REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SOFGEN HOLDINGS LIMITED – PHILIPPINE BRANCH,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE, AND GLEN A. GERALDINO, REGIONAL DIRECTOR OF REVENUE REGION NO. 8, MAKATI CITY,
Respondents.

CTA Case No. 9691

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
APR 21 2022 11:35am

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DECISION

MANAHAN, *J.*:

This involves a Petition for Review praying that this Court, after due hearing, render judgment:

1. Declaring the *Letter of Authority* (LOA) No. eLA201200033171 null and void;

2. Cancelling the deficiency value-added tax (VAT) assessment, for it was issued based on an invalid LOA, and in the absence of a *Preliminary Assessment Notice* (PAN) and a *Final Assessment Notice* (FAN); and for utter lack of legal merit; and

3. Ordering the refund to petitioner of the payment made under protest in the amount of ₱19,632,677.12.[1]

[1] Summary of the Case, Pre-Trial Order dated May 23, 2018, Docket – Vol. I, p. 389.

THE FACTS

Sofgen Holdings Limited under the name of petitioner Sofgen Holdings Limited - Philippine Branch is a foreign company organized and existing under the laws of the Republic of Cyprus.[2] It is licensed to do business in the Philippines by the Securities and Exchange Commission.[3] It is also registered with the Bureau of Internal Revenue (BIR), and applied for registration as a value-added tax (VAT) taxpayer, among other types of taxes. It secured a BIR Certificate of Registration with VAT-registered Tax Identification No. 403-485-728-000, with address at 10F Quadrant D Rufino Pacific Tower, Ayala Avenue, Makati City 1226.[4]

Respondent Commissioner of Internal Revenue (CIR) is the head of the BIR, with powers and duties to comprehend the assessment and collection of taxes, fees and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith.[5]

Respondent Glen A. Geraldino is the Regional Director of Revenue Region No. 8, Makati City.[6]

On October 26, 2016, the BIR Revenue Region No. 8, Makati City, issued LOA No. eLA201200033171,[7] authorizing Revenue Officer (RO) IB Romel Isturis and Group Supervisor (GS) Emmanuel Obsequio of Revenue District Office No. 47 – East Makati, to examine the books of accounts and other accounting records for all internal revenue taxes of petitioner, for the period April 1, 2015 to March 31, 2016, pursuant to Section 6(A) and Section 10(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.[8]

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[2] Exhibit "P-1", Docket – Vol. I, pp. 228.

[3] Pars. 4 and 7, *Petition for Review*, vis-à-vis Pars. 2 and 3, *Answer*, Docket – Vol. I, pp. 11, and 165, respectively; Exhibit "P-1", Docket – Vol. I, pp. 228.

[4] Par. A.3, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 359; Exhibit "P-2", Docket – Vol. II, p. 759.

[5] Par. A.1, JSFI, Docket – Vol. I, p. 359.

[6] Par. A.2, JSFI, Docket – Vol. I, p. 359.

[7] Exhibit "P-3", Docket – Vol. I, p. 230; Exhibit "R-2", Docket – Vol. II, p. 457.

[8] Par. A.4, JSFI, Docket – Vol. I, p. 360.

Thereafter, on November 21, 2016, respondent, through RO IB Romel B. Isturis, issued a *First Request for Presentation of Records* in relation to LOA No. eLA201200033171 dated October 26, 2016.[9] Subsequently, a *Request for Submission of Additional Documents* dated January 10, 2017 was issued by the BIR, again through RO Isturis, to petitioner.[10] Petitioner then submitted certain information via the letters dated February 9, 2017[11] and February 22, 2017[12].

On July 4, 2017, petitioner received the *48-Hour Notice* dated June 20, 2017. The said *Notice* alleged that based on the report of their investigating office, petitioner has failed to comply with the following requirements as a VAT-registered person:

a. Issue sales invoice or receipts, pursuant to Sections 113 and 237 of the NIRC of 1997, as amended;
b. Pay VAT, pursuant to Section 114 of the NIRC of 1997, as amended; and
c. Reflect its correct taxable sales/receipts for the taxable period January 1, 2015 to December 31, 2015.[13]

In addition, the *Notice* stated that the petitioner was being assessed for deficiency VAT amounting to ₱47,754,294.19, inclusive of interest, with the following details:[14]

Intercompany revenues not subjected to VAT	₱130,956,271.00
Receipt 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%

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[9] Par. A.5, JSFI, Docket – Vol. I, p. 360; Exhibit "P-4", Docket – Vol. I, p. 232; Exhibit "R-5", BIR Records – Folder III, p. 669.
[10] Exhibit "R-6", BIR Records – Folder III, p. 670.
[11] Exhibit "P-5", BIR Records – Folder I, pp. 593 to 594
[12] Exhibit "P-6", BIR Records – Folder I, pp. 600 to 601.
[13] Par. A.6, JSFI, Docket – Vol. I, p. 360; Exhibit "P-7", Docket – Vol. I, p. 238; Exhibit "R-10", BIR Records – Folder II, pp. 164 to 169.
[14] Par. A.7, JSFI, Docket – Vol. I, p. 360; Exhibit "P-7", Docket – Vol. I, p. 238; Exhibit "R-10", BIR Records – Folder II, pp. 164 to 169.

Basic VAT due	₱ 38,528,553.00
Add: 20% interest p.a. from 04/26/2016 to 07/07/2017	9,225,741.18
TOTAL AMOUNT DUE	**₱47,754,294.19**

Furthermore, the same *Notice* directed petitioner to refute the findings stated therein within forty-eight (48) hours from receipt thereof.[15]

In its letter dated July 11, 2017,[16] petitioner requested that the items in the assessment be set aside for lack of factual and legal bases.

On July 20, 2017, respondent Regional Director Glen A. Geraldino issued a letter directing petitioner to pay the related deficiency VAT on its intercompany sales for failure to issue VAT official receipts or invoices.[17]

Thereafter, a *Five (5) – Day VAT Compliance Notice* (VCN) (received by petitioner on July 24, 2017), together with the computation of the deficiency VAT, was issued for collection. The computation reads:[18]

Intercompany revenues not subject to VAT	₱130,956,271.00
Multiply by VAT rate	12%
Basis VAT due	15,714,752.52
Add: 20% interest p.a. from 04/26/2016 to 07/25/2017	3,917,924.60
TOTAL AMOUNT DUE	**₱19,632,677.12**

On July 16, 2017, petitioner filed with the BIR its protest letter of even date,[19] arguing against the said VCN, and requesting that the same be cancelled. Subsequently, on July 31, 2017, petitioner filed with the BIR another letter dated July 28, 2017,[20] providing further arguments against the VCN, and requesting again the cancellation thereof.

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[15] Par. A.8, JSFI, Docket – Vol. I, p. 360.
[16] Exhibit "P-9", Docket – Vol. I, pp. 241 to 246.
[17] Par. A.9, JSFI, Docket – Vol. I, p. 361; Exhibits "P-10" and "R-13", BIR Records – Folder II, pp. 195 to 197.
[18] Par. A.10, JSFI, Docket – Vol. I, p. 361; Exhibits "P-11" and "R-14", BIR Records – Folder II, pp 198 to 199.
[19] Exhibit "P-12", Docket – Vol. I, pp. 252 to 256.
[20] Exhibit "P-13", Docket – Vol. I, pp. 257 to 260.

On August 16, 2017, respondent Regional Director Glen A. Geraldino issued a letter denying the *Protest Letter* of petitioner (copy received by petitioner on even date), and gave the latter three (3) days within which to pay the deficiency VAT as demanded in the VCN, otherwise the case shall be forwarded to respondent CIR for appropriate action pursuant to Revenue Memorandum Order (RMO) No. 3-2009.[21]

Petitioner then filed with the BIR its letter (or *Motion for Reconsideration*) dated August 23, 2017, discussing the basis thereof and requesting the suspension of service of the Order of Closure.[22] Relative thereto, on August 25, 2017, petitioner also filed its letter of even date,[23] requesting the BIR to hold in abeyance any further action on the VCN until the *Motion for Reconsideration* and *Offer of Compromise* are resolved.

On August 29, 2017, respondent Regional Director Glen A. Geraldino issued a letter denying the *Motion for Reconsideration* of petitioner. A copy of the said *Decision* was received by the latter on August 30, 2017.[24]

On August 30, 2017, respondent CIR issued a *Closure Order* against petitioner which states that:

> "By virtue of the power vested in me under Section 115 of the National Internal Revenue Code 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 *10/F 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."[25]

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[21] Par. A.11, JSFI, Docket – Vol. I, p. 361; Exhibits "P-14" and "R-17", BIR Records – Folder II, pp. 347 to 349.
[22] Exhibit "P-15", Docket – Vol. I, pp. 264 to 267.
[23] Exhibits "P-16", Docket – Vo. I, pp. 268 to 269; Exhibit "R-18", BIR Records – Folder II, pp. 366 to 367.
[24] Par. A.12, JSFI, Docket – Vol. I, p. 361; Exhibit "P-17", Docket – Vol. I, p. 270; Exhibit "R-20", BIR Records – Folder II, p. 382.
[25] Par. A.13, JSFI, Docket – Vol. I, p. 361; Exhibit "P-18", BIR Records Folder II, p. 380. am

On the same date, petitioner paid under protest the VAT assessment in the amount of ₱19,632,677.12,[26] to prevent the said *Closure Order.*[27]

Subsequently, on September 24, 2017, the BIR served to petitioner LOA No. SN: eLA201500051606 dated September 26, 2017,[28] authorizing RO IB Romel Isturis and GS Emmanuel Obsequio of Revenue District Office No. 47 – East Makati, to examine the books of accounts and other accounting records for all internal revenue taxes of petitioner, for the period January 1, 2015 to December 31, 2015, pursuant to Section 6(A) and Section 10(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

On September 26, 2017, petitioner filed the present *Petition for Review.*[29] The case was initially raffled to this Court's Third Division.

Respondents posted their *Answer* on November 20, 2017,[30] interposing their special and affirmative defenses.

On February 13, 2018, respondents transmitted to the Court the *BIR Records* of this case.[31]

The Pre-Trial Conference was scheduled and held on April 10, 2018.[32] Prior thereto, *Respondents' Pre-Trial Brief* was submitted on March 13, 2018,[33] while the *Pre-Trial Brief for the Petitioner* was filed on April 4, 2018.[34]

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[26] Par. A.14, JSFI, Docket – Vol. I, p. 361; Exhibit "P-20", Docket – Vol. 1, p. 274.
[27] Exhibit "P-19", Docket – Vol. 1, pp. 272 to 273.
[28] Exhibit "R-3" to "R-3-a", BIR Records – Folder III, p. 672.
[29] Docket – Vol. I, pp. 10 to 29.
[30] Docket – Vol. I, pp. 165 to 172.
[31] *Letter* dated February 13, 2017, Docket – Vol. I, p. 187.
[32] *Notice of Pre-trial Conference* dated November 27, 2017, Docket – Vol. I, pp. 174 to 175; Minutes of the hearing held on, and Order dated, April 10, 2018, Docket – Vol. I, pp. 351 to 353.
[33] Docket – Vol. 1, pp. 189 to 191.
[34] Docket – Vol. 1, pp. 193 to 207. om

On April 25, 2018, the parties submitted their *Joint Stipulation of Facts and Issues.*[35] Subsequently, the Pre-Trial Order dated May 23, 2018 was issued,[36] deeming the termination of the Pre-Trial Conference.

In the Order dated September 20, 2018,[37] the present case was transferred to the First Division of the Court.

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Christine Mayette Antonio,[38] petitioner's Finance Officer; and (2) Atty. Adan T. Delamide,[39] Court-commissioned Independent Certified Public Accountant (ICPA).[40]

The *Report* of the ICPA was submitted on August 27, 2019.[41]

On October 17, 2019, petitioner filed its *Formal Offer of Evidence with Motion for Remarking and to Admit FOE.*[42] Respondents failed to file their comment thereon.[43] In the Resolution dated October 23, 2019,[44] the Court granted, *inter alia*, the said *Motion*, in the interest of justice. Thereafter, in the Resolution dated February 10, 2020,[45] the Court admitted petitioner's exhibits, *except* for Exhibits "P-103" and "P-104", for not being found in the records of the case.

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[35] Docket – Vol. I, pp. 359 to 370.
[36] Docket – Vol. I, pp. 389 to 396.
[37] Docket – Vol. II, p. 589.
[38] Exhibit "P-26", Docket – Vol. II, pp. 441 to 454; Minutes of the hearing held on and Order dated August 14, 2018, Docket – Vol. II, pp. 576 to 578; Minutes of the hearing held on, and Order dated, January 15, 2019, Docket – Vol. II, pp. 633 to 637.
[39] Exhibit "P-28", Docket – Vol. II, pp. 711 to 723; Minutes of the hearing held on, and Order dated, September 24, 2019, Docket – Vol. II, pp. 734 to 739.
[40] *Oath of Commission* dated July 25, 2019, Docket – Vol. II, p. 691; Minutes of the hearing held on, and Order dated, July 25, 2019, Docket – Vol. II, pp. 688 to 690, and 692 to 693, respectively.
[41] Exhibit "P-27", Docket – Vol. II, pp. 695 to 707.
[42] Docket – Vol. II, pp. 745 to 757.
[43] Records Verification dated December 5, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 793.
[44] Docket – Vol. II, pp. 787 to 788.
[45] Docket – Vol. II, pp. 802 to 803.

Petitioner then filed its *Motion for Reconsideration to the Resolution dated February 10, 2020* on March 2, 2020,[46] praying for reconsideration on the admission of the denied exhibits. Respondents again failed to submit their comment.[47] In the Resolution dated July 29, 2020,[48] the Court granted petitioner's *Motion for Reconsideration* and admitted Exhibits "P-103" and "P-104".

Respondents likewise presented their testimonial and documentary evidence. They offered the testimony of RO IB Romel B. Isturis.[49]

Thereafter, respondents filed a *Motion to Admit (attached Formal Offer of Evidence)* on December 14, 2020,[50] attaching therewith their *Formal Offer of Evidence.*[51] Petitioner then submitted its *Comment/Opposition (To the Motion to Admit Attached Formal Offer of Evidence)* on December 17, 2020,[52] and *Comment/Opposition (To Respondent's Formal Offer of Evidence)* on January 28, 2021.[53]

In the Resolution dated February 22, 2021,[54] the Court: (1) admitted respondents' exhibits, *except* for Exhibit "R-1", for not being found in the *BIR Records* of this case; and (2) gave the parties a non-extendible period of thirty (30) days within which to file their respective memoranda.

The *Memorandum for the Petitioner* was submitted on March 12, 2021.[55]

Respondents posted a *Motion for Partial Reconsideration* on March 26, 2021,[56] praying for the admission of the denied

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[46] Docket – Vol. II, pp. 804 to 805.
[47] Records Verification dated July 6, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 908.
[48] Docket – Vol. II, pp. 913 to 914.
[49] Exhibit "R-23", Docket – Vol. II, pp. 843 to 864; Minutes of the hearing held on, and Order dated, November 24, 2020, Docket – Vol. II, pp. 925 to 929.
[50] Docket – Vol. II, pp. 931 to 933.
[51] Docket – Vol. II, pp. 934 to 945.
[52] Docket – Vol. II, pp. 948 to 950.
[53] Docket – Vol. II, pp. 956 to 957.
[54] Docket – Vol. II, pp. 962 to 963.
[55] Docket – Vol. II, pp. 964 to 989. cm

exhibit. Petitioner submitted its *Comment/Opposition (To Respondent's Motion for Partial Reconsideration)* on June 22, 2021.[57] In the Resolution dated July 22, 2021,[58] the Court granted respondents' *Motion for Partial Reconsideration* and admitted Exhibit "R-1".

In the meantime, respondents' *Memorandum* was posted on May 21, 2021.[59]

The present case was submitted for decision on July 22, 2021.[60]

THE ISSUES

As stipulated by the parties, the main issues for resolution of the Court are the following:

"A.

WHETHER OR NOT THE LETTER OF AUTHORITY ISSUED IN THE PRESENT CASE IS VALID.

B.

WHETHER OR NOT THE PETITIONER IS LIABLE TO PAY THE DEFICIENCY VAT ASSESSMENT IN THE AMOUNT OF PHP19,632,677.12 FOR TAXABLE YEAR 2015.

C.

WHETHER OR NOT THE PETITIONER IS ENTITLED TO THE REFUND OF THE AMOUNT OF P19,632,677.12 WHICH IT PAID UNDER PROTEST AS DEFICIENCY VAT FOR TAXABLE YEAR 2015."[61]

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[56] Docket – Vol. II, pp. 992 to 994.
[57] Docket – Vol. II, pp. 1012 to 1014.
[58] Docket – Vol. II, pp. 1019 to 1020.
[59] Docket – Vol. II, pp. 997 to 1009.
[60] Resolution dated July 22, 2021, Docket – Vol. II, pp. 1019 to 1020.
[61] Par. B, JSFI, Docket – Vol. I, p. 362.

Petitioner's arguments:

Petitioner argues that the LOA in the present case is null and void; that the ROs who made the assessment for VAT deficiency went beyond the authority given to them; that the deficiency VAT assessment was made without the mandatory PAN and FAN; and that the alleged deficiency VAT assessment has no legal basis.

Respondents' counter-arguments:

Respondents contends that the LOA is validly issued and duly authorized the ROs named therein to conduct an investigation of petitioner's books of account and accounting records; that petitioner is estopped from questioning the validity of the LOA; and, that the deficiency VAT assessment was validly issued pursuant to RMO No. 3-2009 and RMC No. 11-2014.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

LOA No. eLA201200033171 dated October 26, 2016 is not valid. The resulting VAT assessment is void, since the RO authorized to conduct the audit exceeded his authority.

Petitioner is of the view that LOA No. eLA201200033171 dated October 26, 2016,[62] which covers the examination of its books of accounts and other accounting records for the period from **April 1, 2015 to March 31, 2016**, is void, since it follows the calendar year as its taxable year for national internal revenue tax purposes.

This Court agrees.

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[62] Exhibit "P-3", Docket – Vol. I, p. 230; Exhibit "R-2", Docket – Vol. II, p. 457.

Indeed, the LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[63] It is the concrete manifestation of the grant of authority bestowed by respondent CIR or his authorized representatives to the ROs, pursuant to Sections 6, 10(c) and 13 of the National Internal Revenue Code (NIRC) of 1997, as amended. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, an RO.[64]

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.* ("*Sony* case"),[65] the Supreme Court ruled as follows:

> "The CIR insists that LOA 19734, although it states 'the period 1997 and unverified prior years,' should be understood to mean the fiscal year ending in March 31, 1998. The Court cannot agree.
>
> Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
>> SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –**
>>
>> (A) Examination of Returns and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative **<u>may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from **<u>authorizing the examination of any taxpayer</u>**. x x x [Emphases supplied]

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[63] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

[64] *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.

[65] G.R. No. 178697, November 17, 2010.

> **Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. <u>Equally important is that the revenue officer so authorized must not go beyond the authority given.</u> In the absence of such an authority, the assessment or examination is a nullity.**
>
> **As earlier stated, LOA 19734 covered 'the period 1997 and unverified prior years.' For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA.**
>
> Upon review, the CTA-EB even added that the coverage of LOA 19734, particularly the phrase 'and unverified prior years,' violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, the pertinent portion of which reads:
>
> > 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. [Empasis supplied]
>
> **On this point alone, the deficiency VAT assessment should have been disallowed.** xxx." *(Emphases added)*

Based on the foregoing, it is clear that the LOA issued shall cover a taxable period not exceeding one (1) taxable year.

That the LOA should cover only one (1) taxable year has been the consistent and general policy of the BIR, pursuant to the following issuances, *viz.*:

RMO No. 36-99[66]:

"6.2 **One LA shall be issued for each taxable year to include all internal revenue tax liabilities of the taxpayer.** However, for purposes of verifying tax liabilities of a decedent, one consolidated LA shall be issued to cover the estate tax liability and the income tax liability for the immediately preceding year up to the time of the death of the taxpayer." *(Emphasis added)*

RMO No. 19-2015[67]:

"8. As a general policy, the simultaneous investigation of all liabilities of the taxpayer shall be followed. **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)." *(Emphasis added)*

In this case, LOA No. eLA201200033171 dated October 26, 2016 covers the period from **April 1, 2015 to March 31, 2016**. Because petitioner's taxable year follows the calendar year, *i.e.*, from **January 1 to December 31, 2015**, the subject LOA covers fractions of two taxable years, i.e. from April 1 to December 31, 2015 and January 1 to March 31, 2016 in violation of respondent's guidelines as well as jurisprudence on the matter. The LOA is therefore void.

In the same vein, on the basis of the *Sony* case, the RO authorized to examine or assess a particular taxpayer must not go beyond the authority given. To be clear, in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[68]

RO IB Romel Isturis exceeded his authority to audit petitioner, when he initially requested petitioner to present its

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[66] SUBJECT: 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.
[67] SUBJECT: BIR Audit Program.
[68] *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020. *om*

records for the period from **January 1, 2015 to December 31, 2015**,[69] and on the basis of the said records, came up with his recommendations for the issuance of the: (1) *48-Hour Notice* dated June 20, 2017,[70] (2) VCN,[71] and (3) *Closure Order* dated August 30, 2017.[72] Such being the case, the resulting VAT assessment in the amount of ₱19,632,677.12, covering the period from **January 1, 2015 to December 31, 2015**, is a nullity.

Be that as it may, this Court sees another ground which nullifies the subject VAT assessment, thereby warranting the award of the refund being claimed.

Respondent CIR improperly exercised his power under Section 115 of the NIRC of 1997. Moreover, the BIR totally ignored Section 228 of the same law. Thus, there was a violation of petitioner's right to due process pertaining to the issuance of the subject VAT assessment, rendering the same void.

Undeniably, the *Closure Order* dated August 30, 2017 was issued pursuant to respondent CIR's power under Section 115 of the NIRC of 1997.[73] As a consequence thereof, petitioner paid under protest the VAT assessment in the amount of ₱19,632,677.12,[74] to prevent the same from being implemented by the BIR.[75]

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[69] Exhibit "P-4", Docket – Vol. I, p. 232; Exhibit "R-5", BIR Records – Folder III, p. 669; Exhibit "R-6", BIR Records – Folder III, p. 670.
[70] Refer to Exhibit "R-9", BIR Records – Folder II, pp. 141 to 142, vis-à-vis Exhibit "P-7", Docket – Vol. I, p. 238, and Exhibit "R-10", BIR Records – Folder II, pp. 164 to 169.
[71] Refer to Exhibit "R-12", BIR Records – Folder II, pp. 192 to 194, vis-à-vis Exhibits "P-11" and "R-14", BIR Records – Folder II, pp 198 to 199.
[72] Refer to Exhibit "R-15", BIR Records – Folder II, pp. 200 to 201, and Exhibit "R-16", BIR Records – Folder II, pp. 340 to 344, vis-à-vis Exhibit "P-18", BIR Records Folder II, p. 390.
[73] Exhibit "P-18", BIR Records Folder II, p. 390.
[74] Par. A.14, JSFI, Docket – Vol. I, p. 361; Exhibit "P-20", Docket – Vol. I, p. 274.
[75] Refer to Exhibit "P-19", Docket – Vol. I, pp. 272 to 273.

However, this Court finds that there was an improper exercise of the said power in this case.

For easy reference, Section 115 of the NIRC of 1997 reads as follows, to wit:

> "SEC. 115. *Power of the Commissioner to Suspend the Business Operations of a Taxpayer.* – **The Commissioner or his authorized representative is hereby <u>empowered to suspend the business operations and temporarily close the business establishment of any person</u> for any of the following violations:**
>
> **(a) *In the Case of a VAT-registered Person.*** -
>
> **(1) Failure to issue receipts or 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.**
>
> xxx xxx xxx." *(Emphases and underscoring added)*

Clearly, the foregoing provision empowers respondent CIR *to suspend the business operations and temporarily close the business establishment of any VAT-registered person*, in case the latter: (1) fails to issue receipts or invoices; (2) fails to file a VAT return as required under Section 114 of the NIRC of 1997; and (3) understates the said person's taxable sales or receipts by thirty percent (30%) or more of the same person's correct taxable sales or receipts for the taxable quarter. Simply put, Section 115 specifically grants respondent CIR the power to suspend the business operations and temporarily close the business establishment of any VAT-registered person **upon the said specific grounds**.

Based on the VCN,[76] the grounds relied upon by the BIR in exercising respondent CIR's power under the aforequoted portions of Section 115 are petitioner's failure to comply with the following requirements as a VAT-registered person, to wit:

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[76] Exhibits "P-11" and "R-14", BIR Records – Folder II, pp 198 to 199.

1) To issue sales invoices or receipts in petitioner's intercompany sales transactions, in violation of Sections 113 and 237 of the NIRC of 1997, as amended;

2) To reflect petitioner's correct taxable sales/receipts for taxable year 2015; and

3) To pay the correct VAT deficiency, including increments.

Notably, of the foregoing grounds, only the *first* conforms with the ground stated under Section 115(a)(1) of the NIRC of 1997. However, this Court finds that petitioner had complied with the corresponding requirement by issuing the pertinent official receipts, even before the issuance of the subject *Closure Order.*[77]

In the *Report* of the ICPA,[78] the latter found, *inter alia*, the following, *viz.*:

> "11. **All of 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.
>
> 12. We understand from the Company's personnel that the Company did not issue VAT receipts at the time of remittances because the remittances were for operating capital requirements. The documents made available to us in support of this claim are the bank statements for the two bank accounts for payroll and general expenses. During BIR audit, the Company were required to issue receipts for these remittances and to amend its VAT Returns. As shown in ***Annexes A*** and ***B***, the Company reported in its amended VAT Returns all the receipts belatedly issued.
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> xxx xxx xxx
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> 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." *(Emphases added)*

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[77] Refer to Exhibits "P-37" to "P-60".
[78] Exhibit "P-27", Docket – Vol. II, pp. 695 to 707.

This Court agrees with the foregoing findings. As a corollary, it is noteworthy that respondents failed to present any evidence to refute the same. Such being the case, the *first* ground to justify the issuance of the subject *Closure Order* is unfounded.

Moreover, the *second* and *third* grounds relied upon by the BIR, as stated in the VCN, do not fall under any of the grounds provided under Section 115(a) for the exercise of respondent CIR's power to close the business establishment of petitioner.

Pertinently, the said *second* ground cannot fall under Section 115(a)(3), simply because this provision is explicit that there must be an understatement of taxable sales or receipts by thirty percent (30%). For the ground stated under Section 115(a)(3) to be present, the said threshold must have been reached. The simple failure to reflect the correct taxable sales/receipts for taxable year 2015 is insufficient justification, since such failure may be less than the same threshold. In any case, respondents did not present clear and convincing evidence that there was, in fact, an underdeclaration by at least thirty percent (30%) of petitioner's correct taxable sales or receipts for the subject period.

As for the BIR's *third* ground, it is apparent that the same is not one of those stated under Section 115(a) of the NIRC of 1997.

Correspondingly, the *Closure Order* dated August 30, 2017 must be struck down.

Nonetheless, even granting that all of the grounds relied upon by the BIR in issuing the subject *Closure Order* conform with the grounds stated under Section 115 of the NIRC of 1997, it must be emphasized that the power to suspend the business operations and temporarily close the business establishment of any VAT-registered person under the said provision is separate and distinct from the power to assess the latter, since the provisions of Section 228 of the NIRC of 1997 still ought to be observed.

Apropos, it must be emphasized that Section 115 and Section 228 (both of the NIRC of 1997) pertain to entirely different matters.[79] Thus, the application of the said Section 115 by the BIR does not preclude compliance with the provisions of Section 228, which reads:

> "Section 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person such as, but not limited to, vehicles, capital equipment, machineries and spare parts, have been sold, traded or transferred to non-exempt persons.
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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[79] *Bakbak (1 and 2) Native Chicken Restaurant, represented by the owner Roselle G. Barco, vs. Secretary of Finance, et al.*, G.R. No. 217610, September 2, 2020.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Implementing the foregoing provision, Section 3 of Revenue Regulations (RR) No. 12-99[80], as amended by RR No. 18-2013[81], provides, in part, as follows:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show 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 Final

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[80] SUBJECT: 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 Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[81] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.2 *Exceptions to Prior Notice of the Assessment Notice.* — xxx

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).

3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) **Request for reconsideration** – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) **Request for reinvestigation** – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered on which his protest is based, otherwise, this protest shall be considered *void and without force and effect.*

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For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term 'relevant supporting documents' refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term *'the assessment shall become final'* shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date or receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of the filing of the protest in case of a request for reconsideration; or from the date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

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3.1.5 *Final Decision on a Disputed Assessment (FDDA).* — The decision of the Commissioner or his duly authorized representative shall state the (i) facts, applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his *final decision.*

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Relative thereto, in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*,[82] the Supreme Court held as follows:

"The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. **Section 3.1.2[83] of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4[84] requires that the Final Letter of Demand must state the**

[82] G.R. Nos. 201398-99, and 201418-19, October 3, 2018.
[83] Now Section 3.1.1.
[84] Now Section 3.1.3.

facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6[85] **specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based.** Failure to do so would invalidate the Final Decision on Disputed Assessment.

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'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' <u>This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.</u>

On the other hand, <u>the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment</u>. xxx **under Section 228 of the Tax Code and Section 3.1.2**[86] **of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.**

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This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[87] this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by**

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[85] Now Section 3.1.5.
[86] Now Section 3.1.1.
[87] 652 Phil. 172 (2010) [Per J. Mendoza, Second Division].

Section 228 of the Tax Code rendered the assessment made by the Commissioner as void. xxx.

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In *Commissioner of Internal Revenue v. Reyes*,[88] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.**

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[89] this Court ruled, among others, that **the taxpayer was deprived of due process when the Commissioner failed to issue** a notice of informal conference and **a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.**

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*,[90]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> xxx xxx xxx
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his**

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[88] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[89] 565 Phil. 613 (2007) [Per J. Velasco, Jr., Second Division].
[90] 241 Phil. 829 (1988) [Per J. Cruz, First Division]. *an*

> **tracks if the taxpayer can demonstrate... that the law has not been observed.** (Emphasis supplied).
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> xxx xxx xxx." *(Emphases and underscoring added)*

Based on the foregoing, it is mandated that the BIR observe the due process requirement under Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99, as amended by RR No. 18-2013, which entail informing the concerned taxpayer of the legal and factual bases of the assessment (to be stated in the PAN and FLD/FAN) and of the decision made (to be stated in the FDDA) against the latter. In turn, the same taxpayer is given the opportunity to explain and present his/her/its side throughout the process, from tax investigation through tax assessment.

It must be emphasized that tax collection must be preceded by a *valid* assessment to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no *effective* protest can be made.[91]

The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a clear definite requirement.[92] Moreover, tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.[93] Furthermore, in the exercise of the power to assess and collect taxes, the BIR has the commensurate duty to uphold a taxpayer's fundamental right to due process.[94]

More importantly, it must be stressed that tax assessments issued in violation of the due process rights of a

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[91] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[92] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.
[93] *Id.*
[94] *Id.*

taxpayer are null and void. While the government has an interest in the swift collection of taxes, the BIR and its officers and agents cannot be overreaching in their efforts, **but must perform their duties <u>in accordance with law</u>, <u>with their own rules of procedure</u>, and <u>always with regard to the basic tenets of due process</u>.**[95]

In this case, it is undoubted that the due process requirement under Section 228 of the NIRC of 1997, and Section 3 of the RR No. 12-99, as amended by RR No. 18-2013, was not observed or complied with. Such being the case, the subject VAT assessment in the amount of ₱19,632,677.12 is void. Being a void assessment, the said VAT assessment bears no fruit.[96] Consequently, the said amount was illegally collected, and must perforce be refunded to petitioner.

Respondents nevertheless argue that the *48-Hour Notice* dated June 20, 2017 and VCN were issued in accordance with law and taking into consideration the right to due process of petitioner.

However, the reasoning of respondents is specious.

While it may be true that petitioner was accorded due process with the issuance of the said notices, prior to the issuance of the *Closure Order* dated August 30, 2017 in the exercise of respondent CIR's power under Section 115 of the NIRC of 1997, the same is not tantamount to, or should be equated with, the due process requirement in the issuance of tax assessments under Section 228 of the NIRC of 1997, and Section 3 of RR No. 12-99, as amended by RR No. 18-2013. To reiterate, Section 115 and Section 228 pertain to entirely different matters.[97] Thus, the observance of due process under one provision is ***not*** the same as the observance of due process under the other. Both requirements should have been complied with by the BIR.

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[95] *Id.*
[96] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.
[97] *Bakbak (1 and 2) Native Chicken Restaurant, represented by the owner Roselle G. Barco, vs. Secretary of Finance, et al.*, supra.

To be sure, the due process requirement before the issuance of a *Closure Order* against a taxpayer, pursuant to Section 115 of the NIRC of 1997 and as implemented by RMO No. 3-2009[98], is different from the due process requirement as mandated under Section 228 of the same law, and Section 3 of RR No. 12-99, as amended by RR No. 18-2013. In the former, the apparent objective is before respondent CIR may suspend the business operations and temporarily close the business establishment of any person, the latter must be given an opportunity to be heard on whether there are valid grounds for such suspension and temporary closure. In the latter, the clear objective is before the assessment is enforced, and the subsequent collection is made by the BIR, the taxpayer is given every chance to contest the said assessment, in accordance with the said Section 228 of the NIRC, as amended, and Section 3 of RR No. 12-99, as amended.

Moreover, this Court does not adhere to respondents' invocation of the following provisions found in RMO No. 11-2014[99], to wit:

> "(2) Prior to the issuance of the PAN, the taxpayer may be allowed to make **voluntary payments of probable deficiency taxes and penalties**." *(Emphasis and underscoring added)*

This is so because the payment of petitioner in the amount of ₱19,632,677.12 can hardly be considered as "*voluntary*". As borne out by the records of this case, the subject *Closure Order* was issued on August 30, 2017; and on the same day, petitioner **paid under protest** the said VAT assessment to prevent its closure, and as it did, it informed the BIR that it "*will exercise all legal remedies available to it under the law to recover the said payment.*"[100] In other words,

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[98] SUBJECT: 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.

[99] SUBJECT: Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to Revenue Regulations (RR) 12-99, as amended by RR 18-2013.

[100] Par. A.14, JSFI, Docket – Vol. I, p. 361; Exhibit "P-20", Docket – Vol. I, p. 274. Refer also to Exhibit "P-19", Docket – Vol. I, pp. 272 to 273.

petitioner was actually forced to pay the same VAT assessment so as to prevent the implementation of the said *Closure Order.*

Moreover, the said amount paid by petitioner does not represent a "*probable*" deficiency VAT of the latter. In the VCN,[101] *vis-à-vis* the Memorandum dated August 9, 2017[102] and July 31, 2017[103] of RO IB Romel B. Isturis, the amount of ₱19,632,677.12 can already be considered as definite and no longer subject to any modification. In the same VCN, the BIR effectively demanded the said exact amount; otherwise, the *Closure Order* will be issued against petitioner.

In sum, this Court cannot sustain the subject VAT assessment, and finds that the refund in the amount of ₱19,632,677.12 is in order.

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 petitioner, are **CANCELLED** and **SET ASIDE**.

Furthermore, respondents are **ORDERED TO REFUND** the total amount of ₱19,632,677.12 in favor of petitioner.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[101] Exhibits "P-11" and "R-14", BIR Records – Folder II, pp 198 to 199.
[102] Exhibit "R-16", BIR Records – Folder II, pp. 337 to 344.
[103] Exhibit "R-15", BIR Records – Folder II, pp. 200 to 201.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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