REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

LEVEL UP, INC.,		**CTA EB NO. 2069**
	Petitioner,	(CTA Case No. 9424)
-versus-		
COMMISSIONER OF INTERNAL REVENUE,		
	Respondent.	

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COMMISSIONER OF INTERNAL REVENUE		**CTA EB NO. 2070**
	Petitioner,	(CTA Case No. 9424)
		Present:
		DEL ROSARIO, P.J.,
		CASTAÑEDA, JR.,
		UY,
-versus-		**RINGPIS-LIBAN,**
		MANAHAN,
		BACORRO-VILLENA, and
		MODESTO-SAN PEDRO, JJ.
		Promulgated:
LEVEL UP, INC.,		
	Respondent.	JAN 06 2021 3:47 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* are consolidated Petitions for Review[1] pursuant to ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***[2] filed by Level Up, Inc. (hereinafter referred to as

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[1] Petition for Review, *Rollo (CTA EB No 2070)*, pp. 6-15, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.

"LUI") on 29 May 2019[3] and by the Commissioner of Internal Revenue (hereinafter referred to as "CIR") on 6 June 2019.

Both parties seek modification of the: (1) Decision,[4] dated 6 December 2018 (hereinafter referred to as the "Assailed Decision"); and (2) Resolution, dated 16 April 2019[5] (hereinafter referred to as the "Assailed Resolution"), both rendered by the Court of Tax Appeals ("CTA") Special Second Division (hereinafter referred to as the "Court in Division") partially upholding the deficiency VAT assessment against LUI for the period 1 January 2013 to 30 June 2013.

The Parties

LUI is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with office address at 6th Floor, OPL Building, Carlos Palanca cor. Dela Rosa Street, Legaspi Village, Makati City.

CIR is the chief official of the Bureau of Internal Revenue ("BIR") tasked with enforcement of internal revenue laws. The CIR may be served with notices, orders, and processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

As found by the Court in Division on 14 May 2014, LUI received a Letter of Authority ("LOA") No. V08-2014-00000196/ SN: eLA201100053599, dated 8 May 2014, authorizing Revenue Officer Prince Henry B. Damasco, under the supervision of Group Supervisor Ricardo Balderas, of BIR Revenue Region No. 8 Makati City ("BIR Makati") to examine the books of accounts and other accounting records for VAT for the period of 1 January 2013 to 30 June 2013.[6]

On 5 November 2015, BIR Makati issued a Preliminary Assessment Notice ("PAN") assessing deficiency VAT in the amount of ₱10,140,576.40 and interest of ₱4,823,024.83 or an aggregate amount of ₱14,963,601.23.[7] LUI received a copy of the PAN on 10 November 2015.[8]

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[3] Petition for Review, *Rollo (CTA EB No. 2069)*, pp. 7-225, with annexes.
[4] Decision dated 6 December 2018, Court in Division Docket Vol. III, pp. 1211-1224.
[5] Resolution dated 16 April 2019, Court in Division Docket Vol. III, pp. 1250- 1254.
[6] Decision dated 6 December 2018, Court in Division Docket Vol. III, p. 1213.
[7] *Id.*, p. 1213.
[8] See PAN, BIR Docket, pp. 398-401.

On 17 December 2015, LUI filed its Reply to the PAN through a letter dated 15 December 2015.[9]

On 16 December 2015, BIR Makati issued a Formal Assessment Notice ("FAN") assessing LUI for VAT deficiency and interest in the aggregate amount of ₱15,213,642.84.[10] LUI received a copy of the FAN on 17 December 2015[11] and submitted its Protest Letter for reinvestigation disputing the FAN on 15 January 2016.[12]

On 12 February 2016, BIR Makati granted the request for re-investigation of the assessment with instructions to LUI to submit supporting documents.[13] In compliance with BIR Makati's letter dated 12 February 2016, LUI submitted additional supporting documents through its letter dated 15 March 2016.[14]

On 12 July 2016, the CIR, through Regional Director Jonas DP Amora, issued his FDDA, which LUI received on 13 July 2016.[15] The FDDA contained the following assessments:[16]

Vatable Sales per Return			₱121,148,718.00
Add: Undeclared receipts			44,463,331.43
Vatable Sales per Audit			₱165,612,049.43
			19,873,445.93
Less: Input tax claimed		₱13,353,850.15	
Input tax carried over from previous period		331,865.55	
Input tax on purchases of capital goods exceeding 1M deferred from previous quarter		1,390,697.11	
Total		₱ 15,076,412.81	
Less: Disallowed Input Tax (Schedule 1)	₱4,804,976.63		
Input Tax on Purchases of Capital Goods Exceeding 1M deferred to succeeding period	1,433,066.62		
Input Tax Carried to Succeeding Period	1,264,233.93	7,502,277.18	7,574,135.63
VAT Payable. Excess Input Tax			₱12,299,310.30
Less: Payment per return			2,158,733.90
Basic Deficiency VAT			₱ 10,140,576.40
Add: Interest			6,184,362.49
TOTAL AMOUNT STILL DUE			**₱ 16,324,938.89**

[9] Exhibit "P-4," Court in Division Docket Vol. III, pp. 997-1001.
[10] Decision dated 6 December 2018, Court in Division Docket Vol. III, p. 1213.
[11] See FAN, BIR Docket, pp. 407-410.
[12] Decision dated 6 December 2018, Court in Division Docket Vol. III, p. 1213.
[13] *Ibid.*
[14] Exhibit "P-8," Court in Division Docket Vol. III, p. 1013.
[15] Decision dated 6 December 2018, Court in Division Docket Vol. III, p. 1214.
[16] Exhibit "P-9," Court in Division Docket Vol. III, pp.1037-1040.

This prompted LUI to file a Petition for Review with Motion to Suspend Collection of Taxes.[17]

On 13 October 2016, the Court in Division granted LUI's Motion to Suspend Collection of Tax, subject to the posting of an acceptable surety bond in the amount equivalent to one and one-half times of the alleged assessment or in the amount of ₱24,487,408.34 within ten (10) days from notice.[18] On 11 November 2016, LUI filed its Motion to Reduce Bond and Extension of Time to Post the Reduced Bond.[19] Despite notice, the CIR failed to file his comment to LUI's motion.[20] On 28 February 2017, the Court in Division granted LUI's motion and reduced the bond to equal the amount of the disputed assessment, excluding penalties, interest, and surcharge, or in the amount of ₱10,140,576.40.[21]

Despite an extension having been granted, LUI failed to post the reduced surety bond.[22]

In the meantime, on 21 October 2016, the Court in Division received CIR's Answer, filed through registered mail on 5 October 2016.[23]

With the filing of CIR's Pre-Trial Brief on 7 November 2016 and LUI's Pre-Trial Brief through registered mail on 18 November 2016 and received by the Court on 24 November 2016, the case was set for pre-trial. [24] On 7 December 2016, the parties filed their Joint Stipulation of Facts and Issues which was approved and adopted in the Pre-Trial Order dated 12 January 2017.[25]

During trial, LUI presented its lone witness, Ms. Carmencita S. Cabero.[26] LUI then filed its Formal Offer of Documentary Exhibits on 23 March 2017 which was resolved by the Court in Division on 11 May 2017 thereby admitting and denying LUI's exhibits.[27] For its part, CIR presented Revenue Officer Prince Henry B. Damasco on 5 July 2017.[28] Thereafter, CIR filed its Formal Offer of Evidence on 13 July 2017.[29] The Court in Division

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[17] Decision dated 6 December 2018, Court in Division Docket Vol. III, p. 1214.
[18] *Id.*, p. 1215.
[19] *Ibid.*
[20] *Ibid.*
[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*
[27] *Id.*, pp. 1215-1216.
[28] *Id.*, p. 1216.
[29] *Ibid.*

admitted all of the CIR's evidence in its Resolution dated 20 September 2017.[30]

With the filing of LUI's Memorandum on 24 November 2017 and CIR's Memorandum through registered mail on 27 November 2017, which was received by the Court on 4 December 2017, the case was considered submitted for decision on 12 December 2017.

On 6 December 2018, the Court in Division rendered the Assailed Decision, partially granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWENTY-THREE MILLION FOUR HUNDRED SEVENTY-THREE THOUSAND FIVE HUNDRED ELEVEN PESOS AND FORTY-NINE CENTAVOS (Php23,473,511.49)**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, until December 31, 2017, computed as follows:

Basic Deficiency VAT	Php 8,846,280.86
Add: 25% Surcharge	2,211,570.22
20% Deficiency Interest from July 26, 2013 to August 12, 2016 *[Php8,846,280.86 x 20% x 1,114/365 days]*	5,399,866.79
Total Amount Due, August 12, 2016	**Php16,457,717.87**
20% Deficiency Interest from August 13, 2016 to December 31, 2017 *[Php8,846,280.86 x 20% x 506/365 days]*	2,452,722.25
20% Delinquency Interest from August 13, 2016 to December 31, 2017 *[Php16,457,717.87 x 20% x 506/365 days]*	4,563,071.37
Total Amount Due, December 31, 2017	**Php 23,473,511.49**

> In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the Php16,457,717.87 total amount due as of August 12, 2016, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(c) of the NIRC, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulation No. 21-2018."[31]

Both parties received the Assailed Resolution on 10 December 2018.[32]

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[30] *Ibid.*
[31] *Id.*, pp. 1223-1224.
[32] Notice of Decision dated 6 December 2018, Court in Division Docket Vol. III, p. 1211.

On 21 December 2018, CIR filed its Motion for Partial Reconsideration of the Assailed Decision.[33] Meanwhile, LUI filed its Motion for Reconsideration (Re: Decision dated 6 December 2018) on 27 December 2018.[34] On 31 January 2019, CIR filed its Comment/Opposition (on Motion for Reconsideration).[35] LUI failed to file its Comment on CIR's Motion for Partial Reconsideration of the Decision dated 6 December 2018.[36]

On 16 April 2019, the Court in Division rendered the Assailed Resolution denying both LUI's Motion for Reconsideration and CIR's Motion for Partial Reconsideration, to wit:

> "**WHEREFORE**, petitioner's *Motion for Reconsideration (Re: Decision dated 6 December 2018)* and respondent's *Motion for Partial Reconsideration* are both **DENIED** for lack of merit."[37]

CIR received the Assailed Resolution on 6 May 2019.[38] LUI received the Assailed Resolution on 14 May 2019.[39]

Thereafter, on 29 and 30 May 2019, the LUI and CIR, respectively, filed their Motions for Extension of Time to File Petition for Review.[40] The parties each requested an additional period of fifteen (15) days to file their respective Petitions, particularly, for LUI until 13 June 2019, and the CIR until 5 June 2019. The Motions were granted by the Court *En Banc* in its Minute Resolutions.[41]

LUI filed its Petition for Review on 13 June 2019, which was docketed as CTA EB No. 2069.[42] Considering that 5 June 2019 was declared a regular holiday, the CIR filed its Petition for Review on 6 June 2019, docketed as CTA EB No. 2070.[43]

Subsequently, CTA *EB* No. 2070 was consolidated with CTA *EB* No. 2069 in accordance with the Minute Resolution issued by the Court *En Banc* dated 20 June 2019.[44]

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[33] Motion for Reconsideration, Court in Division Docket Vol. III, pp. 1232-1237.
[34] Motion for Reconsideration (Re: Decision dated 6 December 2018), Court in Division Docket Vol. III, pp. 1225-1231.
[35] Comment/ Opposition (On Motion for Reconsideration), Court in Division Docket Vol. III, pp. 1243-1247.
[36] Records Verification dated 11 February 2019, Court in Division Docket Vol. III, p. 1248.
[37] Resolution dated 16 April 2019, Court in Division Docket Vol. III, p. 1251.
[38] Notice of Resolution dated 16 April 2019, Court in Division Docket Vol. III, p. 1249.
[39] *Id.*, p. 1250
[40] Motion for Extension of Time to File Petition for Review, Court in Division Docket Vol. III, pp. 1255-1258; Motion for Extension of Time to File Petition for Review, Court in Division Docket Vol. III, pp. 1260-1262.
[41] Minute Resolution dated 30 May 2019, Court in Division Docket Vol. III, p. 1259; Minute Resolution dated 3 June 2019, Court in Division Docket Vol. III, p. 1265.
[42] Petition for Review, CTA *EB* No. 2069, Court in Division Docket Vol. III, pp. 1266- 1483.
[43] Petition for Review CTA *EB* No. 2070, Court in Division Docket Vol. III, pp. 1484-1516.
[44] Minute Resolution dated 20 June 2019, Court in Division Docket Vol. III, p. 1517.

On 22 July 2019, LUI filed its Comment/ Opposition (Re: Petition for Review dated 3 June 2019).[45] CIR filed its Comment (On Petition for Review) through registered mail on 15 August 2019, which was received by the Court *En Banc* on 27 August 2019.[46]

With the filing of the parties' comments, on 19 September 2019, the Court *En Banc* rendered a Resolution ordering the parties or their authorized representatives to personally appear at the Philippine Mediation Center- CTA pursuant to *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals* for purposes of deciding whether or not they would agree to enter into mediation.[47] On 9 October 2019, the parties appeared before the Philippine Mediation Center- CTA, where both parties decided not to have their cases mediated by the Philippine Mediation Center Unit- CTA.[48]

On 10 December 2019, the Court *En Banc* issued a Resolution submitting the consolidated Petitions for Review for decision.[49] Hence, this decision.

The Assigned Errors

The lone issue raised by CIR in the instant Petition for Review is whether or not the Honorable Special Second Division of the CTA erred in partially granting LUI's Petition for Review and ordering CIR to cancel and set aside portion of the deficiency VAT assessment with respect to respondent's Excess Input Tax Carried-Over to Succeeding Period in the amount of ₱1,264,233.93.[50]

Meanwhile, LUI makes the following assignment of errors for the Court *En Banc's* resolution:[51]

I. LUI was deprived of due process, thus, the assessment is void and must be cancelled;

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[45] Comment/ Opposition. (Re: Petition for Review dated 3 June 2019), Court in Division Docket Vol. III, pp. 1521-1524.
[46] Comment (On Petition for Review), Court in Division Docket Vol. III, pp. 1526-1530.
[47] Resolution dated 19 September 2019, Court in Division Docket Vol. III, pp. 1532-1535.
[48] No Agreement to Mediate, *Rollo*, CTA *EB* Nos. 2069& 2070, p. 256.
[49] Resolution dated 10 December 2019, *Rollo,* CTA *EB* Nos. 2069& 2070, pp. 257- 260.
[50] Petition for Review dated 3 June 2019, CTA *EB* No. 2070, *Rollo*, p. 10.
[51] Petition for Review dated 13 June 2019, CTA *EB* No. 2069, *Rollo,* p. 13.

II. Even assuming the assessment is valid, the deficiency VAT arising from undeclared receipts from Uniwiz Trade Sales, Inc. ("Uniwiz") and Veritas Solutions, Inc. ("Veritas") in the total amount of ₱44,212,818.04 must be cancelled; and

III. Even assuming the assessment is valid, the disallowance of the unsupported input tax in the amount of ₱4,804,976.63 must be cancelled.

Arguments of the Parties

CIR's Arguments[52]

CIR claims that it can be inferred from Section 110(B) of the NIRC and Section 19 of RR No. 4-2007 that the carrying over of the excess input tax is mandatory. Thus, its disallowance of excess input tax in the amount of ₱1,264,233.93 is proper.

LUI's Arguments[53]

LUI asserts that, *first,* it was deprived of due process because it was not fully apprised of the legal and factual bases of the assessments issued against it, considering that the FAN is exactly the same as the PAN. According to LUI, the CIR did not consider the allegations and supporting documents contained in its Reply to PAN which it filed on 17 December 2015 since the FAN was issued on 16 December 2015.

Second, LUI argues that the detailed summary of transactions of Playweb with its Clients (Uniwiz, Powerhouse, and Veritas) during the subject taxable period sufficiently established that it lacked participation on the transactions which were the subject of the "Undeclared Receipts" in the amount of ₱44,212,818.04.

Finally, LUI claims that the "Undeclared Input Tax" of ₱4,804,976.63 accounts for local transactions as substantiated by its SLP. According to LUI, an SLP is an official document submitted by the taxpayer to the BIR detailing therein all purchases of goods and services in a given month, quarter, or year. If the BIR is allowed to assess a taxpayer on the basis of information provided in the SLP and SLS, the taxpayer should likewise be allowed to dispute an assessment using the information contained in the SLS and SLP.

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[52] Petition for Review dated 3 June 2019, CTA *EB* No. 2070, *Rollo,* pp. 10-11, with annexes.
[53] Petition for Review dated 13 June 2019, CTA *EB* No. 2069, pp. 13-32, with annexes.

The Ruling of the Court *En Banc*

The Court *En Banc* finds no reason to reverse the assailed Decision and Resolution of the Court in Division.

The Court *En Banc* has jurisdiction to rule on the issue of due process raised for the first time on appeal.

In its Petition before the Court *En Banc*, LUI claims that it was deprived of due process because it was not fully apprised of the legal and factual bases of the assessments issued against it. According to LUI, the PAN and the Details of Discrepancy attached thereto as well as the FAN, which is an exact copy of the PAN, did not address the defenses and documents submitted by LUI.

Meanwhile, the CIR, citing ***Commissioner of Internal Revenue v. Mirant Pagbilao Corporation***,[54] claims that this Court has no jurisdiction to decide on the alleged violation of due process as LUI raised the issue for the first time on appeal.

The CIR's contention has no merit.

Section 1, Rule 14 of the RRCTA provides that this Court may rule on related issues necessary to achieve an orderly disposition of the case, to wit:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. Rendition of judgment. – The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *En banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *En banc* or in Division agree on the draft decision, the ponente shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *En banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.
>
> **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.**"[55]

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[54] G.R. No. 159593, 12 October 2006.
[55] Emphasis and underscoring supplied.

Notably, in ***Commissioner of Internal Revenue v. Eastern Telecommunications, Philippines, Inc.***,[56] the Supreme Court recognized the exceptions to raising new issues on appeal as follows:

> "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 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.
>
> ...
>
> 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:
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>> **The appellate court may, <u>in the interest of justice</u>, properly take into consideration in deciding the case <u>matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore</u>, although they have not been specifically raised as issues by the pleadings**. This is in consonance with the liberal spirits 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.
>
> ...
>
> **<u>Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance</u>**."[57]

Based on the foregoing, the general rule, that appeals can only raise questions of law or fact that that (a) were raised in the court below and (b) are within the issues framed by the parties therein, admits of the following exceptions: (1) in the interest of substantial justice, matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored and (2) questions involving matters of public importance.

The instant case qualifies for the application of the exceptions to the general rule.

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[56] G.R No 163835, 7 July 2010.

[57] Emphasis and underscoring supplied.

First, the issue of the alleged violation of due process is a matter of record because the parties submitted their respective evidence necessary for this Court to determine whether or not LUI was deprived of due process. The PAN, FAN, and FDDA, as well as the testimonies of the witnesses of both parties, were all submitted and formed part of the records of this case, which this Court examined to determine if there was violation of due process. The interest of substantial justice compels this Court to revisit these pieces of evidence to determine if LUI was deprived of due process. *Second,* the issue of the alleged violation of due process is a matter of public importance because a taxpayer cannot be held liable under a void assessment as it bears no valid fruit.[58]

<u>LUI was not deprived of its constitutionally protected right to due process.</u>

LUI claims that the factual antecedents of the instant case are very much alike with those in the case of ***Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.***[59] (hereinafter referred to as the "***Avon Case***"), where the Supreme Court ruled that the taxpayer's right to due process was violated, to wit:

> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The **Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, <u>did not even comment or address the defenses and documents submitted by Avon</u>.** Thus, **Avon was <u>left unaware</u> on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.
>
> Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

[58] Samar-I Electric Cooperative v. Commissioner of Internal Revenue, G.R. No. 193100, 10 December 2014.
[59] G.R. Nos. 201398-99, 3 October 2018.

> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

To the mind of the Court, the ***Avon Case*** is not on all fours with the instant case. Here, the CIR gave LUI opportunity to be heard. In fact, the CIR instructed LUI to submit supporting documents in support of its request for reinvestigation. The CIR's appreciation of a taxpayer's allegations and supporting documents is discretionary. The CIR explained in the FDDA the reasons for the denial of LUI's arguments as well as the results of the re-investigation. Contrary to LUI's claim that the act of BIR Makati of not providing the explanation as to why the documents submitted by LUI are not acceptable violated the rule that the taxpayer must be apprised of the nature of the assessment as well as the facts and the law upon which it is based, a perusal of the FDDA shows that BIR Makati sufficiently provide explanations for the denial. We quote the relevant portions of the FDDA below:

> "**Undeclared Receipts, P44,463,331.43.** – Verification disclosed ...
>
> In the above-mentioned letters, it was mentioned that "*The undeclared receipts which were included in the FAN are not sales of LUI but sales of Playweb Games, Inc., a corporation that is separate and distinct from LUI*" and details of which are discussed as follows:
>
> a. An affidavit of Ms. Richel Carlos from the finance department of Playweb Games, Inc. was submitted including copies of several sales invoices and official receipts issued by Playweb Games, Inc. to support the said contention.
>
> b. Further, an affidavit of Ms. Lilibeth A. Abanilla of Uniwiz Trade Sales, Inc. was also submitted as an additional support to the same contention as far as the purchase of Uniwiz Trade Sales, Inc.'s is concerned.
>
> c. It was also noted in the letter dated March 15, 2016 that: *"A. Uniwiz has admitted to its mistake in using [p]layweb's TIN to BIR during a previous assessment . . ."* Furthermore, it was also mentioned in the same l[e]tter that: *"Level Up Inc. was assessed for its income and other revenue taxes for the year 2012. Part of the assessment was for VAT deficiencies owing to undeclared transactions which involved Uniwiz as one of the supposed customers of Level Up, Inc."* In view of this, a letter from Uniwiz December 5, 2014 states that: *"This is to certify that we inadvertently used Level Up, Inc.'s TIN No. 219-367-877-000, instead of Playweb Inc's TIN No. 008-061-053-000,in submitting the summary list of purchases from Playweb Games, Inc. for the calendar year 2012 as our company used to purchase the foods and merchandise prior to September 1, 2011 from Level Up, Inc."*

d. In the same letter dated March 15, 2016 it was mentioned that: *"Veritas has not been transacting with LUI since 2011 and the transactions imputed to LUI"* which was substantiated with a letter dated September 6, 2011 which states that: *"In view of the transfer of ownership as well as by reason of LUI's corporate restructuring we would like to inform you that Playweb Games, Inc. (Playweb) will take over all existing contracts with distributors and key accounts like your company. Accordingly, effective September 1, 2011, LUI is hereby formally terminating the distributorship contract dated September 1, 2011 executed between LUI and your company. Further, effective also on September 1, 2011, Playweb will execute a new distributorship contract under its name with your company...."*

Re-investigation disclosed the following results:

a. The BIR has not seen any reason for the use of the TIN of Level Up, inc. in place of the TIN of Playweb Games, Inc. since upon scrutiny of the invoices and official[s] receipts issued by the latter to Uniwiz Trade Sales disclosed that the said documents clearly states the TIN 008-061-053-000 which is of Playweb Games, Inc.'s. Further, as previously mentioned, that the same issue has already been raised in previous assessment for the taxable year 2012 however, no corrective measure has been done on the part of Uniwiz therefore, there is reason to believe that your contention with regard to the purchases of Uniwiz Trade Sales from Level Up as discussed in letter a.), b.) and c.) above, [Inc.] is not valid. Moreover, total of the vatable sales on the sales invoices issued by Playweb Games, Inc. to Uniwiz Trade sales amounting to P28,553,069.54 does not tally with the purchases claimed by Uniwiz Trade Sale amounting to P43,548,175.37.

b. Moreover, with regard to the transactions with Vertias System Solution Inc., Level Up! International Holdings PTE LTD, Playweb Games Inc., Power House Distributor Inc., and SM mart Inc., the company **failed to provide proof that would warrant the reversal of our assessment**.

In view of the foregoing, our assessment on undeclared sales amounting to P44,463,331.43 is herewith reiterated.

Unsupported Input Tax, P4,804,976.63,- Verification disclosed ...

During re-investigation, you failed to provide proof that would warrant the reversal of our assessment hence, therefore, our assessment on unsupported input tax amounting to P4,804,976 is herewith reiterated.

Excess Input Tax Carried- Over to Succeeding Quarter/ Period, P1,264,233.93. – The excess input tax amounting to P1,264,233.93 was not applied against the allowable input tax in computing deficiency value added tax since this shall be carried over to the next succeeding quarter(s)/year as provided under Section 110(B) of the Tax Code, as amended.

Similarly, the CIR's witness, Prince Henry B. Damasco, testified that LUI did not submit sufficient proof that will warrant the reversal of its audit findings,[60] to wit:

[60] Judicial Affidavit of Prince Henry B. Damasco, Court in Division Docket Vol. III, p. 1130.

Q15: What transpired next, if any?

A: A Preliminary Assessment Notice dated November 5, 2015 and Formal Assessment Notice dated December 16, 2015 were issued and sent to petitioner. Thereafter, re-investigation was conducted regarding petitioner's deficiency VAT liabilities. **<u>Since no proof of any documents were submitted by petitioner to warrant the reversal of the audit findings of the BIR</u>**, the deficiency VAT assessment of petitioner was **<u>reiterated</u> in the Final Decision on Disputed Assessment (FDDA) dated July 12, 2016 after the conduct of the re-investigation.**

Q16: What was the result of the re-investigation?

A: The BIR has not seen any reason for the use of the TIN of petitioner in place of the TIN of Playweb Games, Inc. The sales invoices and official receipts issued by Playweb Games, Inc. to Uniwiz Trade Sales disclosed that the TIN indicated therein was that of Playweb Games, Inc. Clearly, Playweb did not use the TIN of petitioner.

Further, the audit reveal that the total vatable sales on the sales invoices issued by Playweb to Uniwiz amounting to P28,553,069.54 did not tally with the purchases claimed by Uniwiz amounting to P43,548,175.37.

Furthermore, petitioner did not provide any proof regarding its transactions with Veritas System Solution, Inc., Level Up International Holdings Pte Ltd., Playweb Games, Inc., Power House Distributor, Inc. and SM Mart, Inc.

Hence, the assessment on undeclared sales of petitioner amounted to P44,463,331.43. [61]

As cited by LUI, in the ***Avon Case***, the Supreme Court categorically pronounced that:

> "The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on best evidence obtainable, among others. However, these powers must "be exercised reasonably and [under] the prescribed procedure." The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights."

Revenue Regulations No. 12-99 requires the taxpayer to respond to the PAN within fifteen (15) days from receipt thereof; otherwise, it shall be considered in default, and the formal letter of demand and assessment notice may be issued. We quote the relevant portion of the regulation as follows:

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[61] Emphasis and underscoring supplied.

> "3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties[62]"

The Court *En Banc* observes that LUI filed its protest against the PAN on 17 December 2015, or 37 days from 10 November 2015 after receipt of the PAN. Thus, LUI should have been considered in default, and the CIR's issuance of the FAN on 16 December 2015 proceeded pursuant to the above-quoted provisions.

Still, notwithstanding LUI's belated filing of the Reply to PAN, the CIR gave LUI the opportunity to present supporting documents, considered the same, and gave sufficient explanation in the FDDA. This was not so in the ***Avon Case***, where the Details of Discrepancy attached to the PAN, as well as the FLD with the FANs, did not comment or address the defenses and documents submitted by the taxpayer.

LUI failed to establish that the undeclared revenues are revenues of Playweb.

LUI claims that Court in Division misappreciated the documents and affidavits that seek to establish that the "Undeclared Receipts" are not sales of LUI but sales of Playweb, an entity separate and distinct from LUI.

We disagree.

Preliminarily, the Court notes that the sales invoices and official receipts attached by LUI to the instant Petition for Review are unreadable copies.

As revealed by a perusal of records of the Court in Division, and as found by the Court in Division, there are significant discrepancies in the sales invoices and official receipts issued by Playweb Games, Inc. to Uniwiz Trade Sales, Inc. and Veritas System Solutions, Inc. except for those pertaining to

[62] Emphasis and underscoring supplied.

Power House Distribution, Inc. The discrepancies as summarized by the Court in Division as are follows:

Taxable Month	Customer	Undeclared Sales	Sales per Playweb's Invoices and ORs	Discrepancy
5/31/2013	Powerhouse Distribution, Inc.	168,950.89	168,950.89	-
6/30/2013	Powerhouse Distribution, Inc.	81,562.50	81,562.50	-
		250,513.39	250,513.39	-
1/31/2013	Uniwiz Trade Sales Inc.	4,512,348.22	4,317,375.00	194,973.22
2/28/2013	Uniwiz Trade Sales Inc.	10,956,756.70	4,539,827.01	6,416,929.69
3/31/2013	Uniwiz Trade Sales Inc.	5,739,024.00	4,397,089.85	1,341,934.15
4/30/2013	Uniwiz Trade Sales Inc.	7,116,735.94	5,961,247.76	1,155,488.18
5/31/2013	Uniwiz Trade Sales Inc.	7,909,504.01	6,014,457.59	1,895,046.42
6/30/2013	Uniwiz Trade Sales Inc.	7,313,806.50	4,266,340.19	3,047,466.31
		43,548,175.37	29,496,337.40	14,051,837.97
6/30/03	Veritas Systems Solutions, Inc.	664,642.67	117,857.14	546,785.53
	Total	**44,463,331.43**		

In view of the foregoing discrepancies, this Court cannot subscribe to LUI's claim that the undeclared receipts from Uniwiz Trade Sales, Inc. and Veritas Systems Solutions, Inc. are actually the sales of Playweb Games, Inc.

<u>The disallowance of claimed input taxes is proper for failure to substantiate the subject input tax with VAT invoice or VAT official receipts.</u>

LUI claims that the Summary List of Purchases should be sufficient to substantiate the local transactions of LUI amounting to ₱4,804,976.63. LUI further claims that if the BIR is allowed to assess a taxpayer on the basis of information provided in the SLP and SLS, then there should be no reason for the taxpayer to be disallowed to dispute an assessment using information contained in the SLP and SLS.

We disagree with LUI.

Section 110 of the National Internal Revenue Code of 1997, ("Tax Code"), as amended, provides that a creditable input tax should be evidenced by a VAT invoice and VAT official receipt:

"Section 110. Tax Credits. -

A. Creditable Input Tax. -

(1) **Any input tax <u>evidenced by a VAT invoice or official receipt</u> issued in accordance with Section 113 hereof on the following transactions shall be <u>creditable against the output tax</u>**:

(a) Purchase or importation of goods:

(b) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

> The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.
>
> The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code. ..."

Section 113 of the Tax Code further provides that a VAT-registered person shall issue an invoice or official receipt, to wit:

> "Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -
>
> (A) Invoicing Requirements. - A **VAT-registered person <u>shall</u>, <u>for every sale</u>, <u>issue an invoice or receipt</u>.** In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
>
> (B) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance."[63]

Contrary to LUI's claim, an SLP is not sufficient proof to establish the existence of purchase of goods of service. When the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[64]

In view of the foregoing, the Court in Division did not err in disallowing the subject input tax for failure to substantiate the same with VAT invoice or VAT official receipts. Since LUI did not present VAT invoices or official receipts, this Court sustains the disallowance of the input tax of ₱4,804,976.63.

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[63] Emphasis and underscoring supplied.
[64] Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 196907, 13 March 2013.

Disallowance of excess input tax carried over to a succeeding period is improper because it is beyond the scope of the present assessment.

The CIR claims that the Court in Division partially erred in the cancellation of the assessment with respect to excess input tax to be carried over to the succeeding period in the amount of ₱1,264,233.93. According to the CIR, ***Section 110(B) of the Tax Code*** and ***Section 19 of Revenue Regulations No. 4-2007*** clearly and categorically provide that any excess input tax accumulated for the period and from previous periods shall be carried over to the succeeding quarter or quarters. Thus, the CIR infers that the carrying over is mandatory and that it is only proper for it to disallow such excess input tax on the period covered of the assessment since such excess input tax can be utilized by LUI in the succeeding quarter or quarters.

We disagree with the CIR.

It is settled that the disallowance of excess input tax carried forward to succeeding period is improper because it is beyond the scope of the present assessment. Any tax benefit to be derived by the taxpayer from the carry-over will redound to the succeeding quarter.[65] Since the tax benefit will be in the succeeding quarter, at most, the taxpayer may only be assessed in the said succeeding quarter.[66]

Thus, the Court in Division correctly found that the disallowance of excess input tax carried-over to any succeeding period/ quarter is improper as any benefit derived by LUI from such carry-over redounds to the benefit of the succeeding period. The same can only be the subject of assessment on the taxable year when they are claimed.

WHEREFORE, all the foregoing considered, the consolidated Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision dated 6 December 2018 and resolution dated 16 April 2019 are hereby **AFFIRMED.**

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[65] First Philippine Utilities Corp. v. Commissioner of Internal Revenue, CTA Case No. 9431, 29 September 2020; Titanium Corporation v. Commissioner of Internal Revenue, CTA Case No. 9515, 2 October 2019; Process Machinery Co., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9217, 17 August 2018; ZMG Ward Howell, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9004, 4 June 2018; Greenhills Properties, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8295, 15 May 2015.

[66] *Ibid.*

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice