REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE AND GLEN A. GERALDINO, REGIONAL DIRECTOR OF REVENUE REGION NO. 8 – MAKATI CITY, Petitioners,	**CTA EB NO. 2695** (CTA Case No. 9691)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.*****, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
SOFGEN HOLDINGS LIMITED – PHILIPPINE BRANCH, Respondent.	Promulgated: APR 12 2024 3:45

x - x

DECISION

BACORRO-VILLENA, J.:

Assailing the Decision dated 21 April 2022[1] (**assailed Decision**) and Resolution dated 07 September 2022[2] (**assailed Resolution**) of the First Division[3] in CTA Case No. 9691, entitled *Sofgen Holdings Limited – Philippine Branch v. Commissioner of Internal Revenue, and Glen A. Geraldino, Regional Director of Revenue Region No. 8 – Makati City*, petitioners Commissioner of Internal Revenue (**petitioner CIR**) and

[1] *Rollo*, pp. 28-56.
[2] Id., pp. 58-63.
[3] Penned by Associate Justice Catherine T. Manahan, with Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo, concurring.

Regional Director Glen A. Geraldino (**petitioner RD Geraldino**) (**petitioners**) filed the instant Petition for Review[4] before the Court *En Banc* on 20 October 2022[5], pursuant to Section 3(b)[6], Rule 8, in relation to Section 2(a)(1)[7], Rule 4 of the Revised Rules of the Court of Tax Appeals[8] (**RRCTA**).

Herein, petitioners seek the reversal of the assailed Decision and assailed Resolution and pray instead for a judgment denying respondent Sofgen Holdings Limited – Philippine Branch's (**respondent**'s) Petition for Review (before the First Division) for lack of merit, thereby allowing the Bureau of Internal Revenue (**BIR**) to retain the total amount of ₱19,632,677.12 that respondent paid in protest, representing deficiency value-added tax (**VAT**) for the taxable year (**TY**) 2015.

PARTIES OF THE CASE

Petitioner CIR is the head of the BIR, the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.[9]

---

4 *Rollo*, pp. 6-26.

5 The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension from 05 October 2022 (or until 20 October 2022) by the Court *En Banc* pursuant to a "Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 03 October 2022, id., p. 5.

6 **SEC. 3.** *Who may appeal; period to file petition.*
...
(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.
...

7 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
...
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]
...

8 A.M. No. 05-11-07-CTA.

9 Paragraph A.1, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 359.

Petitioner RD Geraldino is the Regional Director of Revenue Region No. 8 – Makati City.[10]

Respondent is a foreign company organized and existing under the laws of the Republic of Cyprus.[11] It is engaged in the business of software development[12] and is licensed to do business in the Philippines by the Securities and Exchange Commission (**SEC**).[13] It is also registered with the BIR as a VAT taxpayer, as evidenced by its Certificate of Registration (**COR**) No. OCN 9RC0000296101, bearing Tax Identification No. (**TIN**) 403-485-728-000, with address at 10F Quadrant D Rufino Pacific Tower, Ayala Avenue, Makati City 1226.[14]

FACTS OF THE CASE

On 26 October 2016, Revenue Region No. 8 (Makati City) of the BIR issued Letter of Authority (**LOA**) No. eLA201200033171[15], authorizing Revenue Officer (**RO**) IB Romel Isturis (**Isturis**) and Group Supervisor (**GS**) Emmanuel Obsequio (**Obsequio**) of Revenue District Office (**RDO**) No. 47 – East Makati to examine respondent's books of accounts and other accounting records for the period covered 01 April 2015 to 31 March 2016, pursuant to Section 6(A) and Section 10(C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended.[16]

Thereafter, on 21 November 2016, petitioners, through RO Isturis, issued a First Request for Presentation of Records[17] in relation to the LOA. This was followed by a Request for Submission of Additional Documents dated 10 January 2017[18] issued through the same RO. In compliance, respondent transmitted pertinent documentation *via* its letters dated 09 February 2017[19] and 22 February 2017.[20]

---

10 Par. A.2, id.
11 Exhibit "P-1", id., p. 228.
12 Exhibit "P-2", id., Volume II, p. 759.
13 Supra at note 11.
14 Supra at note 12.
15 Exhibit "P-3"/Exhibit "R-2", Division Docket, Volume I, p. 230 and Volume II, p. 457, respectively.
16 Par. A.4, JSFI, supra at note 9, p. 360.
17 Exhibit "R-5", BIR Records, Folder I, p. 669.
18 Exhibit "R-6", id., p. 670.
19 Exhibit "P-5", id., pp. 593-594.
20 Exhibit "P-6", id., pp. 600-601.

On 04 July 2017, respondent received a 48-Hour Notice (**Notice**) dated 20 June 2017.[21] It stated that the BIR's investigating office uncovered respondent's failure to comply with the following requirements as a VAT-registered person:

> ...
>
> a. Issue sales invoices or receipts pursuant to Sections 113 and 237 of the National Internal Revenue Code of 1997, as amended;
>
> b. Pay your Value-Added Tax, pursuant to Section 114 of the National Internal Revenue Code of 1997, as amended; and,
>
> c. Reflect your correct taxable sales/receipts for the Taxable Period January 1, 2015 to December 31, 2015.
>
> ...

The Notice gave respondent forty-eight (48) hours to refute the BIR's findings of deficiency VAT, for which the former was being assessed, amounting to ₱47,754,294.19, computed as follows[22]:

Intercompany revenues not subjected to VAT	₱130,956,271.00
Receipts for local non-related party not subjected to VAT	306,506.15
Undeclared revenues recorded under Services account	189,808,497.87
Total revenues/receipts not subjected to VAT	321,071,275.02
Multiply by: VAT rate	12%
Basic VAT due	₱38,528,553.00
Add: Interest (at 20% p.a.) from 26 April 2016 to 07 July 2017	9,225,741.18
Total amount due	**₱47,754,294.19**

In its letter dated 11 July 2017[23], respondent refuted the items in the assessment. It requested that the findings be set aside for lack of factual and legal bases.

On 20 July 2017, petitioner RD Geraldino issued a letter directing respondent to pay the related deficiency VAT on its intercompany sales for the latter's supposed failure to issue VAT official receipts (**ORs**) or invoices.[24]

---

21 Exhibit "R-10", id., Folder II, pp. 164-169.
22 Exhibit "R-10-b", BIR Records, Folder II, p. 168.
23 Exhibit "P-9", Division Docket, Volume I, pp. 241-246.
24 Exhibits "P-10"/"R-13", BIR Records, Folder II, pp. 195-197.

On 24 July 2017, respondent received a Five (5)-Day VAT Compliance Notice[25] (**VCN**) asking petitioner anew to pay the deficiency VAT based on a revised computation:

Intercompany revenues not subjected to VAT	₱130,956,271.00
Multiply by: VAT rate	12%
Basic VAT due	₱15,714,752.52
Add: Interest (at 20% p.a.) from 26 April 2016 to 25 July 2017	3,917,924.60
Total amount due	**₱19,632,677.12**

On 26 July 2017, respondent filed a letter with the BIR, protesting the VCN and requesting its cancellation.[26] Subsequently, on 31 July 2017, respondent filed another letter, providing further supporting arguments and reiterating its request for the VCN's cancellation.[27]

On 16 August 2017, respondent received a letter, issued by petitioner RD Geraldino, denying its protest. It gave respondent three (3) days to pay the deficiency VAT, as demanded in the VCN.[28] It mentioned that, should respondent default, the case shall be forwarded to petitioner CIR for appropriate action, pursuant to Revenue Memorandum Order (**RMO**) No. 3-2009.

On 24 August 2017, respondent then filed with the BIR a letter denominated as a Motion for Reconsideration (**MR**) dated 23 August 2017.[29] Therein, it discussed grounds in support thereof and requested the suspension of service of the Order of Closure. Respondent also offered, by way of a compromise settlement, to pay forty percent (40%) of the deficiency VAT assessment on the ground of its doubtful validity.

Relative thereto, on 25 August 2017, respondent filed another letter of even date, requesting the BIR to hold in abeyance any further action on the VCN until its MR and compromise offer are resolved.[30] In response thereto, on 29 August 2017, petitioner RD Geraldino issued a

---

25 Exhibits "P-11"/"R-14", id., pp. 198-199.
26 See Respondent's letter dated 26 July 2017, Exhibit "P-12", Division Docket, Volume I, pp. 252-256.
27 See Respondent's letter dated 28 July 2017, Exhibit "P-13", id., pp. 257-260.
28 Exhibits "P-14"/"R-17", BIR Records, Folder II, pp. 347-349.
29 Exhibit "P-15", Division Docket, Volume I, pp. 264-267.
30 Exhibit "R-18", BIR Records, Folder II, pp. 366-367.

letter denying the MR.[31] Respondent received a copy of the same on 30 August 2017.

Subsequently, on 30 August 2017, petitioner CIR issued a Closure Order[32] against respondent stating that -

> ...
>
> By virtue of the power vested in me under Section 115 of the National Internal Revenue [C]ode of 1997 (as amended), and upon failure, refusal and/or neglect of the Taxpayer, **SOFGEN HOLDINGS LIMITED PHILIPPINE BRANCH**, with Taxpayer Identification No. 403-485-728-000, to comply with the requirements specified in the Five (5) - Day VAT Compliance Notice dated July 20, 2017, Order is hereby given this 30th day of August, 2017, for the closure of the business establishment(s) of the above-named Taxpayer at *10F Quadrant D Rufino Pacific Tower, Ayala Avenue, Makati City* based on the enclosed recommendatory report of the Investigating Office, as reviewed by the Regional/National Review Board.
>
> This Order shall remain in effect until it is lifted.[33]
>
> ...

On the same day, informing petitioner CIR ahead[34], respondent paid[35] the total amount due *per* the protested VCN (or ₱19,632,677.12), to forestall the said Closure Order.

Later, on 24 September 2017, the BIR served LOA No. SN: eLA201500051606[36] dated 26 September 2017 against respondent, authorizing RO Isturis and GS Obsequio to examine respondent's books of accounts and other accounting records for the period 01 January 2015 to 31 December 2015, pursuant to Section 6(A) and Section 10(C) of the NIRC of 1997, as amended.

On 26 September 2017, herein respondent elevated its case to the Court of Tax Appeals (**CTA**) *via* a Petition for Review.[37] It was initially raffled to this Court's Third Division.

---

31 Exhibit "R-20", id., p. 382.
32 Exhibit "P-18", id., p. 390.
33 Emphasis and italics in the original text.
34 Exhibit "P-19", Division Docket, Volume I, pp. 272-273.
35 See Payment Form, Exhibit "P-20", id., p. 274.
36 Exhibit "R-3", BIR Records, Folder I, p. 672.
37 Division Docket, Volume I, pp. 10-29.

On 20 November 2017, herein petitioners filed an Answer[38] interposing their special and affirmative defenses. In their Answer, they insisted that the issued LOA is a valid and that respondent is estopped from assailing its validity. They also highlighted the validity of the issued Closure Order as well as the deficiency VAT assessment against respondent. As to the amount advanced by respondent, they posited that it is burdened to establish its entitlement to a refund thereof, emphasizing that such claims are to be strictly construed against the claimant.

On 13 February 2018, petitioners transmitted the case's BIR Records to this Court.[39]

Subsequently, petitioners filed their Pre-Trial Brief[40] on 13 March 2018, while respondent's Pre-Trial Brief[41] was filed on 04 April 2018.

On 25 April 2018, pursuant to the Court's Order during the 10 April 2018 Pre-Trial Conference[42], the parties submitted their Joint Stipulation of Facts and Issues[43] (**JSFI**). On 23 May 2018, the Court issued the Pre-Trial Order[44], marking the termination of the Pre-Trial Conference.

In an Order dated 20 September 2018[45], the case was transferred to this Court's First Division.

At the trial proper that ensued thereafter, respondent (as then petitioner) presented testimonies from its witnesses, namely: (1) Christine Mayette Antonio[46] (**Antonio**), its Finance Officer; and, (2) Atty. Adan T. Delamide[47] (**Delamide**), Court-commissioned

---

38 Id., pp. 165-172.
39 See Letter dated 13 February 2017, id., p. 187.
40 Id., pp. 189-191.
41 Id., pp. 193-207.
42 See Minutes of the Hearing held and Order, both dated 10 April 2018, id., pp. 351 and 352-353, respectively.
43 Id., pp. 359-370.
44 Id., pp. 389-396.
45 Id., Volume II, p. 589.
46 See Minutes of the Hearing and Order, both dated 14 August 2018, id., pp. 576 and 577-578, respectively.
47 See Minutes of the Hearing and Order, both dated 24 September 2019, id., pp. 734-737 and 738-739, respectively.

Independent Certified Public Accountant (**ICPA**).[48] Each witness testified *via* their respective Judicial Affidavits.

Relatedly, ICPA Delamide was preceded by another ICPA Henry M. Tan (**Tan**). He was successfully commissioned and was able to submit a report, though the same was eventually stricken from the records.[49] His commissioning was revoked as well. Upon an information that was gathered later in the proceedings, it was found out that ICPA Tan's firm had assisted respondent in the administrative proceedings.[50]

On the witness stand, Antonio set forth her duties as respondent's tax specialist and recounted her involvement in the BIR's investigation of respondent's books of accounts (leading to the Closure Order and the payment under protest amounting to ₱19,632,677.12). She outlined the documents that respondent had received and its actions taken thereon. She also testified on the grounds that petitioner raised in its Petition for Review before the First Division.[51]

On cross-examination[52], after petitioners' counsel clarified a few of Antonio's responses in her Judicial Affidavit, she was questioned as to her familiarity with BIR's policy that allowed a taxpayer to make voluntary payments preceding the issuance of an assessment notice (**AN**). She also shared respondent's actions after the issuance of the LOA. She mentioned that the BIR told respondent to: (1) issue receipts for its intercompany transactions that previously lacked receipts; and, (2) amend its VAT returns to reflect the transactions.[53]

In the redirect and re-cross examinations that followed, she clarified that the BIR later attempted to serve a supposedly amended LOA reflecting a new period, that is, 01 January to 31 December 2015. According to Antonio, respondent was advised by counsel to refuse receipt of the new LOA, considering that it had already filed the Petition for Review before the CTA in Division.[54]

---

48 Oath of Commission dated 25 July 2019, id., p. 691.
49 See Resolution dated 28 May 2019, id., pp. 661-664.
50 TSN dated 15 January 2019.
51 Exhibit "P-26", Division Docket, Volume II, pp. 441-454.
52 See Minutes of the Hearing and Order, both dated 15 January 2019, id., pp. 633-635 and 636-637, respectively.
53 Supra at note 50.
54 Id.

When ICPA Delamide assumed the witness stand, he identified the report he prepared and summarized his findings therein.[55] On cross-examination, he confirmed that respondent had not engaged his services in the past.[56] On 27 August 2019, ICPA Delamide submitted his Report.[57]

On 17 October 2019, respondent filed its Formal Offer of Evidence (**FOE**) with Motion for Remarking and to Admit FOE.[58] In its Resolution dated 23 October 2019[59], the Court granted respondent's motion in the interest of justice, admitting the latter's FOE for later resolution. Despite the Court's order[60], petitioners failed to file their comment upon respondent's FOE.[61] Thereafter, in the Resolution dated 10 February 2020[62], the Court admitted all of respondent's exhibits, except for Exhibits "P-103"[63] and "P-104"[64], for not being found in the records of the case.

To address the same, respondent moved for the admission of its denied exhibits on the ground that they were only inadvertently excluded from the ICPA's submission.[65] Petitioners did not comment.[66] With respondent's submission of the missing exhibits, the Court granted its motion, admitting Exhibits "P-103" and "P-104" through a Resolution dated 29 July 2020.[67]

Later, petitioners presented their lone witness, RO Isturis, who also testified on direct examination by way of his Judicial Affidavit.[68]

On the witness stand, RO Isturis detailed his participation in a series of interrelated audit investigation procedures on respondent's

55 Exhibit "P-28", Division Docket, Volume II, pp. 711-723.
56 TSN dated 25 July 2019, p. 7.
57 Exhibit "P-27", Division Docket, Volume II, pp. 695-707.
58 Id., pp. 745-757.
59 Id., pp. 787-788.
60 See Resolution dated 23 October 2019, id., pp. 787-788.
61 See Records Verification dated 05 December 2019, id., p. 793.
62 Id., pp. 802-803.
63 Outward Telegraphic Transfer Transaction Advice dated 23 January 2015.
64 Outward Telegraphic Transfer Transaction Advice dated 09 February 2015.
65 See Respondent's "Motion for Reconsideration to the Resolution dated February 10, 2020", Division Docket, Volume II, pp. 804-805.
66 See Records Verification dated 06 July 2020, id., p. 908.
67 Id., pp. 913-914.
68 See Minutes of the Hearing and Order, both dated 24 November 2020, id., pp. 925-927 and 928-929, respectively.

books of accounts and pertinent supporting documentation. He recounted his preparation of memorandum reports containing his findings of respondent's deficiency VAT, that included recommendations for the issuance of a Closure Order for its business establishment. He also testified as to the BIR's issuance of the supplemental electronic LOA No. eLA201500051606 dated 26 September 2016.[69]

On cross-examination, RO Isturis confirmed that the scope of his team's investigation covered the fiscal year (**FY**) of 01 April 2015 to 31 March 2016, while respondent taxpayer observed the calendar year (**CY**) from 01 January to 31 December 2015. He also attested that, in connection with the investigation, there were no Preliminary Assessment Notice (**PAN**), Final Assessment Notice (**FAN**), nor Final Decision on Disputed Assessment (**FDDA**) issued against respondent.[70]

Thereafter, on 14 December 2020, petitioners filed their FOE[71] attached to a Motion to Admit[72], that asked the Court to accept their belated[73] submission, on account of BIR Revenue Region No. 8A's relocation of office (and as aggravated by the impacts of the pandemic). Respondent expressed its opposition to both petitioners' Motion to Admit and their FOE, in its Comments filed on 17 December 2020[74] and 28 January 2021[75], respectively.

Acting upon petitioners' FOE, the Court resolved to admit all but one of their offered exhibits in its Resolution dated 22 February 2021.[76] The Court denied admission of petitioners' Exhibit "R-1"[77] for not being found in the BIR Records of the case.

In the same Resolution dated 22 February 2021, the Court also gave the parties a non-extendible period of thirty (30) days within which to

69 Exhibit "R-23", id., pp. 843-854.
70 TSN dated 24 November 2020.
71 Division Docket, Volume II, pp. 934-945.
72 See Motion to Admit (attached Formal Offer of Evidence), id., pp. 931-933.
73 See Order dated 24 November 2020, id., pp. 928-929.
74 See Respondent's "Comment/Opposition (To the Motion to Admit Attached Formal Offer of Evidence)", id., pp. 948-950.
75 See Respondent's "Comment/Opposition (To the [Petitioners'] Formal Offer of Evidence)", id., pp. 956-957.
76 Id., pp. 962-963.
77 The entire BIR records.

file their respective memoranda. Respondent submitted its Memorandum[78] on 12 March 2021.

On 26 March 2021, in relation to their denied Exhibit "R-1", petitioners prayed for its admission through a Motion for Partial Reconsideration (**MPR**).[79] According to petitioners, the exhibit was duly submitted to this Court, marked in a Commissioner's Hearing held on 05 March 2020, and identified by their witness in the hearing held on 24 November 2020. Respondent submitted its comment on petitioners' MPR on 22 June 2021.[80] Over petitioners' contentions, the Court found that the exhibit was, in fact, not marked, nor does the pertinent Commissioner's Report indicate the event of its marking. Nevertheless, in the interest of justice, the Court granted the MPR, admitting petitioners' Exhibit "R-1" (and directing its marking) in its Resolution dated 22 July 2021.[81]

In the meantime, petitioners filed their Memorandum[82] on 21 May 2021. With both parties' memoranda filed, the case was submitted for decision on 22 July 2021.[83]

On 21 April 2022, the First Division proceeded to promulgate the assailed Decision[84] that granted respondent's Petition for Review. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, LOA No. eLA201200033171 dated October 26, 2016, the *48-Hour Notice* dated June 20, 2017, the VCN dated July 20, 2017, and the *Closure Order* dated August 30, 2017, all issued against [respondent], are **CANCELLED** and **SET ASIDE**.
>
> Furthermore, [petitioners] are **ORDERED TO REFUND** the total amount of ₱19,632,677.12 in favor of [respondent].

---

78 Division Docket, Volume II, pp. 964-989.
79 Id., 992-994.
80 See Respondent's "Comment/Opposition (To [Petitioners'] Motion for Partial Reconsideration)", id., pp. 1012-1014.
81 Id., pp. 1019-1020.
82 Id., pp. 997-1009.
83 See Resolution dated 22 July 2021, id., pp. 1019-1020.
84 Supra at note 1; Emphasis and italics in the original text.

SO ORDERED.

...

In the assailed Decision, the First Division ruled that the issued LOA No. eLA201200033171, dated 26 October 2016, was not valid. It additionally held that the resulting VAT assessment is void since the RO authorized to conduct the audit exceeded his authority when he asked respondent to present records pertaining to its transactions for the entirety of TY 2015. The First Division also ruled that respondent's right to due process pertaining to the issuance of the subject VAT assessment was violated, rendering the same void. As it observed, petitioner CIR improperly exercised his or her powers in implementing the Closure Order and in neglecting to issue ANs.[85]

Unsatisfied, on 11 May 2022, petitioners filed an MR[86] through registered mail which the Court received on 24 May 2022.

In their MR, petitioners argued that: (1) the audit of a taxpayer for more than one taxable period is allowed, provided that the other periods or years shall be specifically indicated in the LOA; (2) respondent is estopped from questioning the validity of the LOA as it actively participated in the audit investigation; and, (3) a PAN or FAN is not required as the issuance of the 48-Hour Notice and VCN stemmed from the CIR's power to suspend a taxpayer's business operations. As to the amount paid by respondent under protest, petitioners forward that respondent must prove that the alleged VATable transactions are zero-rated so that it may be entitled to a refund.[87]

On 27 June 2022, respondent filed its Comment/Opposition[88] on petitioners' MR. There, respondent pointed out that the First Division had already ruled on the arguments petitioners raised in their MR. It echoed the First Division's findings that the LOA is void and that there were due process violations in the issuance of the VAT assessment.

---

85 Id.
86 Division Docket, Volume II, pp. 1052-1067.
87 Id.
88 See Comment/Opposition (Re: Motion for Reconsideration dated May 11, 2022), id., pp. 1072-1086.

With respondent's Comment, on 11 July 2022, the First Division submitted the MR for resolution.[89]

In the now assailed Resolution[90] of 07 September 2022, the First Division denied petitioners' MR for lack of merit. In denying the MR, it declared that the assigned RO exceeded his authority and that petitioners violated respondent's due process rights in failing to observe the law in its issuances during the administrative proceedings. It clarified that respondent is entitled to the refund of the amount it paid under protest pursuant to a void assessment.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following petitioners' receipt of a copy of the assailed Resolution on 20 September 2022[91], they filed a "Motion for Extension of Time to File Petition for Review"[92] with the Court *En Banc* on 30 September 2022. On 20 October 2022 or within the fifteen (15)-day extended period granted, petitioners filed the instant Petition for Review[93] (*via* registered mail) seeking the reversal of the First Division's assailed Decision and Resolution. On 14 December 2022, respondent filed its Comment/ Opposition thereto.[94]

On 16 January 2023[95], the Court *En Banc* noted respondent's Comment/Opposition[96] and, pursuant to Parts I.1.B[97] and II[98] of A.M.

---

89 See Minute Resolution dated 11 July 2022, id., p. 1088.
90 Supra at note 2.
91 See Notice of Resolution dated 12 September 2022, Division Docket, Volume II, p. 1089.
92 *Rollo*, pp. 1-3.
93 Supra at note 4.
94 See Comment/Opposition (to the Petition for Review dated October 19, 2022), *rollo*, pp. 71-84.
95 See Resolution dated 16 January 2023, id., pp. 87-88.
96 Supra at note 94.
97 I.1. The following cases may be referred to mediation:
...
B. *Cases within the jurisdiction of the Court En Banc*:
Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies — BIR, BOC, Department of Finance, Department of Trade and Industry, Department of Agriculture.
98 II. *Referral to Mediation*
The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.
A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center — Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

No. 11-1-5-SC-PHILJA or the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*, referred the case to the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for mediation. However, the parties decided not to have their case mediated by the PMC-CTA.[99]

On 12 April 2023, the Court *En Banc* submitted the case for decision.[100]

ISSUES

Before us, petitioners put forward the following issues for the Court *En Banc*'s resolution:

> I.
>
> WHETHER THE FIRST DIVISION ERRED IN FINDING THAT LETTER OF AUTHORITY (LOA) NO. eLA201200033171, DATED 26 OCTOBER 2016, ISSUED AGAINST RESPONDENT SOFGEN HOLDINGS LIMITED – PHILIPPINE BRANCH IS VOID AND THAT THE ASSIGNED REVENUE OFFICER (RO) IB ROMEL ISTURIS EXCEEDED HIS AUTHORITY IN CONDUCTING THE INVESTIGATION;
>
> II.
>
> WHETHER THE FIRST DIVISION ERRED IN FINDING THAT THE INCLUSION OF THE VALUE-ADDED TAX (VAT) DEFICIENCY ASSESSMENT AS A GROUND FOR THE ISSUANCE OF THE FIVE (5)-DAY VAT COMPLIANCE NOTICE (VCN) AND CLOSURE ORDER ISSUED AGAINST RESPONDENT SOFGEN HOLDINGS LIMITED – PHILIPPINE BRANCH VIOLATES THE DUE PROCESS REQUIREMENTS UNDER SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED;
>
> III.
>
> WHETHER THE FIRST DIVISION ERRED IN RULING THAT THE DEFICIENCY VALUE-ADDED TAX (VAT) ASSESSMENT IS VOID FOR VIOLATING RESPONDENT SOFGEN HOLDINGS LIMITED – PHILIPPINE BRANCH'S RIGHTS TO DUE PROCESS; AND,
>
> IV.
>
> WHETHER THE FIRST DIVISION ERRED IN ORDERING THE REFUND OF THE SUM OF ₱19,632,677.12 RESPONDENT SOFGEN HOLDINGS LIMITED – PHILIPPINE BRANCH PAID UNDER PROTEST, ABSENT PROOF THAT THE CORRESPONDING TRANSACTIONS WERE ZERO-RATED.[101]

---

99 See No Agreement to Mediate dated 22 March 2023, *rollo*, p. 89.
100 See Minute Resolution dated 12 April 2023, id., p. 90.
101 Id, p. 10.

ARGUMENTS

In their bid for reversal, petitioners fault the First Division's reasoning declaring the LOA void. According to them, it is sufficient and compliant that the LOA covering more than one taxable period specifically indicates such periods therein. What jurisprudence only prohibits would be a reference in the LOA of "unverified prior years." As such, they conclude that the investigation that RO Isturis conducted was performed with sufficient authority. They also point out that respondent is not allowed to challenge the validity of the LOA for the first time on appeal.

As to the 48-Hour Notice, VCN, Closure Order, and other related orders and issuances, petitioners maintain their stance that all due process requirements were observed in their issuance. Further, they contend that such requirements are distinct from those necessary in proceedings for a deficiency assessment of internal revenue taxes. In line with this, petitioners insist that they gave respondent every opportunity to be heard at every stage of the proceedings.

Finally, petitioners expressed their disagreement with the First Division's decision to refund the amount that respondent paid under protest. For petitioners, the First Division must first rule on whether the transactions covered by the payment were classified as zero-rated.

In response, respondent finds justification in the First Division's actions. It agrees with the finding that the subject LOA is void for covering fractions of two (2) TYs akin to a FY (ending on 31 March 2016), while respondent adopts the CY in its operations. It disagrees with petitioners' contention above, saying that the Court may pass upon issues not raised in the administrative level.

Respondent echoes the First Division's finding that all the grounds that petitioners raised in issuing the VCN and Closure Order were either invalid or already remedied over the course of the investigation. In connection thereto, it highlights the due process violations that attended the issuances. According to respondent, the due process requirements applicable to an assessment should have been complied with.

As to the amount it paid under protest, respondent maintains that it must be refunded since it was paid pursuant to an invalid VAT assessment.

RULING OF THE COURT *EN BANC*

After a thorough examination of the records of the case and the parties' arguments, We find the present Petition for Review is bereft of merit.

Before proceeding further, the Court *En Banc* finds it propitious to preface its disquisitions of the issues with a determination of whether it has jurisdiction over the present petition.

PETITIONERS TIMELY FILED THEIR PETITION FOR REVIEW BEFORE THE COURT *EN BANC*.

Section 18 of Republic Act (**RA**) No. 1125[102], as amended by RA 9282[103], provides that a party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a Petition for Review with the CTA *En Banc*.

The RRCTA[104], under Section 3(b)[105], Rule 8, states that the party affected should file the Petition for Review within 15 days from receipt of a copy of the questioned decision or resolution. This is without prejudice to the authority of the Court to grant an additional 15-day period[106] from the expiration of the original period, within which to file the Petition for Review.

---

102 AN ACT CREATING THE COURT OF TAX APPEALS.

103 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

104 Supra at note 8.

105 Supra at note 6.

106 Id.

Applying the foregoing, petitioners received the assailed Resolution[107] on 20 September 2022. Counting 15 days therefrom, petitioner had until 05 October 2022 to file the present Petition for Review before the Court *En Banc*. On 30 September 2022, petitioners filed a "Motion for Extension of Time to File Petition for Review"[108] which the Court eventually granted[109], pushing the deadline to file the petition back to 20 October 2022.

The instant petition filed on 20 October 2022[110] has, therefore, been timely filed and the Court *En Banc* successfully acquired jurisdiction over it.

We, thus, proceed to discuss the petitioners' arguments in support of this instant petition.

At the outset, We recognize that petitioners' arguments in support of their Petition for Review are merely reiterations of those in their MR before the First Division. Notably, the matters raised had already been thoroughly addressed in both the assailed Decision and assailed Resolution. Nonetheless, this Court indulges to discuss the issues once more, if only, to emphasize the salient points reached in the First Division's findings.

THE ISSUED LETTER OF AUTHORITY (LOA) IS VOID FOR COVERING MORE THAN ONE TAXABLE PERIOD.

Petitioners are of the belief that the first LOA that the BIR issued for the instant case does not admit of defects, particularly in its coverage of multiple TYs. In opposing the First Division's findings, they forward their interpretation of the rules laid down in BIR's RMO No. 43-90[111] which provides:

---

107 Supra at note 91.
108 Supra at note 92.
109 See *En Banc* Minute Resolution dated 03 October 2022, *rollo*, p. 5.
110 Supra at note 4.
111 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit. Issued on 20 September 1990.

> ...
> C. Other policies for issuance of L/As.
> ...
>
> 3. **A Letter of Authority should cover a taxable period not exceeding one taxable year.** The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. **If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.**[112]
>
> ...

For petitioners, the first sentence above-quoted merely sets forth the general rule that an LOA must cover only one TY. They posit that the last sentence of the same item provides the exception to the general rule, *i.e.*, the LOA is valid, as long as it specifically indicates the TYs or periods that it covers.

We disagree.

It bears restating that the BIR has repeatedly enunciated its policy on this matter and in the same tenor. As the First Division has already noted, both RMO Nos. 36-99[113] and 19-2015[114] require clearly and consistently the issuance of one LOA *per* TY or period to be audited.

The Supreme Court's pronouncements in *Commissioner of Internal Revenue v. De La Salle University, Inc.*[115] are largely instructive:

---

112 Emphasis supplied.

113 Guidelines and Procedures in the Issuance of Letters of Authority, Approval of Audit Reports and Issuance of Assessment Notices and Amending Certain Provisions of Revenue Memorandum Order (RMO) Nos. 26-94, 37-94 and 23-97.

...

II. GUIDELINES AND PROCEDURES

...

6.2 One LA shall be issued for each taxable year to include all internal revenue tax liabilities of the taxpayer. ...

114 BIR Audit Program.

...

III. POLICIES and PROCEDURES

...

8. ... One (1) eLA shall be issued for each taxable year or period to include all internal revenue tax liabilities of the taxpayer, except when a specific tax type had been previously examined (e.g., audit of VAT under VAT Audit Program and VAT arising from claim of tax refund/credit).

115 G.R. No. 196596, 09 November 2016; Citations omitted, italics in the original text, emphasis and underscoring supplied.

...

The relevant provision is Section C of RMO No. 43-90, the pertinent portion of which reads:

> 3. A **Letter of Authority** [LOA] **should cover a taxable period not exceeding one taxable year**. The practice of issuing [LOAs] covering audit of unverified prior years is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the [LOA].

What this provision clearly prohibits is the practice of issuing LOAs covering audit of *unverified prior years*. RMO 43-90 does not say that a LOA which contains unverified prior years is void. It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified. The provision read as a whole requires that **if a taxpayer is audited for more than one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs**.

Read in this light, the requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority. Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random *unverified years*, which may include documents from as far back as ten years in cases of *fraud* audit.

In the present case, the LOA issued to DLSU is for *Fiscal Year Ending 2003 and Unverified Prior Years*. The LOA does not strictly comply with RMO 43-90 because it includes unverified prior years. This does not mean, however, that the entire LOA is void.

As the CTA correctly held, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. DLSU was fully apprised that it was being audited for taxable year 2003. Corollarily, the **assessments for taxable years 2001 and 2002 are void** for having been ***unspecified*** **on separate LOAs** as required under RMO No. 43-90.

...

As previously established, for purposes of taxation, respondent follows the CY.[116] In such instance, one TY would consist of the period from 01 January of one year until 31 December of the same year. The issued LOA No. eLA201200033171[117], covering the period from 01 April

---

116 Supra at note 70.
117 Supra at note 15.

2015 until 31 March 2016, thus covers portions of two TYs, contrary to the guidelines enunciated in the above case. Thus, in line with the disquisitions in the above-quoted case, the LOA issued in the present case are similarly void.

It is a well-settled rule that a void assessment bears no valid fruit.[118] If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place.[119] In turn, none of the proceedings and issuances that trailed the first LOA can be afforded validity. This reason alone overthrows petitioners' 48-Hour Notice, VCN, Closure Order, and the BIR's right to retain the ₱19,632,677.12 paid by respondent under protest.

THE HANDLING REVENUE OFFICER (RO) EXCEEDED THE AUTHORITY GRANTED BY THE ISSUED LETTER OF AUTHORITY (LOA), RENDERING ANY RESULTING ASSESSMENT VOID.

For the sake of argument, even if the validity of the LOA were to be upheld, the same cannot be said for the resultant assessment. As the culmination of a number of issuances pursuant to the investigation of respondent's records, the assigned RO's lack of authority renders them collectively void.

As RO Isturis so testified, he caused the issuance of the 48-Hour Notice, VCN, and Closure Order based on his findings upon the documentation he had secured from respondent.[120] To recap, it was the Notice that first introduced the VAT deficiency totaling ₱47,754,294.19 (inclusive of interest), while the VCN interposed the decreased amount of ₱19,632,677.12 (inclusive of interest) which respondent eventually paid under protest.

---

118 *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, 12 September 2022.

119 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, 09 July 2018.

120 Supra at note 69.

Supplemental to the rule that an RO must be clothed with sufficient authority in the form of an LOA[121], the RO so authorized must not go beyond the authority given.[122] When an audit is conducted in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[123]

In the present case, the First Request for Presentation of Records[124] and subsequent Request for Submission of Additional Documents[125] (that the BIR issued through RO Isturis) asked for respondent's records pertaining to the period covered 01 January to 31 December 2015.

It can be observed that the subject of the request aligned with respondent's observed tax period, *i.e.*, the CY. Surprisingly, the LOA did not; hence, the BIR effectively forwarded an unauthorized request for submission of documents (followed by an equally unauthorized investigation and review thereof).

Notably, on 24 September 2017, the BIR attempted to belatedly issue another LOA, with No. eLA201500051606[126] dated 26 September 2017, intended to supplement[127] the earlier issued LOA No. eLA201200083317[128] dated 26 October 2016. The more recent supplemental LOA authorized an updated period of 01 January to 31 December 2015, which was more in keeping with how the BIR's investigation had been carried out, leading to its issuance. Respondent had refused its service as purportedly advised by its counsel and upon the consideration that its case was already filed with this Court.[129]

---

121 National Internal Revenue Code (NIRC) of 1997, as amended, Section 13.
SECTION 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

122 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

123 *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, 04 November 2020.

124 Supra at note 17.

125 Supra at note 18.

126 Supra at note 36.

127 TSN dated 24 November 2020, p. 10.

128 Supra at note 15.

129 TSN dated 15 January 2019, p. 18.

Regrettably, the issuance of another LOA did nothing to cure the defects in the authority of the investigating RO. Even if the new LOA had been subsequently served successfully, respondent had long been issued with the Closure Order and paid in protest the alleged subject deficiency VAT. As far as the taxpayer is concerned, the LOA's purpose is to inform it that it is under audit for a possible deficiency tax assessment.[130] This has clearly been rendered moot.

In consideration of what has been discussed thus far, We find no sensible justification to deviate from what the First Division has held. The invalidity of the LOA was determined correctly.

THE COURT OF TAX APPEALS (CTA) IN DIVISION CAN RULE ON ISSUES RAISED FOR THE FIRST TIME ON APPEAL AND NOT RAISED IN THE ADMINISTRATIVE LEVEL.

As petitioners continue to insist on the LOA's validity, they further propound that the First Division was not in a position to rule thereon. Petitioners contend that respondent is not permitted to question the LOA's validity and the extent of the RO's authority, for the first time on appeal.

We disagree.

Petitioners bank erroneously on the general rule presented in *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*[131]:

> ...
>
> The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process.

---

[130] *Commissioner of Internal Revenue v. De La Salle University, Inc.*, supra at note 115.
[131] G.R. No. 163835, 07 July 2010; Citations omitted.

of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.

...

Conspicuously, the same case proffers the exception[132]:

...

The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.

...

Moreover, Section 1, Rule 14 of the RRCTA[133] authorizes the Court to take cognizance of related issues, even those not raised by the parties:

...

RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION. 1. *Rendition of Judgment.* — ...

...

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

...

---

132 Id.; Citations omitted, emphasis and italics in the original text.
133 Supra at note 8.

In *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation*[134], citing *Bank of the Philippine Islands v. Commissioner of Internal Revenue*[135] and *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[136], the Supreme Court had more recently clarified that the CTA may rule on issues raised for the first time before it, even though the same issue had not been raised in the proceedings in the administrative level:

> ...
>
> Meanwhile, petitioner's contention that respondent could not raise the issue of prescription for the first time on appeal has long been settled in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue*. Therein, it was only when the case ultimately reached this Court that the issue of prescription was brought up. Nevertheless, this Court ruled that the CIR could no longer collect the assessed tax due to prescription, thus:
>
> > We deny the right of the BIR to collect the assessed DST on the ground of prescription.
> >
> > Section 1, Rule 9 of the Rules of Court expressly provides that:
> >
> > > Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by the statute of limitations, the court shall dismiss the claim.
> >
> > If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense. In *Heirs of Valientes v. Ramas*, we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, when the provisions

---

134 G.R. No. 214933, 15 February 2022; Citations omitted and italics in the original text.
135 G.R. No. 181836, 09 July 2014.
136 G.R. No. 183408, 12 July 2017.

> on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.
>
> In the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, this Court categorically ruled that the Revised Rules of the CTA clearly allowed it to rule on issues not stipulated by the parties to achieve an orderly disposition of the case, thus:
>
> > On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
> >
> > Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
> >
> > SECTION 1. *Rendition of judgment.* — x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
> >
> > The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.
>
> In view of the foregoing, the CTA correctly ruled on the issue of prescription even if it was only raised for the first time on appeal.
>
> ...

Guided by the foregoing, the First Division may rule on the issues on the validity of the LOA and the surplus exercise of authority by the RO named therein. It goes without saying that these issues carry utmost relevance to the parties' claims. They are equally crucial to a determination of respondent's liability as a taxpayer which risks being upheld under an invalid tax assessment. Evidently, they are essential to a complete and orderly disposition of the case.

THE 48-HOUR NOTICE, VAT COMPLIANCE NOTICE (VCN), AND CLOSURE ORDER ARE VOID FOR BEING ISSUED BEYOND THE SCOPE OF EXERCISE OF THE COMMISSIONER OF INTERNAL REVENUE'S POWER.

In issuing the 48-Hour Notice, VCN, and Closure Order, petitioners stand resolute in declaring that the same were issued within the scope of the CIR's powers. They claim that the due process requirements under RMO No. 3-2009[137] are applicable and were duly observed.

The issuance of a Closure Order finds basis in Section 115 of the NIRC of 1997, as amended:

> ...
> **SEC. 115.** *Power of the Commissioner to Suspend the Business Operations of a Taxpayer.* – The Commissioner or his authorized representative is hereby empowered to suspend the business operations and temporarily close the business establishment of any person for any of the following violations:
>
> (a) *In the case of a VAT-registered Person.* –
>
> (1) Failure to issue invoices;
>
> (2) Failure to file a value-added tax return as required under Section 114; or
>
> (3) Understatement of taxable sales or receipts by thirty percent (30%) or more of his correct taxable sales or receipts for the taxable quarter.
>
> (b) *Failure of any Person to Register as Required under Section 236.* –
>
> The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements prescribed by the Commissioner in the closure order.
> ...

---

137 Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business.

A closer read of the provision shows that the grounds for the exercise of the CIR's power are specific and exclusive. In contrast, the VCN that paved the route to the enforcement of the Closure Order set forth respondent's alleged violations in this wise[138]:

> ...
> 1. Issue sales invoices or receipts in your intercompany sales transactions, in violation of Sections 113 and 237 of the National Internal Revenue Code of 1997 (as amended);
> ...
> 3. Reflect your correct taxable sales/receipts for the taxable year 2015; [and,]
> 4. Pay the correct VAT deficiency including increments.
> ...

When evaluated side-by-side with Section 115, it becomes apparent that only the first violation (*i.e.*, failure to issue invoices or receipts) is aptly within the purview of the aforementioned Section 115. While an argument may be made for paragraph (a)(3) of Section 115, the First Division had previously demonstrated petitioners' failure to present clear and convincing evidence that there was an understatement of taxable sales meeting the 30% threshold set therein. It is further worth noting that the two remaining violations listed resemble the consequences of the proceedings surrounding a deficiency VAT assessment.

As previously established in the assailed Decision, respondent had already complied with the requirement (to issue ORs) subsequent to the Notice but before the issuance of the Closure Order on 30 August 2017.[139] We echo the findings of the ICPA on the matter[140]:

> ...
> 11. **All the above remittances were covered by VAT ORs all issued on July 31, 2017 in compliance with the order of the BIR.** Thus, the VAT ORs were issued after the remittances were received.
> ...

---

138 Supra at note 25.
139 Supra at note 32.
140 Supra at note 57, pp. 700-701.

> 15. Regardless of the nature of the remittances, **the VAT ORs issued in compliance with the BIR's order**, showed that the remittances received were classified as 'Zero-rated sales' in the VAT ORs.[141]
>
> ...

Respondent's compliance contributes to its case as a taxpayer, in the context of rectifying its violations for purposes of asking that the Closure Order be lifted. However, such fact subsists as a matter separate from the question of whether the Closure Order was validly issued to begin with. Nevertheless, the pertinent portions of RMO No. 3-2009 provide:

> ...
>
> V. GUIDELINES AND PROCEDURES
>
> ...
>
> C. Execution and Enforcement
>
> ...
>
> 4. However, **if in the interim the non-compliant taxpayer rectifies the violation pursuant to Section VIII (Compliance by Taxpayer) hereof**, the Chair of the Review Board concerned shall **desist from implementing the Closure Order**, and shall immediately communicate such information to the Commissioner.
>
> ...
>
> VII. COMPLIANCE BY TAXPAYER
>
> 1. The Closure Order shall only be lifted if the violation/s as stated in the 5-Day VAT Compliance Notice is rectified by the taxpayer by:
>
> 1.1. Complying with the registration requirements set forth in Sections 236 and 238 of the NIRC, in case of failure to register;
>
> 1.2. **Complying with the invoicing requirements** as set forth in Sections 113 and 237, **in case of failure to issue receipts/invoices**;
>
> 1.3. Filing of VAT returns which have not been filed and paying the amount of taxes due thereon;
>
> 1.4. Amending previously filed VAT returns to reflect the correct taxable sales/receipts which were previously

[141] Emphasis supplied.

> understated due to the failure to issue sales invoices/receipts or due to underdeclaration of sales/receipts.[142]
>
> ...

With the inapplicability of the other grounds stated in the VCN and respondent's compliance in the issuance of invoices, there remained no basis for the Closure Order at the time it was issued.

Incidentally, although it could be argued that deficiency taxes and penalties can validly arise from the conduct of procedures under RMO No. 3-2009, the instances contemplated in the RMO are distinguishable from a tax audit conducted pursuant to an LOA:

> ...
>
> VIII. EFFECT OF THE LIFTING OF THE CLOSURE ORDER
>
> 1. The lifting of the closure order shall be done in cases when there has been:
>
> 1.1. Subsequent filing or amendment of returns with the payment of the tax inclusive of statutory penalties;
>
> 1.2. Subsequent registration with the payment of the corresponding compromise penalties;
>
> 1.3. Payment of deficiency taxes inclusive of penalties corresponding to the sales where no invoices/receipts have been issued; and,
>
> 1.4. Payment of deficiency taxes inclusive of penalties corresponding to the understatement of taxable sales or receipts.
>
> ...

As opposed to an assessment arising from the examination of a taxpayer's books of accounts and other accounting records, We perceive that the above instances allow the BIR to derive findings from alternative sources other than the taxpayer's records (which would necessitate prior authority *via* an LOA).

---

[142] Emphasis supplied.

The circumstances of respondent's audit differ precisely in this regard.

Notably, RMO No. 3-2009 mainly deals with the conduct of surveillance and stock-taking activities as enabled by Section 6(c)[143] of the NIRC of 1997, as amended. Serving as a badge of further distinction, the RMO expects the course taken by the proceedings to lead to a tax audit in more than one route:

> ...
> V. GUIDELINES AND PROCEDURES
>
> A. *Surveillance Activities*
>
> ...
>
> 4. Action on Surveillance Results
>
> ...
>
> If the result of the surveillance made likewise indicates that the taxpayer had not been, in fact, correctly reporting income for tax purposes, and that the veracity of his accounting records is not reliable, the Commissioner or Regional Director concerned shall <u>issue a Letter of Authority (LA) for the investigation of the taxpayer</u>. ...
>
> ...
>
> VIII. EFFECT OF THE LIFTING OF THE CLOSURE ORDER
>
> ...
>
> 2. ...
>
> Provided, further, that notwithstanding compliance with the 5-Day VAT Notice and the subsequent lifting of the closure order, the taxpayer <u>may still be subjected to audit</u> of returns filed (original or amended returns) and records pertaining to all his tax liabilities.[144]
>
> ...

---

[143] SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

...

(C) Authority to Conduct Inventory-taking, Surveillance and to Prescribe Presumptive Gross Sales and Receipts. - The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes. The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed *prima facie* correct. ...

[144] Underscoring supplied.

Needless to say, the RO's findings in the case stemmed and from his examination of respondent's books. The handling RO initiated his investigation by the authority supposedly granted to him by the LOA issued against respondent. He then mobilized the audit investigation by requesting respondent's accounting records and related documentation for TY 2015, that is, 01 January to 31 December 2015.[145]

Pursuant to his findings upon respondent's submissions, he built the latter's case and recommended the issuance of (1) the 48-Hour Notice[146], (2) the VCN[147], and eventually (3) the Closure Order[148]:

> ...
>
> **REQUEST FOR A FORTY-EIGHT (48) HOUR NOTICE**
>
> ...
>
> **FINDINGS/OBSERVATIONS**
>
> During the conduct of actual audit/investigation, the undersigned Revenue Officer requested for presentation of its books of accounts, supporting documents for all cost/deductions/expenses claimed; Receipts/Invoices issued, and other accounting records. ...
>
> ...
>
> The undersigned verified the above findings by examining its books of accounts and source documents, i.e. service invoices and official receipts. ...
>
> ...
>
> **RECOMMENDATION**
>
> In view of the foregoing, it is respectfully recommended that a 48-HOUR NOTICE (Under RMO 3-2009) be issued against the taxpayer and the processes on OPLAN KANDADO take its due course.[149]
>
> ...

Assuming the grounds for the issuance of the Closure Order were valid and its issuance against respondent can be upheld, it is readily apparent that the handling RO's findings and

---

145 Supra at note 17.
146 Request for a Forty-Eight (48) Hour Notice dated 19 June 2017, Exhibit "R-9", BIR Records, Folder II, p. 142.
147 Request for 5-Day VAT Compliance dated 17 July 2017, Exhibit "R-12", id., p. 194.
148 Request for Issuance of Closure Order dated 09 August 2017, Exhibit "R-16", id., p. 344.
149 Supra at note 146; Emphasis in the original text.

recommendations were a direct product of his team's conduct of an audit and examination of respondent's records. In this regard, the First Division had already rendered an exhaustive discussion on the lack of observance of the due process requirements tied to a deficiency assessment of internal revenue taxes, as laid down in Section 228[150] of the NIRC of 1997, as amended.

THE DUE PROCESS VIOLATIONS RENDERED THE RESULTANT DEFICIENCY VALUE-ADDED TAX (VAT) ASSESSMENT AGAINST RESPONDENT VOID.

Petitioners' availment of the administrative processes under RMO No. 3-2009 coexist as a separate matter. Petitioners themselves aptly pointed out that Sections 115 and 228 (of the NIRC of 1997, as amended) have different scopes and are implemented by separate regulations, and "the requirements on one should not be made to apply to the other".[151]

We also do not agree with petitioner's insistence that the set of due process requirements under the RMO is applicable in this case and not that for a tax assessment. To our mind, availing separate processes (with distinct due process requirements) calls for full observance of the due process requirements applicable to each.

In the present case, it is undoubted that the due process requirements under Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations (**RR**) No. 12-99[152], as amended by RR No. 18-2013[153], were not met. In implementing Section 228[154], the aforecited RR requires a PAN, FAN, and Formal Letter of Demand (**FLD**) that duly informs a concerned taxpayer of the legal and factual bases of an assessment issued against it. This is followed later into the administrative proceedings by a decision enunciated in a Final Decision on Disputed Assessment (**FDDA**).

150 SEC. 228. *Protesting of Assessment.*
151 Supra at note 4, p. 19.
152 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
153 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
154 Supra at note 150.

Contrary to petitioners' claim that they gave respondent every opportunity to refute the BIR's findings pursuant to RMO No. 3-2009, the BIR was remiss in meeting the requirements of Section 228 of the NIRC of 1997, as amended. None of the essential notices were present in the records of this case. The handling RO thus corroborates[155]:

> ...
> [RO ISTURIS]:
> A. No, Sir. I think, no PAN has been issued.
>
> ATTY. CARDIÑO:
> Q. How about Final Assessment Notice?
>
> [RO ISTURIS]:
> A. No Final Assessment Notice.
>
> ATTY. CARDIÑO:
> Q. How about Final Decision on Disputed Assessment?
>
> [RO ISTURIS]:
> A. No Final Decision on Disputed Assessment.
> ...

The Court *En Banc* adopts with approval the extensive discussions of the First Division as amply supported by jurisprudence on the subject. Indeed, the importance of providing the taxpayer with adequate written notice of his or her tax liability is paramount.[156] Consequently, an aggrieved taxpayer is entitled to seek relief when the law has not been exercised reasonably and in accordance with the prescribed procedure; and in such cases, the Court shall step in.[157]

RESPONDENT NEED NOT ESTABLISH ITS TRANSACTIONS AS ZERO-RATED TO BE ENTITLED TO A REFUND WHEN THE PAYMENTS WERE MADE UPON VOID PROCEEDINGS.

Finally, petitioners advocate for the necessity of establishing respondent's transactions as VAT zero-rated as a precursor to it being

---

155 TSN dated 24 November 2020, p. 14.

156 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. No. 201398-99, 03 October 2018.

157 See *Commissioner of Internal Revenue v. Algue, Inc., and the Court of Tax Appeals*, G.R. No. L-28896, 17 February 1988.

refunded the amount it paid under protest amounting to ₱19,632,677.12. Respondent paid the same to foreclose the enforcement of the Closure Order issued against it.[158]

In this petition before the Court *En Banc*, petitioners gravitate towards the procedure for a refund of unutilized input taxes under Section 112[159] of the NIRC of 1997, as amended. Therein, they proceed to lay down the requirements for the application for a refund *vis-à-vis* the merits of respondent's would-be refund claim. It would thus appear that petitioners are inviting this Court to rule on this issue as if it were a VAT refund. Engaging petitioners' line of reasoning, respondent's entitlement may immediately be brushed aside on the ground that it did not file an administrative nor judicial claim.

In any case, We do not share petitioners' perspective.

Petitioners' appreciation of the events surrounding respondent's payment are regrettably askew. We cannot possibly uphold the notion that this residual issue to an assessment case metamorphosed into a refund claim for unutilized input taxes unprompted.

Revisiting Our pronouncements further above, We have since established that the LOA and the deficient assessment are void. As a void assessment bears no valid fruit[160], the proceedings that emanate therefrom are equally a nullity. Conversely put, since petitioners' assessment of respondent is void for a clear violation of the due process requirements, the amounts erroneously paid should be refunded in the latter's favor.

WHEREFORE, premises considered, the present Petition for Review filed by petitioners Commissioner of Internal Revenue and Glen A. Geraldino is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 21 April 2022 and

---

158 Supra at note 35.

159 SEC. 112. *Refunds or Tax Credits of Input Tax.* –
(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: ...

160 *Prime Steel Mill Incorporated v. Commissioner of Internal Revenue*, supra at note 118.

07 September 2022, respectively, in CTA Case No. 9691, entitled *Sofgen Holdings Limited – Philippine Branch v. Commissioner of Internal Revenue, and Glen A. Geraldino, Regional Director of Revenue Region No. 8, Makati City,* are **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice