

**REPUBLIC OF THE PHILIPPINES**  
**Court of Tax Appeals**  
**QUEZON CITY**

**SPECIAL SECOND DIVISION**

**AGRINURTURE, INC.,**  
Petitioner,

**CTA CASE NO. 8345**

Members:

- versus -

**CASTAÑEDA, JR.,** *Chairperson*  
**CASANOVA,** *and*  
**MINDARO-GRULLA, JJ.**

**COMMISSIONER OF**  
**INTERNAL REVENUE,**  
Respondent.

Promulgated:

MAY 29 2013

3:10 p.m.

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**DECISION**

**CASTAÑEDA, JR., J.:**

Before this Court is the Petition for Review filed by Agrinurture, Inc., through registered mail on September 16, 2011, to seek the cancellation and withdrawal of the assessment issued against petitioner for alleged deficiency income tax and value-added tax (VAT) for taxable year 2007.

Petitioner Agrinurture, Inc. is a publicly listed corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at No. 54 National Road, Dampol II-A, Pulilan, Bulacan, Philippines.<sup>1</sup>

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel or abate tax liabilities pursuant to the

<sup>1</sup> Par. 2.1, Petition for Review, docket, p. 10.

provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.

Petitioner received from respondent a Preliminary Assessment Notice (PAN) dated August 26, 2010 from the LN Task Force of the BIR, which assessed petitioner for alleged deficiency income tax and VAT for taxable year 2007.<sup>2</sup>


Thereafter, petitioner received the Final Assessment Notice<sup>3</sup> dated December 30, 2010, assessing petitioner for deficiency income tax and deficiency VAT, inclusive of interest and surcharges, for taxable year 2007, broken down follows:

<b>TAX</b>	<b>AMOUNT</b>
Value-added Tax	P 715,839.15
Income Tax	2,043,335.50
<b>TOTAL</b>	<b>P2,759,174.65</b>

On February 18, 2011, petitioner filed its Protest on the Final Assessment Notice, stating that the assessment for alleged deficiency income tax and VAT predicated solely on the alleged undeclared purchase transaction in the amount of P13,572,086.31 should be reconsidered, since there is no factual and/or legal basis for such assessment.<sup>4</sup>

Since no action was taken by respondent on the protest within 180 days from the filing thereof on February 18, 2011, petitioner filed the instant Petition for Review before this Court on September 16, 2011.<sup>5</sup>

On November 10, 2011, respondent filed her Answer<sup>6</sup> and interposed the following defenses:

"4. The deficiency Value-Added Tax (VAT) assessment in the amount of P715,839.15 and the deficiency Income Tax in the amount of P2,043,335.50 were 

<sup>2</sup> Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues, (JSFI), docket, pp. 86-87; Exhibits "A" and "11".

<sup>3</sup> Par. 3, Stipulation of Facts, JSFI, docket, p. 87; Exhibits "C" and "18".

<sup>4</sup> Exhibit "D".

<sup>5</sup> Par. 3.5, Petition for Review, docket, p. 13.

<sup>6</sup> Docket, pp. 47-53.

issued in accordance with law and suffers no infirmity.

5. The said deficiency assessments arose from the Reconciliation of Listing for Enforcement System (RELIEF), Tax Reconciliation System (TRS) and Third Party Matching-Bureau of Customs (TPM-BOC) Date Program as declared in petitioner's tax return which resulted in the following:

Purchases per LN TPI RELIEF Per Summary List of Sales submitted by petitioner's suppliers	P14,180,337.89
Purchases per Returns filed	<u>608,251.58</u>
Under-declaration on purchases	P13,572,086.31

6. The said assessments were in accordance with Sections 31, 32, 106 and 108 of the National Internal Revenue Code of 1997 (NIRC of 1997) which provides, thus:

SEC. 31. Taxable Income Defined. – The term 'taxable income' means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.

SEC. 32. Gross Income. –

(A) General Definition. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

xxx

xxx

xxx

SEC. 106. Value-Added Tax on Sale of Goods or Properties. *je*

(A) There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) 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: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%) after any of the following conditions has been satisfied:

xxx

xxx

xxx

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

(A) Rate and Base of Tax. – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange or services, including the use or lease of properties: Provided, That the President, upon recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

xxx

xxx

xxx


7. Further, the said assessments were based on Revenue Memorandum Order No. 17-2009 (Prescribing Guidelines and Procedures in Handling Letter Notices Generated Thru Tax Reconciliation System (TRS) and Reconciliation of Listing for Enforcement System (RELIEF)/Third Party Matching-Bureau of Customs (TPM-BOC) Data Program in the Year 2007 for Audit and Enforcement) which covers the income and value-added tax liabilities of individual and corporate taxpayers who were issued Letter Notices (LNs) based on TRS and Consolidated *je*

RELIEF-SLSP and TPM-BOC Data Programs covering taxable years 2007.

8. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc.* 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (*Mindanao Bus Company vs. CIR*, 1 SCRA 538; *CIR vs. Tuazon, Inc.*, 173 SCRA 397) and failure to do so shall vest legality on respondent's actions and assessments.
  
9. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. (*Delta Motors Co. vs. Commissioner*, CTA Case No. 3782, 21 May 1986; *Commissioner of Internal Revenue vs. Court of Appeals, et. al.*, G.R. Nos. 104151 and 105563, 10 March 1995)."

The case was set for pre-trial conference on December 8, 2011.<sup>7</sup> Respondent filed her Pre-Trial Brief on November 21, 2011<sup>8</sup>; while petitioner filed its Pre-Trial Brief on December 5, 2011<sup>9</sup>.

On January 17, 2012, the parties filed with this Court their Joint Stipulation of Facts and Issues<sup>10</sup>; which was approved in a Resolution<sup>11</sup> dated January 19, 2012. In the same Resolution, the Court considered the pre-trial terminated and ordered the parties to proceed with the trial on the merits presenting only evidence not covered by their Joint Stipulation of Facts.

During trial, both parties presented their respective documentary and testimonial evidence. Petitioner presented as its witness Ma. Lizette B. Navea, petitioner's Comptroller since October 2010,<sup>12</sup> and Rafaelito M. Soliza, petitioner's former Auditor General 

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<sup>7</sup> Notice of Pre-Trial Conference issued on November 11, 2011, docket, p. 55.

<sup>8</sup> Docket, pp. 57-65.

<sup>9</sup> Docket, pp. 67-73.

<sup>10</sup> Docket, pp. 86-88.

<sup>11</sup> Docket, p. 91.

<sup>12</sup> TSN dated January 30, 2012; Exhibit "G".

from February 2009 until April 2010<sup>13</sup>. Also, petitioner presented and formally offered Exhibits "A" to "J-1"<sup>14</sup>; which were admitted as part of its documentary evidence as per this Court's Resolutions dated April 11, 2012<sup>15</sup> and January 30, 2013<sup>16</sup>.

On the other hand, respondent presented as her sole witness Jocelyn P. Hernandez, Chief of the Assessment Section of Revenue District Office No. 28, Novaliches and formerly occupying the position of Revenue Officer II from 1995.<sup>17</sup> Respondent likewise presented and formally offered Exhibits "1" to "27"<sup>18</sup>; which were admitted as part of her documentary evidence as per this Court's Resolution dated September 20, 2012<sup>19</sup>.

The case was submitted for decision on March 14, 2013<sup>20</sup>, considering respondent's Memorandum filed on February 22, 2013<sup>21</sup> and petitioner's Memorandum filed through registered mail on March 4, 2013<sup>22</sup>.

The parties submitted for this Court's disposition the following issues<sup>23</sup>:

1. Whether petitioner is liable for deficiency income tax in the amount of P2,043,335.50 for taxable year of 2007;
2. Whether petitioner is liable for deficiency value added tax in the amount of P715,839.15 for taxable year 2007;
3. Whether or not the assessments were made in accordance with law; *JL*

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<sup>13</sup> TSN dated February 22, 2012 and November 28, 2012; Exhibits "H" and "J".

<sup>14</sup> Docket, pp. 123-129 and 358-362.

<sup>15</sup> Docket, pp. 244-245.

<sup>16</sup> Docket, pp. 368-369.

<sup>17</sup> TSN dated July 16, 2012; Exhibit "26".

<sup>18</sup> Docket, pp. 266-281.

<sup>19</sup> Docket, pp. 292-293.

<sup>20</sup> Docket, p. 411.

<sup>21</sup> Docket, pp. 372-380.

<sup>22</sup> Docket, pp. 384-408.

<sup>23</sup> Issues to be Resolved, JSFI, docket, pp. 87-88.

4. Whether or not petitioner was informed of the law and the facts upon which the assessments were based;
5. Whether the assessment is void for failing to state the specific facts and law upon which it was based;
6. Whether or not petitioner submitted accounting records and other documents necessary for the proper determination of its tax liability; and
7. Assuming *arguendo* that there was an unreported purchase transaction and the same is an ordinary expense, whether the effect thereof would in fact result in lower tax liabilities on the part of petitioner, both as to income tax and value-added tax.

According to petitioner, the assessment issued by respondent is void for failing to state the specific facts and law upon which it was based. Petitioner argued that the assailed assessment is defective as it failed to clearly specify the purchases allegedly made by petitioner for taxable year 2007 that were subject to VAT and income tax, but were purportedly not declared in its tax returns.

Petitioner likewise asserted that the assessment is predicated solely on the supposed discrepancy in the Reconciliation of Listing of Enforcement (RELIEF) and Third-Party Matching-BOC. However, the details of the purported discrepancy on the Summary List of Sales submitted by petitioner's suppliers were not itemized. According to petitioner, even the name of petitioner's supplier which reported the said purchase made by petitioner was never disclosed. Thus, petitioner concluded that it will be difficult, if not impossible, on its part to verify the accuracy of the information cited in the assailed assessment such as the alleged undeclared purchases, and what and from whom are the alleged undeclared purchases; or to explain its position regarding the nature of the purchases, such as whether said purchases refer to the acquisition of ordinary assets or capital assets; and/or to present the pertinent documents supporting its position.

Petitioner added that even assuming *arguendo* that there was an unreported purchase transaction and the same is an ordinary *pe*

expense, the effect thereof would in fact result in lower tax liabilities of petitioner, both as to income tax and value-added tax.

On the other hand, respondent alleged that the assessments were in accordance with Sections 31, 32, 106, and 108 of the National Internal Revenue Code of 1997. Further, respondent averred that the said assessments were based on Revenue Memorandum Order No. 17-2009<sup>24</sup>, which covers the income and value-added tax liabilities of individual and corporate taxpayers who were issued Letter Notices (LNs) based on TRS and Consolidated RELIEF-SLP and TPM-BOC Data Programs covering taxable year 2007.

Likewise, respondent pointed out that petitioner did not submit accounting records necessary for the proper determination of its tax liability. Thus, for petitioner's alleged failure to submit the required invoices/official receipts and schedule of purchases, the discrepancies noted in the Letter Notices were not reconciled.

On petitioner's argument that the assessment is patently void for failing to state the specific facts and law upon which it was based, the same is found to be bereft of merit.


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

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

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XXX

XXX

**The taxpayers shall be informed in writing of the law and the facts on which the assessment is** 

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<sup>24</sup> Prescribing Guidelines and Procedures in Handling Letter Notices Generated Thru Tax Reconciliation System (TRS) and Reconciliation of Listing for Enforcement System (RELIEF)/Third Party Matching-Bureau of Customs (TPM-BOC) Data Program in the Year 2007 for Audit and Enforcement.



**made; otherwise, the assessment shall be void.”**  
*(Emphasis supplied)*

The law requires that the taxpayers should be informed of the legal and factual bases of the assessment. However, the assessment notices need not be a full narration of the facts and laws on which the assessment is based. Thus, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.<sup>25</sup>

In this case, respondent’s witness, Ms. Jocelyn P. Hernandez, testified that petitioner was furnished with a copy of a Letter-Notice which was received on July 8, 2009, together with the details from the supplier of petitioner.<sup>26</sup> This was further supported by a copy of the said Letter-Notice together with the details of taxpayer’s supplier’s record, which formed part of the evidence for respondent.<sup>27</sup> A Preliminary Assessment Notice (PAN) dated August 26, 2010 was also issued by the LN Task Force of the BIR.<sup>28</sup> Petitioner was able to file its Reply on the said PAN through a letter dated November 19, 2010.<sup>29</sup> Petitioner likewise received a Final Assessment Notice (FAN)<sup>30</sup> dated December 30, 2010 from which petitioner had the opportunity to file its protest on February 18, 2011.<sup>31</sup> Both the PAN and the FAN contained computations of petitioner’s tax liabilities and the provisions of law from which the said assessment was based.

The FAN and the details of discrepancy, which informed petitioner that respondent found petitioner liable for deficiency VAT and deficiency income tax for taxable year 2007, contain the following<sup>32</sup>:

<b>I. DEFICIENCY VALUE-ADDED TAX</b>	
Discrepancy per Letter Notice	P13,572,086.31
Divided by Cost ratio	82.60%
Additional Taxable Sales	16,431,097.23
Multiply by GPR	17.40%
Net Taxable sales	2,859,010.92
Multiply by VAT Rate	12%

<sup>25</sup> *Calma, et al. vs. Court of Appeals, et al.*, G.R. No. 122787, February 9, 1999, 302 SCRA 682.  
<sup>26</sup> Transcript of Stenographic Notes (TSN) taken during the hearing held on July 16, 2012, pp. 18-19.  
<sup>27</sup> Exhibit “25”.  
<sup>28</sup> Exhibits “A” and “11”.  
<sup>29</sup> Exhibit “B”.  
<sup>30</sup> Exhibits “C” and “18”.  
<sup>31</sup> Exhibit “D”.  
<sup>32</sup> Exhibit “C”.

Deficiency VAT	343,081.31
Add: 50% surcharge	171,540.66
20% interest p.a. up to 12-31-10	201,217.18
TOTAL AMOUNT DUE	P 715,839.15
<b>II. DEFICIENCY INCOME TAX</b>	
Discrepancy per Letter Notice	P13,572,086.31
Divided by Cost ratio	82.60%
Additional Taxable Sales	16,431,097.23
Multiply by GPR	17.40%
Net Taxable sales	2,859,010.92
Add: Taxable income per ITR	1,126,512.00
Total Taxable Income	3,985,552.92
Multiply by Normal Income Tax Rate	35%
Adjusted Income Tax Due	1,394,933.02
Less: Tax paid per return filed	394,279.00
Deficiency Income Tax	1,000,654.02
Add: 50% surcharge	500,327.01
20% interest p.a. up to 12-31-10	542,354.47
TOTAL AMOUNT DUE	P 2,043,335.50

“DETAILS OF DISCREPANCIES

DEFICIENCY INCOME TAX AND VAT

Verification disclosed that the following discrepancy resulted from the Reconciliation of Listing of Enforcement (RELIEF), TRS and Third Party Matching – BOC Data Program as declared in your tax returns, hence assessed in accordance with Sections 31, 32, 106 and 108 of the 1997 NIRC, as amended and RMO No. 17-2009:

Purchases per LN TPI Relief Per Summary List of Sales submitted by your suppliers	P14,180,337.89
Purchases per Returns filed	<u>608,251.58</u>
Under-declaration on purchases	P13,572,086.31”

As already illustrated, the details of discrepancy attached to the assessment itself stated that the assessment was the result of the Reconciliation of Listing for Enforcement (RELIEF), TRS and Third Party Matching-BOC Data Program as declared in petitioner’s tax returns. The details of discrepancy further provided for the computation as to how the under-declaration on purchases was derived by respondent, *i.e.*, from the difference between the amount of purchases per LN TPI Relief per summary list of sales submitted *je*

by petitioner's suppliers and the amount of purchases per returns filed by petitioner.

It is clear that petitioner was informed of the factual and legal bases of the assessment and was given the opportunity to contest same. Thus, there is no reason for this Court to sustain petitioner's allegation that the assessment notice was void for failure to state the assessment's factual basis inasmuch as it was based on the examination by respondent of petitioner's tax returns and the TPI Relief per summary list of sales submitted by petitioner's suppliers as stated in the subject tax assessment.

Now, as to whether petitioner is liable for the assessed deficiency VAT and income tax for taxable year 2007, basic is the rule that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a Petition for Review in this Court and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.<sup>33</sup>

However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis. Hence, the determination by this Court must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.<sup>34</sup> *Jr*

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<sup>33</sup> *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. 136975, March 31, 2005, 454 SCRA 301.

<sup>34</sup> *Ibid.*

As shown in the above-quoted assessment, the sole basis for the income tax assessment and the VAT assessment issued by respondent is the finding that there is under-declared purchase in the amount of P13,572,086.31. In this regard, respondent's witness, Ms. Jocelyn P. Hernandez, testified as to how the alleged under-declaration of purchases affected the income tax and value-added tax of petitioner, to wit:

"WITNESS

Q: Now, how do these purchases affect the income tax of the petitioner?

A: Because if you have an under declaration of purchases, you have an under declaration of income which results to increase of income tax liability.

JUSTICE CASTAÑEDA:

Clarificatory question.

Q: Does that increase the gross income of the petitioner?

WITNESS:

A: When it translated into income, an unaccounted expense will result to undeclared income.

JUSTICE CASTAÑEDA:

All right proceed.

ATTY. CAMIÑA:

Q: Now with regard to the Value Added Tax, how would these additional purchases affect the Value Added Tax of the petitioner? *je*

WITNESS:

A: Because of the under recorded expenses will affect the cost of sales of the petitioner.

Q: How would this now affect the Value Added Tax liability of the petitioner?

A: The taxpayer can claim for input or he can claim it as an expense but the question here is the unrecorded purchases which does not match with the third party information got by the BIR.<sup>35</sup>

Furthermore, respondent alleged that the deficiency income tax and the deficiency value-added tax were assessed in accordance with Sections 31, 32, 106, and 108 of the NIRC of 1997, as amended, the pertinent portions of which read:

"SEC. 31. *Taxable Income Defined.* – The term '*taxable income*' means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws."

"SEC. 32. *Gross Income.* –

(A) *General Definition.* – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:"

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

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered *Je*

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<sup>35</sup> TSN dated July 16, 2012, pp. 17-18.

or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:"

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

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange or services, including the use or lease of properties: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:"

As regards the issue on petitioner's deficiency income tax, let it be noted that the three elements in the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.<sup>36</sup> Income tax is assessed on income received from any property, activity or service.<sup>37</sup> Such being the case, in the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, not when there is an under-declaration of purchases.<sup>38</sup>

In this case, the assessment made by respondent and the testimony of its witness would show that respondent merely presumed that the alleged undeclared purchase is an unaccounted expense, which supposedly translated into income. Thus, respondent's assessment was not based on undeclared income actually received by petitioner. *je*

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<sup>36</sup> *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999, 301 SCRA 152.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Philippine Daily Inquirer, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7853, February 16, 2012.

Moreover, it is important to note that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.<sup>39</sup>


Thus, even when there is under-declaration of purchase or unaccounted expense, the same is not prohibited by law. Accordingly, mere reliance on the fact that there is under-declared purchase is not enough basis for the Court to uphold respondent's assessment of the subject deficiency income tax.

Now, as regards respondent's assessment for deficiency VAT, it must be pointed out that under Section 106(A) of the NIRC of 1997, as amended, VAT is assessed on 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".

Also, under Section 108 of the NIRC of 1997, as amended, VAT is assessed on the "gross receipts derived from the sale or exchange of services". Significantly, the law defines "gross receipts" as:

". . . 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."

Clearly, VAT can be imposed only when it is shown that the taxpayer received an amount of money or its equivalent from its sale, barter or exchange of goods or properties, or from sale or exchange of services, and not when there are under-declared purchases.

At this juncture, it must be pointed out that in order to stand the test of judicial scrutiny, the assessment must be based on actual 

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<sup>39</sup> *The Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965, 14 SCRA 52.

facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.<sup>40</sup> Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.<sup>41</sup>

Consequently, while there is a presumption of correctness of assessment issued by respondent, being a mere presumption, the same cannot be made to rest on another presumption, which is respondent's presumption that the under-declared purchases translated and would automatically result in undeclared income or additional taxable sales, which would in turn increase petitioner's income tax and VAT liabilities.

Considering this Court's findings that respondent's assessment has no factual or legal basis, the other issues are now rendered moot.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax and deficiency value-added tax against petitioner for taxable year 2007 are hereby **CANCELLED** and **WITHDRAWN**.

**SO ORDERED.**

  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice

WE CONCUR:

  
**CAESAR A. CASANOVA**  
Associate Justice

  
**CIELITO N. MINDARO-GRULLA**  
Associate Justice

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<sup>40</sup> *Collector of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962, 4 SCRA 182; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987, 153 SCRA 665.

<sup>41</sup> *Ibid.*



## 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.

  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice  
Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice