Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

WELLFORM TRADING CORPORATION, Petitioner,	**CTA EB NO. 1827** (CTA Case No. 9086)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 2 4 2019 2:42 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on November 15, 2018 is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1],

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

as amended, of the Decision[2] in the case entitled Wellform Trading Corporation vs. Commissioner of Internal Revenue (CIR), docketed as CTA Case No. 9086, dated November 27, 2017, rendered by the Second Division of this Court, and its Resolution[3] dated March 13, 2018.

The Second Division of this Court denied petitioner's Petition for Review and found petitioner liable to pay the basic deficiency Value Added Tax (VAT) in the reduced amount ₱20,035,440.15, in addition to deficiency and delinquency interest thereon.

Petitioner assails both the aforesaid Decision and Resolution, the pertinent portions of which, respectively, read as follows:

Decision dated November 27, 2017:

*"**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. Accordingly, the Court finds petitioner liable to pay the basic deficiency VAT but in the reduced amount of ₱20,035,440.15, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, as computed below*

Basic deficiency VAT	***₱16,028,352.12***
Add: 25% Surcharge	*4,007,088.03*
Total VAT due	***₱20,035,440.15***

In addition, petitioner is liable to pay:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱16,028,352.12 computed from July 25, 2012, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱20,035,440.15 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from December 11, 2014, until full

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[2] En Banc Docket, pp. 17-58.
[3] En Banc Docket, pp. 61-69.

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payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended

SO ORDERED."

Resolution March 13, 2018:

*"**WHEREFORE,** finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Partial Reconsideration (of the Decision promulgated on November 27, 2017)** and respondent's **Motion for Partial Reconsideration** are **DENIED** for lack of merit.*

SO ORDERED."

The antecedent facts as narrated by the Court in Division in its Decision read as follows:

Petitioner Wellform Trading Corporation is registered with the Securities and Exchange Commission (SEC) on August 2, 1991, with SEC Company Registration No. AS091-194034 and with the Bureau of Internal Revenue (BIR) on May 21, 1996, with Tax Identification Number 000-080-369-000. Petitioner holds office at 355 Cavite corner Gapan Streets, Barangay 148, Zone 13, Tondo, Manila. It is primarily engaged in the business of buying, selling, distributing, and marketing at wholesale and retail of fermented liquor, bottled water and other beverages.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On March 18, 2013, petitioner received Letter of Authority (LOA) No. LOA-VO8-2013-00000120/SN: eLA201100016722 dated March 14, 2013 authorizing the representatives of BIR Revenue District No. V08-Assessment Division to conduct an examination for VAT for the period covering January 1, 2012 to June 30, 2012 pursuant to Revenue Memorandum Order No. 20-2012.

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On April 3, 2013, petitioner received from respondent its First Request for Presentation of Records dated April 1, 2013.

This was followed by the Second and Final Notice for Presentation of Records dated April 16, 2013, received by petitioner on April 18, 2013.

On April 26, 2013, May 8, 2013 and May 22, 2013, petitioner submitted supporting documents in response to the above requests.

On May 22, 2013, petitioner received from respondent a Reminder Letter for the submission of its Books of Accounts, Official Receipts, Summary List of Sales and Purchases and Expense Receipts.

Petitioner again submitted supporting documents on June 11, 2013 and July 5, 2013.

Subsequently, petitioner received a Subpoena Duces Tecum on July 26, 2013.

Thus, another set of documents were submitted by petitioner on August 14, 2013 in compliance with respondent's subpoena.

However, respondent issued a Preliminary Assessment Notice (PAN) together with the Details of Discrepancies dated October 2, 2014, which was received by petitioner on October 3, 2014.

On November 13, 2014, petitioner received from respondent Formal Assessment Notice (FAN) dated November 11, 2014, Details of Discrepancies, Assessment Notice No. VT-ELA16722-12-14-1046, Analysis of Sales per TPI from AITEID, and Schedule of Supported Input Taxes; wherein the latter assessed the former for deficiency VAT in the amount of P96,527,897.39 inclusive of interest for taxable period January 1 to June 30, 2012.

As a response to respondent's FAN, petitioner filed on December 12, 2014 an Administrative Protest by way of a Request for Reconsideration of the assessment contained in the respondent's FAN with the Office of the Regional Director Jonas DP Amora of Revenue Region No. 8- Makati.

Petitioner alleges that despite the filing of the administrative protest, respondent did not issue any decision thereon. Thus, feeling aggrieved by the VAT assessment, and mindful of the reglementary period *relative to respondent's inaction on the protest, petitioner filed the instant Petition for Review on July 10, 2015.*

On September 10, 2015, respondent filed an Answer by registered mail, interposing the following defenses:

> *"4. Petitioner was assessed of deficiency value-added tax for taxable period January 1, 2012 to June 30, 2012 for the reason that during the administrative investigation of its tax case by the Bureau of Internal Revenue (BIR), petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) dated October 2, 2014 and Formal Assessment Notice (FAN) dated November 11, 2014, which are briefly discussed hereunder, viz:*
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> *xxx xxx xxx.*
>
> *5. Petitioner was assessed by the respondent for deficiency value-added tax for taxable period of January 1, 2012 to June 30, 2012 within the prescriptive period under Section 203 of the 1997 Tax Code;*
>
> *6. The assessments issued against petitioner for deficiency value-added tax for were made in accordance with law and regulations.*
>
> *7. Assessment are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed (Aban, Law of Basic Taxation in the Philippine, 1st Edition, p. 109)."*

The case was subsequently set for Pre-Trial Conference on November 12, 2015. Respondent's Pre-Trial Brief was later filed on November 6, 2015, while the Pre-Trial Brief for the petitioner was filed on November 9, 2015.

