

SECOND DIVISION

[G.R. No. 213943, March 22, 2017]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
PHILIPPINE DAILY INQUIRER, INC., RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition for review^[1] assailing the 4 November 2013 Decision^[2] and the 1 August 2014 Resolution^[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 905. The CTA *En Banc* affirmed the 16 February 2012 Decision^[4] and the 8 May 2012 Resolution^[5] of the CTA First Division in CTA Case No. 7853 which granted the petition for review filed by Philippine Daily Inquirer, Inc. (PDI) and cancelled the Formal Letter of Demand dated 11 March 2008 and Assessment No. LN # 116-AS-04-00-00038-000526 issued by the Bureau of Internal Revenue (BIR) for deficiency Value Added Tax (VAT) and income tax for the taxable year 2004.

The Antecedent Facts

The facts of this case, as presented by the CTA, are as follows:

PDI is a corporation engaged in the business of newspaper publication. On 15 April 2005, it filed its Annual Income Tax Return for taxable year 2004. Its Quarterly VAT Returns for the same year showed the following:

	Date of Filing
For the First Quarter	20 April 2004
For the Second Quarter	16 July 2004
For the Third Quarter	18 October 2004
For the Fourth Quarter	21 January 2005 ^[6]

On 10 August 2006, PDI received a letter dated 30 June 2006 from Region 020 Large Taxpayers' Service of BTR under LN No. 116-AS-04-00-00038. BIR alleged that based on the computerized matching it conducted on the information and data provided by third party sources against PDI's declaration on its VAT Returns for taxable year 2004, there was an underdeclaration of domestic purchases from its suppliers amounting to P317,705,610.52. The BIR invited PDI to reconcile the deficiencies with BIR's Large Taxpayers Audit & Investigation Division I (BIR-LTAID). In response, PDI submitted reconciliation reports, attached to its letters dated 22 August 2006 and 19 December 2006, to BIR-LTAID. On 21 March 2007, PDI executed a Waiver of the Statute of Limitation (First Waiver) consenting to the assessment and/or collection of taxes for the year 2004 which may be found due

after the investigation, at any time before or after the lapse of the period of limitations fixed by Sections 203 and 222 of the National Internal Revenue Code (NIRC) but not later than 30 June 2007. The First Waiver was received on 23 March 2007 by Nestor Valeroso (Valeroso), OIC-ACIR of the Large Taxpayer Service. In a letter dated 7 May 2007, PDI submitted additional partial reconciliation and explanations on the discrepancies found by the BIR. On 30 May 2007, PDI received a letter dated 28 May 2007 from Mr. Gerardo Florendo, Chief of the BIR-LTAID, informing it that the results of the evaluation relative to the matching of sales of its suppliers against its purchases for the taxable year 2004 had been submitted by Revenue Officer Narciso Laguerta under Group Supervisor Fe Caling. In the same letter, BIR invited PDI to an informal conference to present any objections that it might have on the BIR's findings. On 5 June 2007, PDI executed a Waiver of the Statute of Limitation (Second Waiver), which Valeroso accepted on 8 June 2007.

In a Preliminary Assessment Notice (PAN) dated 15 October 2007 issued by the BIR-LTAID, PDI was assessed for alleged deficiency income tax and VAT for taxable year 2004 on the basis of LN No. 116-AS-04-00-00038. The PAN states:

COMPUTATION OF DEFICIENCY VAT

Undeclared Income	P 1,007,565.03
Add: Overdeclared input VAT	<u>1,601,652.43</u>
Total undeclared income per Investigation	P 2,609,217.46
Less: Attributable input tax	<u>715,371.17</u>
VAT still payable per investigation	P 1,893,846.29
Add: Increments -	
Interest from	
1/26/05 to 11/15/07	P1,062,629.37
Compromise penalty	<u>25,000.00</u> <u>1,087,629.37</u>
Amount Due and Collectible	P 2,981,475.66

COMPUTATION OF DEFICIENCY INCOME TAX

Undeclared Gross Income	P 10,075,650.28
Less: Cost of Sales	<u>7,153,711.70</u>
Undeclared Net Income	P 2,921,938.58
Multiply by income tax rate	<u>32%</u>
Income tax still due per investigation	P 935,020.35
Add: Increments -	
Interest from	
4/16/05 to 11/15/07	P 483,648.88
Compromise penalty	<u>20,000.00</u> <u>503,648.88</u>
Amount Due and Collectible	P 1,438,669.23 ^[7]

PDI received the PAN on 4 December 2007. In a letter dated 12 December 2007, PDI sought reconsideration of the PAN and expressed its willingness to execute another Waiver (Third Waiver), which it did on the same date, thus extending BIR's right to assess and/or collect from it until 30 April 2008. Romulo L. Aguila, Jr. (Aguila), OIC-Head Revenue Executive Assistant for the Large Taxpayers Service-Regular, accepted the Third Waiver on 20 December 2007.

On 17 April 2008, PDI received a Formal Letter of Demand dated 11 March 2008 and an Audit Result/Assessment Notice from the BIR, demanding for the payment of alleged deficiency VAT and income tax, respectively, computed as follows:

1. COMPUTATION OF (DEFICIENCY) VAT

Undeclared Income	P 1,007,565.03
Add: Overdeclared input VAT	<u>1,601,652.43</u>
Total Undeclared Income per Investigation	P 2,609,217.46
Less: Attributable input tax	<u>715,371.17</u>
VAT still payable per investigation	P 1,893,846.29
Add: Increments -	
Interest from	
1/26/05 to 11/15/07	P1,235,929.28
Compromise penalty	<u>25,000.00</u> <u>1,260,929.28</u>
Amount Due and Collectible	P 3,154,775.56

2. COMPUTATION OF [DEFICIENCY INCOME TAX]

Undeclared Gross Income	P 10,075,650.28
Less: Cost of Sales	<u>7,153,711.70</u>
Undeclared Net Income	2,921,938.58
Multiply by income tax rate	<u>32%</u>
Income tax still due per investigation	P 935,020.35
Add: Increments -	
Interest from	
4/16/05 to 11/15/07	P 569,209.65
Compromise penalty	<u>20,000.00</u> <u>589,209.65</u>
Amount Due and Collectible	P 1,524,229.99 ^[8]

On 16 May 2008, PDI filed its protest. On 12 December 2008, PDI filed a Petition for Review against the Commissioner of Internal Revenue (CIR) alleging that the 180-day period within which the BIR should act on its protest had already lapsed.

The CTA First Division, quoting at length the CIR's Answer, presented the following facts:

Petitioner Philippine Daily Inquirer is liable to pay the amount of Three Million One Hundred Fifty Four Thousand Seven Hundred Seventy Five Pesos and 56/100 (P3,154,775.56) and One Million Five Hundred Twenty Four Thousand Two Hundred Twenty Nine Pesos and 99/100 (P1,524,299.99) representing deficiency Value-Added Tax (VAT and Income Tax, respectively, for the taxable year 2004.

1. The VAT and income tax liabilities of petitioner in the aggregate amount of Four Million Six Hundred Seventy Nine Thousand and Five Pesos and 55/100 (P4,679,005.55) arose on account of the issuance to petitioner of Letter Notice No. 116-AS-04-00-00038 dated June 30, 2006. Computerized matching conducted by respondent on information/data provided by third party sources against its declaration per VAT returns revealed the aforesaid discrepancies for taxable year 2004. The income and value-added tax liabilities were generated through the Reconciliation of Listing for Enforcement (RELIEF) system-Summary List of Sales and Purchases (SLSP) and Third Party Matching. Through the system, respondent was able to detect tax leaks through the matching of data available in the Integrated Tax Systems (ITS) with the information gathered from third party sources.

On the basis of the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases were generated to uncover under-declared income and over-claimed purchases (goods and services).

As explicitly provided under Revenue Memorandum Order (RMO) No. 42-2003:

II. POLICIES [x x x]

2. In order to intensify enforcement, the power of the Commissioner to authorize the examination of the taxpayer and the assessment of the correct amount of tax is hereby ordered done through the so called '*no contact-audit-approach*'.

3. The '*no contact-audit-approach*' includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayer under the RELIEF system pursuant to RR No. 7-95 as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

4. Even without conducting a detailed examination of taxpayer's books and records, the computerized/manual matching of sales and purchases/expenses will reveal discrepancies which shall be communicated to the concerned taxpayer through the issuance of a Letter Notice (LN) by the

Commissioner.

5. LNs being served by the Bureau upon the taxpayer found to have understated their sales or over claimed their purchases/expenses can be considered notice of audit or investigation in so far as the amendment of any return is concerned which is the subject of such LN. A taxpayer is therefore disqualified from amending his return once an LN is served upon him.

III. GUIDELINES

x x x

5. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice of Informal Conference, thus, the procedures defined in RR 12-99 should likewise be observed.

Furthermore, in CTA Case No. 7092 entitled '*BIG AA Corporation represented by Erlinda L. Stohner vs. Bureau of Internal Revenue*' dated February 22, 2006, the Honorable Court had the opportunity to say:

'Letter Notices issued against a taxpayer in connection with the information of under declaration of sales and purchases gathered through Third Party Information Program may be considered as a '**notice of audit or investigation**' in the absence of evident error or clear abuse of discretion.'

2. On the basis of the abovementioned LN and after a careful and extensive scrutiny of petitioner's documents, resulting deficiency in income and Value-added taxes led to the issuance of the Preliminary Assessment Notice (PAN) dated October 15, 2007 together with the Details of Discrepancies and subsequently, a Formal Letter of Demand (FLD) dated March 11, 2008.

Relative thereto, Section 203 of the National Internal Revenue Code (NIRC) explicitly provides:

'Section 203. Period of Limitation Upon Assessment and Collection of Taxes.

Except as provided in Section 222, internal revenue taxes shall be assessed **within three (3) years after the last day prescribed by law for filing of the return**, and no proceeding in court without assessment, for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return i[s] filed beyond the period prescribed by law, the three (3) year period shall be counted from the day [t]he return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered filed on such day.'