REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 975** (CTA CASE NO. 8151)
- versus -	*Present*: **DEL ROSARIO**, *PJ*, **CASTAÑEDA**, JR., **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **COTANGCO-MANALASTAS**, *and* **RINGPIS-LIBAN**, *JJ.*
FIRST SUMIDEN REALTY, INC., Respondent.	Promulgated: JAN 07 2014

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DECISION

***DEL ROSARIO, P.J.* :**

This is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) on January 28, 2013 seeking the nullification of the Decision promulgated on September 27, 2012 (assailed Decision) by the former Second Division of this Court (CTA-Second Division)[1] and its Resolution dated December 21, 2012 (assailed Resolution), in the case entitled "*First Sumiden Realty, Inc. vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 8151, which partially granted the petition for review filed by First Sumiden Realty, Inc. (FSRI) thereby cancelling and withdrawing the assessment for deficiency final withholding tax for the taxable year 2006 due to prescription; and affirming with some modifications the assessment for deficiency VAT for the taxable year 2006.

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[1] Composed of Associate Justice Juanito C. Castañeda, Jr., Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla.

THE FACTS

The facts,[2] as culled from the records, are as follows:

"Petitioner FSRI is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal business address at Ampere St. corner Main Avenue, LISPP, Bo. Diezmo, Cabuyao, Laguna.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the duly appointed official vested with the authority to carry out the functions, duties and responsibilities of said office including the power to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Court. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is a PEZA-registered Ecozone Facilities Enterprise located at the Light Industry and Science Park of the Philippine Special Economic Zone, primarily engaged in the business of the construction of factory buildings for lease or for sale specifically to registered ecozone enterprises.

On February 10, 2006, petitioner filed with the Bureau of Internal Revenue (BIR) its Monthly Remittance Return of Final Income Taxes Withheld covering the period January 2006.

On April 25, 2006, petitioner filed with the BIR its Quarterly VAT Return covering the period January to March 2006.

On July 25, 2006, petitioner filed with the BIR its Quarterly VAT Return covering the period April to June 2006.

On October 25, 2006, petitioner filed with the BIR its Quarterly VAT Return covering the period July to September 2006.

On January 24, 2007, petitioner filed with the BIR its Quarterly VAT Return covering the period October to December 2006.

On March 24, 2009, petitioner received respondent's Preliminary Assessment Notice with the attached Details of Discrepancies, assessing petitioner for alleged deficiency value-added tax and final withholding tax for 2006.

On April 13, 2009, petitioner filed its reply addressed to Jaime Santiago, Regional Director of BIR Revenue Region No. 9, Assessment Division, San Pablo City.

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[2] *Rollo*, pp. 34 to 37.

On January 15, 2010, petitioner received respondent's Formal Letter of Demand, with attached Details of Discrepancy and Audit Results/Assessment Notice dated December 28, 2009, assessing petitioner for alleged deficiency VAT and FWT inclusive of interest and compromise penalties for taxable year 2006, in the aggregate amount of P7,869,009.76, broken down as follows:

Particulars	Basic Tax	Interest	Compromise Penalty	Total
VAT	3,129 ,052 .20	1,853,094.24	25,000.00	5,007,146.44
FWT	1,778 ,597.69	1,058 ,265 .63	25,000.00	2,861,863.32
Total	**P 4,907,649.89**	**P 2,911,359.87**	**P 50,000.00**	**P 7,869,009.76**

On January 22, 2010, petitioner protested the foregoing assessment by filing a letter-protest dated January 21, 2010 addressed to Mr. Nestor S. Valeroso, Regional Director of BIR Revenue Region No. 9, San Pablo City.

In the letter dated March 3, 2010, respondent, through Rodita Galanto, Regional Director of BIR Revenue Region No. 9, San Pablo City informed the petitioner that its letter request together with the whole docket of the case, will be forwarded on even date to Revenue District Office No. 57, Biñan, Laguna, for further evaluation.

On April 20, 2010, respondent through Revenue District Officer Julio G. Alcasabas of Revenue Region No. 9, Revenue District No. 57 of Biñan, Laguna, wrote to petitioner a letter requesting it to execute a "Waiver of Prescription under the Statute of Limitations", with the attached form of "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code".

In its letter-reply dated May 25, 2010, petitioner essentially reiterated its protest to the assessment.

Subsequently, on June 18, 2010, respondent through Revenue District Officer Julio G. Alcasabas wrote again to petitioner with the annexed "revised proposed tax assessments".

The Computation of Deficiency dated April 12, 2010 or the revised proposed tax assessments attached as Annex A to the letter dated June 18, 2010, shows the following details:

Particulars	Basic Tax	Interest	Compromise Penalty	Total
VAT	3,129 ,052 .20	2,153,473.73	25,000.00	5,307,525.93
FWT	1,778 ,597.69	1,228,937.91	25,000.00	3,032,535.60
Total	**P 4,907,649.89**	**P 3,382,411.64**	**P 50,000.00**	**P 8,340,061.52**

In its letter dated July 16, 2010, petitioner reiterated to BIR-RDO 57 its position that it has no pending tax liabilities for 2006.

On August 9, 2010, petitioner filed a letter addressed to Revenue District Officer Julio G. Alcasabas and Regional Director Nestor S. Valeroso, to supplement its letter-protest dated January 21, 2010 and the letter dated July 16, 2010, pointing out that it did not

> execute a waiver and that any assessment for deficiency VAT and FWT for the taxable year 2006 is subject to the three-year prescriptive period for the assessment of internal revenue taxes.
>
> Respondent, not taking any final action on its protest, petitioner, thus, filed the instant Petition for Review on August 20, 2010, praying that the assessment of its deficiency VAT and FWT in the aggregate amount of P7,869,009.76 covering taxable year 2006, be cancelled and withdrawn."

In compliance with the order of the CTA-Second Division, the CIR filed her Answer to FSRI's Petition for Review and interposed special and affirmative defenses, the main points of which are summarized hereunder:

a) The assessments for 2006 deficiency Value-Added Tax (VAT) and Final Withholding Tax (FWT) were issued within the period prescribed by law;

b) As a VAT-registered entity, FSRI is mandated to issue a VAT invoice or official receipt (OR) for every sale, barter, exchange of goods, properties or services which should contain the details enumerated under Section 113(8) of the National Internal Revenue Code (NIRC) of 1997, as amended, including the imprinting of the term "ZERO-RATED SALE" or "VAT-EXEMPT SALE", as the case may be. FSRI was assessed for deficiency VAT because it issued official receipts (OR) for taxable year 2006 without imprinting thereon the words "VAT ZERO-RATED" thereby violating Section 4.113-4 of Revenue Regulations (RR) No. 16-2005, as amended;

c) FSRI was assessed deficiency FWT because it directly applied the 10% rate provided under the RP-Japan Tax Treaty without filing an application for tax treaty relief with the BIR, thus, violating Revenue Memorandum Order (RMO) No. 1-2000 which requires that a prior ruling from the BIR must be secured prior to the availment of a preferential tax rate under a tax treaty.

After trial on the merits, the CTA-Second Division rendered the assailed Decision, the dispositive portion of which reads:

> "**WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED. Accordingly**, the assessment for deficiency final withholding tax for taxable year 2006 in the amount of ₱2,861,863.32 is hereby **CANCELLED** and **WITHDRAWN** due to prescription.

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However, the assessment for deficiency VAT issued by respondent against petitioner for taxable year 2006 is hereby **AFFIRMED** with some modifications. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the amount of ₱ 995,775.81, inclusive of the 25% surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, as amended:

Basic Deficiency VAT	₱ 796,620.65
25% Surcharge	199,155.16
Total	₱ 995,775.81

In addition, petitioner is liable to pay (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT in the amount of ₱796,620.65 computed from January 25, 2007, until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of ₱995,775.81 and on the 20% deficiency interest which have accrued as aforestated in (a) computed from January 28, 2010 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997.

The compromise penalty of P25,000.00, originally imposed by respondent is hereby excluded there being no compromise agreement between the parties.

SO ORDERED."[3]

Both the CIR and FSRI moved for the reconsideration of the assailed Decision which was, however, denied by the CTA-Second Division in the assailed Resolution, *viz.*:

"**WHEREFORE,** premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 27 September 2012)** and petitioner's ***Motion for Partial Reconsideration*** are hereby **DENIED.**

SO ORDERED."[4]

Aggrieved, the CIR filed the instant Petition for Review where she raises the following issues:

[3] *Rollo*, pp. 52 to 53.
[4] *Rollo*, p. 65.

THE ISSUES

1) Whether or not respondent is liable to pay the deficiency FWT and VAT for taxable year 2006; and,

2) Whether or not respondent's right to assess for deficiency FWT and VAT is barred by prescription.[5]

THE PARTIES' ARGUMENTS

Petitioner CIR's Arguments

Petitioner CIR contends that respondent FSRI is liable to pay deficiency VAT for taxable year 2006. Although respondent FSRI, being a PEZA-registered entity and entitled to the 5% gross income tax (GIT) incentive, is not required to register for VAT purposes, respondent FSRI opted to do so. Hence, it must comply with the provisions of Section 113 of the NIRC of 1997, as amended, relative to, among others, the requirement to prominently write or imprint on official receipts the words "VAT zero-rated" or "VAT exempt sale". The failure on the part of respondent FSRI to imprint the aforesaid words on its official receipts rendered it liable for deficiency VAT on its sales of services for the taxable year 2006.[6]

With regard to the deficiency FWT assessment, petitioner CIR avers that it was erroneous for respondent FSRI to directly apply the 10% rate provided under the RP-Japan Tax Treaty on the dividends it remitted to Sumitomo Electric Industries Ltd., a nonresident foreign corporation, without a prior filing of an application for tax treaty relief with the BIR as provided under Revenue Memorandum Order (RMO) No. 01-2000. The aforesaid RMO requires that any taxpayer who would like to avail of the benefit of the tax treaty relief is mandated to file an Application for Relief from Double Taxation within fifteen (15) days prior to the transaction or payment of dividends, as in this case. Petitioner CIR posits that respondent FSRI applied the ten percent (10%) tax rate, without complying with the requirement imposed under RMO No. 01-2000.[7]

Finally, petitioner CIR argues that respondent FSRI should have raised the issue on prescription at the administrative level. Invoking the doctrine of primary jurisdiction, petitioner CIR maintains that all issues that

[5] *Rollo,* p. 14.
[6] *Rollo,* pp. 10 to 14.
[7] *Rollo,* pp. 20 to 26.

should be raised on appeal must have been discussed and ruled upon extensively in the administrative level; otherwise, the administrative agency that has primary jurisdiction over the case, the BIR in the instant case, would be denied of its right to rule on the matter.[8]

Respondent FSRI's Counter-Arguments

Respondent FSRI argues that its Quarterly VAT Returns for the first to third quarters of 2006 were all filed by October 25, 2006, at the latest, while its Monthly Remittance Return of Final Income Taxes Withheld was filed on February 10, 2006. Respondent FSRI insists that petitioner CIR's right to assess it for deficiency VAT for the first to third quarters of 2006 and deficiency FWT for taxable year 2006 had already prescribed considering that the Formal Letter of Demand ("FLD") and Assessment Notices ("FAN") were issued on December 28, 2009 and received by respondent FSRI on January 15, 2010[9] which dates are beyond three (3) years from the dates when respondent FSRI filed its returns.

As to the contention of petitioner CIR that respondent FSRI did not raise the issue of prescription at the administrative level, respondent FSRI argues that the evidence it presented during trial belied petitioner CIR's allegation. Respondent FSRI points out that while petitioner CIR, in its letter dated April 20 2010, requested respondent FSRI to execute a Waiver of Prescription, respondent FSRI did not execute any Waiver of Prescription as clearly stated in its letter dated May 26, 2010. Furthermore, in its Supplemental Protest to the BIR, respondent FSRI allegedly stated that any assessment for deficiency VAT and FWT for the taxable year 2006 is subject to the three-year prescriptive period for the assessment of internal revenue taxes.[10]

Assuming that prescription has not yet set in to bar the issuance of the deficiency VAT assessment, respondent FSRI claims that it is still not liable for VAT. As a PEZA-registered Ecozone Facilities Enterprise, respondent FSRI's 2006 revenues consisted solely of rentals from the lease of a factory building to First Sumiden Circuits, Inc. ("FSCI"), another PEZA-registered ecozone enterprise. Since respondent FSRI availed of the 5% GIT rate pursuant to Republic Act No. (RA) 7916 and its Implementing Rules and Regulations, respondent FSRI argues that it is exempt from national and local taxes including VAT. Relying also on Section 5(4) (a) of Revenue Memorandum Circular (RMC) No. 74-99, respondent FSRI avers that its

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[8] *Rollo*, pp. 26 to 28.
[9] *Rollo*, p. 78.
[10] *Rollo*, p. 79.

sales of services, in particular, the lease of a factory building to FSCI is considered an "Intra Ecozone Enterprise Sale of Service" (Intra Ecozone Transaction) which is exempt from VAT.[11]

Finally, respondent FSRI argues that the non-filing of a prior tax treaty relief application with the International Tax Affairs Division (ITAD) of the BIR should not result in the imposition of the ordinary income tax rate. It reasons that the RP-Japan Tax Treaty is a part of the law of the land, being a binding international agreement, thus, it is accorded the same status as our domestic laws. RMO No. 1-2000 which requires the filing of a prior tax treaty relief application is a mere administrative order which cannot take precedence over the provisions of tax treaties.[12]

THE RULING OF THE COURT *EN BANC*

After carefully evaluating the parties' respective arguments, the Court *En Banc* finds no compelling reason to reverse and set aside the assailed Decision and the assailed Resolution.

Petitioner CIR's contention that respondent FSRI cannot raise the issue of prescription for the first time on appeal is bereft of merit.

Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

> "Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.**" (Emphasis supplied)

In ***Dino vs. Court of Appeals,***[13] the Supreme Court reiterated the doctrine that allows the dismissal of an action on the ground of prescription even after judgment on the merits, or even if the defense was not raised at all so long as the relevant dates are clearly shown on the records. Pertinent pronouncements of the Supreme Court in the *Dino case* are quoted hereunder:

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[11] *Rollo*, pp. 81 to 85.
[12] *Rollo*, pp. 86 to 89.
[13] G.R. No. 113564, June 29, 2001.

"As a rule, the defense of prescription cannot be raised for the first time on appeal. Thus, we held in *Ramos v. Osorio*, *viz*:

> "It is settled law in this jurisdiction that the defense of prescription is waivable, and that if it was not raised as a defense in the trial court, it cannot be considered on appeal, the general rule being that the appellate court is not authorized to consider and resolve any question not properly raised in the lower court (Subido vs. Lacson, 55 O.G. 8281, 8285; Moran, Comments on the Rules of Court, Vol. I, p. 784, 1947 Edition)."

However, this is not a hard and fast rule. In *Gicano v. Gegato*, we held:

> "**. . .(T)rial courts have authority and discretion to dimiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred**; (Francisco v. Robles, Feb, 15, 1954; Sison v. McQuaid, 50 O.G. 97; Bambao v. Lednicky, Jan. 28, 1961; Cordova v. Cordova, Jan. 14, 1958; Convets, Inc. v. NDC, Feb. 28, 1958; 32 SCRA 529; Sinaon v. Sorongan, 136 SCRA 408); and it may do so on the basis of a motion to dismiss (Sec. 1,f, Rule 16, Rules of Court), or an answer which sets up such ground as an affirmative defense (Sec. 5, Rule 16), ***or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration*** (Ferrer v. Ericta, 84 SCRA 705); ***or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings*** (Garcia v. Mathis, 100 SCRA 250; PNB v. Pacific Commission House, 27 SCRA 766; Chua Lamco v. Dioso, et al., 97 Phil. 821); or where a defendant has been declared in default (PNB v. Perez, 16 SCRA 270). ***What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence.*"** (emphasis supplied)

xxx xxx xxx

Following the *Gicano doctrine* that allows dismissal of an action on the ground of prescription even after judgment on the merits, or even if the defense was not raised at all so long as the relevant dates are clear on the record, we rule that the action filed by the petitioners has prescribed. The dates of delivery and institution of the action are undisputed. There are no new issues of fact arising in connection with the question of prescription, thus carving out the case at bar as an exception from the general rule that prescription if not impleaded in the answer is deemed waived.

Even if the defense of prescription was raised for the first time on appeal in respondent's Supplemental Motion for Reconsideration of the appellate court's decision, this does not militate against the due process right of the petitioners. On appeal, there was no new issue of

> fact that arose in connection with the question of prescription, thus it cannot be said that petitioners were not given the opportunity to present evidence in the trial court to meet a factual issue. Equally important, petitioners had the opportunity to oppose the defense of prescription in their Opposition to the Supplemental Motion for Reconsideration filed in the appellate court and in their Petition for Review in this Court.
>
> **This Court's application of the *Osorio* and *Gicano doctrines* to the case at bar is confirmed and now enshrined in Rule 9, Sec. 1 of the 1997 Rules of Civil Procedure**, *viz*:
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> xxx xxx xxx." (Emphases supplied; citations omitted)

Truth to tell, the CTA Second Division correctly resolved the issue of prescription of petitioner CIR's right to assess respondent FSRI for deficiency VAT for the first to third quarters of 2006 and deficiency FWT for the month of January 2006 as it clearly appears from the records that the FLD and FAN were issued more than three years from the time respondent FSRI filed its Quarterly VAT Returns for the first to third quarters of 2006 and its Monthly Remittance Return of Final Income Taxes Withheld for the month of January 2006.

Section 203 of the NIRC of 1997, as amended provides that petitioner CIR has three (3) years to assess an internal revenue tax, *viz.*:

> "**SEC. 203**. *Period of Limitation Upon Assessment and Collection*. - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three -year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

The three-year period to assess a taxpayer for internal revenue taxes commences from the date of the actual filing of the return or from the last day prescribed by law for the filing of such return, whichever comes later.

Under Section 114(A)[14] of the NIRC of 1997, as amended, the last day for filing the Quarterly VAT Return is on the 25th day of the month

[14] "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**

following the close of each taxable quarter. On the other hand, for FWT, Revenue Regulations (RR) No. 02-98,[15] as amended, requires the filing of the withholding tax returns on FWT within ten (10) days after the end of each month for the months of January until November, while the withholding tax return for the month of December should be filed on or before January 15 of the following year.

Applying the foregoing to the instant case and considering the dates when respondent FSRI actually filed its Quarterly VAT Returns for the four quarters of 2006[16] and its Monthly Remittance Return of Final Income Taxes Withheld for the month of January 2006,[17] petitioner CIR should have issued the corresponding assessment on the following dates:

Period Covered (Year 2006)	Date of Filing of the Return	Deadline for Filing the Return	Last Day to Assess
VAT			
1st Quarter	04/25/06	04/25/06	04/27/09*
2nd Quarter	07/25/06	07/25/06	07/27/09*

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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." (Emphasis supplied)

[15] "Sec. 2.58 – Returns and Payment of Taxes Withheld at Source.
(A) Monthly return and payment of taxes
Xxx xxx xxx
(2) WHEN TO FILE –
(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year."

"Sec. 2.81. Filing of Return and Payment of Income Tax Withheld on Compensation (form 1601). - Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; provided, however, that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 15 of the succeeding year; Xxx xxx"

[16] *Rollo*, pp. 47 to 48.

[17] *Id.*

3rd Quarter	10/25/06	10/25/06	10/26/09**
4th Quarter	01/24/07	01/25/07	01/25/10
FWT			
January 2006	02/10/06	02/10/06	02/10/09

*the 25th day of the month fell on a Saturday
**the 25th day of the month fell on a Sunday

Since the FLD and FAN, both dated December 28, 2009, were mailed only on January 12, 2010 and received by respondent FSRI on January 15, 2010, the CTA-Second Division correctly held that said FLD and FAN, in so far as they assess respondent FSRI for deficiency VAT for the first to third quarters of 2006 and deficiency FWT for the month of January 2006, were issued beyond the three-year prescriptive period. The deficiency VAT assessment for the first to third quarters of 2006 and deficiency FWT for the month of January 2006 are not valid and effective and should perforce be cancelled.

On the other hand, the deficiency VAT assessment for the fourth quarter of 2006 is valid as the right of petitioner CIR to assess respondent FSRI for deficiency VAT assessment for the fourth quarter of 2006 has not prescribed. As shown above, the Quarterly VAT Return for the fourth quarter of 2006 was filed on January 24, 2007 while its last day for filing was on January 25, 2007. Counting three years from January 25, 2007, petitioner CIR had until January 25, 2010 within which to assess respondent FSRI for deficiency VAT for the fourth quarter of 2006. The FLD and the FAN, both dated December 28, 2008, which were mailed on January 12, 2010, were issued within the three-year prescriptive period.

After reviewing the records of this case, the Court *En Banc* agrees with the ruling of the CTA Second Division finding respondent FSRI liable for deficiency VAT for the fourth quarter of 2006, thus:

> "On this point, this Court finds petitioner liable for deficiency VAT which has not prescribed.
>
> Since petitioner has been granted 5% gross income tax (GIT) incentive by the PEZA, it is entitled to exemption from national and local taxes including VAT pursuant to Section 24 of RA No. 7916, otherwise known as "The Special Economic Zone Act of 1995", as amended by RA No. 8748, which states:
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> > "SEC. 24. Exemption from National and Local Taxes. — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business

enterprises within the ECOZONE shall be paid and remitted as follows:

a. Three percent (3%) to the National Government;

b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprises is located."

Section 109 (K) of the NIRC of 1997, as amended, provides as well that transactions which are exempt under special laws, like RA No. 7916, are also exempt from VAT, thus:

"SEC. 109. Exempt Transactions. — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

xxx xxx xxx

(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529."

Clearly, from the foregoing, petitioner, being exempt from VAT, may not register as VAT taxpayer. However, petitioner opted to be registered as VAT taxpayer. Section 113 (D) (2) of the NIRC of 1997, as amended, in relation to Section 113 (B) (2) (b) of the same Code, explicitly provides that if a VAT registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the words "VAT-exempt sale", the transaction shall become taxable, to wit:

"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —

xxx xxx xxx

"(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:

xxx xxx xxx

"(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:

xxx xxx xxx

"(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;

> xxx xxx xxx
>
> (D) Consequences of Issuing Erroneous VAT Invoice or VAT Official Receipt. —
>
> xxx xxx xxx
>
> (2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term 'VAT-exempt sale', the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply."
>
> Upon scrutiny of the official receipts issued by petitioner to FSCI for the fourth quarter of 2006, as contained in petitioner's "Analysis Schedule of Official Receipts issued", this Court found that the words "VAT-exempt sale" were not written or printed on the said official receipts in violation of Section 113 (B) (2) (b) of the NIRC of 1997, as aforequoted. Consequently, pursuant to Section 113 (D) (2) of the NIRC of 1997, as amended, petitioner is liable to pay basic deficiency VAT for the fourth quarter of taxable year 2006 in the aggregate amount of ₱796,620.65, xxx xxx xxx:
>
> xxx xxx xxx." (*Citations omitted*)

When a PEZA-registered enterprise engages in activities which are not registered with PEZA, the income or receipts derived from unregistered activities shall be subject to regular internal revenue tax, such as VAT. In such case, the PEZA-registered enterprise is obliged to register as a VAT taxpayer and issue a VAT official receipt or invoice for every sale or transaction which is subject to VAT. Should the PEZA-registered enterprise use its VAT official receipt or invoice to evidence its VAT-exempt sale, Section 113 of the NIRC of 1997 requires it to prominently write or print the term "VAT-exempt sale" on the VAT official receipt or invoice as failure to do so shall make it liable to account for the VAT as if the sale is not VAT-exempt.

In this case, by reason of respondent FSRI's failure to indicate the words "VAT-exempt sale" on the official receipts that were issued to FSCI, FSRI is liable to pay the VAT for the fourth quarter of 2006, pertaining to its sales of services to FSCI which are supported by official receipts that do not bear the words "VAT-exempt sale".

There being no reversible error committed by the CTA-Second Division in this case, the Court *En Banc* finds no cogent reason to reverse and set aside the CTA-Second Division's Decision promulgated on September 27, 2012 and its Resolution dated December 21, 2012.

WHEREFORE, premises considered, the Petition for Review filed on January 28, 2013 by the Commissioner of Internal Revenue is hereby **DENIED**. The Decision promulgated on September 27, 2012 and the Resolution dated December 21, 2012 of the former Second Division of this Court in the case entitled *"First Sumiden Realty, Inc. vs. Commissioner of Internal Revenue,"* docketed as CTA Case No. 8151, are hereby **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice