REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA *EB* NO. 2602** (CTA Case No. 9705)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
CASAS + ARCHITECTS, INC., *Respondent*.	Promulgated: AUG 15 2023 2:40pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) through registered mail on April 13, 2022, assailing the Decision[2] dated March 9, 2021 (assailed Decision) and the Resolution[3] dated March 14, 2022 (assailed Resolution), both rendered by this Court's Third Division (Court in Division) in CTA Case No. 9705 entitled "*Casas + Architects v. Commissioner of Internal Revenue.*"

The assailed Decision granted, *albeit* partially, respondent's Petition for Review which sought the cancellation of the assessment issued against it for deficiency value-added tax (VAT) and withholding tax on compensation (WTC) in the aggregate amount of ₱9,835,888.23, covering the taxable year

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[1] *En Banc* (*EB*) Docket, pp. 1-12.
[2] *EB* Docket, pp. 33-56.
[3] *EB* Docket, pp. 58-61.

(TY) 2011. On the other hand, the assailed Resolution denied petitioner's *Motion for Reconsideration* of the assailed Decision.

THE PARTIES

Petitioner is the duly appointed CIR empowered to perform the duties of his office, including, among others, the power to decide disputed assessments, approve, and grant refunds or tax credits of erroneously paid taxes, as provided by law.[4]

Respondent Casas + Architects, Inc., on the other hand, is a general professional partnership duly organized and existing under the laws of the Republic of the Philippines and registered with the Securities and Exchange Commission (SEC) with principal office at the Penthouse, Paseo Center, 8757 Paseo de Roxas Avenue cor. Sedeño Street, Salcedo Village, Makati City.[5]

THE FACTS AND THE PROCEEDINGS

The relevant facts,[6] as found by the Court in Division, remain undisputed, to wit:

> On 3 September 2012, a Letter of Authority (LOA) (LOA-050-2012-00000238) with SN: eLA201000078291 was issued by Regional Director Nestor S. Valeroso authorizing Revenue Officer (RO) Michael Felipe and Group Supervisor (GS) Roderick Cantillana to examine [respondent's] books of accounts and other accounting records for all internal revenue taxes for the period from 1 January 2011 to 31 December 2011, pursuant to Audit Criteria for Taxable Years 2009 and 2010.
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> Subsequently, on 7 July 2015, [respondent] received a Preliminary Assessment Notice ("PAN"), dated 6 July 2015, stating that, after investigation, [respondent] had been found liable for the following deficiency taxes:

Tax Type	Basic Tax	Interest	Total
VAT	₱7,499,516.73	₱5,325,684.21	₱12,825,200.94
WTC	1,338,114.26	957,576.56	2,295,690.82
EWT	1,341,223.02	959,801.24	2,301,024.26
TOTAL	₱10,178,854.01	₱7,243,062.01	₱17,421,916.02

[4] See Admitted Facts, Pre-Trial Order, Division Docket, p. 872.
[5] See Exhibit "P-1," Division Docket, Vol. 3, pp. 1171-1185.
[6] Assailed Decision, *EB* Docket, pp. 34-39.

On 20 July 2015, [petitioner] received a Reply to the PAN from [respondent] praying for reduction of the amount assessed to the following amounts on the ground that [respondent] had substantiated [petitioner's] deficiency assessment:

Tax Type	Per BIR	Per [Respondent]	Reduction
VAT	₱7,499,516.73	₱32,268.74	₱7,467,247.99
WTC	1,338,114.26	821,297.89	516,816.37
EWT	1,341,223.02	362,166.32	979,056.70
TOTAL	₱10,178,854.01	₱1,215,732.95	₱8,963,121.06

Thereafter, on 27 July 2015, [respondent] received a Formal Assessment Notice ("FAN"), dated 27 July 2015, with attached Assessment Notices for the following deficiency taxes to be paid on or before 27 August 2015:

Tax Type	Basic Tax	Interest	Total
VAT	₱7,499,516.73	₱5,469,510.56	₱12,969,027.29
WTC	1,338,114.26	983,239.03	2,321,353.29
EWT	1,341,223.02	985,523.33	2,326,746.35
TOTAL	₱10,178,854.01	₱7,438,272.92	₱17,617,126.93

On 26 August 2015, [respondent] filed a Protest requesting for a reinvestigation of the alleged deficiency taxes for lack of factual and/or legal bases. [Respondent] attached to the Protest an intent to pay a portion of the alleged deficiency taxes in the amount of ₱1,183,464.21 representing deficiency WTC and EWT and in fact paid said amount per Payment Form (BIR Form No. 0605) and EFPS payment confirmation. [Respondent] also attached supporting documents to its request for reinvestigation.

In [petitioner's] letter, dated 18 September 2015, which [respondent] received on 23 September 2015, [petitioner], through Regional Director Jonas DP Amora, informed [respondent] that the entire docket and Protest Letter had been forwarded to Revenue District Office No. 50-South Makati for evaluation and other appropriate action. In the same letter, [petitioner] recognized [respondent's] payment on 26 August 2015 of the EWT and WTC amounting to ₱362,166.32 and ₱821,297.89, respectively, or in the aggregate amount of ₱1,183,464.21.

Subsequently, on 7 October 2015, [respondent] filed a letter, dated 6 October 2016, with [petitioner], informing the latter of its submission of all relevant supporting documents on or before 25 October 2015. On 20 October 2015, [respondent] submitted additional documents in support of its request for reinvestigation.

On 13 October 2016, [respondent] requested that the docket be pulled out from Revenue Region No. 8 and returned to Revenue District Office No. 50 for further evaluation. According to [respondent], the dockets were forwarded to RR 8 without informing it of the results of the reinvestigation.

On 26 April 2017, [respondent] transmitted additional supporting documents to RDO 50 in support of its request for reinvestigation, which [petitioner] received on even date.

On 26 September 2017, [respondent] received a Final Decision on Disputed Assessment ("FDDA"), dated 22 September 2017, issued by [petitioner] for the following deficiency taxes:

Tax Type	Basic Tax	Interest	Total
VAT	₱3,229,662.71	₱3,719,863.57	₱6,949,526.28
WTC	1,337,975.76	1,548,386.19	2,886,361.95
TOTAL	₱4,567,638.47	₱5,268,249.76	₱9,835,888.23

The FDDA required payment of the deficiency taxes on or before 23 October 2017.

Thereafter, [respondent] filed the instant Petition for Review on 26 October 2017, assailing the FDDA. [Respondent] then filed an Amended Petition for Review, dated 28 December 2017.

On 2 March 2018, and within the extended period granted by the Court, [petitioner] filed its Answer through registered mail, which was received by this Court on 15 March 2018. In its Answer, [petitioner] interposed the following defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

> [Petitioner] reproduces and repleads all the foregoing allegations insofar as they are relevant to his defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
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> 4. A revenue regulation, the issuance of which is authorized by statute, has the force and effect of law (*Vitug & Acosta, Tax Law and Jurisprudence, 3rd Edition, p. 55*);

> 5. Assessment are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. (*Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109*);
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> 6. At the outset, Final Decision on Disputed Assessment dated September 22, 2017 reflects the internal revenue tax liabilities of the [respondent] for the taxable year 2011 representing Deficiency Value Added Tax and Withholding Tax on Compensation.
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> xxx xxx xxx
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> 7. Over and above all, [respondent] should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (*Commissioner vs. Algue, Inc. L-28896, 17 February 1988*). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another. — **Non videtur quisquam id capere quod ei necesse est alii restitutere**."

In [respondent's] Reply to [petitioner's] Answer, filed through registered mail on 28 March 2018, [respondent] countered that, *first*, [respondent] is not questioning the validity of any revenue regulation; *second*, [respondent] presents enough proof to rebut the presumption of correctness of the assessment; and *third*, [petitioner] ineffectively denied the allegations in the petition filed by [respondent], and in effect, admitted the same.

On 17 May 2018, [petitioner] filed, through registered mail, his Pre-Trial Brief, while [respondent] filed its Pre-Trial Brief with Motion for Commissioning of Independent Certified Public Accountant on 31 May 2018. The Court granted the commissioning of ICPA Ma. Teresita Socorro Z. Dimaculangan, who thereafter submitted her report within the extended period granted by the Court. Following the filing of both parties' Pre-Trial Briefs, the Pre-Trial Conference proceeded on 5 June 2018. Subsequently, the Court issued a Pre-Trial Order on 21 June 2018.

In the meantime, [petitioner] transmitted the entire BIR Records on 19 June 2018.

[Respondent] presented the following witnesses: (1) Bernadith Bersabe Nañaga, its Head of Finance and Accounting, who testified and identified her Judicial Affidavit during the hearing on 10 September 2018; and (2) Ma. Teresita Socorro Z. Dimaculangan, the court-commissioned ICPA, who testified and identified her Judicial Affidavit during the hearing on 15 January 2019.

Thereafter, [respondent] filed its Formal Offer of Documentary Evidence on 6 February 2019. The Court admitted all of [respondent's] formally-offered documentary evidence except for Exhibit "P-22" for failure to identify the same.

For his defense, [petitioner] presented Revenue Officer Michael T. Felipe as his lone witness, who testified and identified his Judicial Affidavit during the hearing on 23 July 2019.

[Petitioner] filed his Formal Offer of Evidence through registered mail on 7 August 2019. Meanwhile, [respondent] filed a Comment/Opposition (Re: [Petitioner's] Formal Offer of Evidence) through registered mail on 27 August 2019. Except for Exhibits "R-10" and "R-10-a," all of [petitioner's] exhibits were denied for failure to mark the same.

On 18 November 2019, [respondent] filed its Memorandum, but [petitioner] did not file his Memorandum. Thereafter, on 9 March 2020, the case was submitted for decision, in view of [respondent's] filing of its Memorandum, *sans* [petitioner's] memorandum.

On March 9, 2021, the Court in Division rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition for Review filed by Casas + Architects is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for taxable year 2011 covering deficiency VAT is **AFFIRMED** but with modifications. Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of ₱1,454,825.03 for taxable year 2011, inclusive of the 25% surcharge imposed under **Section 248(A)(3) of the Tax Code, as amended**, and deficiency and delinquency interests imposed under **Section 249 (B) and (C) of the Tax Code, as amended**, until 31 December 2017, computed as follows:

	VAT
Basic Tax Due	₱ 576,010.86
Add: Surcharge (25%)	144,002.71
20% Deficiency Interest from 26 Jan. 2012 to 23 Oct. 2017 [576,010.86 x 20% x 2066/365 days]	661,860.14
Total Amount Due, 23 October 2017	1,381,873.71
Subtotal	
Add: 20% Deficiency Interest from 24 Oct. 2017 to 31 Dec. 2017 [576,010.86 x 20% x 69/365]	21,462.32
20% Delinquency Interest from 24 Oct. 2017 to 31 Dec. 2017 [1,381,873.71 x 20% x 69/365]	51,488.99
TOTAL	**₱1,454,825.03**

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the unpaid VAT of ₱1,381,873.71, representing basic deficiency tax and surcharge, as determined above, computed from 1 January 2018 until full payment, pursuant to Section 249 (C) of the Tax Code, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion ("TRAIN").

However, the partial payment made by petitioner resulting to the overpayment of Ninety-Two Thousand Nine Hundred Ninety-Eight Pesos and 46/100 (₱92,998.46), shall have to be deducted in the final settlement of the above deficiency taxes including surcharge, deficiency interest, and delinquency interest.

SO ORDERED.

In partly granting respondent's *Petition*, the Court in Division is convinced that, based on the evidence presented, the decrease in the balance of respondent's accounts receivable is due to legitimate writing off of uncollectible accounts. As such, the reduction of accounts receivable in the amount of ₱24,767,415.04 should not be classified as under-declared receipts and should not lead to a VAT deficiency assessment.

Further, the Court in Division deemed it proper to modify the WTC deficiency assessment considering that (i) petitioner's use of the average withholding tax rate of 16.29873905% has no basis; (ii) while respondent failed to prove that the Department of Labor and Employment sanctioned its apprenticeship program, it nevertheless demonstrated that the allowances given to the apprentices are below the minimum wage, thus, exempt from withholding; and (iii) based on the analysis of respondent's 2011 *Alphalist*, petitioner indeed failed to consider respondent's 13th-month pay, *de minimis* benefits,

and SSS, PHIC & PAGIBIG contributions, which were not subject to withholding.

Unconvinced, petitioner filed a *Motion for Partial Reconsideration*[7] on May 24, 2021, to which respondent filed its *Comment*[8] on October 22, 2021.

On March 14, 2022, the Court in Division rendered the equally assailed Resolution, which denied petitioner's *Motion for Partial Reconsideration.*

PROCEEDINGS BEFORE THE COURT *EN BANC*

On April 13, 2022, petitioner filed *the instant Petition for Review* via registered mail, which the Court *En Banc* received on April 27, 2022.

Upon perusal of the instant *Petition*, the Court *En Banc* noted that petitioner failed to attach the duplicate original or certified true copy of the assailed Decision and Resolution of the Court in Division, as required under Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA). The Court *En Banc* likewise noted that the attached *Verification and Certification Against Forum Shopping* was signed by Regional Director Maridur V. Rosario under the authority given under Revenue Delegation Authority Order (RDAO) No. 2-2007. However, petitioner failed to attach a copy of the said RDAO. Hence, on May 25, 2022, the Court *En Banc* issued a Resolution[9] directing petitioner to submit, within five (5) days from notice, the original or certified true copies of the assailed Decision and Resolution, as well as the original or certified true copy of RDAO No. 2-2007. In the same Resolution, respondent was given ten (10) days from notice to file its comment on petitioner's *Petition for Review.*

On June 2, 2022, respondent filed a *Manifestation with Motion*[10] stating that it has yet to receive a copy of petitioner's *Petition for Review;* hence, it requests that the 10-day period to file comment be counted from its receipt of the said *Petition* instead of the Resolution dated May 25, 2022.

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[7] Division Docket, pp. 1784-1792.
[8] *Id.*
[9] *En Banc* Docket, pp. 18-20.
[10] *En Banc* Docket, pp. 21-22.

On June 22, 2022, the Court *En Banc* issued a Resolution[11] granting respondent's *Manifestation with Motion.*

On June 23, 2022, petitioner filed his *Motion to Admit Attached Copies of the Decision dated 09 March 2021, Resolution Dated 14 March 2022 and Revenue Delegation Authority Order No. 2-2007,*[12] which the Court *En Banc* granted and accordingly admitted in the Resolution[13] promulgated on July 13, 2022.

On July 8, 2022, respondent filed its *Comment (Re: Petition for Review dated April 13, 2022),*[14] which the Court *En Banc* noted in the Resolution[15] dated July 29, 2022. In the same Resolution, the Court *En Banc* referred the instant case to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) under Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.*

On September 7, 2022, the instant case was submitted for decision considering the report[16] of the PMC-CTA dated August 18, 2022, stating that the parties have decided not to have their case mediated by the PMC-CTA.[17]

Hence, this Decision.

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors [18] allegedly committed by the Court in Division, to wit:

I. THE HONORABLE THIRD DIVISION OF THE COURT OF TAX APPEALS ERRED IN PARTIALLY GRANTING RESPONDENT'S PETITION FOR REVIEW;

II. THE HONORABLE THIRD DIVISION OF THE COURT OF TAX APPEALS ERRED IN FINDING THAT THERE WAS A LEGITIMATE AND PROPER WRITING-OFF OF RESPONDENT'S UNCOLLECTED ACCOUNTS.

[11] *EB* Docket, pp. 25-26.
[12] *EB* Docket, pp. 27-31.
[13] *EB* Docket, pp. 81-82.
[14] *EB* Docket, pp. 68-79.
[15] *EB* Docket, pp. 84-86.
[16] *EB* Docket, p. 87.
[17] Resolution dated September 7, 2022, *EB* Docket, pp. 89-90.
[18] *Petition for Review*, *EB* Docket, p. 6.

Petitioner's Arguments:

Contrary to the ruling of the Court in Division, petitioner submits that respondent failed to establish its compliance with the mandatory requirements set forth under Revenue Regulations (RR) No. 05-99,[19] as amended by RR No. 25-02,[20] for bad debts to be allowed as a deduction from gross income. According to petitioner, respondent's supporting documents only established that: (a) it has accounts receivables in the total amount of ₱24,767,415.04 (inclusive of VAT); (b) various collection letters were issued by respondent and received by the corresponding clients; (c) the partners authorized the write-off in a meeting held on December 1, 2011; and (d) a journal entry was made to reduce the balance of Accounts Receivable and Partner's Contribution. For petitioner, the documents presented to support the write-off of said receivables do not establish nor indicate the worthlessness nor uncollectibility of said accounts. At best, it only shows that a write-off was executed, but its legitimacy is another story.

Further, the documents presented need to establish that a legal action to enforce payment would, in all probability, not result in the satisfaction of execution of judgment. Allegedly, in *Philippine Refining Company v. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*,[21] the Supreme Court ruled that there are steps outlined to be undertaken by the taxpayer to prove that he exerted diligent efforts to collect the debts, *viz.*: (1) sending of settlement of accounts; (2) sending of collection letters; (3) giving the account to a lawyer for collection; and (4) filing as collection case in court.

While there are collection letters allegedly sent by respondent to its clients, petitioner submits that this does not fulfill the diligence required to declare the "worthlessness of debt" nor the "uncollectibility" of said debts. Hence, respondent asks the Court *En Banc* to declare that said write-off is not a valid deduction as bad debt from gross income.

Petitioner likewise claims that the Court in Division erred in using the withholding tax rate of fifteen percent (15%) found by the Independent Certified Public Accountant (ICPA), which

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[19] SUBJECT: *Implementing Section 34(F) of the Tax Code of 1997 on the Requirements for Deductibility of Bad Debts from Gross Income.*
[20] SUBJECT: *Amending Revenue Regulations No. 5-99, Further Implementing Section 34(E) of the Tax Code of 1997 on the Requirements for Deductibility of Bad Debts from Gross Income.*
[21] G.R. No. 118794, May 8, 1996.

pertains to the maximum withholding tax on payments made to professionals. According to petitioner, the withholding tax on salaries and wages of respondent's employees is subject to a graduated rate of withholding tax on compensation as provided under Section 2.78 of RR No. 2-98. Allegedly, respondent's records disclosed that it declared in its Financial Statements that it paid salaries and wages, which include direct staff cost – the cost of services, salaries, and wages – administrative expenses, and other allowances & benefits in the total amount of ₱38,049,089.00 while only declaring a total amount of ₱29,839,163.93 in the salaries and wages subject to withholding tax per *Alphalist* submitted. Hence, it is clear that respondent failed to withhold a significant portion of its employees' salaries and wages to withholding tax on compensation.

In closing, petitioner highlights that tax assessments are *prima facie* presumed correct and made in good faith; and that the taxpayer has the duty to prove otherwise.

Respondent's Arguments:

By way of *Comment*, respondent submits that petitioner is mistaken in postulating that writing off the accounts receivables was (i) unilateral and self-righteous, and (ii) the documents it presented did not show that it instituted a legal action to enforce payment. According to respondent, the Supreme Court in *Collector v. Goodrich International Rubber Co.*[22] (*Goodrich case*), explained that the requirement of the determination of worthlessness of the debt requires proof of two (2) basic requirements: (1) that the taxpayer did ascertain the debt to be worthless in the year for which the deduction is sought; and (2) that in so doing, he acted in good faith. More importantly, the taxpayer must show that he reasonably investigated the relevant facts and information which reasonably supports his inference.

Respondent posits that it had indeed ascertained that the uncollectible accounts were worthless, that it acted in good faith in writing off these uncollectible accounts, and that it duly determined that there was no chance of enforcing payment on them. Hence, the write-off is justified and proper.

[22] G.R. No. L-22265, December 26, 1967.

In any case, respondent points out that petitioner's assessment was not based on adequate facts. In arriving at the assessment for deficiency VAT, petitioner merely compared the beginning and ending balance of respondent's Accounts Receivable for TY 2011 and then presumed that the decrease in the balance was undeclared receipts. As aptly ruled by the Court in Division, the presumption of correctness of assessment does not apply when the assessment is utterly without foundation. Here, it is undisputed that the decrease in the balance of accounts receivable in the amount of ₱24,767,415.04 does not constitute under-declared receipts. Thus, it should not result in a VAT deficiency assessment.

Respondent submits that the Court in Division correctly found no basis for petitioner's use of the average withholding tax rate of 16.29873905%. As correctly pointed out by the Court in Division, such a rate is not supported by any provision in the Tax Code, relevant issuances of the BIR, or jurisprudence.

THE COURT *EN BANC'S* RULING

The instant *Petition for Review* is bereft of merit.

First, *We* determine whether the present *Petition for Review* was timely filed.

The instant Petition for Review was timely filed; hence, the Court En Banc has jurisdiction over the instant case.

Section 3(b), Rule 8 of the RRCTA states:

> **SEC. 3**. *Who may appeal; period to file petition.* — xxx
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> xxx xxx xxx
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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court

> may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Records show that petitioner received the assailed Resolution on March 29, 2022. Thus, petitioner had fifteen (15) days from March 29, 2022 or until April 13, 2022 to file his *Petition for Review* before the Court *En Banc*.

Thus, the filing of the instant *Petition for Review* through registered mail on April 13, 2022, is on time.

Having settled that the *Petition for Review* was timely filed, *We* likewise rule that the CTA *En Banc* has validly acquired jurisdiction to take cognizance of this *case* under Section 2(a)(1), Rule 4 of the RRCTA.

Now, on the merits.

The Court in Division did not err in holding that the reduction of accounts receivable in the amount of ₱24,767,415.00 should not lead to a VAT deficiency assessment:

It is a legal truism that, as a rule, assessments are *prima facie* presumed correct and made in good faith; that the taxpayer has the duty of proving otherwise; and, in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.[23]

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.[24] To withstand the test of judicial scrutiny, the assessment must be based on facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[25]

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[23] *Interprovincial Autobus Co., Inc. vs. CIR*, G.R. No. L-6741, January 31, 1956; *Sy Po vs. Court of Tax Appeals, et al.*, G.R. No. 81446, August 18, 1988; *Dayrit, et al. vs. Cruz, et al.*, G.R. No. L-39910, September 26, 1988.
[24] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.
[25] *Collector of Internal Revenue v. Benipayo*, G.R. No. 13656, January 31, 1962.

In the case of *Fax n Parcel, Incorporated v. Commissioner of Internal Revenue*,[26] as affirmed by the CTA *En Banc* in the case involving the same parties and issues,[27] this Court ruled that although tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be. This was also highlighted in the case of *Commissioner of Internal Revenue v. Hantex Trading*,[28] to wit:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
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> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence."

In the instant case, it is undisputed that petitioner treated the "decrease" in the balance of respondent's Accounts Receivable as "collections" subject to VAT.

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[26] CTA Case No. 7415, November 22, 2011.
[27] CTA *EB* No. 883, February 14, 2013.
[28] G.R. No. 136975, March 31, 2005.

However, the record shows that the decrease in accounts receivable was attributable to the *write-off* of long overdue and uncollectible accounts in the aggregate amount of ₱24,767,415.04. The record further reveals that the said write-off was authorized by the partners in a meeting held on December 1, 2011,[29] with a corresponding journal entry on an even date to reduce the balance of Accounts Receivable and Partners' Contribution.[30]

As correctly observed by the Court in Division, petitioner failed to present proof of actual sales and relies on the presumption that the decrease in accounts receivable is attributable to receipts subject to VAT. For the Court in Division, a change in the Accounts Receivable balance does not necessarily translate to collections subject to VAT. More, when respondent can explain the nature of the reduction in the account and provide the necessary supporting documents, as obtained in the instant case.

Thus, finding that the decrease in the balance of respondent's Accounts Receivable was due to the write-off of uncollectible accounts and not due to collection, the imposition of VAT on the said decrease in accounts receivable would be arbitrary and capricious.

Besides, even assuming for the sake of argument, that respondent failed to establish its compliance with the mandatory requirements set forth under RR No. 05-99 as amended by RR No. 25-02, for bad debts to be allowed as a deduction from gross income, the same would not result to a deficiency VAT but to a deficiency income tax as it relates to disallowance of claimed expense from gross income.

To illustrate:

Assuming that Company A decided to write-off its long outstanding accounts receivable from Company B amounting to ₱100,000.00, the journal entry to record the write-off would be:

Bad Debts Expense	₱100,000.00	
Accounts Receivable		P100,000.00

[29] ICPA Exhibit P-49, Division Docket, pp. 987-989.
[30] ICPA Exhibit P-51, Division Docket, p. 992.

At the close of the taxable year, particularly in preparing its Annual Income Tax Return, Company A will then claim as a deduction from its gross income the amount of ₱100,000.00 as Bad Debts Expense to arrive at the taxable income for the year.

If, in the event of a BIR audit, the BIR examiner found that Company A failed to satisfy the requirements for bad debts to be allowed as a deduction from gross income, the disallowance of the amount of ₱100,000.00 will result in overstated operating expense, which in effect, will result in understated taxable income for the subject taxable year.

Hence, given the understated taxable income, the assessment should be deficiency Income Tax and not deficiency VAT.

However, since respondent is a general professional partnership, respondent is not subject to income tax. Instead, the partners will be liable for deficiency income tax if assessed individually by the BIR.

Accordingly, the deficiency VAT attributable to the accounts receivable written-off should be cancelled.

The Court in Division did not err in applying the 15% withholding tax rate.

Petitioner maintains that the withholding tax on salaries and wages of respondent's employees is subject to a graduated rate on withholding tax on compensation as provided under Section 2.78 of RR No. 2-98. Hence, the Court in Division erred in using the withholding tax rate of 15%, which pertains to the maximum withholding tax on payments made to professionals, says petitioner.

The Court *En Banc* disagrees.

As testified by the ICPA,[31] she applied the 15% WTC rate as this is the highest rate that could be applied to professionals, talent and consultancy fees, and other similar activities, to wit:

[31] Exhibit P-26, Judicial Affidavit of Ma. Teresita Socorro Z. Dimaculangan, Division Docket, pp. 1116-1124.

16. Question: **The last item of assessment against Petition is on withholding tax on compensation**. In your report, you concluded that Petitioner over-withheld and should not be assessed any withholding tax. How did you arrive at this finding?

Answer: In this assessment, the BIR imposed deficiency withholding tax on compensation based on the difference between the amounts declared in Petitioner's Audited Financial Statements (AFS) for the year 2011 and those declared in the *Alphalist*. It seems that the BIR concluded that because the total amount in the AFS is higher than the amount declared in Petitioner's *Alphalist*, then there was compensation paid which were not subjected to withholding tax, and therefore, there was an underpayment of withholding tax.

Having computed the summaries from the AFS for the fiscal year ending December 31, 2011 and the *Alphalist* of same year, I did trace a discrepancy between the amounts in the AFS and the *Alphalist*. However, the discrepancy or difference is only Php4,647,709.51 and not Php7,692,582.57, as alleged by the BIR. My computations, as compared with those of the BIR's are detailed in the spreadsheet attached to my Report.

17. Question: What did you do after?

Answer: **I computed the withholding tax allegedly still due by multiplying the lower amount of Php4,647,709.51 with 15%**. Initially, my calculation showed that Petitioner should pay a deficiency tax of Php697,156.43.

18. Question: **Why did you apply the rate of 15% on the discrepancy between the total amount of compensation declared in the AFS and in the *Alphalist*?**

Answer: **I applied the 15% rate because this is the highest rate that could be applied to professional, talent and consultancy fees, and other similar activities**. I decided to use the highest rate that can be imposed in order to arrive at a conservative estimate of alleged tax due.

19. Question: **Why did you conclude that this deficiency in the AFS and *Alphalist* came from "professional fees" subject to 15% rate and not employee's compensation which would have been subject to a higher rate of 30% due on withholding tax on compensation**?

Answer: **Based on my examination of the Petitioner's records and the BIR's assessment documents, specifically the Preliminary Assessment Notice issued on July 6, 2015, the BIR's examination showed that there were allowances to the Partners which were not subjected to withholding tax**. Petitioner, in the interest of settling the issue, submitted a reconciliation to the BIR on July 20, 2015 which shows that in 2011, its Partners did receive professional fees and allowances which were not subjected to payment of withholding tax. Petitioner then voluntarily paid the deficiency withholding tax to the BIR, in the amount of Php821,297.89 on August 26, 2015. (*Boldfacing supplied*)

In fact, during her cross-examination, the ICPA explained the use of the 15% withholding tax rate as follows:

ATTY. HUSSIN:

Question: Now, in your answer in relation to Question No. 17, you mentioned that the petitioner has used the tax rate of 15% instead of the 30% tax on compensation. Why was this so, Ms. Witness, if you know?

MS. DIMACULANGAN:

Answer: Okay. **The reason why I used the 15% tax rate for the computation on the amount not subject to tax was when (*sic*) because when I summarized the audited financial statements, it appears that there was this cost of sales, administrative cost, there (*sic*) were all part of the *Alphalist* and so there's another item which is other allowances and benefit which when I went through the documents, it pertains to the allowances paid to partners. So that's the reason why I used the 15% because the allowances to partners, I used the maximum of 15% withholding tax for the distribution.**

ATTY. HUSSIN:

Question: Do you know if the BIR used 30% tax rate on the computation of petitioner's withholding tax on compensation?

MS. DIMACULANGAN:

Answer: **Sir, what I just used was that what is in the tax rate supposedly for the withholding tax to distribution to partners on a regular basis.**[32] (*Boldfacing supplied*)

Based on the foregoing, respondent was able to establish that the compensation not subjected to withholding tax represents allowances given to the partners.

Revenue Memorandum Circular (RMC) No. 3-2012 [33] pertinently provides, thus:

[32] Transcript of Stenographic Notes (TSN) during the Hearing held on January 15, 2019.
[33] SUBJECT: *Tax Implications of General Professional Partnership.*

> Clearly, a general professional partnership shall not be subject to income tax since it is the individual partners who shall be subject to income tax in their separate and individual capacities...
>
> xxx xxx xxx
>
> Relative thereto, income payments made to a General Professional Partnership in consideration for its professional services are not subject to income tax and consequently to withholding tax prescribed in Revenue Regulations No. 2-98, as amended.
>
> It is the individual partners who shall be subject to income tax, and consequently, to withholding tax, in their separate and individual capacities pursuant to Section 26 of the 1997 Tax Code, as amended. Furthermore, each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership.
>
> However, it is worth mentioning that **income payments made periodically or at the end of the taxable year by a general professional partnership to the partners, such as drawings, advances, sharings, allowances, stipends and the like, are subject to the Fifteen percent (15%), if the payments to the partner for the current year exceeds P720,000.00; and Ten percent (10%) creditable withholding tax, if otherwise, pursuant to Section 2.57.2 (H) of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 30-03**. (*Boldfacing and underscoring supplied*)

Clearly, income payments, in this case, "allowances," given periodically by a general professional partnership to the partners, are subject to 10% or 15%, as the case may be.

Thus, contrary to petitioner's assertion, the Court in Division correctly applied the 15% withholding tax rate.

All told, We find no compelling justification to disturb the ruling of the Court in Division, which is in accord with the facts obtained in the case, the applicable law, and jurisprudence.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The *Decision* dated March 9, 2021, and the *Resolution* dated March 14, 2022, of the Court's Third Division in CTA Case No. 9705 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice