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SECOND DIVISION

[G.R. No. 136975. March 31, 2005]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **HANTEX TRADING CO., INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING SIGNED BY THE REGIONAL DIRECTOR OF THE BUREAU OF INTERNAL REVENUE CONSTITUTES SUFFICIENT COMPLIANCE WITH THE REQUIREMENT OF SECTIONS 4 AND 5, RULE 7 OF THE RULES OF COURT.**— A verification and certification against forum shopping signed by the Regional Director constitutes sufficient compliance with the requirements of Sections 4 and 5, Rule 7 of the Rules of Court. Under Section 10 of the NIRC of 1997, the Regional Director has the power to administer and enforce internal revenue laws, rules and regulations, including the assessment and collection of all internal revenue taxes, charges and fees. Such power is broad enough to vest the Revenue Regional Director with the authority to sign the verification and certification against forum shopping in behalf of the Commissioner of Internal Revenue. There is no other person in a better position to know the collection cases filed under his jurisdiction than the Revenue Regional Director. Moreover, under Revenue Administrative Order No. 5-83, the Regional Director is authorized to sign all pleadings filed in connection with cases referred to the Revenue Regions by the National Office which, otherwise, require the signature of the petitioner.

2. **ID.; ID.; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; A MOTION FOR RECONSIDERATION OF THE DECISION OF THE COURT OF APPEALS IS NOT A CONDITION *SINE QUA NON* FOR THE FILING OF PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT.**— A motion for reconsideration of the decision of the CA is not a condition *sine qua non* for the filing of a petition for review under Rule 45.

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3. **ID.; ID.; UNDER EXCEPTIONAL CIRCUMSTANCES, THE COURT MAY RESOLVE QUESTIONS OF FACT.**—While Rule 45 of the Rules of Court provides that only questions of law may be raised by the petitioner and resolved by the Court, under exceptional circumstances, the Court may take cognizance thereof and resolve questions of fact. In this case, the findings and conclusion of the CA are inconsistent with those of the CTA, not to mention those of the Commissioner of Internal Revenue. The issues raised in this case relate to the propriety and the correctness of the tax assessments made by the petitioner against the respondent, as well as the propriety of the application of Section 16, paragraph (b) of the 1977 NIRC, as amended by Pres. Decree Nos. 1705, 1773, 1994 and Executive Order No. 273, in relation to Section 3, Rule 132 of the Rules of Evidence. There is also an imperative need for the Court to resolve the threshold factual issues to give justice to the parties, and to determine whether the CA capriciously ignored, misunderstood or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case.

4. **TAXATION; NATIONAL INTERNAL REVENUE CODE; POWER OF COMMISSIONER TO MAKE ASSESSMENTS; THE COMMISSIONER OF INTERNAL REVENUE MAY AVAIL OF THE BEST EVIDENCE, OTHER INFORMATION OR TESTIMONY BY EXERCISING THE POWER OR AUTHORITY UNDER PARAGRAPHS (1) TO (4) OF SECTION 7 OF THE CODE.** — Central to the second issue is Section 16 of the NIRC of 1977, as amended, which provides that the Commissioner of Internal Revenue has the power to make assessments and prescribe additional requirements for tax administration and enforcement. Among such powers are those provided in paragraph (b) thereof. This provision applies when the Commissioner of Internal Revenue undertakes to perform her administrative duty of assessing the proper tax against a taxpayer, to make a return in case of a taxpayer's failure to file one, or to amend a return already filed in the BIR. The petitioner may avail herself of the best evidence or other information or testimony by exercising her power or authority under paragraphs (1) to (4) of Section 7 of the NIRC. The "best evidence" envisaged in Section 16 of the 1977 NIRC, as amended, includes the corporate and accounting

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records of the taxpayer who is the subject of the assessment process, the accounting records of other taxpayers engaged in the same line of business, including their gross profit and net profit sales. Such evidence also includes data, record, paper, document or any evidence gathered by internal revenue officers from other taxpayers who had personal transactions or from whom the subject taxpayer received any income; and record, data, document and information secured from government offices or agencies, such as the SEC, the Central Bank of the Philippines, the Bureau of Customs, and the Tariff and Customs Commission.

5. **ID.; ID.; ID.; THE LAW ALLOWS THE BUREAU OF INTERNAL REVENUE ACCESS TO ALL RELEVANT OR MATERIAL RECORDS AND DATA IN THE PERSON OF THE TAXPAYER.**— The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable the BIR to get at the taxpayer's records in whatever form they may be kept. Such records include computer tapes of the said records prepared by the taxpayer in the course of business. In this era of developing information-storage technology, there is no valid reason to immunize companies with computer-based, record-keeping capabilities from BIR scrutiny. *The standard is not the form of the record but where it might shed light on the accuracy of the taxpayer's return.*

6. **ID.; ID.; ID.; BEST EVIDENCE OBTAINABLE UNDER SECTION 16 OF THE NIRC, AS AMENDED, DOES NOT INCLUDE MERE PHOTOCOPIES OF RECORDS/ DOCUMENTS; SUCH COPIES ARE MERE SCRAPS OF PAPER AND ARE OF NO PROBATIVE VALUE AS BASIS FOR ANY DEFICIENCY INCOME OR BUSINESS TAXES AGAINST TAXPAYER.**— We agree with the contention of the petitioner that the best evidence obtainable may consist of hearsay evidence, such as the testimony of third parties or accounts or other records of other taxpayers similarly circumstanced as the taxpayer subject of the investigation, hence, inadmissible in a regular proceeding in the regular courts. Moreover, the general rule is that administrative agencies such

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as the BIR are not bound by the technical rules of evidence. It can accept documents which cannot be admitted in a judicial proceeding where the Rules of Court are strictly observed. It can choose to give weight or disregard such evidence, depending on its trustworthiness. However, the best evidence obtainable under Section 16 of the 1977 NIRC, as amended, does not include mere photocopies of records/documents. The petitioner, in making a preliminary and final tax deficiency assessment against a taxpayer, cannot anchor the said assessment on mere machine copies of records/documents. Mere photocopies of the Consumption Entries have no probative weight if offered as proof of the contents thereof. The reason for this is that such copies are mere scraps of paper and are of no probative value as basis for any deficiency income or business taxes against a taxpayer. Indeed, in *United States v. Davey,* the U.S. Court of Appeals (2nd Circuit) ruled that where the accuracy of a taxpayer's return is being checked, the government is entitled to use the original records rather than be forced to accept purported copies which present the risk of error or tampering.

7. **ID.; ID.; ID.; PETITIONER COMMISSIONER OF INTERNAL REVENUE ACTED ARBITRARILY AND CAPRICIOUSLY IN RELYING ON AND GIVING WEIGHT TO THE MACHINE COPIES OF THE CONSUMPTION ENTRIES IN FIXING THE TAX DEFICIENCY ASSESSMENTS AGAINST THE RESPONDENT.**— In fine, then, the petitioner acted arbitrarily and capriciously in relying on and giving weight to the machine copies of the Consumption Entries in fixing the tax deficiency assessments against the respondent. The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.

8. **ID.; ID.; ID.; THE *PRIMA FACIE* CORRECTNESS OF A TAX ASSESSMENT DOES NOT APPLY UPON PROOF THAT AN ASSESSMENT IS UTTERLY WITHOUT FOUNDATION, ARBITRARY AND CAPRICIOUS.**— We agree with the contention of the petitioner that, as a general rule, tax

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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 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. 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.*

9. **ID.; ID.; ID.; UNAUTHENTICATED MACHINE COPIES/ ALBEIT OF CONSUMPTION ENTRIES CERTIFIED BY CUSTOMS OFFICIALS CANNOT BE RELIED UPON AS EVIDENCE.**— In fine, the petitioner based her finding that the 1987 importation of the respondent was underdeclared in the amount of ₱105,761,527.00 on the worthless machine copies of the Consumption Entries. Aside from such copies, the petitioner has no other evidence to prove that the respondent imported goods costing ₱105,761,527.00. The petitioner cannot find solace on the certifications of Tomas and Danganan because they did not authenticate the machine copies of the Consumption Entries, and merely indicated therein the entry numbers of Consumption Entries and the dates when the Bureau of Customs released the same. The certifications of Tomas and Danganan do not even contain the landed costs and the advance sales

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taxes paid by the importer, if any. Comparing the certifications of Tomas and Danganan and the machine copies of the Consumption Entries, only 36 of the entry numbers of such copies are included in the said certifications; the entry numbers of the rest of the machine copies of the Consumption Entries are not found therein.

10. ID.; ID.; ID.; THE PRESUMPTION OF CORRECTNESS OF AN ASSESSMENT, BEING A MERE PRESUMPTION, CANNOT BE MADE TO REST ON ANOTHER PRESUMPTION.— Thus, the computations of the EIIB and the BIR on the quantity and costs of the importations of the respondent in the amount of ₱105,761,527.00 for 1987 have no factual basis, hence, arbitrary and capricious. The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo,* in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.

APPEARANCES OF COUNSEL

Mario A. Saldevar and Gerlo C. Cacatian for petitioner.
Pitargue & Associates Law Office for respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

Before us is a petition for review of the Decision[1] of the Court of Appeals (CA) which reversed the Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 5126, upholding the deficiency income and sales tax assessments against respondent Hantex Trading Co., Inc.

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[1] Penned by Associate Justice Omar U. Amin (retired), with Associate Justices Jorge S. Imperial (retired) and Hector L. Hofileña (retired), concurring.

[2] Penned by Presiding Judge Ernesto D. Acosta, concurred in by Associate Judges Ramon O. de Veyra and Amancio Q. Saga.

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The Antecedents

The respondent is a corporation duly organized and existing under the laws of the Philippines. Being engaged in the sale of plastic products, it imports synthetic resin and other chemicals for the manufacture of its products. For this purpose, it is required to file an Import Entry and Internal Revenue Declaration (Consumption Entry) with the Bureau of Customs under Section 1301 of the Tariff and Customs Code.

Sometime in October 1989, Lt. Vicente Amoto, Acting Chief of Counter-Intelligence Division of the Economic Intelligence and Investigation Bureau (EIIB), received confidential information that the respondent had imported synthetic resin amounting to ₱115,599,018.00 but only declared ₱45,538,694.57.[3] According to the informer, based on photocopies of 77 Consumption Entries furnished by another informer, the 1987 importations of the respondent were understated in its accounting records.[4] Amoto submitted a report to the EIIB Commissioner recommending that an inventory audit of the respondent be conducted by the Internal Inquiry and Prosecution Office (IIPO) of the EIIB.[5]

Acting on the said report, Jose T. Almonte, then Commissioner of the EIIB, issued Mission Order No. 398-89[6] dated November 14, 1989 for the audit and investigation of the importations of Hantex for 1987. The IIPO issued *subpoena duces tecum* and *ad testificandum* for the president and general manager of the respondent to appear in a hearing and bring the following:

1. Books of Accounts for the year 1987;
2. Record of Importations of Synthetic Resin and Calcium Carbonate for the year 1987;

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[3] BIR Records, p. 338.

[4] *Id.* at 236-303. (Exhibits "I-1" to "I-AAAA")

[5] *Id.*

[6] *Id.* at 163.

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3. Income tax returns & attachments for 1987; and

4. Record of tax payments.[7]

However, the respondent's president and general manager refused to comply with the subpoena, contending that its books of accounts and records of importation of synthetic resin and calcium bicarbonate had been investigated repeatedly by the Bureau of Internal Revenue (BIR) on prior occasions.[8] The IIPO explained that despite such previous investigations, the EIIB was still authorized to conduct an investigation pursuant to Section 26-A of Executive Order No. 127. Still, the respondent refused to comply with the subpoena issued by the IIPO. The latter forthwith secured certified copies of the Profit and Loss Statements for 1987 filed by the respondent with the Securities and Exchange Commission (SEC).[9] However, the IIPO failed to secure certified copies of the respondent's 1987 Consumption Entries from the Bureau of Customs since, according to the custodian thereof, the original copies had been eaten by termites.[10]

In a Letter dated June 28, 1990, the IIPO requested the Chief of the Collection Division, Manila International Container Port, and the Acting Chief of the Collection Division, Port of Manila, to authenticate the machine copies of the import entries supplied by the informer. However, Chief of the Collection Division Merlita D. Tomas could not do so because the Collection Division did not have the original copies of the entries. Instead, she wrote the IIPO that, as gleaned from the records, the following entries had been duly processed and released after the payment of duties and taxes:

IMPORTER — HANTEX TRADING CO., INC. — SERIES OF 1987

ENTRY NO.	DATE RELEASED	ENTRY NO.	DATE RELEASED
03058-87	1-30-87	50265-87	12-09-87
09120-87	3-20-87	46427-87	11-27-87

[7] *Id.* at 162.

[8] Exhibit "F".

[9] Exhibits "1-e" to "1-i".

[10] TSN, 23 May 1995, pp. 20-22.

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18089-87	5-21-87	30764-87	8-21-87
19439-87	6-2-87	30833-87	8-20-87
19441-87	6-3-87	34690-87	9-16-87
11667-87	4-15-87	34722-87	9-11-87
23294-87	7-7-87	43234-87	11-2-87
45478-87	11-16-87	44850-87	11-16-87
45691-87	12-2-87	44851-87	11-16-87
25464-87	7-16-87	46461-87	11-19-87
26483-87	7-23-87	46467-87	11-18-87
29950-87	8-11-87	48091-87	11-27-87[11]

Acting Chief of the Collection Division of the Bureau of Customs Augusto S. Danganan could not authenticate the machine copies of the import entries as well, since the original copies of the said entries filed with the Bureau of Customs had apparently been eaten by termites. However, he issued a certification that the following enumerated entries were filed by the respondent which were processed and released from the Port of Manila after payment of duties and taxes, to wit:

Hantex Trading Co., Inc.

Entry No.	*Date Released*	*Entry No.*	*Date Released*
03903	1-29-87	22869	4-8-87
04414	1-20-87	19441	3-31-87
10683	2-17-87	24189	4-21-87
12611	2-24-87	26431	4-20-87
12989	2-26-87	45478	7-3-87
17050	3-13-87	26796	4-23-87
17169	3-13-87	28827	4-30-87
18089	3-16-87	31617	5-14-87
19439	4-1-87	39068	6-5-87
21189	4-3-87	42581	6-21-87
43451	6-29-87	42793	6-23-87
42795	6-23-87	45477	7-3-87
35582	not received	85830	11-13-87
45691	7-3-87	86650	not received

[11] *Id.* at 235. (Exhibit "1-bbbb").

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46187	7-8-87	87647	11-18-87
46427	7-3-87	88829	11-23-87
57669	8-12-87	92293	12-3-87
62471	8-28-87	93292	12-7-87
63187	9-2-87	96357	12-16-87
66859	9-15-87	96822	12-15-87
67890	9-17-87	98823	not received
68115	9-15-87	99428	12-28-87
69974	9-24-87	99429	12-28-87
72213	10-2-87	99441	12-28-87
77688	10-16-87	101406	1-5-87
84253	11-10-87	101407	1-8-87
85534	11-11-87	03118	1-19-87[12]

Bienvenido G. Flores, Chief of the Investigation Division, and Lt. Leo Dionela, Lt. Vicente Amoto and Lt. Rolando Gatmaitan conducted an investigation. They relied on the certified copies of the respondent's Profit and Loss Statement for 1987 and 1988 on file with the SEC, the machine copies of the Consumption Entries, Series of 1987, submitted by the informer, as well as excerpts from the entries certified by Tomas and Danganan.

Based on the documents/records on hand, inclusive of the machine copies of the Consumption Entries, the EIIB found that for 1987, the respondent had importations totaling ₱105,716,527.00 (inclusive of advance sales tax). Compared with the declared sales based on the Profit and Loss Statements filed with the SEC, the respondent had unreported sales in the amount of ₱63,032,989.17, and its corresponding income tax liability was ₱41,916,937.78, inclusive of penalty charge and interests.

EIIB Commissioner Almonte transmitted the entire docket of the case to the BIR and recommended the collection of the total tax assessment from the respondent.[13]

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[12] *Id.* at 234. (Exhibit "I-cccc"); CTA Records (Exhibits "H" to "H-5").

[13] *Id.* at 234. (Exhibits "I" to "I-3").

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On February 12, 1991, Deputy Commissioner Deoferio, Jr. issued a Memorandum to the BIR Assistant Commissioner for Special Operations Service, directing the latter to prepare a conference letter advising the respondent of its deficiency taxes.[14]

Meanwhile, as ordered by the Regional Director, Revenue Enforcement Officers Saturnino D. Torres and Wilson Filamor conducted an investigation on the 1987 importations of the respondent, in the light of the records elevated by the EIIB to the BIR, inclusive of the photocopies of the Consumption Entries. They were to ascertain the respondent's liability for deficiency sales and income taxes for 1987, if any. Per Torres' and Filamor's Report dated March 6, 1991 which was based on the report of the EIIB and the documents/records appended thereto, there was a *prima facie* case of fraud against the respondent in filing its 1987 Consumption Entry reports with the Bureau of Customs. They found that the respondent had unrecorded importation in the total amount of ₱70,661,694.00, and that the amount was not declared in its income tax return for 1987. The District Revenue Officer and the Regional Director of the BIR concurred with the report.[15]

Based on the said report, the Acting Chief of the Special Investigation Branch wrote the respondent and invited its representative to a conference at 10:00 a.m. of March 14, 1991 to discuss its deficiency internal revenue taxes and to present whatever documentary and other evidence to refute the same.[16] Appended to the letter was a computation of the deficiency income and sales tax due from the respondent, inclusive of increments:

B. Computations:

1. Cost of Sales Ratio	A2/A1	85.492923%
2. Undeclared Sales — Imported	A3/B1	110,079,491.61
3. Undeclared Gross Profit	B2-A3	15,969,316.61

[14] *Id.* at 394-395. (Exhibit "5"); CTA Records, p. 109. (Exhibit "L").

[15] *Id.* at 169-173.

[16] *Id.* at 154.

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C. Deficiency Taxes Due:

1. Deficiency Income Tax	B3 x 35%	5,589,261.00
50% Surcharge C1 x 50%		2,794,630.50
Interest to 2/28/91	C1 x 57.5%	3,213,825.08
Total		11,597,825.58
2. Deficiency Sales Tax		
at 10%		7,290,082.72
at 20%		10,493,312.31
Total Due		17,783,395.03
Less: Advanced Sales Taxes Paid		11,636,352.00
Deficiency Sales Tax		6,147,043.03
50% Surcharge C2 x 50%		3,073,521.52
Interest to 2/28/91		5,532,338.73
Total		14,752,903.28[17]

The invitation was reiterated in a Letter dated March 15, 1991. In his Reply dated March 15, 1991, Mariano O. Chua, the President and General Manager of the respondent, requested that the report of Torres and Filamor be set aside on the following claim:

> . . . [W]e had already been investigated by RDO No. 23 under Letters of Authority Nos. 0322988 RR dated Oct. 1, 1987, 0393561 RR dated Aug. 17, 1988 and 0347838 RR dated March 2, 1988, and re-investigated by the Special Investigation Team on Aug. 17, 1988 under Letter of Authority No. 0357464 RR, and the Intelligence and Investigation Office on Sept. 27, 1988 under Letter of Authority No. 0020188 NA, all for income and business tax liabilities for 1987. The Economic Intelligence and Investigation Bureau on Nov. 20, 1989, likewise, confronted us on the same information for the same year.
>
> In all of these investigations, save your request for an informal conference, we welcomed them and proved the contrary of the allegation. Now, with your new inquiry, we think that there will be no end to the problem.
>
> Madam, we had been subjected to so many investigations and re-investigations for 1987 and nothing came out except the payment

[17] *Id.* at 32-33.

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of deficiency taxes as a result of oversight. Tax evasion through underdeclaration of income had never been proven.[18]

Invoking Section 235[19] of the 1977 National Internal Revenue Code (NIRC), as amended, Chua requested that the inquiry be set aside.

The petitioner, the Commissioner of Internal Revenue, through Assistant Commissioner for Collection Jaime M. Maza, sent a Letter dated April 15, 1991 to the respondent demanding payment of its deficiency income tax of ₱13,414,226.40 and deficiency sales tax of ₱14,752,903.25, inclusive of surcharge and interest.[20] Appended thereto were the Assessment Notices of Tax Deficiency Nos. FAS-1-87-91-001654 and FAS-4-87-91-001655.[21]

On February 12, 1992, the Chief of the Accounts Receivables/ Billing Division of the BIR sent a letter to the respondent demanding payment of its tax liability due for 1987 within ten (10) days from notice, on pain of the collection tax due *via* a warrant of distraint and levy and/or judicial action.[22] The Warrant of Distraint and/or Levy [23] was actually served on the respondent on January 21, 1992. On September 7, 1992, it wrote the Commissioner of Internal Revenue protesting the assessment on the following grounds:

I. THAT THE ASSESSMENT HAS NO FACTUAL AS WELL AS LEGAL BASIS, *THE FACT THAT NO INVESTIGATION OF OUR RECORDS WAS EVER MADE BY THE EIIB WHICH RECOMMENDED ITS ISSUANCE.*[24]

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[18] *Id.* at 201.

[19] As amended by Presidential Decree (P.D.) Nos. 1457, 1705, 1773 and 1959.

[20] CTA Records, p. 98. (Exhibit "G")

[21] *Id.* at 99. (Exhibits "D" and "E")

[22] BIR Records, p. 222.

[23] *Id.* at 432.

[24] *Id.* at 450.

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II. *THAT GRANTING BUT WITHOUT ADMITTING THAT OUR PURCHASES FOR 1987 AMOUNTED TO ₱105,716,527.00 AS CLAIMED BY THE EIIB, THE ASSESSMENT OF A DEFICIENCY INCOME TAX IS STILL DEFECTIVE FOR IT FAILED TO CONSIDER OUR REAL PURCHASES OF ₱45,538,694.57.*[25]

III. *THAT THE ASSESSMENT OF A DEFICIENCY SALES TAX IS ALSO BASELESS AND UNFOUNDED CONSIDERING THAT WE HAVE DUTIFULLY PAID THE SALES TAX DUE FROM OUR BUSINESS.*[26]

In view of the impasse, administrative hearings were conducted on the respondent's protest to the assessment. During the hearing of August 20, 1993, the IIPO representative presented the photocopies of the Consumption and Import Entries and the Certifications issued by Tomas and Danganan of the Bureau of Customs. The IIPO representative testified that the Bureau of Customs failed to furnish the EIIB with certified copies of the Consumption and Import Entries; hence, the EIIB relied on the machine copies from their informer.[27]

The respondent wrote the BIR Commissioner on July 12, 1993 questioning the assessment on the ground that the EIIB representative failed to present the original, or authenticated, or duly certified copies of the Consumption and Import Entry Accounts, or excerpts thereof if the original copies were not readily available; or, if the originals were in the official custody of a public officer, certified copies thereof as provided for in Section 12, Chapter 3, Book VII, Administrative Procedure, Administrative Order of 1987. It stated that the only copies of the Consumption Entries submitted to the Hearing Officer were mere machine copies furnished by an informer of the EIIB. It asserted that the letters of Tomas and Danganan were unreliable because of the following:

In the said letters, the two collection officers merely submitted a listing of alleged import entry numbers and dates released of alleged

[25] *Id.* at 449.

[26] *Id.* at 448.

[27] *Id.* at 518.

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importations by Hantex Trading Co., Inc. of merchandise in 1987, for which they certified that the corresponding duties and taxes were paid after being processed in their offices. In said letters, no amounts of the landed costs and advance sales tax and duties were stated, and no particulars of the duties and taxes paid per import entry document was presented.

The contents of the two letters failed to indicate the particulars of the importations per entry number, and the said letters do not constitute as evidence of the amounts of importations of Hantex Trading Co., Inc. in 1987.[28]

The respondent cited the following findings of the Hearing Officer:

> . . . [T]hat the import entry documents do not constitute evidence only indicate that the tax assessments in question have no factual basis, and must, at this point in time, be withdrawn and cancelled. Any new findings by the IIPO representative who attended the hearing could not be used as evidence in this hearing, because all the issues on the tax assessments in question have already been raised by the herein taxpayer.[29]

The respondent requested anew that the income tax deficiency assessment and the sales tax deficiency assessment be set aside for lack of factual and legal basis.

The BIR Commissioner[30] wrote the respondent on December 10, 1993, denying its letter-request for the dismissal of the assessments.[31] The BIR Commissioner admitted, in the said letter, the possibility that the figures appearing in the photocopies of the Consumption Entries had been tampered with. She averred, however, that she was not proscribed from relying on other admissible evidence, namely, the Letters of Torres and Filamor dated August 7 and 22, 1990 on their investigation of the

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[28] *Id.* at 503.

[29] *Id.* at 537.

[30] Commissioner Liwayway Vinzons-Chato.

[31] *Id.* at 541-542.

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respondent's tax liability. The Commissioner emphasized that her decision was final.[32]

The respondent forthwith filed a petition for review in the CTA of the Commissioner's Final Assessment Letter dated December 10, 1993 on the following grounds:

First. The alleged 1987 deficiency income tax assessment (including increments) and the alleged 1987 deficiency sales tax assessment (including increments) are void *ab initio*, since under Sections 16(a) and 49(b) of the Tax Code, the Commissioner shall examine a return after it is filed and, thereafter, assess the correct amount of tax. The following facts obtaining in this case, however, are indicative of the incorrectness of the tax assessments in question: the deficiency interests imposed in the income and percentage tax deficiency assessment notices were computed in violation of the provisions of Section 249(b) of the NIRC of 1977, as amended; the percentage tax deficiency was computed on an annual basis for the year 1987 in accordance with the provision of Section 193, which should have been computed in accordance with Section 162 of the 1977 NIRC, as amended by Pres. Decree No. 1994 on a quarterly basis; and the BIR official who signed the deficiency tax assessments was the Assistant Commissioner for Collection, who had no authority to sign the same under the NIRC.

Second. Even granting *arguendo* that the deficiency taxes and increments for 1987 against the respondent were correctly computed in accordance with the provisions of the Tax Code, the facts indicate that the above-stated assessments were based on alleged documents which are inadmissible in either administrative or judicial proceedings. Moreover, the alleged bases of the tax computations were anchored on mere presumptions and not on actual facts. The alleged undeclared purchases for 1987 were based on mere photocopies of alleged import entry documents, not the original ones, and which had never been duly certified by the public officer charged with the custody of such records in the Bureau of Customs. According

[32] CTA Records, p. 96. (Exhibit "B")

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to the respondent, the alleged undeclared sales were computed based on mere presumptions as to the alleged gross profit contained in its 1987 financial statement. Moreover, even the alleged financial statement of the respondent was a mere machine copy and not an official copy of the 1987 income and business tax returns. Finally, the respondent was following the accrual method of accounting in 1987, yet, the BIR investigator who computed the 1987 income tax deficiency failed to allow as a deductible item the alleged sales tax deficiency for 1987 as provided for under Section 30(c) of the NIRC of 1986.[33]

The Commissioner did not adduce in evidence the original or certified true copies of the 1987 Consumption Entries on file with the Commission on Audit. Instead, she offered in evidence as proof of the contents thereof, the photocopies of the Consumption Entries which the respondent objected to for being inadmissible in evidence.[34] She also failed to present any witness to prove the correct amount of tax due from it. Nevertheless, the CTA provisionally admitted the said documents in evidence, subject to its final evaluation of their relevancy and probative weight to the issues involved.[35]

On December 11, 1997, the CTA rendered a decision, the dispositive portion of which reads:

> IN THE LIGHT OF ALL THE FOREGOING, judgment is hereby rendered DENYING the herein petition. Petitioner is hereby ORDERED TO PAY the respondent Commissioner of Internal Revenue its deficiency income and sales taxes for the year 1987 in the amounts of ₱11,182,350.26 and ₱12,660,382.46, respectively, plus 20% delinquency interest per annum on both deficiency taxes from April 15, 1991 until fully paid pursuant to Section 283(c)(3) of the 1987 Tax Code, with costs against the petitioner.
>
> SO ORDERED.[36]

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[33] CTA Records, pp. 2-4.

[34] BIR Records, pp. 50-60. (Exhibits "I" to "I-AAAA")

[35] CTA Records, pp. 198-201.

[36] *Rollo*, pp. 60-61.

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The CTA ruled that the respondent was burdened to prove not only that the assessment was erroneous, but also to adduce the correct taxes to be paid by it. The CTA declared that the respondent failed to prove the correct amount of taxes due to the BIR. It also ruled that the respondent was burdened to adduce in evidence a certification from the Bureau of Customs that the Consumption Entries in question did not belong to it.

On appeal, the CA granted the petition and reversed the decision of the CTA. The dispositive portion of the decision reads:

> FOREGOING PREMISES CONSIDERED, the Petition for Review is GRANTED and the December 11, 1997 decision of the CTA in CTA Case No. 5162 affirming the 1987 deficiency income and sales tax assessments and the increments thereof, issued by the BIR is hereby REVERSED. No costs.[37]

The Ruling of the Court of Appeals

The CA held that the income and sales tax deficiency assessments issued by the petitioner were unlawful and baseless since the copies of the import entries relied upon in computing the deficiency tax of the respondent were not duly authenticated by the public officer charged with their custody, nor verified under oath by the EIIB and the BIR investigators.[38] The CA also noted that the public officer charged with the custody of the import entries was never presented in court to lend credence to the alleged loss of the originals.[39] The CA pointed out that an import entry is a public document which falls within the provisions of Section 19, Rule 132 of the Rules of Court, and to be admissible for any legal purpose, Section 24, Rule 132 of the Rules of Court should apply.[40] Citing the ruling of this Court in *Collector of Internal Revenue v. Benipayo*,[41] the CA ruled that the assessments were unlawful because they were based

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[37] *Id.* at 42.

[38] *Id.* at 32.

[39] *Id.* at 34.

[40] *Id.* at 39.

[41] 4 SCRA 182 (1962).

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on hearsay evidence. The CA also ruled that the respondent was deprived of its right to due process of law.

The CA added that the CTA should not have just brushed aside the legal requisites provided for under the pertinent provisions of the Rules of Court in the matter of the admissibility of public documents, considering that substantive rules of evidence should not be disregarded. It also ruled that the certifications made by the two Customs Collection Chiefs under the guise of supporting the respondent's alleged tax deficiency assessments invoking the best evidence obtainable rule under the Tax Code should not be permitted to supplant the best evidence rule under Section 7, Rule 130 of the Rules of Court.

Finally, the CA noted that the tax deficiency assessments were computed without the tax returns. The CA opined that the use of the tax returns is indispensable in the computation of a tax deficiency; hence, this essential requirement must be complied with in the preparation and issuance of valid tax deficiency assessments.[42]

The Present Petition

The Commissioner of Internal Revenue, the petitioner herein, filed the present petition for review under Rule 45 of the Rules of Court for the reversal of the decision of the CA and for the reinstatement of the ruling of the CTA.

As gleaned from the pleadings of the parties, the threshold issues for resolution are the following: (a) whether the petition at bench is proper and complies with Sections 4 and 5, Rule 7 of the Rules of Court; (b) whether the December 10, 1991 final assessment of the petitioner against the respondent for deficiency income tax and sales tax for the latter's 1987 importation of resins and calcium bicarbonate is based on competent evidence and the law; and (c) the total amount of deficiency taxes due from the respondent for 1987, if any.

On the first issue, the respondent points out that the petition raises both questions of facts and law which cannot be the

[42] *Rollo*, p. 40.

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subject of an appeal by *certiorari* under Rule 45 of the Rules of Court. The respondent notes that the petition is defective because the verification and the certification against forum shopping were not signed by the petitioner herself, but only by the Regional Director of the BIR. The respondent submits that the petitioner should have filed a motion for reconsideration with the CA before filing the instant petition for review.[43]

We find and so rule that the petition is sufficient in form. A verification and certification against forum shopping signed by the Regional Director constitutes sufficient compliance with the requirements of Sections 4 and 5, Rule 7 of the Rules of Court. Under Section 10 of the NIRC of 1997,[44] the Regional Director has the power to administer and enforce internal revenue laws, rules and regulations, including the assessment and collection of all internal revenue taxes, charges and fees. Such power is broad enough to vest the Revenue Regional Director with the authority to sign the verification and certification against forum

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[43] *Id.* at 112-113.

[44] SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:

(a) Implement laws, policies, plans, programs, rules and regulations of the department or agencies in the regional area;

(b) Administer and enforce internal revenue laws, and rules and regulations, including the assessment and collection of all internal revenue taxes, charges and fees;

(c) Issue Letters of Authority for the examination of taxpayers within the region;

(d) Provide economical, efficient and effective service to the people in the area;

(e) Coordinate with regional offices or other departments, bureaus and agencies in the area;

(f) Coordinate with local government units in the area;

(g) Exercise control and supervision over the officers and employees within the region; and

(h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner.

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shopping in behalf of the Commissioner of Internal Revenue. There is no other person in a better position to know the collection cases filed under his jurisdiction than the Revenue Regional Director.

Moreover, under Revenue Administrative Order No. 5-83,[45] the Regional Director is authorized to sign all pleadings filed in connection with cases referred to the Revenue Regions by the National Office which, otherwise, require the signature of the petitioner.

We do not agree with the contention of the respondent that a motion for reconsideration ought to have been filed before the filing of the instant petition. A motion for reconsideration of the decision of the CA is not a condition *sine qua non* for the filing of a petition for review under Rule 45. As we held in *Almora v. Court of Appeals*:[46]

Rule 45, Sec. 1 of the Rules of Court, however, distinctly provides that:

> A party may appeal by *certiorari* from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for *certiorari* within fifteen (15) days from notice of judgment, or of the denial of his motion for reconsideration filed in due time. (Emphasis supplied)

The conjunctive "or" clearly indicates that the 15-day reglementary period for the filing of a petition for *certiorari* under Rule 45

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[45] As a general rule, decisions adverse to the Bureau should be appealed. However, if the Regional Office believes that no appeal shall be taken, the necessary recommendations should be submitted, thru the Legal Office, for approval by the Commissioner. The notice of appeal and record on appeal shall be filed by the Legal Branch concerned, which shall also continue handling the case in the appellate courts.

At the request of the Regional Director, assistance in the handling of all the criminal and civil cases will be extended by the Legal Office.

In all the abovementioned cases, the Regional Director is authorized to sign all pleadings filed in connection therewith which, otherwise, requires the signature of the Commissioner.

[46] G.R. No. 116151, July 2, 1999, 309 SCRA 586.

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commences either from notice of the questioned judgment or from notice of denial of the appellant's motion for reconsideration. A prior motion for reconsideration is not indispensable for a petition for review on *certiorari* under Rule 45 to prosper. . . .[47]

While Rule 45 of the Rules of Court provides that only questions of law may be raised by the petitioner and resolved by the Court, under exceptional circumstances, the Court may take cognizance thereof and resolve questions of fact. In this case, the findings and conclusion of the CA are inconsistent with those of the CTA, not to mention those of the Commissioner of Internal Revenue. The issues raised in this case relate to the propriety and the correctness of the tax assessments made by the petitioner against the respondent, as well as the propriety of the application of Section 16, paragraph (b) of the 1977 NIRC, as amended by Pres. Decree Nos. 1705, 1773, 1994 and Executive Order No. 273, in relation to Section 3, Rule 132 of the Rules of Evidence. There is also an imperative need for the Court to resolve the threshold factual issues to give justice to the parties, and to determine whether the CA capriciously ignored, misunderstood or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case.

On the second issue, the petitioner asserts that since the respondent refused to cooperate and show its 1987 books of account and other accounting records, it was proper for her to resort to the best evidence obtainable — the photocopies of the import entries in the Bureau of Customs and the respondent's financial statement filed with the SEC.[48] The petitioner maintains that these import entries were admissible as secondary evidence under the best evidence obtainable rule, since they were duly authenticated by the Bureau of Customs officials who processed the documents and released the cargoes after payment of the duties and taxes due.[49] Further, the petitioner points out that

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[47] *Id.* at 596.

[48] *Rollo*, p. 16.

[49] *Id.* at 170-171.

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under the best evidence obtainable rule, the tax return is not important in computing the tax deficiency.[50]

The petitioner avers that the best evidence obtainable rule under Section 16 of the 1977 NIRC, as amended, legally cannot be equated to the best evidence rule under the Rules of Court; nor can the best evidence rule, being procedural law, be made strictly operative in the interpretation of the best evidence obtainable rule which is substantive in character.[51] The petitioner posits that the CTA is not strictly bound by technical rules of evidence, the reason being that the quantum of evidence required in the said court is merely substantial evidence.[52]

Finally, the petitioner avers that the respondent has the burden of proof to show the correct assessments; otherwise, the presumption in favor of the correctness of the assessments made by it stands.[53] Since the respondent was allowed to explain its side, there was no violation of due process.[54]

The respondent, for its part, maintains that the resort to the best evidence obtainable method was illegal. In the first place, the respondent argues, the EIIB agents are not duly authorized to undertake examination of the taxpayer's accounting records for internal revenue tax purposes. Hence, the respondent's failure to accede to their demands to show its books of accounts and other accounting records cannot justify resort to the use of the best evidence obtainable method.[55] Secondly, when a taxpayer fails to submit its tax records upon demand by the BIR officer, the remedy is not to assess him and resort to the best evidence obtainable rule, but to punish the taxpayer according to the provisions of the Tax Code.[56]

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[50] *Id.* at 179.

[51] *Id.* at 170.

[52] *Id.* at 172.

[53] *Id.* at 18.

[54] *Id.* at 180.

[55] *Id.* at 190.

[56] *Id.* at 191.

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In any case, the respondent argues that the photocopies of import entries cannot be used in making the assessment because they were not properly authenticated, pursuant to the provisions of Sections 24[57] and 25[58] of Rule 132 of the Rules of Court. It avers that while the CTA is not bound by the technical rules of evidence, it is bound by substantial rules.[59] The respondent points out that the petitioner did not even secure a certification of the fact of loss of the original documents from the custodian of the import entries. It simply relied on the report of the EIIB agents that the import entry documents were no longer available because they were eaten by termites. The respondent posits that the two collectors of the Bureau of Customs never authenticated the xerox copies of the import entries; instead, they only issued certifications stating therein the import entry numbers which were processed by their office and the date the same were released.[60]

The respondent argues that it was not necessary for it to show the correct assessment, considering that it is questioning the assessments not only because they are erroneous, but because they were issued without factual basis and in patent violation of the assessment procedures laid down in the NIRC of 1977, as amended.[61] It is also pointed out that the petitioner failed to use the tax returns filed by the respondent in computing the deficiency taxes which is contrary to law;[62] as such, the deficiency

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[57] SEC. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy. . . .

[58] SEC. 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any. . . .

[59] *Rollo*, p. 192.

[60] *Id.* at 190-191.

[61] *Id.* at 193.

[62] *Id.* at 194-195.

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assessments constituted deprivation of property without due process of law.[63]

Central to the second issue is Section 16 of the NIRC of 1977, as amended,[64] which provides that the Commissioner of Internal Revenue has the power to make assessments and prescribe additional requirements for tax administration and enforcement. Among such powers are those provided in paragraph (b) thereof, which we quote:

> (b) Failure to submit required returns, statements, reports and other documents. — When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or regulation or *when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.*
>
> In case a person fails to file a required return or other document at the time prescribed by law, or *willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.*[65]

This provision applies when the Commissioner of Internal Revenue undertakes to perform her administrative duty of assessing the proper tax against a taxpayer, to make a return in case of a taxpayer's failure to file one, or to amend a return already filed in the BIR.

The petitioner may avail herself of the best evidence or other information or testimony by exercising her power or authority under paragraphs (1) to (4) of Section 7 of the NIRC:

> (1) To examine any book, paper, record or other data which may be relevant or material to such inquiry;

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[63] *Id.* at 196.

[64] As amended by Presidential Decree Nos. 1705, 1773 and 1994, and Executive Order No. 273.

[65] Italics supplied.

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(2) To obtain information from any office or officer of the national and local governments, government agencies or its instrumentalities, including the Central Bank of the Philippines and government owned or controlled corporations;

(3) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(4) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; . . .[66]

The "best evidence" envisaged in Section 16 of the 1977 NIRC, as amended, includes the corporate and accounting records of the taxpayer who is the subject of the assessment process, the accounting records of other taxpayers engaged in the same line of business, including their gross profit and net profit sales.[67] Such evidence also includes data, record, paper, document or any evidence gathered by internal revenue officers from other taxpayers who had personal transactions or from whom the subject taxpayer received any income; and record, data, document and information secured from government offices or agencies, such as the SEC, the Central Bank of the Philippines, the Bureau of Customs, and the Tariff and Customs Commission.

The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable the BIR to get at the taxpayer's records in whatever form they may be kept. Such records include computer tapes of the said records prepared by the taxpayer in the course of business.[68] In this era of developing information-storage

[66] As amended by Pres. Decree Nos. 1705, 1773 and 1994.

[67] De Leon, *The National Internal Revenue Code Annotated*, p. 37.

[68] *United States v. Davey*, 543 F.2d 996 (1976).

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technology, there is no valid reason to immunize companies with computer-based, record-keeping capabilities from BIR scrutiny. *The standard is not the form of the record but where it might shed light on the accuracy of the taxpayer's return.*

In *Campbell, Jr. v. Guetersloh*,[69] the United States (U.S.) Court of Appeals (5th Circuit) declared that it is the duty of the Commissioner of Internal Revenue to investigate any circumstance which led him to believe that the taxpayer had taxable income larger than reported. Necessarily, this inquiry would have to be outside of the books because they supported the return as filed. He may take the sworn testimony of the taxpayer; he may take the testimony of third parties; he may examine and subpoena, if necessary, traders' and brokers' accounts and books and the taxpayer's book accounts. The Commissioner is not bound to follow any set of patterns. The existence of unreported income may be shown by any practicable proof that is available in the circumstances of the particular situation. Citing its ruling in *Kenney v. Commissioner*,[70] the U.S. appellate court declared that where the records of the taxpayer are manifestly inaccurate and incomplete, the Commissioner may look to other sources of information to establish income made by the taxpayer during the years in question.[71]

We agree with the contention of the petitioner that the best evidence obtainable may consist of hearsay evidence, such as the testimony of third parties or accounts or other records of other taxpayers similarly circumstanced as the taxpayer subject of the investigation, hence, inadmissible in a regular proceeding in the regular courts.[72] Moreover, the general rule is that administrative agencies such as the BIR are not bound by the technical rules of evidence. It can accept documents which cannot

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[69] 287 F.2d 878 (1961).

[70] 111 F.2d 374.

[71] *Campbell, Jr. v. Guetersloh, supra* at 880.

[72] *Llorente v. Commissioner of Internal Revenue*, 74 TC 260 (1980); *Weimerskirch v. Commissioner of Internal Revenue*, 67 TC 672 (1977); *Rosano v. Commissioner of Internal Revenue*, 46 TC 681 (1966).

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be admitted in a judicial proceeding where the Rules of Court are strictly observed. It can choose to give weight or disregard such evidence, depending on its trustworthiness.

However, the best evidence obtainable under Section 16 of the 1977 NIRC, as amended, does not include mere photocopies of records/documents. The petitioner, in making a preliminary and final tax deficiency assessment against a taxpayer, cannot anchor the said assessment on mere machine copies of records/documents. Mere photocopies of the Consumption Entries have no probative weight if offered as proof of the contents thereof. The reason for this is that such copies are mere scraps of paper and are of no probative value as basis for any deficiency income or business taxes against a taxpayer. Indeed, in *United States v. Davey*,[73] the U.S. Court of Appeals (2nd Circuit) ruled that where the accuracy of a taxpayer's return is being checked, the government is entitled to use the original records rather than be forced to accept purported copies which present the risk of error or tampering.[74]

In *Collector of Internal Revenue v. Benipayo*,[75] the Court ruled that the assessment must be based on actual facts. The rule assumes more importance in this case since the xerox copies of the Consumption Entries furnished by the informer of the EIIB were furnished by yet another informer. While the EIIB tried to secure certified copies of the said entries from the Bureau of Customs, it was unable to do so because the said entries were allegedly eaten by termites. The Court can only surmise why the EIIB or the BIR, for that matter, failed to secure certified copies of the said entries from the Tariff and Customs Commission or from the National Statistics Office which also had copies thereof. It bears stressing that under Section 1306 of the Tariff and Customs Code, the Consumption Entries shall be the required number of copies as prescribed by regulations.[76] The Consumption

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[73] 543 F.2d 996 (1976).

[74] *Id.* at 1001.

[75] 4 SCRA 182 (1962).

[76] SEC. 1306. *Forms and Contents of Import Entry.* — Import entries shall be in the required number of copies in such form as prescribed by regulations.

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Entry is accomplished in sextuplicate copies and quadruplicate copies in other places. In Manila, the six copies are distributed to the Bureau of Customs, the Tariff and Customs Commission, the Declarant (Importer), the Terminal Operator, and the Bureau of Internal Revenue. Inexplicably, the Commissioner and the BIR personnel ignored the copy of the Consumption Entries filed with the BIR and relied on the photocopies supplied by the informer of the EIIB who secured the same from another informer. The BIR, in preparing and issuing its preliminary and final assessments against the respondent, even ignored the records on the investigation made by the District Revenue officers on the respondent's importations for 1987.

The original copies of the Consumption Entries were of prime importance to the BIR. This is so because such entries are under oath and are presumed to be true and correct under penalty of falsification or perjury. Admissions in the said entries of the importers' documents are admissions against interest and presumptively correct.[77]

In fine, then, the petitioner acted arbitrarily and capriciously in relying on and giving weight to the machine copies of the Consumption Entries in fixing the tax deficiency assessments against the respondent.

The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible

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They shall be signed by the person making the entry of the articles, and shall contain the names of the importing vessel or aircraft, port of departure and date of arrival, the number and marks of packages, or the quantity, if in bulk, the nature and correct commodity description of the articles contained therein, and its value as set forth in a proper invoice to be presented in duplicate with the entry.

[77] *Caltex Philippines, Inc. v. Court of Appeals*, 292 SCRA 273 (1998).

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barrier to proof.[78] However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.[79]

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 the taxpayer is made.[80] 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.[81]

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.[82] In such a situation, the U.S. Court of Appeals ruled[83] that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the*

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[78] *United States v. Johnson*, 319 U.S. 1233 (1943).

[79] *Marcos II v. Court of Appeals*, 273 SCRA 47 (1997).

[80] *United States v. Rindskopf*, 105 U.S. 418 (1881).

[81] *United States v. Rexach*, 482 F.2d 10 (1973). The *certiorari* was denied by the United States Supreme Court on November 19, 1973.

[82] *United States v. Janis*, 49 L. Ed. 2d 1046 (1976); 428 US 433 (1976).

[83] *Clark and Clark v. Commissioner of Internal Revenue*, 266 F.2d 698 (1959).

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determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.

The issue that now comes to fore is whether the tax deficiency assessment against the respondent based on the certified copies of the Profit and Loss Statement submitted by the respondent to the SEC in 1987 and 1988, as well as certifications of Tomas and Danganan, is arbitrary, capricious and illegal. The CTA ruled that the respondent failed to overcome the *prima facie* correctness of the tax deficiency assessment issued by the petitioner, to wit:

> The issue should be ruled in the affirmative as petitioner has failed to rebut the validity or correctness of the aforementioned tax assessments. It is incongruous for petitioner to prove its cause by simply drawing an inference unfavorable to the respondent by attacking the source documents (Consumption Entries) which were the bases of the assessment and which were certified by the Chiefs of the Collection Division, Manila International Container Port and the Port of Manila, as having been processed and released in the name of the petitioner after payment of duties and taxes and the duly certified copies of Financial Statements secured from the Securities and Exchange Commission. Any such inference cannot operate to relieve petitioner from bearing its burden of proof and this Court has no warrant of absolution. The Court should have been persuaded to grant the reliefs sought by the petitioner should it have presented any evidence of relevance and competence required, like that of a certification from the Bureau of Customs or from any other agencies, attesting to the fact that those consumption entries did not really belong to them.
>
> The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right (*Tan Guan v. CTA*, 19 SCRA 903), otherwise, the presumption in favor of the correctness of tax assessment stands (*Sy Po v. CTA*, 164 SCRA 524). The burden of proving the illegality of the assessment lies upon the petitioner alleging it to be so. In the case at bar, petitioner miserably failed to discharge this duty.[84]

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[84] *Rollo*, pp. 52-53.

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We are not in full accord with the findings and ratiocination of the CTA. Based on the letter of the petitioner to the respondent dated December 10, 1993, the tax deficiency assessment in question was based on (a) the findings of the agents of the EIIB which was based, in turn, on the photocopies of the Consumption Entries; (b) the Profit and Loss Statements of the respondent for 1987 and 1988; and (c) the certifications of Tomas and Danganan dated August 7, 1990 and August 22, 1990:

In reply, please be informed that after a thorough evaluation of the attending facts, as well as the laws and jurisprudence involved, this Office holds that you are liable to the assessed deficiency taxes. The conclusion was arrived at based on the findings of agents of the Economic Intelligence & Investigation Bureau (EIIB) and of our own examiners who have painstakingly examined the records furnished by the Bureau of Customs and the Securities & Exchange Commission (SEC). The examination conducted disclosed that while your actual sales for 1987 amounted to ₱110,731,559.00, you declared for taxation purposes, as shown in the Profit and Loss Statements, the sum of ₱47,698,569.83 only. The difference, therefore, of ₱63,032,989.17 constitutes as undeclared or unrecorded sales which must be subjected to the income and sales taxes.

You also argued that our assessment has no basis since the alleged amount of underdeclared importations were lifted from uncertified or unauthenticated xerox copies of consumption entries which are not admissible in evidence. On this issue, it must be considered that in letters dated August 7 and 22, 1990, the Chief and Acting Chief of the Collection Division of the Manila International Container Port and Port of Manila, respectively, certified that the enumerated consumption entries were filed, processed and released from the port after payment of duties and taxes. It is noted that the certification does not touch on the genuineness, authenticity and correctness of the consumption entries which are all xerox copies, wherein the figures therein appearing may have been tampered which may render said documents inadmissible in evidence, but for tax purposes, it has been held that the Commissioner is not required to make his determination (assessment) on the basis of evidence legally admissible in a formal proceeding in Court (Mertens, Vol. 9, p. 214, citing *Cohen v. Commissioner*). A statutory notice may be based in whole or in part upon admissible evidence (*Llorente v. Commissioner*, 74

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TC 260 (1980); *Weimerskirch v. Commissioner*, 67 TC 672 (1977); and *Rosano v. Commissioner*, 46 TC 681 (1966). In the case also of *Weimerskirch v. Commissioner* (1977), the assessment was given due course in the presence of admissible evidence as to how the Commissioner arrived at his determination, although there was no admissible evidence with respect to the substantial issue of whether the taxpayer had unreported or undeclared income from narcotics sale. . . .[85]

Based on a Memorandum dated October 23, 1990 of the IIPO, the source documents for the actual cost of importation of the respondent are the machine copies of the Consumption Entries from the informer which the IIPO claimed to have been certified by Tomas and Danganan:

The source documents for the total actual cost of importations, abovementioned, were the different copies of Consumption Entries, Series of 1987, filed by subject with the Bureau of Customs, marked Annexes "F-1" to "F-68." The total cost of importations is the sum of the Landed Costs and the Advance Sales Tax as shown in the annexed entries. These entries were duly authenticated as having been processed and released, after payment of the duties and taxes due thereon, by the Chief, Collection Division, Manila International Container Port, dated August 7, 1990, "Annex-G," and the Port of Manila, dated August 22, 1990, "Annex-H." So, it was established that subject-importations, mostly resins, really belong to HANTEX TRADING CO., INC.[86]

It also appears on the worksheet of the IIPO, as culled from the photocopies of the Consumption Entries from its informer, that the total cost of the respondent's importation for 1987 was ₱105,761,527.00. Per the report of Torres and Filamor, they also relied on the photocopies of the said Consumption Entries:

The importations made by taxpayer verified by us from the records of the Bureau of Customs and xerox copies of which are hereto attached shows the big volume of importations made and not declared in the income tax return filed by taxpayer.

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[85] BIR Records, pp. 96-97.

[86] *Id.* at 101.

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Based on the above findings, it clearly shows that a *prima facie* case of fraud exists in the herein transaction of the taxpayer, as a consequence of which, said transaction has not been possibly entered into the books of accounts of the subject taxpayer.[87]

In fine, the petitioner based her finding that the 1987 importation of the respondent was underdeclared in the amount of ₱105,761,527.00 on the worthless machine copies of the Consumption Entries. Aside from such copies, the petitioner has no other evidence to prove that the respondent imported goods costing ₱105,761,527.00. The petitioner cannot find solace on the certifications of Tomas and Danganan because they did not authenticate the machine copies of the Consumption Entries, and merely indicated therein the entry numbers of Consumption Entries and the dates when the Bureau of Customs released the same. The certifications of Tomas and Danganan do not even contain the landed costs and the advance sales taxes paid by the importer, if any. Comparing the certifications of Tomas and Danganan and the machine copies of the Consumption Entries, only 36 of the entry numbers of such copies are included in the said certifications; the entry numbers of the rest of the machine copies of the Consumption Entries are not found therein.

Even if the Court would concede to the petitioner's contention that the certification of Tomas and Danganan authenticated the machine copies of the Consumption Entries referred to in the certification, it appears that the total cost of importations inclusive of advance sales tax is only ₱64,324,953.00 — far from the amount of ₱105,716,527.00 arrived at by the EIIB and the BIR,[88] or even the amount of ₱110,079,491.61 arrived at by Deputy Commissioner Deoferio, Jr.[89] As gleaned from the certifications of Tomas and Danganan, the goods covered by the Consumption Entries were released by the Bureau of Customs, from which it can be presumed that the respondent must have paid the taxes due on the said importation. The petitioner did not adduce any documentary evidence to prove otherwise.

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[87] BIR Records, p. 209.

[88] Exhibit "K".

[89] Exhibit "L".

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Thus, the computations of the EIIB and the BIR on the quantity and costs of the importations of the respondent in the amount of ₱105,761,527.00 for 1987 have no factual basis, hence, arbitrary and capricious. The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*,[90] in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.

Moreover, the uncontroverted fact is that the BIR District Revenue Office had repeatedly examined the 1987 books of accounts of the respondent showing its importations, and found that the latter had minimal business tax liability. In this case, the presumption that the District Revenue officers performed their duties in accordance with law shall apply. There is no evidence on record that the said officers neglected to perform their duties as mandated by law; neither is there evidence *aliunde* that the contents of the 1987 and 1988 Profit and Loss Statements submitted by the respondent with the SEC are incorrect.

Admittedly, the respondent did not adduce evidence to prove its correct tax liability. However, considering that it has been established that the petitioner's assessment is barren of factual basis, arbitrary and illegal, such failure on the part of the respondent cannot serve as a basis for a finding by the Court that it is liable for the amount contained in the said assessment; otherwise, the Court would thereby be committing a travesty.

On the disposition of the case, the Court has two options, namely, to deny the petition for lack of merit and affirm the decision of the CA, without prejudice to the petitioner's issuance of a new assessment against the respondent based on credible evidence; or, to remand the case to the CTA for further proceedings, to enable the petitioner to adduce in evidence certified true copies or duplicate original copies of the Consumption Entries for the respondent's 1987 importations, if there be any, and

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[90] *Supra*.

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the correct tax deficiency assessment thereon, without prejudice to the right of the respondent to adduce controverting evidence, so that the matter may be resolved once and for all by the CTA. In the higher interest of justice to both the parties, the Court has chosen the latter option. After all, as the Tax Court of the United States emphasized in *Harbin v. Commissioner of Internal Revenue,*[91] taxation is not only practical; it is vital. The obligation of good faith and fair dealing in carrying out its provision is reciprocal and, as the government should never be over-reaching or tyrannical, neither should a taxpayer be permitted to escape payment by the concealment of material facts.

IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The Decision of the Court of Appeals is *SET ASIDE*. The records are *REMANDED* to the Court of Tax Appeals for further proceedings, conformably with the decision of this Court. No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Tinga, and *Chico-Nazario, JJ.*, concur.

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[91] 40 TC 373 (1963).