On November 27, 2015, the parties filed their Joint Stipulation of Facts and Issues. Thereafter, a Pre-Trial Order was issued by the Court on January 19, 2016.

Trial ensued, giving both parties the opportunity to present their respective documentary and testimonial evidence.

After presentation, marking, identification and offer, the Court admitted, as part of petitioner's documentary

> *evidence, Exhibits "P1" to "P-33-A", except for Exhibits "P-9-a", "P-10-a", "P-12-a" and "P13-a".*
>
> *On the other hand, the Court admitted, as part of respondent's evidence, Exhibits "R-1" to "R-9-a".*
>
> *Thereafter, the Memorandum for Respondent was filed by registered mail on October 21, 2016, while the Memorandum for the Petitioner was filed on November 25, 2016. Accordingly, the instant case was considered submitted for decision on December 2, 2016."*

On November 27, 2017, the Second Division of this Court rendered the Decision which denied petitioner's petition and ordered the payment of deficiency VAT. In effect, respondent CIR's assessment was upheld though in a reduced amount. Likewise, petitioner's Motion for Partial Reconsideration was denied for lack of merit.

Hence, this Petition for Review was filed.

Petitioner submits that the Court in Division erred in ruling that petitioner is liable for the Deficiency VAT arising from the alleged unsupported input tax of ₱16,028,352.13.

Petitioner argues that respondent CIR's disallowance of input tax was based on the alleged failure of petitioner to provide support to the claimed input tax and the Court in Division's disallowance of input tax based on reasons other than the failure to provide supporting documents has no basis.

Petitioner maintains that the Court in Division is limited in resolving the correctness in assessment based on the arguments raised by the parties. Thus, petitioner claims that due process dictates that the Court in Division may not disallow further on the basis of other reasons not cited in the Final Assessment Notice since petitioner was not given the opportunity to dispute the same in the administrative protest.

Petitioner argues that the respondent CIR made a 97% disallowance of petitioner's claimed input tax as without basis. However, petitioner maintains that it complies with substantiation requirements although there were some irregularities in the invoices and receipt, and the fact that

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the amounts are all accounted for, then there is no loss to the government. Furthermore, petitioner claims that there is no semestral, semiannual or final annual VAT return and liability is determined every quarter. Thus, any VAT assessment not computed on quarterly basis must be declared null and void. Concomitantly, petitioner argues that the delinquency and deficiency interest lack factual and legal basis.

We are not persuaded.

The Court in Division is not limited in resolving the correctness of the assessment based only on the arguments raised by the parties. Thus, the Court in Division may disallow further on the basis of other reasons not cited in the Final Assessment Notice considering that the Court may also rule upon related issues necessary to achieve an orderly disposition of the case.

In the case of Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.[4], the Supreme Court ruled that this Court is not bound by the issues specifically raised by the parties. To wit:

> *"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.*
>
> *Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:*
>
> *SECTION 1. Rendition of judgment. - x xx*
>
> *In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.*
>
> *The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the*

[4] G.R. No. 183408, July 12, 2017.

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scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

By filing a Petition for Review with the CTA-Division, petitioner recognizes the CTA's jurisdiction over the case including all matters raised in its Petition including related issues necessary to achieve an orderly disposition of the case. Moreover, the Court of Tax Appeals, being a Court of record, is required to conduct a formal trial (trial de novo) where the parties must present their evidence accordingly if they desire this Court to take such evidence into consideration.[5] Perusal of the records reveal that the parties in their Joint Stipulation of Facts and Issues[6] agreed among others the following issues for resolution:

"III. Whether Respondent's disallowance of Petitioner's input tax representing 97% of the total input tax credits claimed for taxable period January to June 2012 has factual and legal basis.

IV. Whether Petitioner is liable for the alleged deficiency value-added tax and increments for taxable period January to June 2012 in the amount of P96,527,897.39".[7]

Evidently, in determining the validity of the assessment as well as the liability on the alleged deficiency value -added tax, the proper allowance or disallowance of claimed input tax other than those cited in the FAN are related issues necessary to achieve an orderly disposition of the case.

Being a court of record, cases filed are litigated de novo and party litigants should prove every minute of their case. Thus, in the case of Commissioner of Internal Revenue vs. Manila Mining Corporation[8], the Supreme Court had the occasion to rule as follows:

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[5] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007.
[6] Division Docket, Volume II, pp. 789-797.
[7] Ibid. p. 792.
[8] G.R. No. 153204 August 31, 2005.

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> *"A 'sales or commercial invoice' is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.*
>
> *A 'receipt' on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.*
>
> *These sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price, and taken collectively are the best means to prove the input VAT payments."*

Evidently, sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price, and taken collectively are the best means to prove the input VAT payments. Thus, this Court En Banc finds that the Court in Division correctly ruled as follows:

> *"Section 110 of the NIRC of 1997, as amended, as implemented by Section 4.110-1 of RR No. 16-05, provides that in order for an input tax to be credited against output tax, the same* ***<u>must</u> be evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the same Code.***
>
> *Relative thereto, Sections 113(A) and (B) of the same Code provide for the invoicing requirements and contents of the VAT invoice or official receipt, to wit:*
>
>> ***SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.-***
>>
>> *(A) Invoicing Requirements. - A VAT-registered person shall issue:*
>>
>> *(1) A VAT invoice for every sale, barter or exchange of goods or properties; and*

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(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);

(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: Provided, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

*(b) If the sale is exempt from value-added tax, the term **"VAT-exempt sale"** shall be written or printed prominently on the invoice or receipt;*

*(c) If the sale is subject to zero percent (0%) value-added tax, the term **"zero-rated sale"** shall be written or printed prominently on the invoice or receipt;*

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) <u>In the case of sales in the amount of one thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer</u>

> *identification number (TIN) of the purchaser, customer or client. (Underlining supplied)*
>
> *The law is clear. The Tax Code expressly provides for the invoicing requirements and contents of the VAT invoice or official receipt. Thus, petitioner cannot claim deprivation of its right to due process on matters which are clearly provided by law in the guise of contesting limited wordings used in the FAN.*
>
> *Further, mere submission of supporting documents or substantial compliance with the invoicing requirements cannot be considered as 'proper substantiation' if these do not comply with the provisions of the law. The requirements set by the law would be rendered useless and nugatory if the Court will allow petitioner to claim credits for input taxes which are not compliant with the invoicing requirements.*
>
> *By petitioner's admission, there were indeed irregularities in the information contained in the submitted VAT invoices and official receipts. Without proper substantiation in accordance with Section 113(A) and (B) of the Tax Code, the corresponding input taxes then cannot be claimed as tax credits by petitioner pursuant to Section 110 of the same Code. Hence, the Court correctly disallowed input taxes that failed to comply with the invoicing requirements."*

As to the claim that any VAT assessment not computed a on quarterly basis must be declared null and void. We find no basis to declare such VAT assessment void. In this case, petitioner was assessed for deficiency VAT for the period January 1, 2012 to June 30, 2012. While it is true that the there is no semiannual VAT return, the assessment for the period January 1, 2012 to June 30, 2012 is in compliance with Section 114[9] of the National Internal Revenue Code, as amended, which requires VAT registered persons to pay VAT

[9] **SEC. 114. Return and Payment of Value-Added Tax. –**

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

on monthly basis and file a quarterly return. Thus, the assessment covers the months from January to June, the 1st and 2nd quarters where petitioner is required to file its returns.

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.

WHEREFORE, premises considered, the Petition for Review docketed as CTA EB No. 1827 is **DENIED** for lack of merit. Accordingly, the Decision dated November 27, 2017 and Resolution dated March 13, 2018 by the Second Division of this Court in CTA Case No. 9086 are **AFFIRMED with MODIFICATION** in the computation of deficiency interest and delinquency interest in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulation No. 21-2018 [10]. No pronouncement as to costs.

Accordingly, the Decision dated November 27, 2017 and Resolution dated March 13, 2018 by the Second Division of this Court, is modified and shall read as follows:

> *"**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. Accordingly, the Court finds petitioner liable to pay the basic deficiency VAT but in the reduced amount of ₱54,387,926.56, inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017 as follows:*[11]

Basic deficiency VAT	***₱16,028,352.12***
Add: 25% Surcharge	*4,007,088.03*
20% Deficiency Interest[12] *July 26, 2012 to December 11, 2014* *(₱16,028,352,.12 x 20% x 869/365 days)*	*7,632,130.41*
Total VAT due as of December 11, 2014	***₱27,667,570.56***
20% Deficiency Interest [13]	

[10] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".
[11] Section 6 of Revenue Regulations No. 21-2018 dated September 14,2018.
[12] Basic tax multiplied by 20% Deficiency Interest and years.
[13] Ibid.

December 12, 2014 to December 31, 2017 (₱16,028,352,.12 x 20% x 1116/365 days)	*9,801,447.10*
20% Delinquency Interest [14] December 12, 2014 to December 31, 2017 (₱27,667,570.56 x 20% x 1116/365 days)	*16,918,908.90*
Total Amount Due as of December 31, 2017	***₱54,387,926.56***

*In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the total unpaid basic deficiency tax, surcharge and deficiency interest as of December 11, 2014 amounting to **₱27,667,570.56** computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN). "*

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[14] Total Amount Due as of December 11, 2014 multiplied by 20% Deficiency Interest and years.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice