REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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PRUDENTIALIFE PLANS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1219
(CTA Case No. 8109)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

APR 19 2016 1:30 p.m.

x - x

DECISION

UY, J.:

This is a Petition for Review filed on October 9, 2014 by Prudentialife Plans, Inc., against the Commissioner of Internal Revenue which seeks the reversal of the Resolutions dated June 23, 2014[1] and September 3, 2014[2], both promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 8109, entitled *"**Prudentialife Plans, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent**,"* the dispositive portions of which respectively read:

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[1] EB Docket, pp. 68 to 84.
[2] EB Docket, pp. 40 to 42.

Resolution dated June 23, 2014:

"**WHEREFORE,** in view of petitioner's failure to provide sufficient testimonial evidence and documentary evidence that may overturn the assailed assessments, respondent's Demurrer to Evidence is hereby **GRANTED**, and the instant case is **DISMISSED** for lack of merit.

Likewise, petitioner's "Prayer to Admit Formal Offer of Exhibits" is hereby **DENIED** for lack of merit."

SO ORDERED."

Resolution dated September 3, 2014:

"**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner Prudentialife Plans Inc. is a domestic corporation registered with the Securities and Exchange Commission as a pre-need company with principal office at PLPI Building, 118 Gamboa Street, Legaspi Village, Makati City.[3]

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including among others, the power to authorize examination of taxpayer's books of accounts, to issue and decide deficiency assessments of internal revenue taxes.[4]

On July 12, 2005, respondent issued against petitioner a Final Assessment Notice (FAN) on alleged deficiency value-added tax (VAT) for Fiscal Years ended March 31, 2001 and March 31, 2002 computed as follows:[5]

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[3] Par. 1, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI), Division Docket (CTA Case No. 8109) — Vol. 1, p. 133.
[4] Par. 2, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI), Division Docket (CTA Case No. 8109) — Vol. 1, p. 133.
[5] Par. 3, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI), Division

	FY ended 03/31/01	FY ended 03/31/02
Deficiency Value Added Tax	₱ 23,023,475.35	₱ 50,682,006.90
Add: 20% interest from:		
04/26/01 to 07/26/05	19,569,954.05	
04/26/01 to 07/26/05		32,943.304.50
Total	42,593,429.40	83,625,311.40
Total assessment for two fiscal years		₱ 126,218,740.80

Petitioner filed its formal written protest with the BIR National Office Large Taxpayer's Service on September 20, 2005.[6] The docket of the case was then referred to the Appellate Division where petitioner submitted supporting documents on two separate occasions and filed with BIR Appellate Division.[7]

Respondent issued Warrant of Distraint and/or Levy against petitioner.[8] Thereafter, petitioner applied for and submitted to the BIR, original copy of the Surety Bond issued by Prudential Guarantee and Assurance Inc. (PGA) on June 1, 2010 equal to the total amount of disputed assessment.[9]

On June 22, 2010, petitioner filed with the Court in Division a *Petition for Review*, which was docketed as CTA Case No. 8109[10] entitled "***Prudentialife Plans, Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent.***"

On August 16, 2010, respondent filed her *Answer*[11] interposing special and affirmative defenses, and stating, among others, that the sole issue in the instant case is the validity of the Value Added Tax (VAT) assessments served by respondent against petitioner. Allegedly, petitioner admitted in its request for refund dated September 20, 2005 that it was unable to comply with the invoicing requirement mandated under RMC No. 13-96; while respondent previously issued VAT Ruling No. 026-96 dated September 23, 1996 stating that it cannot dispense with the procedure prescribed in RMC No. 13-96, specifically under A-10. Petitioner's non-compliance with

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Docket (CTA Case No. 8109) — Vol. 1, p. 134.

[6] Par. 4, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI), Division Docket (CTA Case No. 8109) — Vol. 1, p. 134.

[7] Par. 5, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI), Division Docket (CTA Case No. 8109) — Vol. 1, p. 134.

[8] Par. 6, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI), Division Docket (CTA Case No. 8109) — Vol. 1, p. 134.

[9] Par. 7, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI), Division Docket (CTA Case No. 8109) — Vol. 1, p. 134.

[10] Division Docket (CTA Case No. 8109) — Vol.1, pp. 5 to 17.

[11] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 103 to 110.

the invoicing requirement denotes a violation of RMC No. 13-96 and therefore, its claim for refund must be denied for lack of merit.

CTA Case No. 8109 was set for pre-trial conference on September 16, 2010[12] but the same was reset to October 28, 2010.[13] Subsequently, the parties filed with the Court in Division their *Joint Stipulation of Facts and Issues* (JSFI) on November 5, 2010.[14] In the Resolution dated November 9, 2010,[15] the Court in Division approved the said JSFI, deemed pre-trial terminated and set the case for the presentation of petitioner's evidence.

On January 25, 2012, petitioner's witness, Maria Luisa Manzano, was called to the witness stand and testified on direct examination by way of a Judicial Affidavit, but due to petitioner's violation of the three (3) day rule on the submission of Judicial Affidavits, the cross examination of Ms. Manzano was deferred and reset on March 7, 2012.[16] Subsequently, on March 7, 2012, Ms. Manzano completed her testimony and upon motion of petitioner's counsel, the continuation of the presentation of petitioner's evidence was set on April 25, 2012.[17]

Prior thereto or on April 23, 2012, petitioner filed an *Urgent Motion to Postpone*, stating that its witness, Lourdes Dumigpi, has not completed and is not ready to submit her Judicial Affidavit.[18] Hence, the continuation of the presentation of petitioner's evidence was reset to May 16, 2012.[19] On said hearing date, Ms. Dumigpi completed her testimony and petitioner's counsel manifested that petitioner is reserving its right to re-call Ms. Dumigpi to the witness stand. Continuation of the presentation of petitioner's evidence was then set on June 20, 2012.[20]

On June 14, 2012, petitioner filed an *Urgent Motion To*

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[12] Notice of Pre-Trial Conference, Division Docket (CTA Case No. 8109) — Vol. 1, p. 112.
[13] Division Docket (CTA Case No. 8109), Vol. 1, p. 132
[14] Division Docket (CTA Case No. 8109) — Vol.1, pp. 133 to 136.
[15] Division Docket (CTA Case No. 8109) — Vol. 1, p. 138.
[16] Minutes of the Hearing held on January 25, 2012, Division Docket (CTA Case No. 8109) — Vol.1, p. 265.
[17] Minutes of the Hearing held on March 7, 2012, Division Docket (CTA Case No. 8109) — Vol. 1, p. 266.
[18] Division Docket (CTA Case No. 8109) — Vol.1, p. 271 to 273.
[19] Minutes of the Hearing held on April 25, 2012, Division Docket (CTA Case No. 8109) — Vol. 1, p. 279.
[20] Minutes of the Hearing held on May 16, 2012, Division Docket (CTA Case No. 8109) — Vol. 1, p. 290.

Postpone the hearing on June 20, 2012 on the ground that petitioner's witness, Rodolfo U. Cabrera, has not yet completed and is not ready to submit his Judicial Affidavit.[21] In the Order dated June 15, 2012, the Court in Division granted petitioner's motion and accordingly reset the continuation of the presentation of petitioner's evidence on July 25, 2012.[22]

On the succeeding hearing dates, petitioner recalled to the witness stand Ms. Dumigpi and presented Lyndon L. Lukban, as an additional witness. Both of them testified on direct examination by way of Judicial Affidavits with respondent waiving its right to conduct cross examination on said witnesses.[23]

On September 24, 2012, petitioner's counsel filed a *Motion to Postpone and Setting for Commissioner's Hearing*, requesting that the scheduled hearing on September 27, 2012 be postponed and the marking of fifty nine (59) pages of documentary exhibits before the Court Commissioner be scheduled accordingly.[24] As prayed for, the continuation of the presentation of petitioner's evidence was reset to October 24, 2012 and the pre-marking of petitioner's exhibit was scheduled on October 3 and 10, 2012.[25]

On October 18, 2012, petitioner filed a *Motion to Postpone*, requesting that the hearing scheduled on October 24, 2012 be postponed and rescheduled on November 28, 2012,[26] which was granted by the Court in Division and the continuation of the presentation of petitioner's evidence was set on November 28, 2012.[27] On said date, petitioner's counsel manifested that his intended witness was not available and thus, he requested for a resetting. Since respondent interposed no objection, the Court in Division granted said request and the continuation of the presentation of petitioner's evidence was reset to January 23, 2013.[28]

On said hearing date, petitioner's witness, Ms. Dumigpi,

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[21] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 292 to 294.
[22] Division Docket (CTA Case No. 8109) — Vol. 1, p. 296.
[23] Minutes of the Hearings held on July 25, 2012 and August 29, 2012, Division Docket (CTA Case No. 8109) — Vol.1, p. 302 and 313.
[24] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 314 to 316.
[25] Minutes of the Hearing held on September 26, 2012, Division Docket (CTA Case No. 8109) — Vol. 1, p. 318.
[26] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 331 to 333.
[27] Minutes of the Hearing held on October 24, 2012, Division Docket (CTA Case No. 8109) — Vol. 1, p. 335.
[28] Minutes of the Hearing held on November 28, 2012, Division Docket (CTA Case No. 8109) — Vol. 1, p. 343.

testified on additional direct examination by way of Judicial Affidavit. Upon motion of respondent's counsel, the cross examination of said witness was deferred and set on February 20, 2013. In addition, the Court in Division directed both parties to submit the affidavits of all their witnesses five (5) days from February 20, 2013.[29]

On February 15, 2013, petitioner filed a *Motion to Postpone* the hearing set on February 20, 2013 on the ground that the judicial affidavits of petitioner's witnesses that should come from trust officers of the Bank of the Philippine Islands, Banco de Oro, Metropolitan Bank and Trust Company, Deutsche Bank AG, ING Investment Management and Standard Chartered Bank will not be available in time for the court hearing.[30] Thus, the Court in Division rescheduled the continuation of the presentation of the evidence for petitioner to April 3, 2013.[31]

On March 26, 2013, petitioner's counsel filed an *Urgent Motion to Postpone* the April 3, 2013 hearing, offering the same excuse that the judicial affidavits of petitioner's witnesses are unavailable in time for the court hearing.[32] The Court in Division once again granted petitioner's request and reset the continuation of the presentation of petitioner's evidence to May 22, 2013.[33]

Despite the grant of petitioner's request, petitioner's counsel still filed on May 16, 2013 an *Urgent Motion to Postpone* the May 22, 2013 hearing reiterating that the judicial affidavits of petitioner's witnesses will not be available in time for the court hearing. Thus, petitioner's counsel requested that the hearing be rescheduled on June 26, 2013.[34]

During the May 22, 2013 hearing, petitioner's counsel failed to appear despite notice; and so counsel for respondent orally moved that the direct testimony of Ms. Dumigpi, who was set for cross examination on that day, be stricken off the records, and that petitioner be declared to have waived its right to present further evidence. The Court in Division denied the said motion and granted petitioner's Urgent Motion to Postpone filed on May 16, 2013.

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[29] Minutes of the Hearing held on January 23, 2012, Division Docket (CTA Case No. 8109) — Vol. 1, p. 433.
[30] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 434 to 436.
[31] Minutes of the Hearing held on February 20, 2013, Division Docket (CTA Case No. 8109) — Vol. 1, p. 438.
[32] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 440 to 442.
[33] Order dated April 1, 2013, Division Docket (CTA Case No. 8109) — Vol.1, p. 444.
[34] Division Docket (CTA Case No. 8109) —, Vol. 1, pp. 446 to 448.

Consequently, the cross examination of Ms. Dumigpi was reset to June 26, 2013.[35]

During the hearing on June 26, 2013, petitioner's counsel and its witness failed to appear, despite due notice. Upon motion of respondent's counsel, the direct testimony of Ms. Dumigpi was stricken out of the records and petitioner's right to present further testimonial evidence was deemed waived and petitioner was granted twenty (20) days from notice within which to file its Formal Offer of Evidence; while respondent was granted ten (10) days from receipt thereof to file her Comment thereto.[36]

As per Records Verification dated August 7, 2013 issued by the Records Officer of the 2nd Division, counsel for petitioner failed to file its Formal Offer of Evidence.[37] Hence, the Court in Division, in the Resolution dated August 14, 2013, declared petitioner to have waived its right to formally offer its exhibits and to have rested its case, for failure of petitioner's counsel to file petitioner's Formal Offer of Evidence within the period allowed by the Court in Division.[38]

Subsequently, on September 4, 2013, petitioner's counsel filed a *Motion to Re-Open the Case for Continuation of Presentation of Petitioner's Evidence*,[39] praying for the forbearance and liberality of the Court in Division to reopen the case and to allow petitioner to continue with the presentation of its testimonial and documentary evidence. In the same Motion, petitioner's counsel claimed that he was hospitalized from May 27, 2013 to May 31, 2013 due to severe vertigo, hypertension and type 2 diabetes mellitus and was treated for respiratory tract infection on June 26, 2013. He also claimed that he was rendered incapacitated for two months, thus, he was not able to attend court hearings nor to comply with the orders of the Court in Division.

On September 4, 2014, respondent filed a *Demurrer to Evidence*,[40] praying for the dismissal of CTA Case No. 8109 on the ground that upon the facts and the law, petitioner has shown no right to relief. Respondent filed its *Comment (To petitioner's Motion to*

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[35] Minutes of the Hearing held on May 22, 2013, Division Docket (CTA Case No. 8109) — Vol. 1, p. 450.
[36] Minutes of the Hearing held on June 26, 2013; and Resolution dated June 26, 2013, Division Docket (CTA Case No. 8109) — Vol. 1, pp. 452 and 454, respectively.
[37] Division Docket (CTA Case No. 8109) — Vol. 1, p. 455.
[38] Division Docket (CTA Case No. 8109) — Vol.1, p. 457.
[39] Division Docket (CTA Case No. 8109) — Vol.1, pp. 458 to 460.
[40] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 464 to 471.

Reopen the Case for the Continuation of Presentation of Petitioner's Evidence) on September 24, 2013.[41]

In the Resolution dated October 21, 2013, finding the reasons of petitioner's counsel meritorious and sufficient to allow the exercise of leniency in the application of procedural rules, the Court in Division granted petitioner's *Motion to Re-Open*.[42] In the same Resolution, the Court in Division denied respondent's *Demurrer to Evidence* and set the case for hearing on November 13, 2013 for the continuation of petitioner's presentation of evidence.

On November 8, 2013, petitioner's counsel filed an *Urgent Motion to Postpone*[43] the November 13, 2013 hearing on the ground that petitioner's witness, Rodolfo U. Cabrera, was still outside of Metro Manila and has not yet submitted his Judicial Affidavit. The Court in Division granted petitioner's *Urgent Motion* and reset the continuation of the presentation of petitioner's evidence to January 20, 2014. Petitioner was also given twenty (20) days within which to submit the Judicial Affidavit of its witness.[44]

As per Records Verification dated January 13, 2014, petitioner's counsel failed to submit the requisite Judicial Affidavit of petitioner's witness within the prescribed period.[45]

On the January 20, 2014 hearing, counsel for petitioner failed to appear despite due notice, and upon motion by respondent's counsel that the further presentation of petitioner's evidence be waived, the Court in Division granted the said motion, and petitioner was given twenty (20) days from notice to file its Formal Offer of Evidence.[46]

In the Resolution dated March 14, 2014, the Court in Division declared petitioner to have waived its right to formally offer its exhibits and to have rested its case for failure of petitioner's counsel to comply with its Resolution dated January 20, 2014. Respondent's initial presentation of evidence was then set on April 21, 2014.[47]

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[41] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 478 to 483.
[42] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 486 to 488.
[43] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 489 to 491.
[44] Minutes of the Hearing held on November 13, 2013, Division Docket (CTA Case No. 8109) — Vol. 1, p. 493.
[45] Division Docket (CTA Case No. 8109) — Vol. 1, p. 494.
[46] Minutes of the Hearing held on January 20, 2014, Resolution dated January 20, 2014, Division Docket (CTA Case No. 8109) — Vol. 1, pp. 495 and 497, respectively.
[47] Division Docket (CTA Case No. 8109) — Vol. 1, p. 500.

Subsequently, respondent once again filed a *Demurrer to Evidence* on April 15, 2014;[48] while petitioner filed its *Comment/Opposition to Respondent's Demurrer on Evidence Dated 15 April 2014 With Prayer to Admit Formal Offer of Exhibits* on May 5, 2014.[49]

In the assailed Resolution dated June 23, 2014, the Court in Division denied the admission of petitioner's *Formal Offer of Evidence* attached to its *Comment/Opposition to Respondent's Demurrer on Evidence* and granted respondent's *Demurrer to Evidence* thereby ordering the dismissal of CTA Case No. 8109 for lack of merit.[50]

Aggrieved, petitioner filed a *Motion for Reconsideration (Re: Resolution dated 23 June 2014 1. Denying admission of petitioner's Formal Offer of Evidence and 2. Dismissing petitioner's Petition for Review on the basis of a demurrer to evidence)* on July 10, 2014,[51] to which respondent filed her *Opposition (to petitioner's Motion for Reconsideration)* on August 11, 2014.[52] The said *Motion for Reconsideration* was denied by the Court in Division in the assailed Resolution dated September 3, 2014 for lack of merit.[53]

Undaunted, petitioner filed before the Court *En Banc,* a *Motion for Extension of Time to File Petition for Review* on September 18, 2014.[54] The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from September 24, 2014, or until October 9, 2014, within which to file its Petition for Review.[55]

Petitioner filed the instant *Petition for Review* before the Court *En Banc* on October 9, 2014,[56] praying as follows that the Court *En Banc*:

(1) Declare null and void portion of A-10 of RMC No. 13-96 insofar as it provides that "(t)*he amount of such contribution shall be indicated in the VAT official receipt;*

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[48] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 501 to 508.
[49] Division Docket (CTA Case No. 8109) — Vol. 2, pp. 515 to 567.
[50] Division Docket (CTA Case No. 8109) — Vol. 3, pp. 1347 to 1363; EB Docket, pp. 68 to 84.
[51] Division Docket (CTA Case No. 8109) — Vol. 3, pp. 1364 to 1386.
[52] Division Docket (CTA Case No. 8109) — Vol. 3, pp. 1399 to 1404.
[53] Division Docket (CTA Case No. 8109) — Vol. 3, pp. 1406 to 1408 ; EB Docket, pp. 40 to 42.
[54] EB Docket, pp. 1 to 4.
[55] Minute Resolution dated September 24, 2014, EB Docket, p. 5.
[56] EB Docket, pp. 6 to 32.

otherwise the entire amount shall be subject to VAT";

(2) Declare void the VAT assessments for fiscal years 2001 and 2002 for lack of legal basis; and

(3) Give due course and admit petitioner's *"Formal Offer of Evidence"*.[57]

Without necessarily giving due course to the Petition for Review, respondent was ordered by the Court *En Banc* to file her Comment thereon.[58] Correspondingly, respondent filed her *Comment (Re: Petition for Review dated October 9, 2014)* on December 4, 2014.[59]

Considering the arguments raised by petitioner in the Petition for Review and respondent's Comment thereon, the Court *En Banc* resolved to give due course to the said Petition for Review, and required the parties to submit their respective Memoranda.[60]

However, both parties opted to file their respective manifestations. In her *Manifestation* filed on February 12, 2015,[61] respondent intimated that she is adopting the arguments raised in her *Comment (Re: Petition for Review dated October 9, 2014)* as her Memorandum; while in its *Manifestation* filed on March 17, 2015,[62] petitioner stated that it is adopting the legal issues raised and legal arguments discussed in its Petition for Review.

Thereafter, the case was submitted for decision on May 7, 2015.[63]

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for the resolution of the Court *En Banc*, to wit:

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[57] Prayer, Petition for Review, EB Docket, pp. 29 to 30.
[58] Resolution dated November 6, 2014, EB Docket, pp. 161 to 162.
[59] EB Docket, pp. 168 to 174.
[60] Resolution dated January 5, 2015, EB Docket, pp. 176 to 177.
[61] EB Docket, pp. 178 to 180.
[62] EB Docket, pp. 182 to 184.
[63] Resolution dated May 7, 2015, EB Docket, pp. 187 to 188.

> "I. WHETHER OR NOT THE LEGAL BASIS OF THE VAT ASSESSMENT – Q10 AND A10 OF BIR RMC NO. 13-96 - IS NULL AND VOID AS IT IS CONTRARY TO THE EXPRESS MANDATE OF A LAW, THE SECURITIES REGULATIONS CODE. IF IT IS A VOID ASSESSMENT, IT PRODUCES NO EFFECT AND SHOULD BE CANCELLED OUTRIGHT BY THIS HONORABLE COURT.
>
> II. WHETHER OR NOT A PRE-NEED COMPANY'S CONTRIBUTIONS TO THE TRUST FUND EARMARKED AND DEPOSITED IN THE TRUST FUND ACCOUNTS – FOR THE BENEFIT OF PLANHOLDERS AS MANDATED BY SECURITIES REGULATIONS CODE – DO NOT FORM PART OF ITS GROSS RECEIPTS AND IS THUS NOT SUBJECT TO VALUE ADDED TAX."

Petitioner's arguments:

Petitioner argues that A-10 of Revenue Memorandum Circular No. 13-96[64] (RMC No. 13-96) stating that *'the amount of such contribution shall be indicated in the VAT official receipt; otherwise the entire amount shall be subject to VAT'* should be declared null and void as the creation and contribution to the trust fund is mandated under the Securities and Regulations Code and its implementing rules. Pursuant thereto, the issuance of the subject VAT assessments, which was based on the violation of said invoicing requirement under RMC No. 13-96, is null and void and should be ordered cancelled by this Honorable Court.

Citing the case of *Commissioner of Internal Revenue vs. Tours Specialist, Inc.*[65] (*Tours Specialist* case), petitioner maintains that the portion of premium collections segregated and earmarked for contribution to the trust fund does not form part of petitioner's gross receipts; as such, it is not subject to VAT.

Moreover, petitioner avers that the subject VAT assessments have no factual basis inasmuch as respondent did not provide

[64] Clarification of Issues Affecting Dealers in Securities and Lending Investors Under Republic Act No. 7716, Otherwise Known as the "Expanded VAT Law", January 15, 1996.
[65] G.R. No. L-66416, March 21, 1990.

information on how the assessed amounts appearing on the Formal Assessment Notice were arrived at; thus, said assessment is void pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Petitioner likewise asserts that the dismissal of CTA Case No. 8109 on the basis of respondent's demurrer to evidence is premature, contrary to law and jurisprudence because the Court in Division already decided the case on the merits without requiring respondent to present evidence supporting her claim, and not merely rely on the weakness of petitioner's evidence and on the presumption of correctness of tax assessments.

Lastly, petitioner submits that despite the procedural lapses of its attending lawyer, equity and fair play dictate that petitioner be extended leniency if only to afford it the chance to complete its presentation of evidence after having been prevented from doing so by factors beyond its control.

Respondent's counter-arguments:

As to the first issue, respondent avers that the same is outside the scope of petitioner's original petition for review and was belatedly raised only in its Motion for Reconsideration of the assailed Resolution dated June 23, 2014. At any rate, respondent contends that this Honorable Court has no jurisdiction to pass upon the validity or constitutionality of RMC No. 13-96 as confirmed by several Supreme Court decisions and even by this Court, both sitting *En Banc* and in Division. According to respondent, the validity or constitutionality of Q10 and A10 of RMC No. 13-96 is the proper subject of an appeal before the Secretary of Finance as provided under Section 4 of the NIRC of 1997, as amended.

As to the second issue, respondent emphasizes that the Court in Division already meticulously discussed, passed upon and considered the arguments raised by petitioner in the Resolution dated June 23, 2014.

Finally, respondent avers that it opposes the admission of petitioner's Formal Offer of Evidence as its denial for admission was already resolved by the Court in Division in the assailed Resolution dated September 3, 2014 denying petitioner's Motion for Reconsideration.

THE COURT *EN BANC'S* RULING

The instant Petition lacks merit.

Issues not raised in the proceedings below may not be raised on appeal.

The issue being raised by petitioner, which deals with the validity of A-10 of RMC No. 13-96, was never raised in the proceedings *a quo*. Thus, the same cannot be passed upon by the Court *En Banc*.

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.[66] It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.[67]

Furthermore, although the said issues were purportedly being raised to assail the subject VAT assessment, petitioner failed to prove that such assessment was erroneous. Needless to state, in appeals to this Court, the determination of the respondent is presumed correct and it behooves the taxpayers to rebut such presumption.[68] The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[69]

Correspondingly, if the Court *En Banc* would rule on the issue regarding the validity of RMC No. 13-96, despite the absence of proof of error on the subject VAT assessment, it would be tantamount to rendering a mere advisory opinion. Needless to state, courts are proscribed from rendering an advisory opinion.[70]

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[66] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.
[67] *Toshiba Information Equipment (Philippines), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.
[68] *Tan Guan vs. Court of Tax Appeals, et al.*, G.R. No. L-23676, April 27, 1967.
[69] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.
[70] *Velarde vs. Social Justice Society*, G.R. No. 159357, April 28, 2004.

Nevertheless, We shall resolve the crux of the controversy in this case which pertains to the propriety of the dismissal of the CTA Case No. 8109 on demurrer to evidence.

Demurrer to Evidence authorizes a judgment on the merits without need to consider respondent's evidence.

Petitioner contends that the dismissal of its petition on demurrer to evidence was premature because the Court in Division already decided the case on the merits without requiring respondent to present evidence.

Petitioner's reasoning is specious.

A demurrer to evidence is defined as an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue.[71] This procedural remedy applies to cases filed before this Court pursuant to Section 3, Rule 1[72] of the Revised Rules of the Court of Tax Appeals, which provides for the suppletory application of the Rules of Court.

Rule 33 of the 1997 Rules of Civil Procedure governs the rule on demurrer to evidence. Section 1 thereof reads as follows:

> "Section 1. *Demurrer to evidence.* — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence."

Based on the foregoing, the defendant (respondent in CTA Case No. 8109) after the plaintiff (petitioner in said case) has completed the presentation of his evidence, may move to dismiss the case on the ground of insufficiency of evidence. In passing upon the

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[71] *Gonzales, et al. vs. Bugaay et al.*, G.R. No. 173008, February 22, 2012.
[72] RULE 1. SEC. 3. *Applicability of the Rules of Court.* – The Rules of Court in the Philippines shall apply suppletorily to these Rules.

sufficiency of evidence in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the judgment.[73]

In the case of *Casent Realty Development Corporation vs. Philbanking Corporation*,[74] the Supreme Court explained that the evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, which includes plaintiff's evidence and all means sanctioned by the Rules of Court in ascertaining matters of judicial proceedings; the only exclusion being defendant's own evidence.

In the fairly recent case of *GMA Network, Inc. vs. Central CATV, Inc.*,[75] the High Court reiterated that Rule 33 of the Rules of Court, as explained in our ruling in *Casent*, proscribes the court or the tribunal from considering the defendant's evidence in the resolution of a motion to dismiss based on a demurrer to evidence.

Nonetheless, there was no error on the part of the Court in Division when it dismissed the petition on demurrer to evidence without first requiring respondent to present her evidence in support of the assessment. The purpose of a demurrer to evidence is precisely to expeditiously terminate the case without the need of the defendant's evidence. It authorizes a judgment on the merits of the case **without the defendant having to submit evidence on his part** as he would ordinarily have to do, if it is shown by plaintiff's evidence that the latter is not entitled to the relief sought.[76]

The Court in Division did not err in granting respondent's demurrer to evidence.

The Supreme Court established some guidelines on when a demurrer to evidence should be granted, to wit:

> "A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiff's evidence together with such inferences and conclusions as may reasonably be drawn

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[73] *Gonzales, et al. vs. Bugaay et al.,* supra.
[74] *Casent Realty Development Corp. vs. Philbank Corp.*, G.R. No. 150731, September 14, 2007.
[75] G.R. No. 176694, July 18, 2014.
[76] *Oropesa vs. Oropesa,* G.R. No.184528, April 25, 2012.

> therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. **A demurrer to evidence is likewise sustainable when**, admitting **<u>every proven fact</u>** favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, **the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim**. **It should be sustained where the plaintiff's evidence is prima facie insufficient for a recovery**."[77] *(Emphasis and underscoring supplied)*

Applying the foregoing guidelines to the case under review, it is clear that Court in Division is correct in granting respondent's demurrer to evidence.

It must be noted that the documents attached by petitioner to its pleadings and judicial affidavits of its witnesses cannot be given any weight or evidentiary value because these documents were **not** formally offered as evidence in CTA Case No. 8109 before the Court in Division.

To recall, petitioner failed to file a Formal Offer of Evidence within the prescribed period.[78] Section 34, Rule 132 of the Rules of Court provides that *"the court shall consider no evidence which has not been formally offered."* A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.[79]

With the failure to formally offer its documentary evidence, petitioner clearly failed to establish a *prima facie* case in its favor. The dismissal of the petition on demurrer to evidence was therefore

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[77] *Condes vs. Condes,* G.R. No. 161304, July 27, 2007; See also *Uy vs. Chua,* G.R. No. 183965, September 18, 2009.

[78] Records Verification dated March 7, 2014, Division Docket (CTA Case No. 8109), Vol.1, p. 498.

[79] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,* G.R, No. 197515, July 2, 2014 citing *Heirs of Pedro Pasag, et al. vs. Spouses Parocha, et al.,* G.R. No. 155483, April 27, 2007.

warranted.

Petitioner lost its right to make a formal offer of evidence.

Petitioner, however, contends that its failure to file a Formal Offer of Exhibits on time was brought about by factors beyond its control, thus, invoking equity and the liberal application of procedural rules, petitioner prays its Formal Offer of Exhibits be admitted and considered by the Court.

We cannot grant petitioner's prayer.

Records bear out that petitioner was accorded all the opportunity to complete the presentation of its evidence despite numerous postponements requested by its former counsel. To recall, the Court in Division allowed a total of thirteen (13) motions for postponement and resetting, all at the instance of petitioner, from the time the initial presentation of petitioner's evidence was scheduled on November 22, 2010 until the dismissal of the case on June 23, 2014. The Court in Division even stretched its leniency to the limit when petitioner's *Motion to Re-Open the Case for Continuation of Presentation of Petitioner's Evidence* was granted and petitioner was allowed to present further evidence,[80] notwithstanding petitioner's failure to file a Formal Offer of Evidence within the period required by the Court in Division pursuant to its June 26, 2013 Resolution[81].

However, despite the given opportunity, petitioner filed another *Urgent Motion to Postpone*[82] but failed to appear on the hearing date granted by the Court in Division, despite due notice.[83] Consequently, in its Resolution dated January 20, 2014, the Court in Division considered the further presentation of petitioner's evidence as waived, and granted petitioner a sufficient period of twenty (20) days from notice, within which to file its Formal Offer of Evidence.[84]

Still, petitioner failed to file its Formal Offer of Evidence within

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[80] Resolution dated October 21, 2013, Division Docket (CTA Case No. 8109), Vol. 1, pp. 486 to 488.
[81] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 454 to 455.
[82] Division Docket (CTA Case No. 8109) — Vol. 1, pp. 489 to 492.
[83] Minutes of the Hearing held on January 20, 2014, Division Docket (CTA Case No. 8109) — Vol. 1, p. 495.
[84] Resolution dated January 20, 2014, Division Docket (CTA Case No. 8109) — Vol. 1, p. 497.

the prescribed period,[85] prompting the Court in Division to consider petitioner to have waived its right to formally offer its exhibits and to have rested its case.[86]

In fact, it was only after the lapse of almost three (3) months when petitioner moved for the admission of its Formal Offer of Exhibits and yet failed to provide any compelling reason for such delay.[87] Thus, it was but proper and correct for the Court in Division to deny the admission of petitioner's Formal Offer of Exhibits attached to its Comment/Opposition to Respondent's Demurrer to Evidence.[88]

Neither can the Court *En Banc* extend further leniency to petitioner and admit petitioner's Formal Offer of Exhibits because to do so is anathema to the paramount objective of Our procedural rules, which is the orderly and speedy administration of justice.

On this point, the pronouncement of the Supreme Court in the case of *Heirs of Pedro Pasag et al. vs. Sps. Lorenzo and Floretina Parocha, et al.*[89] is most instructive, to wit:

> "**The rule on formal offer of evidence is not a trivial matter. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it**. Consequently, as in this case, any evidence that has not been offered shall be excluded and rejected.
>
> xxx xxx xxx
>
> The Rules of Court provides that the court shall consider no evidence which has not been formally offered. A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows

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85 Records Verification dated March 7, 2014, Division Docket (CTA Case No. 8109) — Vol.1, p. 498.
86 Resolution dated March 14, 2014, Division Docket (CTA Case No. 8109) — Vol. 1, p. 500.
87 Petitioner's "Comment/Opposition to Respondent's Demurrer on Evidence Dated 15 April 2014 With Prayer to Admit Formal Offer of Exhibits.", Division Docket (CTA Case No. 8109) — Vol. 2, pp. 515 to 567.
88 Resolution dated June 23, 2014, Division Docket (CTA Case No. 8109) — Vol. 3, pp. 1347 to 1363; EB Docket, pp. 68 to 84.
89 G.R. No. 155483, April 27, 2007.

> opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
>
> Strict adherence to the said rule is not a trivial matter. **The Court in *Constantino v. Court of Appeals*[90] ruled that the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice.**
>
> **Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence.** Despite several extensions of time to make their formal offer, petitioners failed to comply with their commitment and allowed almost five months to lapse before finally submitting it. Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice. xxx" *(Emphasis supplied).*

Simply put, any evidence that a party desires to submit for the consideration of the court must be formally offered by him otherwise it is excluded and rejected and cannot even be taken cognizance of on appeal.[91]

WHEREFORE, all the foregoing considered, the Petition for Review is hereby **DENIED** for lack of merit. The Resolutions dated June 23, 2014 and September 3, 2014, both issued by the Court in Division in CTA Case No. 8109 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[90] G.R. No. 116018, November 13, 1996.

[91] *Catacutan vs. People of the Philippines,* G.R. No. 175991, August 31, 2011.

WE CONCUR:

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AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice