondent erred in ruling that it is liable for deficiency VAT in the aggregate amount of ₱78,320,162.12, including increments, interests and compromise penalty for the period from 01 January 2014 to 30 June 2014, petitioner argues that its transactions supported by non-VAT ARs do not constitute income and, therefore, should not be subjected to VAT.

First, as to the assessment for deficiency VAT on gross receipts not subjected to VAT, petitioner contends that respondent erroneously classified the following items as "gross receipts" not subjected to VAT: (a) participation fees from marketing events; (b) initial customer deposits; (c) payments for second-hand trade-in units; (d) insurance claims; and (e) special plate processing fees. 

⁷⁸ Id., pp. 579-597.

⁷⁹ See Records Verification dated 23 June 2025, id., p. 601.

⁸⁰ See Minute Resolution dated 08 August 2025, id., p. 602.

⁸¹ See Part B, JSFI, *supra* at note 46, p. 361.

As regards the participation fees from marketing events, petitioner asserts that the Final Decision misappreciated the nature of the amounts collected. It explains that it merely collected the fees from participants and remitted them to the Lamborghini Club to cover actual event costs. Thus, petitioner insists that these amounts did not inure to its benefit and should not be treated as gross receipts.

With respect to initial customer deposits, payments for second-hand trade-in units, and insurance claims, petitioner maintains that these items do not represent actual sales or income. It merely applied the initial customer deposits against the cost of the vehicles and recorded the corresponding sales only upon consummation of the transactions. Petitioner further claims that it held the trade-in units on consignment and applied their proceeds to the cost of new units, which it reported for tax purposes upon actual sale. Lastly, petitioner asserts that it received the insurance claims on behalf of its clients and applied the same directly to repair costs. Accordingly, petitioner argues that these amounts should not be subjected to VAT.

As to the special plate processing fees, petitioner argues that the Final Decision speculatively and without sufficient basis subjected these fees to VAT merely because it did not maintain a separate account for them in its financial records. Petitioner contends that it held these amounts in trust and remitted them to the Land Transportation Office (LTO) for the issuance of special plates. As trust funds, petitioner insists that these amounts do not form part of its gross receipts.

Second, as regards the assessment for deficiency VAT arising from undeclared sales of second-hand or trade-in units amounting to ₱25,700,000.00, petitioner asserts that it took these units on consignment and applied the proceeds against the purchase of brand-new vehicles, which petitioner duly reported. Thus, petitioner claims that it did not realize actual gross receipts from the trade-in transactions. Petitioner therefore argues that the corresponding VAT assessment lacks basis and must be cancelled.

Third, as to the assessment for deficiency VAT arising from the undeclared sale of a Lamborghini Aventador amounting to ₱16,071,428.57, petitioner argues that it merely acted as an indenter or conduit in the sale between Khamfeuag Phanthaxay (Phanthaxay) 

and Wilfredo Revillame (**Revillame**) and did not earn income from the transaction. Petitioner adds that it charged no service fees or commissions. According to petitioner, the Indent Order clearly shows that the buyer, not petitioner, initiated the purchase. Since petitioner received no compensation, petitioner maintains that it earned no taxable gross receipts from the transaction. Thus, petitioner argues that the VAT assessment is erroneous and must be withdrawn.

Fourth, with respect to the assessment for deficiency VAT arising from undeclared sales of unaccounted inventory deemed sold amounting to ₱43,754,796.30, petitioner explains that the discrepancy resulted from accounting errors, such as the failure to reclassify entries and reverse work-in-progress items. Petitioner insists that these errors did not intend to understate income and that petitioner adequately explained the same. Citing the Court of Tax Appeals (CTA) *En Banc*'s ruling in *Commissioner of Internal Revenue v. Agrinurture, Inc.*,⁸² (**Agrinurture**) petitioner asserts that the underdeclaration of purchases alone does not justify the imposition of IT or VAT. Respondent must still prove the elements of taxable income, *i.e.*, actual or constructive receipt of gain, which petitioner claims are absent in this case. Thus, petitioner argues that no VAT should be imposed on the alleged unaccounted inventory.

Fifth, as to the assessment for deficiency VAT arising from undeclared output VAT amounting to ₱17,560,200.75, petitioner argues that the alleged deficiency resulted from bookkeeping errors committed by its previous accountant. Petitioner claims that the detailed reconciliation submitted to the BIR during the administrative proceedings shows that there was no undeclared sale. Upon correction of the error, the alleged undeclared sales should be reduced to zero. Hence, petitioner argues that the VAT assessment should be cancelled and withdrawn.

Sixth, relative to the assessment for deficiency VAT arising from the disallowed input tax on current purchases of ₱20,652,441.81 due to alleged noncompliance with the invoicing requirements under Sections 110⁸³ and 113⁸⁴ of the NIRC of 1997, as amended, petitioner maintains that

⁸² CTA EB No. 1054 (CTA Case No. 8345), 13 January 2015.

⁸³ SEC. 110. *Tax Credits*.

⁸⁴ SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons*.

compliant invoices and receipts fully support its input tax claims. Petitioner also relies on its Summary List of Sales (SLS) and the Summary List of Purchases (SLP) submitted by its suppliers. Petitioner further asserts that it reported the purchases and paid the corresponding VAT. Thus, petitioner argues that the disallowance lacks basis and should be reversed.

Seventh and last, as regards the assessment for deficiency VAT arising from the disallowed input tax carried over to the succeeding period amounting to ₱478,651.75, petitioner assails the disallowance for lack of legal and factual basis. Petitioner notes that the law allows the carry-over of excess input VAT, even if the excess input VAT arose from a previous year. Since petitioner did not claim the input tax as a credit against output tax during the period in question, petitioner argues that the amount remained valid for carry-over to the next quarter.

RESPONDENT'S ARGUMENTS

On the other hand, respondent did not address the foregoing arguments in a memorandum, having opted not to file one. However, in the Answer, respondent raised arguments in response to petitioner's claims.

First, as to the imposition of VAT on items deemed "gross receipts" subject to VAT, respondent maintains that these items are subject to VAT because they arose from transactions incidental to petitioner's commercial or economic activity and were made in furtherance of its business. Respondent argues that petitioner failed to present documents disproving the assessment that the sales relating to initial customer deposits and payments for second-hand trade-in units were consummated within the assessed period. According to respondent, petitioner likewise failed to present documents disproving the assessment that the repairs on the insured vehicles were performed within the assessed period; hence, respondent treated the same as sales subject to VAT. With regard to the special plate processing fees, respondent insists that petitioner failed to submit documents supporting its claim that the amounts received were in the nature of a tax exclusion. Thus, respondent treated the amounts as gross receipts for services rendered in assisting customers with the processing of their special plates.



Second, regarding the undeclared sales of second-hand or trade-in units amounting to ₱25,700,000.00, respondent counters that petitioner's consignment transactions are deemed sales because the actual sales between petitioner and its clients occurred more than 60 days from the dates of consignment. Respondent asserts that, since the actual sales occurred beyond the 60-day period and since reinvestigation showed that petitioner had no remaining vehicles in its inventory, the consigned goods were deemed sold under Section 106(B)(3)⁸⁵ of the NIRC of 1997, as amended.

Third, as to the undeclared sale of a Lamborghini Aventador amounting to ₱16,071,428.57, respondent asserts that petitioner failed to present evidence showing the vendor's claim for consideration. Respondent further notes that petitioner failed to refute the finding that the sale of the Lamborghini Aventador constituted a "deemed sale" transaction under a consignment arrangement pursuant to Section 4.106-7(a)(3)⁸⁶ of Revenue Regulations (RR) No. 16-2005.⁸⁷ Respondent based this finding on the fact that petitioner sells consigned goods and that its ARs books show that petitioner received the buyer's down payment. Moreover, respondent argues that, even assuming petitioner merely acted as a commercial broker in the transaction, the gross receipts from such service remain subject to VAT under Section 108⁸⁸ of the NIRC of 1997, as amended.

Fourth, as to the unaccounted inventory deemed sold, respondent explains that the discrepancy between the beginning inventory balance *per* trial balance and the amount *per* duly submitted inventory list amounted to ₱43,754,796.30, and that respondent treated this discrepancy as undeclared sales. Respondent notes that the discrepancy arose from petitioner's accountant's failure to update the General

⁸⁵ SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —

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

...
(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned[.]

⁸⁶ SECTION 4.106-7. *Transactions Deemed Sale.* —

(a) The following transactions shall be "deemed sale" pursuant to Sec. 106 (B) of the Tax Code:

...
(3) Consignment of goods if actual sale is not made within 60 days following the date such goods were consigned. Consigned goods returned by the consignee within the 60-day period are not deemed sold[.]

⁸⁷ Consolidated Value-Added Tax Regulations of 2005.

⁸⁸ SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*

Ledger (GL) by reclassifying the entry for "Bentley Inventory-Lifestyle" to "Cost of Sales-Unit Sales, Swapping of Tire of Unit Sold," and by reversing the "work-in-progress" entry. According to respondent, these circumstances confirm the inaccuracy of petitioner's records and indicate the possibility of undeclared sales.

Fifth, with respect to the undeclared output VAT amounting to ₱17,560,200.75, respondent notes that the assessment resulted from a comparison between the total output tax accounts *per* trial balance and the output tax declared for June 2014, which disclosed a discrepancy of ₱2,107,224.09. According to respondent, petitioner admitted that the discrepancy arose from its previous bookkeeper's failure to record various accounting entries, which petitioner sought to correct through its reconciliation. However, respondent argues that petitioner had already filed its books of accounts, GL, and tax returns with the BIR, and that these had become final because petitioner did not amend them within the period provided under the NIRC of 1997, as amended. Respondent therefore maintains that petitioner may no longer correct its previously filed VAT returns at this stage; otherwise, the law on the timely filing and payment of taxes would be rendered ineffective.

Sixth, as to the disallowed input tax on current purchases, respondent contends that the examination of petitioner's books of accounts showed that the input taxes claimed on local purchases, amounting to ₱20,652,441.81, failed to comply with the invoicing and substantiation requirements under Sections 110(A)⁸⁹ and 113(A) and (B)⁹⁰ of the NIRC of 1997, as amended, and under Section 4.110-8⁹¹ of RR No. 16-2005.⁹² Respondent thus maintains that the amount of ₱20,652,441.81 claimed as credit against petitioner's output taxes should be disallowed.

Seventh and finally, regarding the disallowed input tax carried over to the succeeding period amounting to ₱478,651.75, respondent stresses that a taxpayer may carry over input tax as creditable input tax for the next quarter only when the input tax exceeds the output tax.

⁸⁹ SEC. 110. *Tax Credits.*

(A) *Creditable Input Tax.* — ...

⁹⁰ SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*

(A) *Invoicing Requirements.* — ...

(B) *Accounting Requirements.* — ...

⁹¹ SECTION 4.110-8. *Substantiation of Input Tax Credits.*

⁹² *Supra* at note 87.

Since the assessment against petitioner resulted in a VAT deficiency, respondent argues that petitioner no longer had excess input VAT that could be carried over as creditable input tax for the next quarter.

RULING OF THE COURT

Before delving into the merits of the case, the Court finds it propitious to first resolve whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA)
HAS JURISDICTION OVER THE
INSTANT PETITION FOR REVIEW.

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.⁹³ Section 7(a)(1) of Republic Act (RA) No. 1125,⁹⁴ as amended by RA 9282,⁹⁵ provides:

...

Sec. 7. Jurisdiction. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.]⁹⁶

...

⁹³ *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

⁹⁴ AN ACT CREATING THE COURT OF TAX APPEALS.

⁹⁵ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

⁹⁶ Italics in the original text, emphasis and underscoring supplied.

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.⁹⁷

The law is clear on the period to appeal to this Court if a decision on the protest is denied in whole or in part by the CIR. Section 228 of the NIRC of 1997, as amended, in part, reads as follows:

...
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[.] ...

...
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.⁹⁸

...

⁹⁷ *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

⁹⁸ Italics in the original text, emphasis and underscoring supplied.

The afore-quoted Section 228 of the NIRC of 1997, as amended, is implemented by RR No. 12-99,⁹⁹ as amended by RR No. 18-2013¹⁰⁰ and RR No. 22-2020.¹⁰¹ Relevant portions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013 and RR No. 22-2020, provides the taxpayer's options on disputed assessments, to wit:

...

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

...

Sec. 3.1.5. Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation as follows:

- (i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
- (ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

...

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 

⁹⁹ 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.

¹⁰⁰ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

¹⁰¹ Amending Certain Sections of Revenue Regulations No. 12-1999, as Amended by Revenue Regulations No. 18-2013 and Revenue Regulations No. 7-2018, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

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 or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.¹⁰²

...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*¹⁰³ (**PAGCOR**) and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*,¹⁰⁴ explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

...

Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:

1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days

¹⁰² Italics in the original text, emphasis and underscoring supplied.

¹⁰³ G.R. No. 208731, 27 January 2016; Citation omitted, emphasis, italics and underscoring in the original text and supplied.

¹⁰⁴ Supra at note 93.

from receipt of the whole or partial denial of the protest.

2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

...

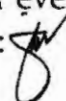
To avoid confusion, the Supreme Court in *PAGCOR* further summarized the rules in the following wise:

...

To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. **A whole or partial denial by the CIR may be appealed to the CTA.** The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.¹⁰⁵

...

Based on the foregoing provisions and jurisprudence, in cases where a taxpayer's protest is denied by the CIR's duly authorized representative, a taxpayer is given **two (2) alternative remedies**, to either: *first*, appeal to the CTA within 30 days from the date of receipt of the representative's decision; or, *second*, **elevate his protest through a request for reconsideration to the CIR, within the same 30-day period, otherwise referred to as an "administrative appeal" and await the final decision of the CIR on the disputed assessments and appeal such final decision to the CTA within 30 days from receipt of a copy of such decision.**

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

Date	Event
31 May 2016	Petitioner received the PAN dated 30 May 2016, ¹⁰⁶ signed by RD Amora.
01 July 2016	Petitioner received the FAN dated 27 June 2016, ¹⁰⁷ signed by RD Amora.
29 July 2016	Petitioner filed its Request for Reinvestigation (Protest against the FAN) dated 29 July 2016 ¹⁰⁸ within the 30-day reglementary period.
-	Petitioner received the BIR's Letter dated 22 August 2016, ¹⁰⁹ granting the Request for Reinvestigation and directing petitioner to submit all relevant supporting documents within 60 days from the filing of the Protest.
27 September 2016	Petitioner filed a Supplemental Protest Letter dated 27 September 2016, ¹¹⁰ submitting additional supporting documents in connection with the Request for Reinvestigation within the 60-day reglementary period.
21 June 2017	Petitioner received the FDDA dated 19 June 2017, ¹¹¹ signed by RD Geraldino.
20 July 2017	Petitioner filed a Request for Reconsideration (Protest against the FDDA) dated 20 July 2017 ¹¹² within the 30-day reglementary period.
01 February 2023	Petitioner received respondent's Final Decision dated 20 January 2023. ¹¹³
02 March 2023	Petitioner filed its Petition for Review ¹¹⁴ within the 30-day reglementary period.

Since the instant Petition for Review was timely filed on 02 March 2023, a day before the last day of the 30-day appeal period (reckoned from petitioner's receipt of respondent's Final Decision on 01 February 2023), this Court acquired jurisdiction over the case.

We now proceed to the merits of the case. For an orderly discussion, We shall address, *in seriatim*, the parties' contrasting arguments on each of the following components of the deficiency VAT assessment:

¹⁰⁶ Exhibit "P-16"/Exhibit "R-3", supra at note 14.

¹⁰⁷ Exhibit "P-17", supra at note 17.

¹⁰⁸ Exhibit "P-18", supra at note 19.

¹⁰⁹ Supra at note 21.

¹¹⁰ Exhibit "P-19", BIR Records, Folder No. 2, pp. 467-483.

¹¹¹ Exhibit "P-20", supra at note 24.

¹¹² Exhibit "P-21", supra at note 26.

¹¹³ Exhibit "P-22"/Exhibit "R-6", supra at note 6.

¹¹⁴ Supra at note 1.

Component	Computation per FDDA	Amount
(a)	VATable Sales/Receipts per VAT Returns	₱196,707,767.41 ¹¹⁵
<i>First</i>	Gross Receipts Not Subjected to VAT	₱122,652,541.91
<i>Second</i>	Undeclared Sales from Trade-In Units Deemed Sold	25,700,000.00
<i>Third</i>	Undeclared Sales of Lamborghini Aventador	16,071,428.57
<i>Fourth</i>	Undeclared Sales from Unaccounted Inventory	43,754,796.30
<i>Fifth</i>	Undeclared Sales from Undeclared Output Tax	17,560,200.75
(b)	Total Additional Gross Receipts Subjected to VAT	₱225,738,967.53
(c) = (a) + (b)	Gross Receipts Subjected to VAT	₱422,446,734.94
(d) = (c) x 12%	Output VAT	₱50,693,608.19
(d)	Input VAT on Current Purchases	₱21,153,159.43 ¹¹⁶
<i>Sixth</i>	Disallowed Input Taxes on Local Purchases	20,652,441.81
<i>Seventh</i>	Disallowed Input Tax Carried Over to Succeeding Period	478,651.75
(e)	Total Disallowed Input VAT	₱21,131,093.56
(f) = (d) - (e)	Net Allowed Input VAT	₱22,065.87
(g) = (d) - (f)	Output VAT Due	₱50,671,542.32
(h)	VAT Payments	2,930,424.41 ¹¹⁷
(i) = (g) - (h)	Basic Deficiency Output VAT Due	₱47,741,117.91
(j)	Deficiency Interest (from 26 July 2014 to 21 July 2017)	28,566,192.20

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Month	VATable Sales/Receipts	Exhibit No.	Division Docket
January 2014	₱16,604,924.31	"P-5" (BIR Form No. 2550M)	p. 475
February 2014	83,084,951.60	"P-6" (BIR Form No. 2550M)	p. 477
March 2014	95,807,962.08	"P-7" (BIR Form No. 2550Q)	p. 479
April 2014	401,955.17	"P-8" (BIR Form No. 2550M)	p. 481
May 2014	572,197.08	"P-9" (BIR Form No. 2550M)	p. 483
June 2014	235,777.17	"P-10" (BIR Form No. 2550Q)	p. 485
Total	₱196,707,767.41		

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Month	Input VAT on Current Purchases	Exhibit No.	Division Docket
January 2014	₱1,779,602.16	"P-5" (BIR Form No. 2550M)	p. 475
February 2014	8,674,527.93	"P-6" (BIR Form No. 2550M)	p. 477
March 2014	10,093,599.16	"P-7" (BIR Form No. 2550Q)	p. 479
April 2014	49,264.64	"P-8" (BIR Form No. 2550M)	p. 481
May 2014	49,220.53	"P-9" (BIR Form No. 2550M)	p. 483
June 2014	506,945.01	"P-10" (BIR Form No. 2550Q)	p. 485
Total	₱21,153,159.43		

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Month	VAT Payments	Exhibit No.	Division Docket
January 2014	₱212,988.76	"P-5-1" (BTR-BIR Deposit/Payment Slip)	p. 476
February 2014	1,295,666.26	"P-6-1" (BTR-BIR Deposit/Payment Slip)	p. 478
March 2014	1,403,356.29	"P-7-1" (BTR-BIR Deposit/Payment Slip)	p. 480
April 2014	-	"P-8-1" (Acknowledgment Receipt)	p. 482
May 2014	18,413.10	"P-9-1" (BTR-BIR Deposit/Payment Slip)	p. 484
June 2014	-	"P-10-1" (Acknowledgment Receipt)	p. 486
Total	₱2,930,424.41		

Component	Computation per FDDA	Amount
(k) = (i) + (j)	A. Total Deficiency Output VAT Due	₱76,307,310.11
(l)	Basic Tax Due (Late Remittance)	₱5,931,715.30 ¹¹⁸
(m) = (l) x 25%	25% Surcharge	1,482,928.81 ¹¹⁹
(n)	Interest up to Date of Remittance	444,923.20 ¹²⁰
(o) = (m) + (n)	B. Total Increment on Late Remittance	₱1,927,852.01
(p)	C. Compromise Penalty	₱85,000.00
(q) = (k) + (o) + (p)	TOTAL	₱78,320,162.12

FIRST COMPONENT:
ASSESSMENT FOR DEFICIENCY
VALUE-ADDED TAX (VAT) ON ITEMS
DEEMED GROSS RECEIPTS SUBJECT
TO VAT TOTALLING ₱122,652,541.91

The *first component* concerns respondent’s imposition of VAT on certain items supported by non-VAT ARs, which respondent treated as gross receipts subject to VAT.

Petitioner argues that the subject items supported by non-VAT ARs do not constitute income or gross receipts because they either did not inure to its benefit, did not represent completed sales, or were merely held in trust for third parties or government agencies. 

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Invoice No.	VATable Sale/Receipt	Output VAT Belatedly Remitted	25% Surcharge	BIR Records Folder No. 4
00039	₱7,759.73	₱931.17	₱232.79	p. 975
00036	10,141,071.43	1,216,928.57	304,232.14	p. 974
00029	5,343.97	641.28	160.32	p. 973
022	13,142,857.14	1,577,142.86	394,285.71	p. 946
020	13,142,857.14	1,577,142.86	394,285.71	p. 948
021	12,991,071.43	1,558,928.57	389,732.14	p. 947
Total	₱49,430,960.85	₱5,931,715.31	₱1,482,928.81	

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Id.

Invoice No.	VATable Sale/Receipt	Output VAT Belatedly Remitted	Date of Remittance	Should be Reported	Interest Rate	Interest
00039	₱7,759.73	₱931.17	26/01/2015	25/07/2014	10.14%	₱94.39
00036	10,141,071.43	1,216,928.57	26/01/2015	25/07/2014	10.14%	123,359.88
00029	5,343.97	641.28	26/01/2015	25/07/2014	10.14%	65.01
022	13,142,857.14	1,577,142.86	26/01/2015	25/07/2014	10.14%	159,874.76
020	13,142,857.14	1,577,142.86	27/10/2014	25/07/2014	5.15%	81,233.66
021	12,991,071.43	1,558,928.57	27/10/2014	25/07/2014	5.15%	80,295.50
Total	₱49,430,960.85	₱5,931,715.31				₱444,923.20

Respondent counters that the subject items supported by non-VAT ARs arose from transactions incidental to petitioner's commercial or economic activity and were made in furtherance of its business. Respondent further maintains that petitioner failed to present sufficient documents to prove that these amounts should be excluded from gross receipts or should not be subjected to VAT.

At the outset, the Court reiterates that tax assessments enjoy the presumption of regularity and correctness, and are presumed to have been made in good faith.¹²¹ Thus, petitioner bears the burden of presenting competent and sufficient evidence to refute respondent's findings and to prove that the assessed items do not form part of its taxable gross receipts.

As held in *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*,¹²² upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer arises, and petitioner-taxpayer bears the burden of disputing the correctness of the assessment. Similarly, in *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*,¹²³ the Supreme Court reiterated that tax assessments are presumed correct and issued in the regular performance of tax authorities' duties; hence, the taxpayer must dispute such correctness and regularity.

Notably, Schedule 1¹²⁴ attached to the FDDA contains only a list of receipts not subjected to VAT. Although the listed transactions refer to the related SIs/ORs and include their corresponding descriptions or particulars, Schedule 1 does not group the amounts according to the category or nature of the items treated as gross receipts subject to VAT, which amounted in the aggregate to ₱122,652,541.91. Nonetheless, the Court will address the parties' respective claims according to the nature of the items purportedly comprising the total amount subjected to VAT. 

¹²¹ *Bonifacia Sy Po v. Honorable Court of Tax Appeals and Honorable Commissioner of Internal Revenue*, G.R. No. L-81446, 18 August 1988.

¹²² G.R. No. 136975, 31 March 2005.

¹²³ G.R. No. 247737, 08 August 2023.

¹²⁴ "Revised Summary of Gross Receipts not subjected to VAT" attached to the Final Decision on Disputed Assessment (FDDA), Exhibit "P-20", supra at note 24, p. 1269.

Section 105¹²⁵ of the NIRC of 1997, as amended, is clear and categorical in stating that a person shall be liable to VAT when the sale of goods and services is done in the ordinary course of trade or business. The phrase "in the course of trade or business" connotes regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto.

Under Section 106(A) of the NIRC of 1997, as amended, VAT is imposed on the "gross selling price or gross value in money of the goods or properties sold, bartered or exchanged" and shall be paid by the seller or transferor. Meanwhile, under Section 108(A) of the NIRC of 1997, as amended, VAT is imposed on the "gross receipts derived from sale or exchange of services." Significantly, these provisions define the terms "goods or properties," "gross selling price," and "gross receipts," as well as the phrase "sale or exchange of services," as follows:

...

SEC. 106. Value-added Tax on Sale of Goods and Properties. —

(A) *Rate and Base of Tax.* — These 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.

(1) The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation[.]

...

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.

...

SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —



¹²⁵

SEC. 105. Persons Liable. — Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

(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 phrase ‘sale or exchange of services’ means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. ...

...

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.¹²⁶

...

Relatedly, Section 4.105-1¹²⁷ of RR No. 16-2005¹²⁸ defines a “taxable sale” as the sale, barter, exchange, or lease of goods or properties, including transactions deemed sale, and the performance of service for a consideration, whether in cash or in kind, all of which are subject to

¹²⁶ Emphasis supplied and italics in the original text.

¹²⁷ SECTION 4.105-1. *Persons Liable.*

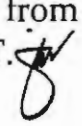
¹²⁸ Supra at note 87.

VAT under Section 106¹²⁹ and 108¹³⁰ of the NIRC of 1997, as amended. Section 4.105-3¹³¹ of the same Regulations further provides that the phrase "in the course of trade or business" refers to the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto.

Thus, amounts actually or constructively received by a taxpayer as contract price, compensation, service fee, or consideration for transactions undertaken in the course of trade or business fall within the scope of taxable gross receipts, unless the taxpayer proves that such amounts were merely received in trust, merely passed on to third parties, or otherwise legally excluded from taxable gross receipts. In *Commissioner of Internal Revenue v. Tours Specialists, Inc. and the Court of Tax Appeals*¹³² (**Tours Specialists**), the Supreme Court recognized that amounts merely entrusted to a taxpayer, which do not belong to it and do not redound to its benefit, do not form part of its gross receipts. However, the taxpayer must first establish by competent evidence that the amounts were in fact merely held in trust or passed on to third parties.

After a careful consideration of the parties' respective arguments, the Court is constrained to sustain respondent's finding that petitioner failed to prove that the subject items supported by non-VAT ARs do not fall within the scope of taxable gross receipts, as defined under Sections 106 and 108 of the NIRC of 1997, as amended.

a. Participation Fees from Marketing Events

Petitioner argues that respondent erroneously subjected the participation fees from marketing events to VAT because petitioner merely collected the fees from the participants and remitted the same to the Lamborghini Club to cover actual event costs. Respondent, however, maintains that petitioner failed to substantiate this claim and, accordingly, treated the participation fees as receipts arising from transactions incidental to petitioner's business and subject to VAT. 

¹²⁹ SEC. 106. *Value-added Tax on Sale of Goods or Properties.*

¹³⁰ Supra at note 88.

¹³¹ SECTION 4.105-3. *Meaning of "In the Course of Trade or Business".*

¹³² G.R. No. 66416, 21 March 1990.

Petitioner's claim rests mainly on the allegation that it merely collected and remitted the participation fees to the Lamborghini Club. However, petitioner failed to present competent and sufficient evidence showing that it actually remitted the amounts to the Lamborghini Club, that the amounts corresponded to actual event costs, or that petitioner did not retain any portion thereof as compensation, service fee, or benefit for organizing, facilitating, or participating in the marketing events.

While amounts merely received in trust or passed on to third parties may be excluded from gross receipts, as held in *Tours Specialists*, petitioner must first prove the factual basis for such exclusion. Unfortunately, petitioner did not discharge this burden. In the absence of supporting documents establishing the alleged trust or pass-through character of the participation fees, the Court cannot treat the amounts as excluded from petitioner's gross receipts.

It is well-settled that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.¹³³ Since petitioner failed to substantiate its claim, respondent correctly treated the participation fees from marketing events as taxable gross receipts arising from transactions incidental to petitioner's business and made in furtherance of its commercial or economic activity.

b. Initial Customer Deposits

Petitioner contends that the initial customer deposits should not be treated as gross receipts subject to VAT because petitioner merely applied these deposits against the cost of the vehicles and recorded the corresponding sales only upon consummation of the transactions. Respondent, however, counters that petitioner failed to present documents disproving the assessment that the sales relating to the initial customer deposits were consummated within the assessed period and, accordingly, treated the deposits as part of petitioner's gross receipts subject to VAT. 

¹³³ *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistics Systems, Inc.*, G.R. No. 214406, 06 February 2017.

Regrettably, petitioner failed to present specific and verifiable evidence showing that the initial customer deposits were in fact applied against the selling price of particular vehicles whose sales were already reported and subjected to VAT. Petitioner did not identify the specific sales transactions to which the deposits related, nor did it point to particular VAT invoices, ORs, or accounting entries showing that the deposits formed part of the selling price already reported for VAT purposes.

Without these details, the Court has no basis to determine whether the deposits were merely advances later applied to duly reported sales or whether the corresponding sales were consummated within the assessed period but not properly reported. Considering that "gross receipts" defined in Section 108¹³⁴ of the NIRC of 1997, as amended, includes "deposits and advance payments actually or constructively received" "for services performed or to be performed," and considering further that VAT applies to sales or transactions made in the course of trade or business, petitioner had the burden to prove that the assessed deposits were not taxable in the period involved or were already included in reported taxable sales. Petitioner failed to do so.

Accordingly, respondent's treatment of the initial customer deposits as taxable gross receipts must be sustained.

c. Payments for Second-Hand or Trade-In Units

Petitioner argues that the payments for second-hand or trade-in units do not constitute taxable gross receipts because petitioner merely took the units on consignment and applied the proceeds against the selling price of the brand-new units purchased, which petitioner allegedly duly reported for tax purposes upon actual sale. Respondent, however, maintains that petitioner failed to present sufficient documents disproving the assessment that the transactions involving the second-hand or trade-in units were consummated within the assessed period and, thus, treated the amounts as gross receipts arising from petitioner's business transactions and subject to VAT. 

Petitioner again relies on the assertion that the payments for second-hand or trade-in units were merely applied against the selling price of the brand-new units purchased. However, petitioner did not present specific documents identifying the brand-new units or vehicles involved, the customers concerned, the corresponding trade-in agreements, the application of the proceeds to the selling price of the brand-new units purchased, the VAT invoices, and the relevant portions of the SLS (reconciled with the corresponding VAT returns) showing that the resulting sales were already reported for tax purposes.

Absent these supporting documents, the Court cannot verify whether the amounts were merely offsets against duly reported sales or whether petitioner actually received consideration from transactions consummated within the assessed period. Petitioner's bare allegation cannot overcome the presumption of correctness accorded to respondent's assessment.

Accordingly, respondent properly treated the payments for second-hand or trade-in units as taxable gross receipts.

d. Insurance Claims

Petitioner asserts that the insurance claims should not be subjected to VAT because petitioner merely received the amounts on behalf of its clients and applied them directly to repair costs; hence, the amounts did not represent actual sales, income, or gross receipts. Respondent, however, counters that petitioner failed to present documents disproving the assessment that the repairs on the insured vehicles were performed within the assessed period and, accordingly, treated the amounts as sales or receipts subject to VAT.

Unfortunately, petitioner failed to present competent evidence showing that the amounts classified as payments from insurance claims belonged to the owners of the insured vehicles and were merely received by petitioner on their behalf. Petitioner likewise failed to establish, through repair orders, invoices, ORs, insurance documents, accounting records, or similar evidence, that the amounts were fully applied to the cost of repairs and that the corresponding repair services, if any, were properly reported for VAT purposes.



If petitioner received insurance proceeds and applied them to the repair of vehicles, such amounts may constitute consideration for repair services performed in the course of petitioner's business, unless petitioner proves that it merely held the amounts in trust or acted only as a conduit without receiving compensation or economic benefit. Petitioner did not present such proof.

Accordingly, respondent validly treated the amounts classified as payments from insurance claims as taxable receipts subject to VAT.

e. Special Plate Processing Fees

Petitioner argues that the special plate processing fees should not form part of its gross receipts because petitioner merely held the amounts in trust and remitted them to the LTO for the issuance of special plates, and that respondent's reliance on the absence of a separate account in its financial records is speculative and unsupported. Respondent, however, maintains that petitioner failed to substantiate its claim that the amounts were held in trust and, accordingly, treated the fees as gross receipts for services rendered in assisting customers with the processing of their special plates.

As with the foregoing categories of items supported by non-VAT ARs, petitioner failed to present specific evidence showing that the special plate processing fees were merely held in trust and fully remitted to the LTO. Particularly, petitioner did not submit proof of remittance to the LTO, official LTO receipts corresponding to the assessed amounts, schedules matching customer collections with LTO payments, or accounting records showing that petitioner did not retain any portion of the amounts as a service fee or processing charge.

As held in *Tours Specialists*, the Court recognizes that funds merely received in trust or passed on to third parties do not constitute taxable gross receipts when they do not belong to the taxpayer and do not redound to its benefit. However, the taxpayer invoking this rule must first prove that the amounts were indeed received in trust or merely passed on to third parties. Petitioner failed to make this showing.



Moreover, petitioner's failure to maintain a separate account for the alleged trust funds further weakens its claim. Although the absence of a separate account, by itself, may not conclusively establish taxability, it supports respondent's finding when taken together with petitioner's failure to present proof of remittance and non-retention of any portion of the special plate processing fees.

Accordingly, respondent properly treated the special plate processing fees as taxable gross receipts for services rendered in assisting customers with the processing of special plates.

In sum, petitioner failed to carry its burden of presenting competent and sufficient evidence showing that the items supported by non-VAT ARs were not gross receipts subject to VAT. Specifically, petitioner failed to establish that the amounts were merely held in trust, merely passed on to third parties, already reported as part of taxable sales, or otherwise excluded from VAT.

Considering that petitioner bears the burden of clearly showing that the assessment is erroneous, its failure to present sufficient proof of error justifies the judicial affirmance of the assessment.¹³⁵ Accordingly, the *first component* of respondent's assessment for deficiency VAT, which treated gross receipts in the aggregate amount of ₱122,652,541.91 as subject to VAT, is sustained.

SECOND COMPONENT:

ASSESSMENT FOR DEFICIENCY
VALUE-ADDED TAX (VAT) ON
UNDECLARED SALES OF SECOND-
HAND OR TRADE-IN UNITS
AMOUNTING TO ₱25,700,000.00

The *second component* involves respondent's assessment of deficiency VAT on the alleged undeclared sales of second-hand or trade-in units amounting to ₱25,700,000.00.¹³⁶

¹³⁵ *Ferdinand R. Marcos II v. Court of Appeals, et al.*, G.R. No. 120880, 05 June 1997, citing *Adela Santos Gutierrez v. Jose D. Villegas and Rizalina Santos Rivera*, G.R. No. L-17117, 31 July 1963.

¹³⁶

Client's	Date	Traded Unit	Price
Inigo Zobel	1/11/2014	Porsche Cayenne Turbo 2010	₱6,000,000.00

Petitioner argues that these trade-in units were actually consignment deals between petitioner and its clients and the proceeds thereof upon sale were applied against the selling price of the brand-new units purchased by the owners and already reported for tax purposes upon consummation of the sale. Petitioner maintains that it did not realize actual gross receipts from the trade-in transactions. Thus, petitioner contends that the corresponding VAT assessment lacks factual and legal basis.

Respondent counters that the consignment deals constituted transactions deemed sales under Section 106(B)(3)¹³⁷ of the NIRC of 1997, as amended. Respondent asserts that the actual sales between petitioner and its clients occurred more than 60 days from the dates of consignment. Respondent further points out that, upon reinvestigation, petitioner had no remaining vehicles in its inventory. On this basis, respondent maintains that the consigned goods were deemed sold and properly subjected to VAT.

We uphold the assessment.

At the outset, the Court finds it necessary to clarify the nature of the underlying transactions. In its Protest against the FAN,¹³⁸ petitioner itself explained that the trade-in transactions were actually consignment deals between petitioner and its clients. A consignment is an arrangement where the owner leaves goods in the possession of another party for sale. Petitioner likewise stated that, in the assessed transactions, it merely acted as a conduit of its clients with respect to the trade-in units. Petitioner further explained that the amounts received from the sale of these units were applied as discounts to the price of the new vehicles purchased by the clients and, for this reason, petitioner allegedly did not receive actual gross receipts subject to VAT. 

Benedicto Pe Lim	2/12/2014	Porsche Cayenne S/996 Turbo	4,000,000.00
Bryan Ang	2/18/2014	Porsche 2013 911	6,500,000.00
		Audi 2013 RS5	4,000,000.00
Arch. Antonio Turalba Sr.	2/20/2014	Porsche Turbo 2011	5,200,000.00
Total Selling Price of Trade-in Units Deemed Sold			P25,700,000.00

¹³⁷ Supra at note 85.

¹³⁸ Exhibit "P-18", supra at note 19, pp. 407-408.

Based on petitioner's own explanation, it appears that the trade-in value of the second-hand units did not form part of the selling price reflected in the sales invoices for the brand-new vehicles. Since petitioner allegedly applied the proceeds from the sale of the trade-in units as discounts, petitioner would have issued SIs only for the net purchase price of the brand-new vehicles, after deducting the value or proceeds of the trade-in units.

However, the Court can confirm this factual premise only through the VAT invoices or SIs corresponding to the sale of the brand-new vehicles. These documents would show whether petitioner indeed excluded the trade-in value from the selling price of the brand-new vehicles, or whether petitioner had already included the trade-in value in the invoiced amount and subjected the same to VAT. Unfortunately, petitioner failed to present these relevant pieces of evidence.

This distinction is material. If the transaction involved the sale of brand-new vehicles with the value of the trade-in units applied as discounts, petitioner would be liable for VAT only on the net selling price of the brand-new vehicles actually invoiced and reported. However, once petitioner subsequently sold the second-hand or trade-in units, petitioner became liable for VAT on the selling price of those units. At the very least, petitioner had to show that it had already reported and remitted the VAT on such subsequent sales to the BIR.

Conversely, if petitioner returned the trade-in units to the clients and, for that reason, no discount was ultimately applied to the purchase price of the brand-new vehicles, petitioner should have received from the clients the amount corresponding to the value of the returned trade-in units. In that scenario, petitioner would still have received consideration connected with the sale of the brand-new vehicles, whether in cash or its equivalent, and such receipt would likewise be subject to VAT unless petitioner proves that it had already reported and remitted the corresponding VAT thereon.

Thus, an assertion that the sale of the brand-new vehicles had already been reported for VAT purposes does not necessarily prove that petitioner likewise reported and paid VAT on the subsequent sale of the second-hand or trade-in units. Petitioner had to present the VAT invoices or SIs for the sale of the brand-new vehicles, as well as the



relevant documents relating to the subsequent sale of the trade-in units, such as SIs, ORs, deeds of sale, consignment records, inventory records, accounting entries, and VAT returns.

Considering petitioner's own characterization of the transactions as consignment deals, as well as the representation of petitioner's representative, a certain Carol Delos Santos (**Delos Santos**), that petitioner had no remaining inventory of vehicles, petitioner bore the burden to prove that the second-hand or trade-in units were sold at selling prices equivalent to, or higher than, their trade-in values and that petitioner reported and remitted the corresponding VAT to the BIR. Alternatively, petitioner could have shown that the units were sold outside the assessment period or that any particular unit remained unsold during the period involved.

Having failed to present the relevant evidence relating to both the sale of the brand-new vehicles and the subsequent sale of the trade-in units, petitioner failed to discharge its burden.

Specifically, petitioner did not present the supposed consignment agreements, SIs, ORs, VAT returns, accounting entries, inventory movement schedules, or other competent documents showing the actual sale of the trade-in units, the selling prices thereof, and the payment of the corresponding VAT. Petitioner likewise failed to establish that any of the trade-in units were sold outside the assessment period. While petitioner asserted that some units remained unsold or still on hand, this assertion cannot prevail over the audit finding that petitioner's representative, Delos Santos, disclosed that petitioner had no remaining vehicle inventory, especially in the absence of documentary support.

Moreover, petitioner's explanation that the proceeds from the sale of the trade-in units were merely applied as discounts to the purchase price of the brand-new vehicles does not negate VAT liability on the subsequent sale of the trade-in units. On the contrary, it confirms that the trade-in units had economic value and that their disposition generated proceeds used to reduce the purchase price of the clients' new vehicles. If petitioner sold the units and used the proceeds to grant discounts to its clients, petitioner had to establish that the



corresponding output VAT on those sales had been paid. Petitioner failed to do so.

The Court is mindful of the settled rule that an assessment must rest on actual facts and that the presumption of correctness of an assessment cannot rest on another presumption.¹³⁹ However, this rule does not aid petitioner. Respondent's assessment did not rest solely on speculation. Respondent based the assessment on petitioner's own explanation during the administrative proceedings that the trade-in units were placed with petitioner for sale and that the proceeds were applied as discounts to the price of new vehicles, as well as on the disclosure during audit that petitioner had no remaining vehicle inventory. These circumstances reasonably support respondent's finding that the trade-in units had been sold and that petitioner failed to show that the corresponding VAT had been paid.

As earlier emphasized, in assessment cases, petitioner bears the burden of proving that the assessment is erroneous. Here, petitioner had control over the documents necessary to refute respondent's findings, including the consignment agreements, records of sale, SIs, ORs, VAT returns, inventory records, and proof of remittance of output VAT. Petitioner's failure to present these documents gives rise to the presumption that suppressed evidence would be adverse if produced,¹⁴⁰ and justifies the conclusion that petitioner failed to overcome the assessment.

Accordingly, the Court finds that respondent properly treated the second-hand or trade-in units as undeclared sales subject to VAT. Since petitioner failed to prove that the VAT on the sale of these units had already been reported and remitted, or that the units were sold outside the assessment period or remained unsold, the *second component* of respondent's assessment for deficiency VAT on undeclared sales of 

¹³⁹ See *Ortiz Memorial Chapel Inc., represented by Ronald Ortiz v. Commissioner of Internal Revenue*, G.R. No. 278483, 03 December 2025, citing *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, 03 May 2021.

¹⁴⁰ Rule 131

BURDEN OF PROOF, BURDEN OF EVIDENCE AND PRESUMPTIONS

...
Section 3. *Disputable presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

...
(e) That evidence willfully suppressed would be adverse if produced[.]

second-hand or trade-in units amounting to ₱25,700,000.00 is sustained.

THIRD COMPONENT:

ASSESSMENT FOR DEFICIENCY
VALUE-ADDED TAX (VAT) ON THE
UNDECLARED SALE OF
A LAMBORGHINI AVENTADOR
AMOUNTING TO ₱16,071,428.57

The *third component* relates to respondent's assessment of deficiency VAT on the alleged undeclared sale of a Lamborghini Aventador amounting to ₱16,071,428.57.

Petitioner argues that it merely acted as an indenter or conduit in the sale between Phanthaxay and Revillame. Petitioner maintains that it did not earn income from the transaction and did not charge any service fee or commission. According to petitioner, the Indent Order shows that the buyer, not petitioner, initiated the purchase. Since petitioner received no compensation, petitioner insists that it earned no taxable gross receipts from the transaction.

Respondent counters that petitioner failed to present evidence showing the vendor's claim for consideration. Respondent further argues that petitioner failed to refute the finding that the sale of the Lamborghini Aventador constituted a deemed sale transaction under a consignment arrangement pursuant to Section 4.106-7(a)(3)¹⁴¹ of RR No. 16-2005.¹⁴² Respondent bases this finding on petitioner's business of selling consigned goods and on petitioner's ARs books showing that petitioner received the buyer's down payment. Moreover, respondent argues that, even assuming petitioner merely acted as a commercial broker, the gross receipts from such service remain subject to VAT under Section 108¹⁴³ of the NIRC of 1997, as amended.

We are inclined to cancel the assessment for lack of factual basis. 

¹⁴¹ Supra at note 86.

¹⁴² Supra at note 87.

¹⁴³ Supra at note 88.

Section 106(A)¹⁴⁴ of the NIRC of 1997, as amended, quoted above, imposes VAT on every sale, barter, or exchange of goods or properties in the course of trade or business, based on the gross selling price or gross value in money of the goods or properties sold, bartered, or exchanged. The tax shall be paid by the seller or transferor.

Section 108(A)¹⁴⁵ of the NIRC of 1997, as amended, imposes VAT on gross receipts derived from the sale or exchange of services. The same provision defines “sale or exchange of services” as the performance of all kinds of services in the Philippines for others for a fee, remuneration, or consideration, including those performed or rendered by commercial brokers and similar services, regardless of whether the performance thereof calls for the exercise or use of physical or mental faculties.

Here, respondent arrived at the assessment after vouching petitioner’s ARs Book. This procedure revealed that, under AR No. 00012 dated 07 February 2014,¹⁴⁶ petitioner received ₱26,000,000.00 from “Wire Int’l Holdings, Inc. FAO: [Revillame]” in full payment for one (1) unit of Lamborghini Aventador. Respondent also examined the Deed of Absolute Sale (DOAS) dated 16 September 2014¹⁴⁷ covering the sale of the same vehicle from Phanthaxay to Revillame for a total consideration of ₱44,000,000.00.

In its Protest against the FDDA,¹⁴⁸ petitioner explained that Phanthaxay originally imported the subject Lamborghini Aventador through petitioner pursuant to an indent arrangement. However, upon the arrival of the vehicle, Phanthaxay allegedly decided not to take the car and instead sold it to Revillame. For this reason, petitioner insisted that it merely acted as an indenter and conduit in the sale between Phanthaxay and Revillame.

Petitioner’s explanation that it merely acted as an indenter or conduit does not fully persuade the Court. Petitioner did not offer in evidence the Indent Order that allegedly showed the terms of the indent arrangement, the identity of the real buyer or principal, the scope of

¹⁴⁴ Supra at p. 28.

¹⁴⁵ Supra at pp. 28-29.

¹⁴⁶ BIR Records, Folder No. 3, p. 927.

¹⁴⁷ Id., Folder No. 1, p. 239.

¹⁴⁸ Exhibit “P-21”, supra at note 26, p. 507.

petitioner's role, and the absence of any compensation, commission, service fee, or other economic benefit in its favor. Petitioner likewise failed to present any agreement, correspondence, billing, accounting record, remittance document, or other competent evidence showing the precise nature of its participation in the transaction.

Nevertheless, petitioner's failure to substantiate its indenter or conduit theory does not automatically sustain respondent's assessment. Respondent still had the burden to establish, by adequate factual and evidentiary basis, that petitioner received taxable gross receipts or gross selling price corresponding to the amount assessed. Again, an assessment must rest on actual facts.¹⁴⁹ Although assessments enjoy the presumption of correctness, such presumption cannot rest on another presumption. An assessment cannot be based on mere inference, conjecture, or assumption, no matter how reasonable or logical the inference may appear.¹⁵⁰

The documentary trail shows that the assessed transaction involved the same Lamborghini Aventador. The DOAS¹⁵¹ identifies the vehicle as a Lamborghini Aventador with Chassis No. ZHW EC1 471C LA 01259, Motor No. L539-01572, and color yellow. These details match those reflected in the cancelled Vehicle Sales Invoice (VSI) No. 255¹⁵² issued by PGA Automobile, Inc. to petitioner, which identifies the same unit by Vehicle Identification No. (VIN) ZHW EC1 471C LA 01259, Model Lamborghini Aventador, Engine No. L539-01572, and exterior color yellow.

The DOAS¹⁵³ shows that the total consideration for the sale of the Lamborghini Aventador amounted to ₱44,000,000.00. Since respondent had already included the ₱26,000,000.00 portion evidenced by AR No. 00012¹⁵⁴ under the *first component* of the deficiency VAT assessment, respondent assessed only the remaining ₱18,000,000.00 

¹⁴⁹ See *Ortiz Memorial Chapel Inc., represented by Ronald Ortiz v. Commissioner of Internal Revenue*, supra at note 139, citing *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, supra at note 139.

¹⁵⁰ See *Collector of Internal Revenue (now Commissioner) v. Alberto D. Benipayo*, G.R. No. L-13656, 31 January 1962; *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, 11 September 1987.

¹⁵¹ Supra at note 147.

¹⁵² BIR Records, Folder No. 1, p. 243.

¹⁵³ Supra at note 147.

¹⁵⁴ Supra at note 146.

difference. To arrive at the tax base or the gross selling price not subjected to VAT, respondent divided this VAT-inclusive amount by 1.12, resulting in the undeclared sale of ₱16,071,428.57, computed as follows:

Total Consideration for the Sale of Lamborghini Aventador per DOAS between Phanthaxay and Revillame	₱44,000,000.00
Less: Amount Received by Petitioner from Revillame (already assessed under the First Component)	26,000,000.00
Difference (Amount Not Subjected to VAT)	18,000,000.00
Divided by: 1 + 12% VAT rate	1.12
Undeclared Sale of Lamborghini Aventador	₱16,071,428.57

However, the Court cannot uphold the assessment merely on the basis of the ₱18,000,000.00 difference between the consideration stated in the DOAS and the ₱26,000,000.00 covered by petitioner's AR No. 00012. There is no evidence on record showing that petitioner received the remaining ₱18,000,000.00, actually or constructively, during the assessed period. There is likewise no competent evidence showing that this amount represented payment for services performed or to be performed by petitioner, or that the amount ultimately redounded to petitioner's benefit.

The BIR Records also contain an LTO Certification dated 03 June 2014¹⁵⁵ showing that Phanthaxay was an Importer, or an individual authorized to import a motor vehicle for personal use. This LTO Certification further states that Phanthaxay's status as an Importer "shall be covered by a written undertaking not to sell the vehicle for a period of three (3) years from the time of importation." This document is material because it tends to show that Phanthaxay, and not petitioner, appeared as the person authorized to import the subject vehicle for personal use, subject to the undertaking stated in the LTO Certification.

To be sure, if Phanthaxay sold the imported motor vehicle within the restricted period or in a manner inconsistent with his status as an importer for personal use, such circumstance may have tax consequences against him. Depending on the surrounding facts, the sale may fall within the course of trade or business, in which case the BIR

may pursue the proper tax consequences against Phanthaxay. That matter, however, is for the BIR to determine and pursue against the proper taxpayer.

What is material in this case is whether respondent sufficiently established that petitioner received the ₱18,000,000.00 difference as taxable consideration, gross receipts, or remuneration during the assessed period. Respondent failed to do so.

The Court cannot infer petitioner's receipt of the ₱18,000,000.00 difference solely from the fact that petitioner received ₱26,000,000.00 under AR No. 00012¹⁵⁶ and that the DOAS¹⁵⁷ between Phanthaxay and Revillame stated a total consideration of ₱44,000,000.00. These documents may show petitioner's participation in the transaction to some extent, but they do not prove that petitioner received the remaining balance, that petitioner retained any portion thereof, or that the amount was paid to petitioner for services rendered as broker, indenter, facilitator, or conduit.

Respondent's theory therefore rests on an evidentiary gap. Section 106(A)¹⁵⁸ of the NIRC of 1997, as amended, requires proof of a sale, barter, or exchange of goods or properties by the taxpayer in the course of trade or business. Section 108(A),¹⁵⁹ on the other hand, requires proof of gross receipts derived from the sale or exchange of services for a fee, remuneration, or consideration. In either case, respondent had to establish that petitioner received or became entitled to receive the taxable amount assessed. The records do not show this with respect to the ₱18,000,000.00 difference.

Accordingly, despite that petitioner failed to fully substantiate its claim that it merely acted as an indenter or conduit, respondent likewise failed to establish that petitioner actually or constructively received the ₱18,000,000.00 difference, or that such amount redounded to petitioner's benefit as consideration for the unit sold or services rendered, if any, during the assessed period. The Court is therefore constrained to cancel the *third component* of respondent's assessment.

¹⁵⁶ Supra at note 146.

¹⁵⁷ Supra at note 147.

¹⁵⁸ Supra at p. 28.

¹⁵⁹ Supra at pp. 28-29.

for deficiency VAT on the alleged undeclared sale of the Lamborghini Aventador, with a tax base of ₱16,071,428.57.

FOURTH COMPONENT:

ASSESSMENT FOR DEFICIENCY
VALUE-ADDED TAX (VAT) ON
UNDECLARED SALES OF
UNACCOUNTED INVENTORY
DEEMED SOLD AMOUNTING TO
₱43,754,796.30

The *fourth component* concerns respondent's assessment of deficiency VAT on alleged undeclared sales arising from unaccounted inventory deemed sold amounting to ₱43,754,796.30.

Petitioner explains that the discrepancy resulted from accounting errors, such as the failure to reclassify entries and reverse work-in-progress items. Petitioner insists that these errors were not intended to understate income and that petitioner adequately explained the same. Citing the CTA *En Banc*'s ruling in *Agrinurture*, petitioner asserts that the underdeclaration of purchases alone does not justify the imposition of IT or VAT. Respondent must still prove the elements of taxable income, particularly the actual or constructive receipt of gain, which petitioner claims are absent in this case.

Respondent, on the other hand, explains that the discrepancy between the beginning inventory balance *per* trial balance and the amount *per* duly submitted inventory list amounted to ₱43,754,796.30. Respondent treated this discrepancy as undeclared sales. According to respondent, the discrepancy arose from petitioner's accountant's failure to update the GL by reclassifying the entry for "Bentley Inventory-Lifestyle" to "Cost of Sales-Unit Sales, Swapping of Tire of Unit Sold," and by reversing the "work-in-progress" entry. Respondent maintains that these circumstances confirm the inaccuracy of petitioner's records and indicate the possibility of undeclared sales.

We rule in favor of petitioner. 

It bears reiterating the settled rule that an assessment must be based on actual facts.¹⁶⁰ While tax assessments enjoy the presumption of correctness, such presumption cannot rest on another presumption. As earlier underscored, an assessment cannot rest on mere inference, conjecture, or assumption, no matter how reasonable or logical such inference may appear.¹⁶¹ To withstand judicial scrutiny, an assessment must have sufficient factual and evidentiary basis.

The Court recognizes that, in audit investigations, the government is not confined to the taxpayer's declarations alone and may resort to all available evidence and reasonable methods to determine taxable income, including the reconstruction of income.¹⁶² Thus, respondent may resort to indirect approaches, particularly when the taxpayer's records are inadequate, incomplete, or unreliable.

However, respondent must still establish that the indirect approach used is consistent with the best evidence obtainable rule sanctioned under Section 2.3¹⁶³ of Revenue Memorandum Circular (RMC) No. 23-2000.¹⁶⁴ Respondent must also show that the method reasonably leads to the conclusion that the amount assessed represents undeclared sales or taxable receipts. The use of an indirect method does not relieve respondent of the burden to demonstrate the factual connection between the discrepancy found and the tax assessed.

Here, respondent arrived at the alleged inventory deemed sold by merely obtaining the difference between petitioner's "Total Inventory Accounts *per* Trial Balance" as of 30 June 2014,¹⁶⁵ beginning balance 

¹⁶⁰ See *Ortiz Memorial Chapel Inc., represented by Ronald Ortiz v. Commissioner of Internal Revenue*, supra at note 139, citing *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, supra at note 139.

¹⁶¹ See *Collector of Internal Revenue (now Commissioner) v. Alberto D. Benipayo*, supra at note 150; *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, supra at note 150.

¹⁶² See *William Li Yao v. Collector of Internal Revenue*, G.R. No. L-11875, 28 December 1963.

¹⁶³ 2.3 *Assessment Based on Best Evidence Obtainable*. — An assessment based on best evidence obtainable is justified when any of the grounds provided by law is clearly established viz:

1. The report or records requested from the taxpayer are not forthcoming i.e. the records are lost; refusal of the taxpayer to submit such records;
2. The reports submitted are false, incomplete or erroneous.

¹⁶⁴ Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable."

¹⁶⁵ See Petitioner's "Inventory Accounts *Per* Trial Balance" (Beginning Balance Column) and "Trial Balance" (Beginning Balance Column), both as of 30 June 2014, BIR Records, Folder No. 2, pp. 317 and 297-300, respectively.

amounting to ₱45,061,432.83,¹⁶⁶ and petitioner's "Inventory List" as of 31 December 2013,¹⁶⁷ amounting to ₱1,306,636.53. Respondent then treated the resulting difference of ₱43,754,796.30 as undeclared sales subject to VAT, as shown below:

Total Inventory Accounts <i>per</i> Trial Balance as of 30 June 2014, Beginning Balance Column	₱45,061,432.83
Less: Inventory List as of 31 December 2013	1,306,636.53
Inventory Deemed Sold	₱43,754,796.30

The Court cannot sustain this approach.

First, both figures used by respondent are balances *per* books and the higher figure does not appear to be an audited amount. *Second*, respondent compared the two (2) figures that do not pertain to the same inventory classification. The "Total Inventory Accounts *per* Trial Balance" amounting to ₱45,061,432.83 corresponds largely to Lamborghini and Bentley units, and even includes work-in-progress. In contrast, the total amount *per* "Inventory List" of ₱1,306,636.53 corresponds only to "Parts and Accessories and Lifestyle." Notably, the Inventory List does not include Lamborghini and Bentley units.

Thus, respondent's comparison was not made using comparable categories. Respondent compared a broader inventory balance, which included motor vehicle inventory and work-in-progress, with an inventory list limited to parts, accessories, and lifestyle items. This mismatch substantially weakens respondent's conclusion that the entire

¹⁶⁶ Amounts were lifted from petitioner's "Inventory Accounts *Per* Trial Balance" (Beginning Balance Column) and "Trial Balance" (Beginning Balance Column), both as of 30 June 2014.

Account Title	Beginning Balance
Inventory-Units Lamborghini	₱364,812.07
Inventory-Parts & Accessories Lamborghini	9,740,930.77
Inventory-Lifestyle Lamborghini	5,081,160.90
Work-in-Progress Lamborghini	904,747.33
Inventory-Units Bentley	28,200,754.23
Inventory-Parts & Accessories Bentley	623,899.40
Inventory-Lifestyle Bentley	139,012.51
Work-in-Progress Bentley	6,115.62
Total	₱45,061,432.83

¹⁶⁷ See Petitioner's "Inventory List" as of 31 December 2013, BIR Records, Folder No. 2, pp. 210-212.

difference of ₱43,754,796.30 represented unaccounted inventory deemed sold.

Third, petitioner's audited balance sheet as of 31 December 2013¹⁶⁸ further shows an inventory balance of ₱1,675,654.00, consisting of materials and parts amounting to ₱1,306,637.00 (which matches the "Total Inventory Accounts *per* Inventory List" used by respondent) and work-in-progress amounting to ₱369,017.00.¹⁶⁹ While this circumstance may suggest that petitioner's books reflected inventory accounts exceeding the audited inventory balance by ₱43,754,796.30, the Court cannot automatically treat the difference as inventory deemed sold. Respondent had to establish, through competent evidence, that the difference more likely than not corresponded to unreported or undeclared sales during the assessment period.

Respondent failed to make this showing.

The Court notes that petitioner declared VATable sales aggregating ₱196,707,767.41¹⁷⁰ from 01 January 2014 to 30 June 2014, the assessed period. Before respondent could properly assess deficiency VAT on the alleged inventory deemed sold, respondent should have verified whether the units covered by the ₱43,754,796.30 difference had already formed part of the units sold and reported in petitioner's VAT returns, with the corresponding output VAT already remitted to the BIR. Otherwise, petitioner would be exposed to the risk of being assessed deficiency VAT on the same units despite having already declared the corresponding sales and paid the related VAT.

Stated differently, respondent jumped to the conclusion that the ₱43,754,796.30 difference represented inventory deemed sold without first completing the necessary audit steps to establish that the supposed inventory items were not already included in petitioner's reported VATable sales. Respondent's finding therefore lacks the required factual link between the alleged discrepancy and the conclusion that petitioner had undeclared sales subject to VAT. 

¹⁶⁸ Id., Folder 1, p. 229.

¹⁶⁹ See Note 5 (Inventories) under Notes to Financial Statements, id., p. 221.

¹⁷⁰ Supra at note 115.

The Court does not disregard respondent’s observation that petitioner’s records appeared inaccurate or incomplete, particularly in relation to the reclassification of “Bentley Inventory-Lifestyle” to “Cost of Sales-Unit Sales, Swapping of Tire of Unit Sold,” and the reversal of the “work-in-progress” entry. These circumstances may justify further audit inquiry or the use of indirect methods. However, they do not, by themselves, prove that petitioner realized undeclared sales amounting to ₱43,754,796.30. Respondent still had to trace the alleged inventory difference, identify the units or items involved, verify whether they had been sold, and determine whether petitioner failed to report the corresponding sales and output VAT.

In fact, the assessment may be disputed through a reasonableness test showing that, more likely than not, the ₱43,754,796.30 difference had already formed part of the units sold and reported in petitioner’s VAT returns. Applying the standard formula for cost of sales, petitioner’s beginning inventory *per trial balance* as of 30 June 2014 of ₱45,061,432.83, plus domestic purchases of goods other than capital goods *per VAT returns* of ₱174,400,805.09,¹⁷¹ less ending inventory *per trial balance* as of 30 June 2014 of ₱48,031,455.47,¹⁷² yields a derived cost of sales of ₱171,430,782.45. This amount is lower than, but closely approximates, the total cost of sales accounts *per trial balance* of 

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Month	Domestic Purchases of Goods Other than Capital Goods	Exhibit No.	Division Docket
January 2014	₱14,830,018.00	“P-5” (BIR Form No. 2550M)	p. 475
February 2014	72,287,732.75	“P-6” (BIR Form No. 2550M)	p. 477
March 2014	83,579,539.17	“P-7” (BIR Form No. 2550Q)	p. 479
April 2014	5,027.75	“P-8” (BIR Form No. 2550M)	p. 481
May 2014	4,605.16	“P-9” (BIR Form No. 2550M)	p. 483
June 2014	3,693,882.26	“P-10” (BIR Form No. 2550Q)	p. 485
Total	₱174,400,805.09		

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Amounts were lifted from petitioner’s “Inventory Accounts *Per Trial Balance*” (Ending Balance Column) and “Trial Balance” (Ending Balance Column), both as of 30 June 2014.

Account Title	Ending Balance
Inventory-Units Lamborghini	₱364,812.07
Inventory-Parts & Accessories Lamborghini	8,366,322.47
Inventory-Lifestyle Lamborghini	5,019,722.85
Work-in-Progress Lamborghini	1,344,198.80
Inventory-Units Bentley	28,200,754.23
Inventory-Units OPO/Trade-in	4,000,000.00
Inventory-Parts & Accessories Bentley	40,238.98
Inventory-Lifestyle Bentley	237,050.56
Work-in-Progress Bentley	458,355.51
Total	₱48,031,455.47

₱171,995,522.03.¹⁷³ Moreover, applying the 2014 cost ratio of 91.49%¹⁷⁴ to the declared VATable sales of ₱196,707,767.41 for the assessed period results in an estimated declared cost of sales of ₱179,967,936.40. The table below illustrates this reasonableness test.

Total Inventory Accounts <i>per</i> Trial Balance as of 30 June 2014, Beginning Balance Column	₱45,061,432.83
Add: Domestic Purchases of Goods Other than Capital Goods <i>per</i> VAT Returns for the Assessed Period	174,400,805.09
Less: Total Inventory Accounts <i>per</i> Trial Balance as of 30 June 2014, Ending Balance Column	48,031,455.47
Derived Cost of Sales as of 30 June 2014	₱171,430,782.45
Total Cost of Sales Accounts <i>per</i> Trial Balance as of 30 June 2014, Ending Balance Column	₱171,995,522.03
Estimated Declared Cost of Sales as of 30 June 2014	₱179,967,936.40

From the foregoing, since the derived cost of sales for the assessed period of ₱171,430,782.45 is fully covered by the estimated cost of sales based on the VAT returns, the Court may reasonably conclude that the ₱43,754,796.30 difference had already formed part of the units sold.

Accordingly, while respondent may resort to the best evidence obtainable and indirect approaches in appropriate cases, respondent failed to justify that the method used in this component reasonably

¹⁷³ Amounts were lifted from petitioner's "Trial Balance" (Ending Balance Column) as of 30 June 2014.

Account Title	Ending Balance
Cost of Sales-Units-Lambo	₱41,727,678.57
Cost of Sales-Lifestyle-Lambo	22,749.21
Cost of Sales- Lifestyle-ION-Lambo	43,257.50
Cost of Sales-Parts-Lambo	5,657,847.58
Cost of Sales-Parts-IDN-Lambo	1,258,079.13
Cost of Sales-Parts-Workshop-Lambo	438,007.39
Cost of Sales-Units-Bentley	85,523,214.28
Cost of Sales-Lifestyle-Bentley	2,845.43
Cost of Sales- Lifestyle-ION-Bentley	30,545.63
Cost of Sales-Parts-Bentley	36,759,755.27
Cost of Sales-Parts-IDN-Bentley	171,139.56
Cost of Sales-Parts-Workshop-Bentley	360,402.48
Total	₱171,995,522.03

¹⁷⁴ Amounts were lifted from petitioner's 2014 Audited Financial Statements (AFS).

$$\frac{\text{Cost of Sales } ₱256,516,884.00}{\text{Sales } 280,376,964.00} = 91.49\%$$

established undeclared sales. The assessment rested on an inappropriate comparison of non-equivalent inventory figures and an unsupported assumption that the resulting difference represented inventory deemed sold.

Simply put, respondent's finding lacks adequate factual and evidentiary support. Consequently, the *fourth component* of respondent's assessment for deficiency VAT on the alleged undeclared sales corresponding to unaccounted inventory deemed sold amounting to ₱43,754,796.30 must be cancelled.

FIFTH COMPONENT:

ASSESSMENT FOR DEFICIENCY
VALUE-ADDED TAX (VAT) ON
UNDECLARED OUTPUT VAT
AMOUNTING TO ₱17,560,200.75

The *fifth component* involves respondent's assessment of deficiency VAT on alleged undeclared output VAT amounting to ₱17,560,200.75.

Petitioner argues that the alleged deficiency resulted from bookkeeping errors committed by its previous accountant. Petitioner claims that the detailed reconciliation it submitted to the BIR during the administrative proceedings shows that there was no undeclared sale. Upon correction of the error, petitioner maintains that the alleged undeclared sales should be reduced to zero. Hence, petitioner argues that the VAT assessment should be cancelled and withdrawn.

Respondent counters that the assessment resulted from a comparison between the total output tax accounts *per* trial balance and the output tax declared for June 2014, which disclosed a discrepancy of ₱2,107,224.09. According to respondent, petitioner admitted that the discrepancy arose from its previous bookkeeper's failure to record various accounting entries, which petitioner sought to correct through its reconciliation. Respondent argues, however, that petitioner had already filed its books of accounts, GL, and tax returns with the BIR, and that these records had become final because petitioner did not amend them within the period provided under the NIRC of 1997, as amended. Respondent therefore maintains that petitioner may no longer correct



its previously filed VAT returns at this stage; otherwise, the law on the timely filing and payment of taxes would be rendered ineffective.

We sustain the assessment.

Section 6(A)¹⁷⁵ of the NIRC of 1997, as amended, allows a taxpayer to modify, change, or amend a return within three (3) years from filing, provided that no notice for audit or investigation of such return, statement, or declaration has in the meantime been actually served upon the taxpayer. Thus, after the actual service of a notice of audit or investigation, the taxpayer may no longer amend the return covered by the audit.

In this case, respondent arrived at the assessment by comparing the total output tax accounts *per* trial balance with the output tax declared by petitioner for June 2014. This comparison yielded a discrepancy of ₱2,107,224.09. Respondent then translated the discrepancy into undeclared sales of ₱17,560,200.75 by dividing the amount by the 12% VAT rate, computed as follows:

OUTPUT TAX - SALES LAMBO	₱2,134,580.38
OUTPUT TAX - PARTS LAMBO	5,202,457.30
OUTPUT TAX - SERV LAMBO	(71,887.13)
OUTPUT TAX - SALES BENTLEY	(6,243,357.53)
OUTPUT TAX - PARTS BENTLEY	1,156,240.99
OUTPUT TAX - SERV BENTLEY	(42,516.66)
Total Output Tax Accounts as of 30 June 2014	₱2,135,517.35
Less: Declared Output Tax for the Month of June 2014	28,293.26
Undeclared Output VAT	₱2,107,224.09
Divide by: VAT Rate	12%
Undeclared Sales from Undeclared Output VAT	₱17,560,200.75

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SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —

(A) Examination of Returns and Determination of Tax Due. — ...

...

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer. (Emphasis and underscoring supplied)

In its Protest against the FAN,¹⁷⁶ petitioner sought to refute the assessment by submitting a purported reconciliation. According to petitioner, once the adjustments for the alleged inadvertent errors are made and the correct entries are recorded, the computation should zero out. However, such reconciliation can hardly be considered a true reconciliation sufficient to cancel or withdraw the assessment. Instead of explaining the discrepancy between the total output tax accounts *per* trial balance and the output tax declared in petitioner's VAT return, the reconciliation merely showed the alleged corrected or "should be" amounts of the output tax accounts *per* trial balance and resulted in negative output tax figures, detailed as follows:

OUTPUT TAX - SALES LAMBO	P0.03
OUTPUT TAX - PARTS LAMBO	(89,856.82)
OUTPUT TAX - SERV LAMBO	(97,554.76)
OUTPUT TAX - SALES BENTLEY	4,851,428.56
OUTPUT TAX - PARTS BENTLEY	(4,862,330.84)
OUTPUT TAX - SERV BENTLEY	(15,459.57)
Total Output Tax Accounts as of 30 June 2014	(P213,773.40)
Less: Declared Output Tax for the Month of June 2014	28,293.26
Undeclared Output VAT	(P242,066.66)
Divided by VAT Rate	12%
Undeclared Sales from Undeclared Output VAT	(P2,017,222.17)

These results do not simply explain or eliminate the discrepancy found by respondent. Rather, they effectively suggest that petitioner's declared output tax for June 2014 was itself overstated or incorrect. If petitioner's own reconciliation were to be accepted, the necessary consequence would be to alter the output tax figure declared in petitioner's Second Quarterly VAT Return for 2014. This would, in effect, require an amendment of petitioner's VAT return.

Petitioner may not do so at this stage. Under Section 6(A)¹⁷⁷ of the NIRC of 1997, as amended, petitioner could no longer modify, change, or amend its VAT return after the actual service of the notice of audit or investigation. As correctly pointed out by respondent, the law would lose force if a taxpayer, after the commencement of audit and after

¹⁷⁶ Exhibit "P-18", *supra* at note 19, pp. 407-408.

¹⁷⁷ *Supra* at note 175.

respondent has already discovered a discrepancy, could defeat the assessment by submitting adjusted figures that would effectively revise the amounts previously declared in its VAT return.

The Court is mindful that a taxpayer may submit explanations, schedules, reconciliations, and supporting documents during audit or protest proceedings to clarify an assessment item. However, such submissions must merely explain or substantiate the taxpayer's existing declarations; they cannot operate as a prohibited amendment of a return after the commencement of audit or investigation. Here, petitioner's reconciliation does not merely support the output tax declared in its VAT return. It produces negative output tax and negative undeclared sales figures, thereby calling for a revision of the declared output tax itself.

Moreover, petitioner failed to explain, for each output tax account, the exact nature of the alleged error, the circumstances surrounding the error, the specific correcting entry required, and why the error should be treated as merely inadvertent. Petitioner likewise failed to support the reconciliation with competent and verifiable accounting records, such as journal vouchers, adjusting entries, GL details, subsidiary ledgers, SIs, ORs, VAT schedules, or other supporting documents that would allow respondent and this Court to trace and verify the alleged corrections.

Thus, petitioner's reconciliation does not overcome respondent's finding. On the contrary, the negative figures appearing therein undermine petitioner's position because they show that petitioner seeks not merely to explain the discrepancy, but to revise the output tax previously declared in its VAT return, which the law no longer allows after the commencement of audit.

Accordingly, petitioner failed to discharge its burden of proving that respondent erred in treating the discrepancy of ₱2,107,224.09 as undeclared output VAT. Consequently, the *fifth component* of respondent's assessment for deficiency VAT on the undeclared output VAT, with a tax base of ₱17,560,200.75, is sustained. 

SIXTH COMPONENT:

DISALLOWED INPUT TAX ON
CURRENT PURCHASES AMOUNTING
TO ₱20,652,441.81

The *sixth component* concerns respondent's disallowance of input tax on current purchases amounting to ₱20,652,441.81 due to alleged noncompliance with invoicing and substantiation requirements.

Petitioner maintains that compliant invoices and receipts fully support its input tax claims. Petitioner also relies on its SLS and the SLP submitted by its suppliers. Petitioner further asserts that it reported the purchases and paid the corresponding VAT. Thus, petitioner argues that the disallowance lacks basis and should be reversed.

Respondent counters that the examination of petitioner's books of accounts showed that the input taxes claimed on local purchases failed to comply with the invoicing and substantiation requirements under Sections 110(A)¹⁷⁸ and 113(A) and (B)¹⁷⁹ of the NIRC of 1997, as amended, and Section 4.110-8¹⁸⁰ of RR No. 16-2005.¹⁸¹ Respondent thus maintains that the amount of ₱20,652,441.81 claimed as credit against petitioner's output taxes should be disallowed.

We rule in favor of petitioner.

Section 228¹⁸² of the NIRC of 1997, as amended, requires that a taxpayer be informed in writing of the law and the facts on which an assessment is made; otherwise, the assessment shall be void. This requirement is not a mere procedural formality. It embodies the taxpayer's right to due process by enabling the taxpayer to intelligently

¹⁷⁸ Supra at note 89.

¹⁷⁹ Supra at note 90.

¹⁸⁰ Supra at note 91.

¹⁸¹ Supra at note 87.

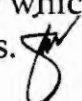
¹⁸² SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings[.] ...

... 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. (Emphasis and underscoring supplied)

protest the assessment, present relevant evidence, and address the actual basis of the BIR's findings.

In this case, the PAN,¹⁸³ FAN,¹⁸⁴ FDDA,¹⁸⁵ and Final Decision¹⁸⁶ consistently described the disallowance of input tax on current purchases amounting to ₱20,652,441.81 as arising from petitioner's alleged failure to comply with the invoicing requirements under Sections 110¹⁸⁷ and 113¹⁸⁸ of the NIRC of 1997, as amended. Thus, petitioner was made to understand that respondent disallowed the input tax because the supporting invoices or receipts were allegedly noncompliant.

However, an examination of Schedule 5,¹⁸⁹ referred to in the PAN, FAN, and FDDA and attached to the PAN, reveals a different basis. Schedule 5 does not show that respondent disallowed the input tax because the invoices or receipts failed to comply with the statutory invoicing requirements. Rather, the schedule shows that respondent disallowed the input tax corresponding to alleged overclaimed purchases determined by computing the difference between petitioner's reported purchases and the amounts reflected in third-party information (TPI), net of undeclared purchases.

This distinction matters. A disallowance based on noncompliant invoices or receipts differs substantially from a disallowance based on variance with TPI. The former requires an examination of the invoices or receipts themselves and a determination of whether they contain the information required by law and regulations. The latter requires disclosure of the nature, source, and reliability of the TPI, as well as the specific manner by which respondent compared such information with petitioner's records. 

¹⁸³ Exhibit "P-16"/Exhibit "R-3", supra at note 14.

¹⁸⁴ Exhibit "P-17", supra at note 17.

¹⁸⁵ Exhibit "P-20", supra at note 24.

¹⁸⁶ Exhibit "P-22"/Exhibit "R-6", supra at note 6.

¹⁸⁷ Supra at note 89.

¹⁸⁸ Supra at note 90.

¹⁸⁹ BIR Records, Folder No. 2, p. 370.

Pertinently, under Revenue Memorandum Order (RMO) No. 46-2004,¹⁹⁰ when an assessment is based on TPI, the investigating RO must prepare and send a confirmation request to the taxpayer that served as the source of the TPI. Alternatively, the investigating RO must coordinate with the RDO having jurisdiction over the TPI source for the preparation and issuance of the confirmation request. If the TPI source confirms, in its reply, the amounts reflected in the TPI, the investigating RO must obtain the TPI source's sworn statement attesting to the veracity of the data provided.

Verily, the aforesaid two (2) grounds for disallowance call for different defenses and different evidence.

Respondent's communicated basis was therefore inaccurate. By repeatedly describing the disallowance as one arising from noncompliance with invoicing requirements, respondent failed to fairly inform petitioner that the actual basis of the disallowance was the alleged discrepancy between petitioner's purchases and TPI. Worse, the records do not provide ample information on the source, nature, and particulars of the TPI used. Without such information, petitioner could not meaningfully verify the supposed discrepancy or refute the assessment with specificity.

The Court cannot uphold an assessment where the ground communicated to the taxpayer differs from the basis actually reflected in the supporting schedule. Due process requires more than a statement of a conclusion. Respondent must state the facts and the law relied upon with sufficient clarity to allow the taxpayer to understand and contest the assessment. An assessment that mischaracterizes the basis of the disallowance deprives the taxpayer of a fair opportunity to be heard on the actual issue.

The Supreme Court has consistently held that assessments issued in violation of the taxpayer's right to due process are void. In *Commissioner of Internal Revenue v. Avon Products Manufacturing,* 

¹⁹⁰

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.

Inc.,¹⁹¹ the Supreme Court emphasized that the BIR must strictly comply with the due process requirements under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99,¹⁹² as amended by RR No. 18-2013¹⁹³ and RR No. 22-2020.¹⁹⁴ The taxpayer must be informed of the factual and legal bases of the assessment; otherwise, the assessment cannot stand. The same principle applies here.

The Court does not rule that respondent may never rely on TPI in verifying a taxpayer's purchases and input tax claims. Respondent may use TPI in appropriate cases. However, if respondent relies on such information as basis for disallowance, respondent must adequately disclose the factual basis of the discrepancy and provide sufficient particulars to allow the taxpayer to respond. Respondent cannot state one ground in the assessment notices and rely on another ground in the supporting schedule.

Accordingly, the disallowance of input tax on current purchases amounting to ₱20,652,441.81 cannot be sustained. The PAN,¹⁹⁵ FAN,¹⁹⁶ FDDA,¹⁹⁷ and Final Decision¹⁹⁸ inaccurately characterized the basis of the disallowance as noncompliance with invoicing requirements, while Schedule 5¹⁹⁹ shows that the disallowance actually stemmed from discrepancies based on TPI. This inconsistency, coupled with the absence of ample information on the source and particulars of the TPI, violated petitioner's right to due process.

Consequently, the disallowance of input tax on current purchases amounting to ₱20,652,441.81 is cancelled.

SEVENTH COMPONENT:

DISALLOWED INPUT TAX CARRIED
OVER TO THE SUCCEEDING PERIOD
AMOUNTING TO ₱478,651.75



¹⁹¹ G.R. Nos. 201398-99, 03 October 2018.

¹⁹² Supra at note 99.

¹⁹³ Supra at note 100.

¹⁹⁴ Supra at note 101.

¹⁹⁵ Exhibit "P-16"/Exhibit "R-3", supra at note 14.

¹⁹⁶ Exhibit "P-17", supra at note 17.

¹⁹⁷ Exhibit "P-20", supra at note 24.

¹⁹⁸ Exhibit "P-22"/Exhibit "R-6", supra at note 6.

¹⁹⁹ Supra at note 189.

The *seventh and final component* involves respondent's disallowance of input tax carried over to the succeeding period amounting to ₱478,651.75.

Petitioner assails the disallowance for lack of legal and factual basis. Petitioner notes that the law allows the carry-over of excess input VAT, even if the excess input VAT arose from a previous year. Since petitioner did not claim the input tax as a credit against output tax during the period in question, petitioner argues that the amount remained valid for carry-over to the next quarter.

Respondent counters that a taxpayer may carry over input tax as creditable input tax for the next quarter only when the input tax exceeds the output tax. Since the assessment against petitioner resulted in a VAT deficiency, respondent maintains that petitioner no longer had excess input VAT that could be carried over as creditable input tax for the next quarter.

We sustain respondent's treatment of the excess input tax carried over to the succeeding period.

To be clear, the deduction of ₱478,651.75 from the allowable input VAT, pertaining to excess input tax carried over to the succeeding period, is not an assessment item. It is not, by itself, a disallowance pursuant to a tax assessment similar to a disallowance for noncompliance with invoicing requirements. Rather, respondent made the adjustment to preserve the proper computation of deficiency VAT for the period under assessment and to prevent the same input tax from being used twice.

Relevantly, in the case of *Intelligent Touch Corporation v. Commissioner of Internal Revenue*,²⁰⁰ the CTA *En Banc* ruled that excess input VAT is deducted from allowable input VAT not as a disallowance, but to remain faithful to the purpose of carrying over excess input VAT and its intended consequence: to benefit the taxpayer not in the current taxable period, but in a future taxable period. 

Under the Philippine VAT system, a taxpayer's output VAT may be reduced by allowable input VAT attributable to the taxable period. If the allowable input VAT exceeds the output VAT, the excess may be carried over to the succeeding quarter or quarters as creditable input tax.²⁰¹ Conversely, if the output VAT exceeds the allowable input VAT, the difference results in VAT payable or deficiency VAT, as the case may be.²⁰²

Here, the deficiency VAT assessment necessarily changes the VAT position of petitioner for the period in question. Since respondent determined that petitioner had deficiency VAT for the assessed period, the amount previously treated as excess input tax carried over to the succeeding period can no longer remain undisturbed in the computation. If respondent did not reduce the total allowable input tax by the excess input tax carried over to subsequent periods, a portion of the input tax that petitioner had already carried forward and could have utilized in the succeeding period would be applied or offset against the basic deficiency VAT for the assessed period. This would contradict the premise that the tax benefit from the excess input tax carried over redounds to the subsequent period, not to the period under assessment.

The adjustment therefore prevents a distortion in the deficiency VAT computation. It ensures that the input tax carried over to the succeeding period is not simultaneously treated as available to reduce the basic deficiency VAT for the assessed period. Otherwise, petitioner would obtain the benefit of the same input tax twice: *first*, as creditable input VAT carried over and utilized in the succeeding period; and *second*, as a reduction of the deficiency VAT assessed for the earlier period.

The Court also recognizes the practical consequences of a contrary ruling. If the Court were to refuse the adjustment and allow the

²⁰¹ SEC. 110. *Tax Credits.* —

...
(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112. (Emphasis and underscoring supplied)

²⁰² See *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, 11 February 2005.

excess input tax carried over to remain part of the allowable input tax for the assessed period, petitioner would have to amend its subsequent VAT returns to remove the excess input tax already utilized or carried forward in those later periods. This would impose an additional burden on petitioner and could expose petitioner to further BIR action if the subsequent returns are not correspondingly corrected.

A contrary ruling would likewise impose an unnecessary administrative burden on respondent. The BIR would have to monitor this Court's decisions and the taxpayer's succeeding VAT returns to ensure that excess input tax credits already applied against a deficiency assessment are not again utilized in subsequent periods. Such a result would complicate the administration of the VAT system and create avoidable risks of double benefit.

More importantly, if the Court were to allow the carry-over without first ascertaining that the excess input tax remained available and unused in the succeeding periods, petitioner could benefit twice from the same amount. Petitioner could enjoy the tax credit against output VAT in subsequent periods while also using the same amount to reduce or offset the deficiency VAT for the assessed period. This would prejudice the government and defeat the purpose of the carry-over mechanism.

Accordingly, respondent correctly reduced the total allowable input tax by the excess input tax carried over to the succeeding period amounting to ₱478,651.75. The adjustment is therefore sustained.

Having already addressed the seven components of respondent's assessment for deficiency VAT, We will now address the propriety of respondent's imposition of increments due to late remittance of output VAT on sales transactions within the assessed period, but belatedly declared in the second half of 2014, during the FDDA stage.

RESPONDENT'S IMPOSITION OF
INCREMENTS DUE TO LATE
REMITTANCE IS PROPER.



To recall, respondent initially assessed gross receipts not subjected to VAT in the total amount of ₱412,682,864.17 (see PAN²⁰³ and FAN²⁰⁴). After reinvestigation, respondent reduced the total amount of gross receipts not subjected to VAT from ₱412,682,864.17 to ₱122,652,541.91. Respondent found that some of the items, amounting to ₱240,599,361.41, pertained to undated VSIs that petitioner had already declared in 2013, with the corresponding VAT properly remitted. Respondent also found that other items, amounting to ₱49,430,960.85,²⁰⁵ were declared in the third and fourth quarters of 2014, although the vehicles had already been delivered and the corresponding VSIs had been issued during the first semester of 2014. Accordingly, respondent no longer treated these items as undeclared sales, but imposed the corresponding statutory increments for the late remittance of VAT.

Section 248(A)²⁰⁶ of the NIRC of 1997, as amended, imposes a twenty-five percent (25%) surcharge in case of failure to file any return and pay the tax due thereon on the date prescribed. Section 249(B)²⁰⁷ of the NIRC of 1997, as amended, likewise imposes interest on any unpaid amount of tax from the date prescribed for payment until full payment thereof. These additions are imposed by operation of law once the taxpayer fails to timely pay the tax due.

It is well-settled that the liability for VAT arises in the taxable period when the sale is made and the output VAT becomes due. A taxpayer's subsequent declaration and payment of the VAT in a later

²⁰³ Exhibit "P-16"/Exhibit "R-3", supra at note 14.

²⁰⁴ Exhibit "P-17", supra at note 17.

²⁰⁵ Supra at note 120.

²⁰⁶ SEC. 248. *Civil Penalties.* —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

²⁰⁷ SEC. 249. *Interest.* —

... (B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

taxable period do not extinguish the surcharge and interest that accrued by reason of the failure to timely report and remit the tax. The statutory additions attach upon late payment and remain collectible notwithstanding eventual remittance of the basic VAT.

Here, petitioner does not dispute that the amount of ₱49,430,960.85²⁰⁸ was declared only in the third and fourth quarters of 2014. The records further show that the underlying transactions pertained to items delivered, and covered by VSIs issued, during the first half of 2014, which is the period under assessment. Thus, even if respondent properly cancelled the basic deficiency VAT on these items after verifying that petitioner eventually declared them and remitted the corresponding VAT, respondent correctly imposed the statutory interest arising from petitioner's late remittance.

The Court also finds no violation of petitioner's right to due process. Petitioner cannot claim lack of notice or surprise as to the late remittance of VAT on these transactions. Respondent confirmed only during reinvestigation, after petitioner submitted additional supporting documents, that the ₱49,430,960.85 had already been declared in the third and fourth quarters of 2014. This necessarily showed that petitioner had already remitted the VAT thereon, albeit in later taxable periods. In the FDDA,²⁰⁹ respondent accepted this explanation after examining petitioner's supporting documents, and consequently cancelled the corresponding portion of the basic deficiency VAT assessment.

Given these circumstances, respondent could not have been reasonably expected to inform petitioner of the late remittance finding at the PAN or FAN stage. Respondent arrived at this finding only during reinvestigation, after petitioner submitted documents showing that the transactions were declared in the third and fourth quarters of 2014. Since petitioner had the opportunity to explain the transactions, submit supporting documents, and secure the cancellation of the basic deficiency VAT on the ₱49,430,960.85,²¹⁰ petitioner was accorded due process.

²⁰⁸ Supra at note 120.

²⁰⁹ Exhibit "P-20", supra at note 24.

²¹⁰ Supra at note 120.

In other words, respondent did not change the nature of the assessment in a manner that deprived petitioner of the opportunity to respond. Instead, respondent reduced the assessment after considering petitioner's own evidence and imposed only the statutory increments that necessarily flowed from petitioner's belated declaration and remittance of VAT. It is also worth noting that petitioner did not refute respondent's finding that the items sold in connection with the transactions involved had already been delivered and the corresponding VSIs had been issued during the first half of 2014. Thus, respondent's determination of the taxable event that triggered the imposition of VAT and the prescribed time for remittance of VAT will prevail.

However, this Court cannot uphold the twenty-five percent (25%) surcharge imposed on the late remittance of VAT on sales transactions aggregating ₱49,430,960.85, considering that petitioner had already filed the VAT returns and paid the VAT due for the first and second quarters of 2014.

Under Section 248(A)²¹¹ of the NIRC of 1997, as amended, the 25% surcharge shall be imposed only in the following cases: **(1) failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed;** or (2) unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or (3) failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessments; or (4) failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of the tax due for which no return is required to be filed, on or before the date prescribed for its payment.

Relevantly, RMC No. 43-2022²¹² clarified that the 25% surcharge shall not be imposed on an amendment of a tax return if the taxpayer filed the initial tax return on or before the prescribed due date. On the other hand, the 25% surcharge shall be imposed on a tax deficiency found during audit if the particular tax return under audit was filed beyond the prescribed period or due date. 

²¹¹ Supra at note 206.

²¹² Non-Imposition of Surcharge on Amended Tax Returns.

Clearly, the imposition of the 25% surcharge under the present circumstances could only fall under the first instance, *i.e.*, failure to file any return and pay the tax due thereon on the date prescribed. However, petitioner timely filed its VAT returns for the first and second quarters of 2014 and paid the VAT due thereon. The belated declaration of certain sales transactions in the third and fourth quarters of 2014 may warrant the imposition of interest on the late remittance of VAT, but it does not justify the imposition of the 25% surcharge where petitioner did not fail to file the relevant returns within the prescribed period.

Accordingly, respondent's imposition of the 25% surcharge is improper and must be cancelled. Only the imposition of interest on the late remittance of output VAT on sales transactions within the assessed period but belatedly declared in the third and fourth quarters of 2014 is sustained.

PETITIONER IS NOT LIABLE FOR
COMPROMISE PENALTY.

Respondent imposed on petitioner a compromise penalty in the amount of ₱85,000.00. The Court finds no legal basis for such imposition.

Under RMO No. 01-90,²¹³ as amended by RMO No. 07-2015,²¹⁴ compromise penalties are merely amounts suggested in settlement of criminal liability. They may not be imposed or exacted from a taxpayer who refuses to pay them.

It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay a compromise penalty. By its very nature, a compromise penalty implies a mutual agreement between the parties as to the matter compromised. Thus, the choice of whether to pay the compromise penalty distinctly belongs to the taxpayer.²¹⁵ Absent any showing that petitioner consented to the compromise penalty, its imposition must be

²¹³ Amendments to the Provisions of a "Revised Schedule of Compromise Penalties" for Internal Revenue Violations as Prescribed in RMO 26-86.

²¹⁴ The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

²¹⁵ *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 & L-12932, 31 March 1962.

deleted. The imposition of a compromise penalty without the taxpayer's conformity is illegal and unauthorized.²¹⁶

In this case, the records do not show that petitioner consented to the imposition of the compromise penalty. In the absence of such consent, respondent's assessment of the compromise penalty in the amount of ₱85,000.00 cannot be sustained.

COMPUTATION OF PETITIONER'S
LIABILITY FOR DEFICIENCY VAT

In fine, petitioner is liable for *reduced* basic deficiency VAT in the amount of **₱19,909,529.12** and interest on the late remittance of output VAT on sales transactions within the assessed period but belatedly declared in the third and fourth quarters of 2014 amounting to **₱444,923.20**, computed as follows:

Component	Adjusted Computation	Amount
(a)	VATable Sales/Receipts per VAT Returns	₱196,707,767.41 ²¹⁷
<i>First</i>	Gross Receipts Not Subjected to VAT	122,652,541.91
<i>Second</i>	Undeclared Sales from Trade-In Units Deemed Sold	25,700,000.00
<i>Third</i>	Undeclared Sales of Lamborghini Aventador	[cancelled]
<i>Fourth</i>	Undeclared Sales from Unaccounted Inventory	[cancelled]
<i>Fifth</i>	Undeclared Sales from Undeclared Output Tax	17,560,200.75
(b)	Total Additional Gross Receipts Subjected to VAT	₱165,912,742.66
(c) = (a) + (b)	Gross Receipts Subjected to VAT	₱362,620,510.07
(d) = (c) x 12%	Output VAT	₱43,514,461.21
(d)	Input VAT on Current Purchases	₱21,153,159.43 ²¹⁸
<i>Sixth</i>	Disallowed Input Taxes on Local Purchases	[cancelled]
<i>Seventh</i>	Disallowed Input Tax Carried Over to Succeeding Period	478,651.75
(e)	Total Disallowed Input VAT	₱478,651.75
(f) = (d) - (e)	Net Allowed Input VAT	₱20,674,507.68
(g) = (d) - (f)	Output VAT Due	₱22,839,953.53

²¹⁶ *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals*, G.R. No. L-35266, 21 January 1991.

²¹⁷ *Supra* at note 115.

²¹⁸ *Supra* at note 116.

Component	Adjusted Computation	Amount
(h)	VAT Payments	2,930,424.41 ²¹⁹
(i) = (g) - (h)	Adjusted Basic Deficiency Output VAT Due	₱19,909,529.12
(m)	Interest up to Date of Remittance	₱444,923.20 ²²⁰

Notwithstanding the foregoing determination that petitioner is liable for deficiency VAT, the Court must proceed to determine whether the prescriptive period for respondent to collect the assessed deficiency has already expired. Although petitioner did not raise prescription as an issue, the Court must resolve it because prescription directly affects the enforceability of the tax liability. The Court cannot properly order petitioner to pay the amount computed above if respondent has already lost the right to collect it by prescription.

In the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*,²²¹ the Supreme Court held that one of the ways by which the CIR may initiate a judicial action for collection of a tax is through the filing of an answer to the taxpayer's petition for review wherein payment of the tax is prayed for so as to stop the running of the prescriptive period in cases where the CIR issued an assessment and the taxpayer appealed the same to the CTA, viz:

...

Unlike summary administrative remedies, **the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment.** Sections 318 and 319(a) of the 1977 NIRC expressly allowed the institution of court proceedings for collection of taxes without assessment within five years from the filing of the tax return and 10 years from the discovery of falsity, fraud, or omission, respectively.

A judicial action for the collection of a tax is begun: (a) by the filing of a complaint with the court of competent jurisdiction, or (b) where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.

From respondents' filing of their excise tax returns in the years 1992 to 1997 until the lapse of the five-year prescriptive period under 

²¹⁹ Supra at note 117.

²²⁰ Supra at note 120.

²²¹ G.R. Nos. 197945 & 204119-20, 09 July 2018; Citations omitted, emphasis in the original text and supplied, underscoring supplied.

Section 318 of the 1977 NIRC in the years 1997 to 2002, **petitioner did not institute any judicial action for collection of tax as** **aforedescribed.** Instead, petitioner relied solely on summary administrative remedies by issuing the collection letters and warrants of garnishment and distraint and/or levy without prior assessment against respondents. Sifting through records, **it can be said that petitioner's earliest attempts to judicially enforce collection of respondents' alleged deficiency excise taxes were his Answers to respondents' Petitions for Review filed before the CTA in Case Nos. 5657, 5728, and 6547 on August 6, 1998, March 2, 1999, and November 29, 2002, respectively.**

Verily, in a long line of jurisprudence, **the Court deemed the filing of such pleadings as effective tax collection suits so as to stop the running of the prescriptive period** in cases where: (a) the CIR issued an assessment and the taxpayer appealed the same to the CTA; (b) the CIR filed the answer praying for the payment of tax within five years after the issuance of the assessment; and (c) at the time of its filing, jurisdiction over judicial actions for collection of internal revenue taxes was vested in the CTA, not in the regular courts.

...

Considering that herein respondent's Answer²²² is what crucially suspended the running of the prescriptive period for collection, and in that pleading, respondent expressly prayed that the Court order petitioner to pay the deficiency VAT for the taxable period from 01 January 2014 to 30 June 2014, the Court must first determine whether respondent may still lawfully exercise the right to collect the assessed deficiency VAT.

THE PRESCRIPTIVE PERIODS UNDER
SECTIONS 203, 222 AND 223 OF THE
NATIONAL INTERNAL REVENUE
CODE (NIRC) OF 1997, AS AMENDED.

Section 203 of the NIRC of 1997, as amended, provides for the prescriptive period in the assessment and collection of internal revenue taxes:



...

SEC. 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

...

In *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*²²³ (**QL Development**), the Supreme Court, citing the case of *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*²²⁴ (**United Salvage**), ruled that in cases of valid assessment issued within the three (3)-year period, the BIR has another three (3) years to collect the taxes reckoning from the date the assessment notice had been released, mailed or sent to the taxpayer:

...

The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of *Batas Pambansa Blg. 700*. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. **However, when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.**²²⁵

...

However, where the assessment itself alleges a false or fraudulent return with intent to evade tax, Section 222 extends the prescriptive period, as follows:

²²³ G.R. No. 258947, 29 March 2022; Emphasis and italics in the original text.

²²⁴ G.R. No. 197515, 02 July 2014.

²²⁵ Citation omitted, italics in the original text and emphasis supplied.

...

The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return. Indeed, Section 222 of the NIRC, as amended, provides:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —

(a) In the case of a **false or fraudulent return with intent to evade tax or of failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

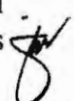
...

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in **paragraph (a) hereof** may be collected by distraint or levy or by a proceeding in court **within five (5) years** following the assessment of the tax.²²⁶

...

Meanwhile, Section 223 of the NIRC of 1997, as amended, provides for instances when the running of the statute of limitation may be suspended, to wit:

...

SEC. 223. Suspension of Running of Statute of Limitations. — The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided, that*, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his 

²²⁶

See Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc., supra at note 223; Emphasis and italics in the original text.

household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.²²⁷

...

These grounds are limitative and must be strictly construed, being exceptions to a statute designed to protect taxpayers from stale claims.²²⁸ Pertinently, the mere characterization of a protest as one for "reinvestigation" does not, by itself, suspend the running of the prescriptive period; the request must have been granted by the CIR or the latter's duly authorized representative, and the burden of proving that the request was granted rests on the CIR.²²⁹

THE ORDINARY THREE (3)-YEAR
PRESCRIPTIVE PERIOD TO COLLECT
APPLIES TO THE SUBJECT VALUE-
ADDED TAX (VAT) ASSESSMENT.

Nothing in the PAN,²³⁰ FAN,²³¹ FDDA,²³² or Final Decision²³³ under review shows that respondent invoked the presumption of *prima facie* fraud in assessing petitioner for deficiency VAT. Accordingly, the extraordinary 10-year assessment period and five (5)-year collection period under Section 222(a)²³⁴ of the NIRC of 1997, as amended, do not apply to the subject deficiency VAT assessment. Instead, the ordinary three (3)-year prescriptive periods under Section 203²³⁵ of the NIRC of 1997, as amended, govern respondent's authority to assess and collect the deficiency VAT at issue in this case. 

²²⁷ Emphasis supplied and italics in the original text.

²²⁸ *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*, G.R. No. 259729, 17 November 2025.

²²⁹ *China Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 172509, 04 February 2015; *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 139736, 17 October 2005.

²³⁰ Exhibit "P-16"/Exhibit "R-3", supra at note 14.

²³¹ Exhibit "P-17", supra at note 17.

²³² Exhibit "P-20", supra at note 24.

²³³ Exhibit "P-22"/Exhibit "R-6", supra at note 6.

²³⁴ **SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.** –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

²³⁵ Supra at p. 69.

THE RELEVANT DATES ARE
ESTABLISHED THROUGH THE
PARTIES JOINT STIPULATION OF
FACTS AND THE EVIDENCE ON
RECORD.

The following dates are material to the computation of the prescriptive period:

Respondent issued the FAN²³⁶ (with ANs²³⁷) on 27 June 2016. Petitioner received the same on 01 July 2019 and timely filed a Request for Reinvestigation (Protest against the FAN)²³⁸ on 29 July 2016. Respondent received such protest on the same date.²³⁹

Thereafter, respondent, through RD Geraldino, issued the FDDA²⁴⁰ on 19 June 2017. Petitioner received the same on 21 June 2017²⁴¹ and timely elevated it to respondent, himself or herself, via a Request for Reconsideration (Protest against the FDDA)²⁴² on 20 July 2017.

Finally, on 20 January 2023, respondent issued the Final Decision²⁴³ under review, which affirmed the FDDA in its entirety.

PETITIONER'S REQUEST FOR
REINVESTIGATION (PROTEST
AGAINST THE FORMAL ASSESSMENT
NOTICE [FAN]) TEMPORARILY
TOLLED THE PRESCRIPTIVE PERIOD
TO COLLECT.

Section 223²⁴⁴ of the NIRC of 1997, as amended, quoted above, provides that a taxpayer's request for reinvestigation suspends the running of the prescriptive period for collection when the CIR grants the request.

²³⁶ Exhibit "P-17", supra at note 17.

²³⁷ Exhibit "R-4", supra at note 16.

²³⁸ Exhibit "P-18", supra at note 19.

²³⁹ Id.

²⁴⁰ Exhibit "P-20", supra at note 24.

²⁴¹ Par. 3.7, III. Statement of the Facts and of the Case, JSFI, supra at note 46, p. 359.

²⁴² Exhibit "P-21", supra at note 26.

²⁴³ Exhibit "P-22"/Exhibit "R-6", supra at note 6.

²⁴⁴ Supra at pp. 70-71.

The records establish that petitioner filed a Request for Reinvestigation (Protest against the FAN) on **29 July 2016**.²⁴⁵ The parties likewise stipulated that the BIR, through the Letter dated 22 August 2016²⁴⁶ signed by RD Amora, informed petitioner that such request had been granted and petitioner was required to submit all relevant supporting documents within 60 days from the filing thereof. Besides, the said Letter expressly states "the entire tax docket, together with [petitioner's] protest, will be forwarded to the VAT Audit Section, Assessment Division, ... for re-evaluation and re-investigation." This affirmative act effectively granted petitioner's Request for Reinvestigation (Protest against the FAN).

Petitioner, thereafter, timely filed its Supplemental Protest²⁴⁷ on 27 September 2016 and submitted additional supporting documents for the BIR's consideration. Respondent, acting through RD Geraldino, subsequently issued the FDDA²⁴⁸ (with Amended ANs²⁴⁹) on 19 June 2017. In the FDDA, respondent expressly considered petitioner's Request for Reinvestigation (Protest against the FAN)²⁵⁰ and Supplemental Protest and substantially reduced the assessed deficiency VAT. These circumstances confirm that respondent granted the request and conducted an actual reinvestigation of the assessment.

In *Bank of the Philippine Islands v. Commissioner of Internal Revenue*,²⁵¹ the Supreme Court explained that the CIR need not expressly grant a request for reinvestigation. The Court may infer the grant from the acts of the CIR or authorized BIR officials in response to the taxpayer's request. The actual conduct of a reinvestigation and the resulting issuance of a reduced or amended assessment constitute circumstances showing that the BIR granted the request. Accordingly, the substantial reduction of the original assessment in the FDDA further demonstrates that respondent acted favorably on petitioner's Request for Reinvestigation (Protest against the FAN).

Indeed, the law prescribing a limitation of actions for the collection of taxes is beneficial both to the State and to its citizens; to

²⁴⁵ Exhibit "P-18", supra at note 19.

²⁴⁶ Supra at note 21.

²⁴⁷ Exhibit "P-19", supra at note 110.

²⁴⁸ Exhibit "P-20", supra at note 24.

²⁴⁹ Exhibit "R-5", supra at note 23.

²⁵⁰ Exhibit "P-21", supra at note 26.

²⁵¹ Supra at note 229.

the State because tax officers would be obliged to act promptly in the making of assessment or collection, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens.²⁵² The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer.²⁵³

Thus, petitioner's Request for Reinvestigation (Protest against the FAN)²⁵⁴ temporarily suspended the running of the prescriptive period for collection beginning on **22 August 2016**, when respondent effectively granted the request through the letter²⁵⁵ directing the re-evaluation and reinvestigation of the assessment. The suspension continued until respondent completed the reinvestigation and issued the FDDA²⁵⁶ (with Amended ANs²⁵⁷) on **19 June 2017**. This interval covered **301 days**.

Apart from the suspension arising from the granted Request for Reinvestigation, other circumstances may have further suspended the running of the prescriptive period for collection. The Court must therefore examine these circumstances before determining whether respondent timely exercised the right to collect the assessed deficiency VAT.

EFFECT OF THE COVID-19 PANDEMIC
ON RESPONDENT'S PRESCRIPTIVE
PERIOD TO COLLECT

Pursuant to Section 223²⁵⁸ of the NIRC of 1997, as amended, by operation of law, the original three (3)-year prescriptive period may be suspended during a period where respondent or the authorized representative is prohibited from making the assessment and for 60 days



²⁵² See *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, id.

²⁵³ Id.

²⁵⁴ Exhibit "P-18", supra at note 19.

²⁵⁵ Supra at note 21.

²⁵⁶ Exhibit "P-20", supra at note 24.

²⁵⁷ Exhibit "R-5", supra at note 23.

²⁵⁸ Supra at p. 70.

thereafter. In this regard, Section 4(z)²⁵⁹ of RA 11469,²⁶⁰ which declared a national emergency due to the Coronavirus Disease 2019 (COVID-19) pandemic, and the subsequent issuance of RR Nos. 11-2020²⁶¹ and 12-2020,²⁶² must be taken into account. These regulations excluded from the computation of prescriptive periods the days when affected areas were under Enhanced Community Quarantine (ECQ) or Modified Enhanced Community Quarantine (MECQ), recognizing that the BIR (specifically, RevReg No. 8-Makati City, which conducted the audit, and respondent's National Office,²⁶³ where the request for reconsideration was pending) could not perform its audit, assessment, or collection functions during such periods. Accordingly, in computing the prescriptive period to collect from 2020 to 2022, the following restrictive quarantine periods imposed in the National Capital Region (NCR) must be considered:

Dates	Imposed Quarantine Restriction	Number of days	COVID-19-related Issuances
01 June 2020 to 15 June 2020	GCQ	15	Inter-Agency Task Force (IATF) Resolution No. 40, 27 May 2020
16 June 2020 to 30 June 2020	GCQ	15	IATF Resolution No. 46-A, 15 June 2020
01 July 2020 to 15 July 2020	GCQ	15	IATF Resolution No. 50-A, 29 June 2020
16 July 2020 to 31 July 2020	GCQ	16	IATF Resolution No. 55-A, 14 July 2020
01 August 2020 to 03 August 2020	GCQ	3	IATF Resolution No. 60-A, 30 July 2020

²⁵⁹ Section 4. *Authorized Powers.* - Pursuant to Article VI, section 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:

...

(z) Move statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine[.]

²⁶⁰ AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECIDED NATIONAL POLICY AND FOR OTHER PURPOSES.

²⁶¹ Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

²⁶² Amends Revenue Regulations No. 10-2020, as amended by Revenue Regulations No. 11-2020, relative to the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

²⁶³ Situated at BIR National Office Building, Senator Miriam Defensor-Santiago Avenue, Diliman, Quezon City.

Dates	Imposed Quarantine Restriction	Number of days	COVID-19-related Issuances
04 August 2020 to 18 August 2020	MECQ	15	Memorandum from the Executive Secretary dated 03 August 2020
19 August 2020 to 31 August 2020	GCQ	13	IATF Resolution No. 64, 17 August 2020
01 September 2020 to 30 September 2020	GCQ	30	IATF Resolution No. 66, 27 August 2020
01 October 2020 to 31 October 2020	GCQ	31	IATF Resolution No. 75-A, 28 September 2020
01 November 2020 to 30 November 2020	GCQ	30	IATF Resolution No. 81, 26 October 2020
01 December 2020 to 31 December 2020	GCQ	31	Memorandum from the Executive Secretary from 01 December 2020
01 January 2021 to 31 January 2021	GCQ	31	Memorandum from the Executive Secretary from 01 January 2021
01 February 2021 to 28 February 2021	GCQ	28	Memorandum from the Executive Secretary from 29 January 2021
01 March 2021 to 28 March 2021	GCQ	28	Memorandum from the Executive Secretary from 27 February 2021
29 March 2021 to 30 April 2021	ECQ/MECQ	33	Memorandum from the Executive Secretary from 27 March 2021; IATF-EID Resolution No. 108-A, 04 April 2021; IATF-EID Resolution No. 109-A, 10 April 2021
01 May 2021 to 14 May 2021	MECQ	14	IATF-EID Resolution No. 113-A, 29 April 2021
15 May 2021 to 31 May 2021	GCQ	17	IATF-EID Resolution No. 115-A, 13 May 2021
01 June 2021 to 30 June 2021	GCQ	30	IATF-EID Resolution No. 118-A, 31 May 2021; IATF-EID Resolution No. 121, 14 June 2021
01 July 2021 to 31 July 2021	GCQ	31	IATF-EID Resolution No. 124, s. 2021, 30 June 2021; IATF-EID Resolution No. 127-E, 15 July 2021
01 August 2021 to 05 August 2021	GCQ	5	IATF-EID Resolution No. 130-A, 29 July 2021
06 August 2021 to 20 August 2021	ECQ	15	
21 August 2021 to 31 August 2021	MECQ	11	IATF-EID Resolution No. 134, 19 August 2021
01 September 2021 to 07 September 2021		7	IATF-EID Resolution No. 135-A, 26 August 2021
08 September 2021 to 15 September 2021		8	IATF-EID Resolution No. 137, 07 September 2021
16 September 2021 to 30 September 2021	GCQ	15	IATF-EID Resolution No. 136-F, 06 September 2021
16 September 2021 to 15 March 2022	Alert Levels 4, 3, 2 and 1 ²⁶⁴	181	Guidelines on the Pilot Implementation of Alert Levels System for COVID-19 Response in the National Capital Region, 13 September 2021; IATF-EID Resolution No. 141-A, 30 September 2021; IATF-EID Resolution No. 143-A, 14 October 2021

²⁶⁴ The highest Alert Level imposed in Metro Manila was Alert Level 4, during which government agencies, such as the BIR, were already required to be fully operational.

From the foregoing tabulation, aside from 16 March 2020 to 31 May 2020 *per* RMC No. 136-2020,²⁶⁵ NCR was also under: (1) MECQ from 04 August 2020 to 18 August 2020 for **fifteen (15) days**; (2) ECQ/MECQ from 29 March 2021 to 14 May 2021 for **forty-seven (47) days**; and (3) ECQ/MECQ from 06 August 2021 to 15 September 2021 for **forty-one (41) days**.

Pursuant to RR Nos. 11-2020²⁶⁶ and 12-2020,²⁶⁷ the Court must add 60 days to each of these quarantine periods. Accordingly, these periods suspended the running of the prescriptive period for collection for an aggregate of **283 days**.²⁶⁸ When combined with the 137-day suspension recognized under RMC No. 136-2020,²⁶⁹ a total of **420 days** (*i.e.*, 137 days *per* RMC No. 136-2020 and 283 days *per* RR Nos. 11-2020 and 12-2020) must be excluded in computing the prescriptive period for collection.

In sum, applying the ordinary three (3)-year period, as adjusted for the 301-day suspension resulting from petitioner’s granted Request for Reinvestigation (Protest against the FAN)²⁷⁰ and the 420-day suspension arising from the COVID-19 emergency issuances, the computation of the prescriptive period to collect the deficiency VAT at issue is as follows:

Date	Event
27 June 2016	Issue date of the FAN
22 August 2016	Approval of the Request for Reinvestigation (Protest against the FAN)
19 June 2017	Issue date of the FDDA
27 June 2019	End of the three (3)-year prescriptive period to collect after the issuance of the FAN

²⁶⁵ Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020.
²⁶⁶ Supra at note 261.
²⁶⁷ Supra at note 262.
²⁶⁸

04 August 2020 to 18 August 2020	15	+	60	=	75
29 March 2021 to 14 May 2021	47	+	60	=	107
06 August 2021 to 15 September 2021	41	+	60	=	101
Total					283

²⁶⁹ Supra at note 265.
²⁷⁰ Exhibit “P-18”, supra at note 19.

Date	Event
23 April 2020 ²⁷¹	End of the three (3)-year prescriptive period to collect after considering the 301-day suspension resulting from petitioner’s granted Request for Reinvestigation (Protest against the FAN)
17 June 2021 ²⁷²	End of the three (3)-year prescriptive period to collect after considering the 420-day suspension due to COVID-19 emergency issuances
15 May 2023	Respondent’s filing of his or her Answer ²⁷³ demanding the payment of the deficiency VAT.

QL Development instructs that the BIR validly commences collection only through distraint, levy, or a judicial proceeding. The judicial remedy may take the form of either an independent action for collection or, when the taxpayer has appealed the assessment to this Court, the filing of an answer that expressly prays for payment of the assessed tax.

In this case, nothing in the case records, including the BIR Records, shows that respondent issued and served upon petitioner a Warrant of Distraint and/or Levy (WDL) or availed of any other summary remedy to collect the deficiency VAT at issue. Thus, respondent undertook only one act of collection: the filing of the Answer before this Court on 15 May 2023, in which respondent prayed that the Court order petitioner to pay the assessed deficiency VAT.

Moreover, respondent issued the Final Decision²⁷⁴ under review only on 20 January 2023. This date marked the earliest point at which respondent could validly pursue collection because, as the Supreme

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Last day of period to collect	27 June 2019
Add: COVID-19 related suspension	301 days
Last day of period to collect after suspension due to grant of reinvestigation	23 April 2020

272

Last day of period to collect after suspension due to grant of reinvestigation	23 April 2020
Add: COVID-19 related suspension	420 days
Last day of period to collect after COVID-19 related suspension	17 June 2021

273 Supra at note 35.
274 Exhibit “P-22”/Exhibit “R-6”, supra at note 6.

Court categorically held in *Light Rail Transit Authority v. Bureau of Internal Revenue*, represented by the Commissioner of Internal Revenue,²⁷⁵ a WDL issued during the pendency of an administrative appeal is void.

Unfortunately, by 20 January 2023, respondent's right to collect had already prescribed. As earlier illustrated, after accounting for the 301-day suspension resulting from petitioner's granted Request for Reinvestigation (Protest against the FAN)²⁷⁶ and the additional 420-day suspension arising from the COVID-19 emergency issuances, the three (3)-year prescriptive period for collection ended on 17 June 2021.

Respondent's delay in resolving the administrative appeal and issuing the Final Decision therefore allowed the prescriptive period to lapse. Indeed, by the time respondent filed the Answer on 15 May 2023, the right to collect had already been barred by prescription for approximately one (1) year, eleven (11) months and seven (7) days.

In the recent case of *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*²⁷⁷ (**Standard Insurance**), the Supreme Court emphasized that the statute of limitations on tax collection does not constitute a mere technical defense. Rather, it confers a substantial right upon the taxpayer. Once the government allows the prescriptive period to lapse through its inaction, it loses the remedy of collection, while the taxpayer acquires the right to finality, thus:

...

c. Effect of prescription: the tax obligation is extinguished

The statute of limitations on the collection of taxes is not a mere technical defense but a substantial right, legislatively designed to afford protection to the taxpayer against unreasonable and stale claims. When the government sleeps on its right and lets the prescribed period elapse, it loses the remedy and the taxpayer gains a right to finality. In *Bank of the Philippine Islands v. CIR*, the Court stressed that the law on 

²⁷⁵ G.R. No. 231238, 20 June 2022.

²⁷⁶ Exhibit "P-18", supra at note 19.

²⁷⁷ Supra at note 228; Citations omitted, italics in the original text, emphasis and underscoring supplied.

prescription should be liberally construed in favor of the taxpayer, and that the exceptions or grounds for suspension should be strictly construed. The inaction of the BIR for an inordinate length of time, to the prejudice of the taxpayer who is entitled to certainty and repose, cannot be simply brushed aside.

...

The present case exemplifies why the statutes of limitation are in place. The deficiency DST assessment was issued in 2004, and Standard Insurance promptly challenged it. The BIR then let more than a decade pass without taking action to enforce collection or to finally resolve the protest. It was only in 2017, by which time key officers may have changed and documents could have been lost or faded, that the CIR decided to issue a final demand. By then, the taxpayer had been lulled into a false sense of security that perhaps the BIR had dropped its claim. To permit the BIR to revive the assessment after such a long silence would be fundamentally unfair. The right of the BIR to collect is never endless, inexhaustible, nor absolute. It does not have an indefinite period of time within which to collect taxes, considering that from the date of receipt of the FAN issued, the prescriptive period within which it could exercise its right to collect began to set in. The BIR had its chance and it blew it. The law then steps in to declare the tax obligation extinguished due to the government's inaction.

It is worth noting that in *BPI*, which involved a DST assessment as well, the Court found the government's right to collect prescribed when the BIR's warrant of distraint was served four days beyond the three-year period then applicable. ...

...

In the present case, the delay is not a matter of days but years; the final demand came almost 10 years past the three-year deadline. If prescription could operate to bar collection in *BPI*, despite the taxpayer's protest and even waivers executed, all the more should it bar the CIR here. The government's neglect materially and substantially violated rights vested by our taxation laws on a taxpayer by virtue of extinctive prescription. To rule otherwise would undermine the very purpose of having prescriptive periods, and would countenance bureaucratic sloth to the detriment of citizens.

Finally, the CIR's citation of *Collector v. Suyoc Consolidated Mining*, an old case on estoppel due to the taxpayer's requests, is misplaced. Standard Insurance's conduct cannot be seen as inducing the BIR to delay collection. On the contrary, Standard consistently pressed for resolution, albeit asking that actual collection be deferred until the protest was decided. The CTA found no evidence



that Standard Insurance did anything to mislead the BIR or cause it to refrain from collecting, aside from legitimately pursuing its administrative remedies. Indeed, after the protest in 2004, the CIR was free to act, either to deny it promptly, or to partially grant it, or even to garnish assets subject to the protest. The prolonged delay was solely of the BIR's choosing or neglect. Under these circumstances, there is no equitable reason to prevent Standard Insurance from invoking prescription. Estoppel against a taxpayer's assertion of prescription can arise only in clear cases of the taxpayer's bad faith, which are not present here.

...

Applying the foregoing pronouncements in *Standard Insurance*, the Court finds it fundamentally unfair to allow respondent to enforce the subject assessment and collect the deficiency VAT after the expiration of the prescriptive period. Respondent's failure to timely resolve the administrative appeal and initiate a valid collection proceeding resulted solely from respondent's own inaction. Nothing in the records, moreover, shows that petitioner acted in bad faith, misled respondent, or otherwise induced the delay in collection.

Thus, although the Court finds the deficiency VAT assessment partially correct, respondent may no longer enforce or collect the assessed amount because the right to collect has already prescribed. The Court must therefore cancel the corresponding deficiency VAT liability on the ground of prescription.

In closing, the Court finds it fitting to echo the Supreme Court's observation in *Standard Insurance* regarding administrative delay — justice delayed is justice denied, even in taxation, viz:

...

Revenue officers and the Commissioner would do well to heed that justice delayed is justice denied, even in taxation. The CIR sat on Standard Insurance's case for over a decade, leaving the taxpayer in limbo. Such inaction is not only detrimental to the public treasury, as the government's chance to timely collect was lost, but also inconsiderate of the taxpayer's right to a prompt disposition of its protest. The Regulations implementing the NIRC, specifically, Revenue Regulations No. 12-99, prescribe periods for the Commissioner to act on protests (180 days from submission of documents, under Section 228 of the NIRC). These were ignored. The Court echoes the CTA *En Banc*'s sentiment that the BIR's



13-year delay in finally disposing of Standard Insurance’s protest is deplorable. It offends the basic tenets of fairness and due process. One cannot simply wait out the taxpayer and then demand payment when memory of the facts has gone stale. This is precisely why the law imposes prescriptive periods. While tax collection is vital to government, it must be accomplished with regard for lawful procedure and basic fairness. The State must observe not only the power to tax, but the duty to do so with reasonable dispatch.²⁷⁸

...

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Euro Autocars, Inc. Doing Business Under the Name and Style of Lamborghini Manila and Bentley Manila on 02 March 2023 is hereby **GRANTED**. Accordingly, the collection of the subject deficiency value-added tax is declared **VOID** for having been issued and/or enforced beyond the prescriptive period.

Respondent Commissioner of Internal Revenue, including all authorized officers, agents, and representatives acting under respondent’s authority, is hereby **PERMANENTLY ENJOINED** from enforcing or collecting the subject deficiency value-added tax assessment.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:


LANEE S. CUI-DAVID
Associate Justice

²⁷⁸ Supra at note 228; Citation omitted, italics in the original text, emphasis and underscoring supplied.

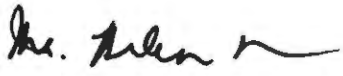
ATTESTATION

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 1st Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st 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.


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice