REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2724** (CTA Case No. 9866) *Present:*
- versus -	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.*
STEEL CORPORATION OF THE PHILIPPINES, *Respondent.*	Promulgated: SEP 30 2024 4:30pm

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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 on January 27, 2023, assailing the Decision[2] dated May 17, 2022 (*assailed Decision*) and the Resolution[3] (*assailed Resolution*) dated December 16, 2022, both rendered by this Court's First Division (Court in Division) in CTA Case No. 9866 entitled "*Steel Corporation of the Philippines v. Commissioner of Internal Revenue.*" The dispositive portions of the assailed Decision and Resolution read:

Assailed Decision dated May 17, 2022:

[1] *En Banc (EB)* Docket, pp. 7-17.
[2] *EB* Docket, pp. 26-50.
[3] *EB* Docket, pp. 57-63.

> **WHEREFORE**, in light of the foregoing considerations, the present Amended Petition for Review is **GRANTED**.
>
> Accordingly, the FLD dated September 30, 2017 and the FDDA dated February 9, 2018, holding petitioner liable for deficiency income and VAT for taxable year 2012, in the aggregate amount of ₱376,408,260.67, inclusive of surcharges and interests, are **CANCELLED** and **SET ASIDE**.
>
> Furthermore, the PCL dated May 16, 2018 and the FNBS dated May 31, 2018 addressed to petitioner are likewise **CANCELLED** and **WITHDRAWN**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.
>
> **SO ORDERED**.

Assailed Resolution dated December 16, 2022:

> **WHEREFORE**, premises considered, respondent's *Motion for Reconsideration (Re: Decision promulgated on 17 May 2022)*, and petitioner's *Motion for Partial Reconsideration*, are both **DENIED** for lack of merit.
>
> **SO ORDERED**.

Petitioner prays that the aforesaid Decision and Resolution be cancelled and set aside and that a new one be rendered ordering respondent Steel Corporation of the Philippines to pay the amount of ₱376,408,260.67 (inclusive of interest and penalties) as deficiency income tax and value-added tax (VAT) for taxable year (TY) 2012, plus interest and surcharge until full payment thereof.

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office, including, inter alia, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code.[4] He holds office and may be served with summons and legal processes at BIR Road, Diliman, Quezon City.[5]

[4] Parties, Petition for Review, *EB* Docket, p. 8.
[5] Par. 1., Facts, Statement of Facts and Issues, Pre-Trial Order dated May 17, 2019, Division Docket – Vol. III, p. 1745.

Respondent, on the other hand, is a domestic corporation duly organized under Philippine laws on October 3, 1994, and registered with the BIR as a VAT taxpayer. Its principal activity is to manufacture and distribute cold-rolled and galvanized steel sheets and coils. Respondent is a wholly-owned subsidiary of Philsteel Holdings Corporation, with office address at Philsteel Tower, 140 Amorsolo St., Legaspi Village, Makati City.[6]

THE FACTS AND THE PROCEEDINGS

The relevant facts, as narrated by the Court in Division in the assailed Decision, are as follows:

> On September 11, 2006, a verified petition was filed by Equitable PCI Bank, Inc. ([respondent's] creditor) with the Regional Trial Court (RTC) of Batangas to have [respondent] placed under corporate rehabilitation in accordance with the provisions of Presidential Decree (PD) No. 902-A, as amended, in relation to A.M. No. 00-8-10-SC. The case was raffled to RTC Branch II - Batangas City, and was docketed as SP. Proc. No. 06-7993. In its Order dated September 12, 2006, the said Court, *inter alia*, granted the petition and we quote the dispositive portion as follows:
>
> > **WHEREFORE**, finding the petition to be sufficient in form and substance, this Order is hereby issued –
> >
> > xxx xxx xxx
> >
> > (c) Staying all claims against **Steel Corporation of the Philippines**, by all other corporations, persons or entities insofar as they may be affected by the present proceedings, until further notice from this Court, pursuant to Sec. 6, of Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.
> >
> > xxx xxx xxx
>
> Thereafter, on the basis of the report of the court-appointed Rehabilitation Receiver of [respondent], RTC Branch 3 - Batangas City issued the Order dated September 19, 2012 (for SP. Proc. No. 06-7993), the dispositive portion of which reads, in part, as follows:

[6] Refer to Exhibit R-2, BIR Records, p. 405.

"**WHEREFORE, IN VIEW OF THE FOREGOING**, the instant corporate rehabilitation proceedings are hereby converted to liquidation proceedings.

Pursuant to Section 112 of the Financial Rehabilitation and Insolvency Act of 2010, this Liquidation Order is hereby issued: (a) declaring debtor Steel Corporation of the Philippines as insolvent; (b) declaring debtor Steel Corporation of the Philippines as dissolved; xxx.

xxx xxx xxx

Pursuant to Section 113 of the Financial Rehabilitation and Insolvency Act of 2010: (a) debtor Steel Corporation of the Philippines is hereby deemed dissolved and its corporate or juridical existence terminated; (b) legal title to and control of all the assets of debtor Steel Corporation of the Philippines, except those that may be exempt from execution, are hereby deemed vested in the liquidator or, pending his election or appointment, with the court; xxx.

Pursuant to Section 114 of the Financial Rehabilitation and Insolvency Act of 2010, this Liquidation Order shall not affect the rights of any secured creditor to enforce its lien against debtor Steel Corporation of the Philippines in accordance with applicable law.

xxx xxx xxx

SO ORDERED.

In the Resolution dated October 16, 2013 (for SP. Proc. No. 06-7993), RTC Branch 3 - Batangas City ordered, *inter alia*, that the liquidation proceedings be closed and terminated effective upon the discharge of the liquidator. The latter then turned over custody of assets back to [respondent] on November 15, 2013.

On May 2, 2017, [respondent] received a Preliminary Assessment Notice (PAN) dated April 21, 2017, finding the latter liable for deficiency income tax and VAT for TY 2012, in the total amount of ₱373,746,344.03, inclusive of surcharges and interests.

> [Respondent] then filed its letter (Reply) to the abovementioned PAN on May 17, 2017.
>
> On September 27, 2017, [respondent] received a Formal Letter of Demand (FLD) dated September 20, 2017, for [respondent's] deficiency income tax and VAT for TY 2012, in the total amount of ₱376,408,260.67, inclusive of surcharges and interests.
>
> On October 25, 2017, [respondent] filed a Request for Reinvestigation dated October 24, 2017 with BIR Revenue Region (RR) No. 9A- CaBaMiRo.
>
> Thereafter, on February 19, 2018, [respondent] received a Final Decision on Disputed Assessment (FDDA) dated February 9, 2018, which denied [respondent's] Reply dated May 17, 2017 and Request for Reinvestigation on October 24, 2017, for lack of legal and factual bases.
>
> On March 21, 2018, [respondent] filed a Request for Reconsideration dated March 21, 2018 on said FDDA.
>
> [Petitioner], acting through his duly authorized representative - the Chief of the Collection Division of BIR RR No. 9A- CaBaMiro - issued a Preliminary Collection Letter (PCL) dated May 16, 2018, which was received by [respondent] on May 31, 2018. On June 6, 2018, [respondent] filed a letter in response to the PCL.
>
> On June 19, 2018, [respondent] received the Final Notice Before Seizure (FNBS) dated May 31, 2018.

Aggrieved, respondent elevated its case before the Court in Division *via* a Petition for Review[7] filed on July 2, 2018, which it later amended *via* an *Amended Petition for Review*[8] filed on July 31, 2018.

In his *Answer*[9] filed on October 15, 2018, petitioner interposed the following special and affirmative defenses:

> I. [Respondent] is liable for the assessed deficiency taxes.
>
> A. [Petitioner] has the right to assess [respondent] for deficiency taxes within the period prescribed by law. Thus, [petitioner] is not barred from assessing and collecting the deficiency taxes for taxable year 2012.

[7] Division Docket – Vol. I, pp. 12-65.
[8] Division Docket – Vol. I, pp. 214-267.
[9] Division Docket – Vol. II, pp. 1210-1230.

B. [Respondent] is not entitled to waiver of taxes.
C. [Respondent] is liable for deficiency income tax.
D. [Respondent] is liable for deficiency value-added tax (VAT).
E. Fifty percent (50%) surcharge was properly imposed.
F. Due process was rightfully observed.

II. The assessment issued is valid and lawful; [respondent] is liable for the assessed deficiency taxes.

After the *Pre-Trial Conference*,[10] a *Pre-Trial Order*[11] was issued on May 17, 2019.

The trial ensued, during which both parties presented documentary and testimonial evidence supporting their respective claims.

On May 17, 2022, the Court in Division rendered the assailed Decision granting respondent's *Amended Petition for Review*. In finding in favor of respondent, the Court in Division ruled that while respondent's claim of tax exemption under the Financial Rehabilitation and Insolvency Act of 2010 (FRIA of 2010) has no merit as the subject tax assessments are for TY 2012 and the period of effectivity of the waiver (of the imposition of taxes), among others, is only from the issuance of the stay order on September 12, 2006 until the approval of the said Rehabilitation Plan on December 2, 2007, still, the Court in Division found that the said deficiency tax assessments are not valid impositions.

According to the Court in Division, the subject deficiency income tax and VAT assessments sprung from the data the BIR obtained from the BOC on the supposed undeclared "Imported Purchases" of respondent in the computed amount of ₱178,708,658.33, which the BIR translated as its "Undeclared Sales" amounting to ₱184,883,776.47, for the deficiency VAT assessment; and "Undeclared Sales" amounting to ₱6,175,118.13, in relation to the deficiency income tax. However, for the Court in Division, the amount of undeclared "Imported Purchases," by itself, should not be treated as income to which income tax should be imposed. The Court in Division explained that the determining factor for the imposition of income tax is whether a taxpayer derived any gain or profit from a transaction. It also emphasized that for

[10] Minutes of the hearing held on February 21, 2019, Division Docket – Vol. III, pp. 1588-1590.
[11] Division Docket – Vol. III, pp. 1744-1754.

income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount or not to claim a deduction at all. In this case, there is no gain or profit, and since respondent is free to deduct from its gross income a lesser amount, the income tax imposition clearly has no factual and legal basis. In the same vein, just as no income tax should be imposed on the supposed undeclared "Imported Purchases," no VAT should likewise be imposed thereon, says the Court in Division.

Not satisfied, petitioner moved for reconsideration[12] but the same was denied in the equally assailed Resolution dated December 16, 2022.

Undeterred, petitioner filed a *Motion for Extension of Time to File Petition for Review*[13] on January 11, 2023. The Court *En Banc* granted petitioner an extension of fifteen (15) days from January 13, 2023, or until January 28, 2023, in the *Minute Resolution*[14] dated January 12, 2023.

On January 27, 2023, and within the extension period given, petitioner filed the instant *Petition for Review.*

Thereafter, or on March 15, 2023, the Court *En Banc* issued a Resolution[15] directing respondent to file its *Comment* to the instant *Petition for Review* within ten (10) days from notice.

On March 30, 2023, respondent filed its *Comment (To the Petition for Review),*[16] which the Court *En Banc* noted in a Minute Resolution[17] dated April 14, 2023. In the same Minute Resolution, the Court *En Banc* referred the instant case for mediation to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.*

On November 20, 2023, the instant case was submitted for decision, considering the report of the PMC-CTA dated November 6, 2023, stating that the mediation was unsuccessful.[18]

[12] Division Docket – Vol. IV, pp. 2152-2159.
[13] *EB* Docket, pp. 1-4.
[14] *EB* Docket, p. 6.
[15] *EB* Docket, pp. 65-66.
[16] *EB* Docket, pp. 67-74.
[17] *EB* Docket, p. 75.
[18] Minute Resolution, *EB* Docket, p. 93.

Hence, this Decision.

ASSIGNMENT OF ERROR

Petitioner assigns the following error allegedly committed by the Court in Division:

> THE HONORABLE COURT IN DIVISION ERRED IN FINDING THAT PETITIONER'S DEFICIENCY TAX ASSESSMENTS ARE INVALID

Petitioner's Arguments:

Contrary to the Court in Division's ruling, petitioner maintains that the deficiency tax assessments issued against respondent are valid.

According to petitioner, the BIR's investigation through computerized matching conducted on the details of importation provided by the BOC as stated per Letter Notice No. 058-RLFTRS-12-00-00335 dated August 8, 2014, as against the declaration per income tax return under Revenue Memorandum Order (RMO) No. 13-2012, revealed that respondent has undeclared importation amounting to ₱178,708,658.33. For petitioner, it is for this reason that the BIR assessed respondent of deficiency income tax on the gross profit of the undeclared importation, pursuant to the doctrine laid down in *Perez v. CTA and CIR*[19] *(Perez case),* wherein reflected sources of funds not accounted for in the taxpayer's returns lead to the inference that part of its income has not been reported.

Petitioner stresses that respondent must prove that said importation did not translate to sales during the assessed period. However, respondent has not provided petitioner or the Court in Division with any proof to show the actual flow of its accounts. Neither did respondent show what actually happened to the subject importation.

Likewise, in maintaining the validity of the deficiency VAT assessment, petitioner reiterates that respondent failed to discharge the burden of proof to show that the importation did not result in actual sales.

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[19] G.R. No. L-10507, May 30, 1958.

In closing, petitioner asserts that assessments are presumed correct and made in good faith. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

Respondent's Arguments:

Respondent avers that petitioner, in arguing that the assessment for income tax should be declared valid instead, was asserting that respondent has undeclared importation amounting to ₱178,708,658.33, which then resulted in additional taxable income of ₱6,175,118.13.

According to respondent, in arriving at the alleged undeclared sales of ₱178,708,658.33, petitioner resorted to extrapolation using what petitioner alleges are the *'VAT amounts per Bureau of Customs' data'*. This procedure is wrong for the respondent as it relies heavily on the presumption that the alleged importations were converted into finished goods and eventually sold. It did not consider that imported materials may have just been stored in the stock room and not factored in production to generate finished goods; other importations may not be raw materials at all for the production of saleable finished goods. In fact, according to respondent, it was able to demonstrate the actual flow of its importations in Paragraphs 36 to 40 of its *Memorandum*[20] dated March 17, 2021, and in the Independent Certified Public Accountant (ICPA) Report (Exhibit P-58) of its *Formal Offer of Evidence.*

Respondent added that in justifying the procedure adopted, petitioner cited the *Perez case,* where the Supreme Court allegedly declared that "*reflected sources of funds accounted for in the taxpayer's return lead to the inference that part of its income has not been reported*". However, respondent submits that petitioner failed to disclose that in the said case, the Collector of Internal Revenue used the "net worth" method to determine income tax deficiency. Allegedly, in the said case, the Collector established increases in the assets of Perez, but there was no discernible increase in his income.

[20] Division Docket – Vol. IV, pp. 2076-2115.

In the case at bar, some importations were presumed to have been converted to saleable products, thus the presumed undeclared sales. This is not obtained in the *Perez case.* Hence, the "net worth" method cannot be perfunctorily applied to justify an assessment for undeclared sales arising from a mere inference that there were undeclared importations.

In the same vein, the undeclared sales arising from alleged undeclared importations do not necessarily translate into undeclared sales resulting in VAT deficiency. Citing *CIR v. Agrinurture Inc.*,[21] respondent submits that a finding of under-declaration of purchases does not result in the imposition of income tax and VAT. As the Court ruled therein, it is not when there is an undeclared purchase, but only when an income is received or realized by the taxpayer, that an imposition or assessment of income tax is appropriate.[22] It also added that the imposition of VAT on the alleged undeclared sales is based on mere inferences and assumptions and is not supported by clear and convincing proof.

Lastly, respondent submits that petitioner is already bereft of jurisdiction to issue the challenged 2012 assessments, echoing the *Concurring Opinion* of Presiding Justice Roman G. Del Rosario in the assailed Decision that prescription has already set in.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* must fail.

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the present *Petition for Review* was timely filed.

The present Petition for Review was seasonably filed; hence, the Court En Banc has jurisdiction over the same.

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

SEC. 3. *Who may appeal; period to file petition.* — xxx

[21] CTA *EB* No. 1054 (CTA Case No. 8345), January 13, 2015.
[22] *Id.*

xxx xxx xxx

> (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 Resolution dated December 16, 2022, which denied his *Motion for Reconsideration (Re: Decision promulgated on 17 May 2022)* on December 29, 2022.[23] Thus, petitioner had fifteen (15) days from December 29, 2022, or until January 13, 2023, to file his *Petition for Review* before the Court *En Banc*.

On January 11, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[24] asking for fifteen (15) days from January 13, 2023, or until January 28, 2023, to file his *Petition for Review*. The *Court En Banc* granted the *Motion* in a *Minute Resolution*[25] dated January 12, 2023.

Considering that the present *Petition* was filed on January 27, 2023, within the extended period granted by the Court, the same was timely filed. Hence, the Court *En Banc* validly acquired jurisdiction over the same.

Now, on the merits.

After a thorough evaluation and consideration of the record of the case, the Court *En Banc* finds no merit in the instant *Petition for Review*.

The records of the case show that the Court in Division had already fully and exhaustively resolved the issues raised in this appeal since they are mere rehash of the arguments proffered by petitioner in his *Answer*[26] dated October 15, 2018, and *Motion for Reconsideration (Re: Decision promulgated*

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[23] Notice of Resolution, *EB* Docket, p. 56.
[24] *EB* Docket, pp. 1-4.
[25] *EB* Docket, p. 6.
[26] Division Docket – Vol. II, pp. 1210-1230.

on 17 May 2022)[27] dated June 3, 2022. Be that as it may, and if only to put petitioner's mind to rest, the Court *En Banc* deems it proper to reiterate the points stressed by the Court in Division.

Petitioner's deficiency IT and VAT assessments have no factual and legal basis; hence, the Court in Division did not err in finding the assessments invalid.

As found by the Court in Division, the subject deficiency income tax and VAT assessments sprung from the data the BIR obtained from the BOC on the supposed undeclared "Imported Purchases" of respondent in the computed amount of ₱178,708,658.33, which the BIR translated as its "Undeclared Sales" amounting to ₱184,883,776.47, for the deficiency VAT assessment; and "Undeclared Sales" amounting to ₱6,175,118.13, in relation to deficiency income tax assessment.

Indeed, while there is a presumption of correctness of assessment issued by petitioner, it is an elementary rule that being a mere presumption, the same cannot be made to rest on another presumption. [28] Petitioner presumes that the undeclared purchases translated and would automatically result in profit, undeclared income, or additional taxable sales, increasing respondent's income tax and VAT liability.

It must be pointed out that to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, assessments should not be based on mere presumptions, no matter how reasonable or logical said presumptions may be.

Assuming that there were undeclared importations/ purchases on the part of respondent, the same is of no consequence. As the Court *En Banc* aptly stated in the case of *Commissioner of Internal Revenue v. Agrinurture, Inc.*, [29] a

[27] Division Docket – Vol. IV, pp. 2152-2159.
[28] *Collector of Internal Revenue v. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962.
[29] CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.

finding of under-declaration of purchase does not result in the imposition of income tax and VAT.

There are three (3) elements for the imposition of income tax. *First*, there must be gain or profit. *Second*, the gain or profit is realized or received, actually or constructively. And *third*, it is not exempted by law or treaty from income tax. Income tax is assessed on income received from any property, activity, or service.[30] Such being the case, in the imposition or assessment of income tax, it is not when there is an undeclared purchase but only when there is income, and such income was received or realized by the taxpayer.[31]

As the Court in Division correctly pointed out, for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[32] Hence, even granting that there is an undeclared purchase, the same is not prohibited by law.

Similarly, no deficiency VAT assessment should arise from an undeclared purchase. Under Section 105 of the NIRC of 1997, VAT is imposed on the seller, to wit:

> "SEC. 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, 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 the Code."

Further, Section 106 (A) of the NIRC of 1997 states that the VAT is assessed on the "gross selling price or gross value in money of the goods or properties sold" and is "to be paid by the seller or transferor." In this connection, the law defines "gross selling price" as:

> ". . . 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."[33]

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[30] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 108576, January 20, 1999.
[31] *Commissioner of Internal Revenue v. Agrinurture, Inc.*, CTA *EB* No. 1054 (CTA Case No. 8345), January 13, 2015.
[32] *Commissioner of Internal Revenue v. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.
[33] National Internal Revenue Code of 1997, Section 106 (A) (1).

What is critical to be shown in the imposition or assessment of VAT in the sale of goods or properties is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, the VAT is imposed when one sells, not when one purchases.[34]

Thus, the Court *En Banc* is one with the Court in Division when it ruled that the subject tax assessments are not valid impositions, to wit:

xxx xxx xxx

> As can be gleaned from the foregoing, the subject deficiency income tax and VAT assessments sprung from the data the BIR obtained from the BOC on the supposed undeclared "Imported Purchases" of [respondent] in the computed amount of ₱178,708,658.33, which the BIR translated as its "Undeclared Sales" amounting to ₱184,883,776.47, for the purpose of the deficiency VAT assessment; and "Undeclared Sales" amounting to ₱6,175,118.13, in relation to the deficiency income assessment.
>
> To be sure, the amount of undeclared "Imported Purchases", by itself, should not be treated as income, to which income tax should be imposed.
>
> Income in tax law is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent. It is the gain derived and severed from capital, from labor or from both combined. Income is profit or gain or the flow of wealth. The determining factor for the imposition of income tax is whether any gain or profit was derived by a taxpayer from a transaction.
>
> Moreover, it must be emphasized 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. Thus, even if a taxpayer has not claimed purchases or declared a lesser amount thereof, in the Income Tax Return (ITR), such action is allowed, and shall not necessarily result in the imposition of income tax on the undeclared or underdeclared purchases.

[34] *Commissioner of Internal Revenue v. Agrinurture, Inc.*, CTA *EB* No. 1054 (CTA Case No. 8345), January 13, 2015.

> Thus, in this case, there being no gain or profit, and since [respondent] is free to deduct from its gross income a lesser amount, the income tax imposition has clearly no factual and legal bases.
>
> In the same vein, just as no income tax should be imposed on the supposed undeclared "Imported Purchases", no VAT should likewise be imposed thereon.
>
> VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. It is a tax imposed on each sale of goods or services in the course of trade or business, or importation of goods as they pass along the production and distribution chain. The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his/her customers. The seller is the one statutorily liable for the payment of the VAT. In other words, the party directly liable for the payment of the tax is the seller.
>
> For sure, when one has undeclared imported purchases, such person is logically deemed as the buyer or purchaser of the goods and/or services, not the seller thereof. Such being the case, no VAT should be imposed on the supposed [respondent's] undeclared "Imported Purchases".
>
> In fine, the subject tax assessments issued by [petitioner] for income tax and VAT for TY 2012 have no valid foundation and thus, must be struck down. (*Citations omitted*)

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The assailed Decision dated May 17, 2022, and the Resolution dated December 16, 2022, are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

We Concur:

(I reiterate my Concurring Opinion in assailed Decision)
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

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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