REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PAYMENTWALL, INC.,
Petitioner,

CTA CASE NO. 9727

Members:

- versus -

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

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

Respondents.

Promulgated:
JUL 28 2020
3:32 p.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

The *Petition for Review* prays that judgment be rendered:

a. Declaring the *Forty Eight (48)-Hour Notice* dated September 14, 2017 and the *Five (5)-day Value-Added Tax (VAT) Compliance Notice* dated September 27, 2017 null and void for non-compliance of Revenue Memorandum Order (RMO) No. 3-2009;

b. Declaring that petitioner is not liable for the alleged value-added tax (VAT) deficiency for non-compliance of RMO No. 3-2009 and under Section 108(B), Item 2 of the National Internal Revenue Code (NIRC); and

c. Issuing a *Status Quo Ante* Order and/or Order Suspending the Collection of the alleged VAT Deficiency after hearing.[1]

THE PARTIES

Petitioner Paymentwall Inc. is a domestic corporation with business address at 5/F Builders Center Building, 170 Salcedo Street, Legaspi Village, Makati City.[2] It is a company providing business process outsourcing only to non-Filipino companies. It is business-to-business service where it is contracted by other businesses to do customer service and risk and fraud analysis.[3]

On the other hand, respondent is the duly-appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the NIRC of 1997 and other tax laws, rules and regulations. He may be served with summons and other court processes at the Legal Division, Bureau of Internal Revenue (BIR), Revenue Region No. 8, 2nd Floor, BIR Bldg., 313 Sen. Gil Puyat Avenue, Makati City.[4]

Respondent Glen A. Geraldino is the Regional Director of Revenue Region No. 8, Makati City. He may be served with summons and other court processes at the BIR Regional Office Building, 313 Sen. Gil Puyat Avenue, Makati City 1200.[5]

THE ANTECEDENTS

On November 8, 2016, petitioner received the *Letter of Authority* No. 201200033231 dated October 28, 2016 from respondent, authorizing Revenue Officer (RO) Maria Victoria Trazona and Group Supervisor Ma. Teresa Reyes of Revenue District Office No. 47 – East Makati, to examine the books of accounts and other accounting records of petitioner for the taxable period January 1, 2015 to December 31, 2015.[6]

Thereafter, petitioner submitted to respondent on September 8, 2017 the following: (i) ten (10) unused booklets of Official Receipt, (ii) General Ledger; (iii) Cash Receipt Book; (iv) Cash Disbursement Book; and (v) Journal.[7]

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[1] Summary of the Case, Pre-Trial Order dated June 22, 2018, Docket – Vol. 1, p. 411.
[2] Par. 1(a), Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 397.
[3] Par. 1(b), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 398.
[4] Par. 1(c), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 398.
[5] Par. 4, Parties, *Petition for Review*, vis-à-vis Par. 3, *Answer*, Docket – Vol. 1, pp. 12, and 282 to 283, respectively.
[6] Par. 1(d), (e), and (f), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 398.
[7] Par. 1(g), (h), and (i), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, pp. 398 to 399.

RO Trazona submitted the *Memorandum Report* (denomitated as *Request for a Forty Eight (48) Hour Notice*) dated September 14, 2017 against petitioner, which *Request* was approved by the BIR Regional Evaluation Board.[8]

Subsequently, on September 20, 2017, petitioner received respondent Geraldino's *48-Hour Notice* dated September 14, 2017, informing petitioner that it has failed to comply with the following:

a. Issue sales invoices or receipts pursuant to Sections 113 and 237 of the NIRC of 1997;
b. Pay VAT, pursuant to Section 114 of the NIRC; and
c. Reflect the correct taxable sales/receipts for the taxable period January 1, 2015 to December 31, 2015.[9]

The said *48-Hour Notice* further reads:

> "In order to give you the opportunity to refute the findings, you are hereby given a period of 48 hours from receipt hereof to explain your side under oath regarding the abovementioned findings. Failure on your part to do so will constrain this Office to recommend the imposition of administrative sanctions against you thru suspension of business operations and temporary closure of your business establishment pursuant to Section 115 of the National Internal Revenue Code as implemented by Revenue Memorandum Order No. 3-2009 dated January 15, 2009, otherwise known as '**OPLAN KANDADO**', and/or filing of criminal action for your aforesaid violations of the provisions of the Tax Code, **WITHOUT FURTHER NOTICE.**"[10]

On September 22, 2017, petitioner submitted its *Reply* to the said *48-Hour Notice*, stating that its transactions are zero-rated, pursuant to Section 108(B)(2) of the NIRC, and has met the requisites thereunder.[11]

Thereafter, on October 4, 2017, petitioner received respondent Geraldino's: (1) letter dated September 27, 2017, finding petitioner's *Reply* to his *48-Hour Notice* "without basis"; and (2) *5-day VAT Compliance Notice* dated October 4, 2017.[12]

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[8] Par. 1(j), and (k), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 399; Exhibit "R-4", BIR Records, pp. 34 to 35.

[9] Par. 11, *Petition for Review*, Docket – Vol. 1, p. 14, vis-à-vis Par. 7, *Answer*, Docket – Vol. 1, p. 283; Par. 1(l), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 399; Exhibit "P-2", Docket – Vol. 1, p. 40; Exhibit "R-5", BIR Records, p. 36.

[10] Exhibit "P-2", Docket – Vol. 1, p. 40; Exhibit "R-5", BIR Records, p. 36.

[11] Par. 12, *Petition for Review*, Docket – Vol. 1, p. 14, vis-à-vis Par. 7, *Answer*, Docket – Vol. 1, p. 283; Par. 1(m), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 399; Exhibit "P-3", Docket – Vol. 1, pp. 41 to 45; Exhibit "R-6", BIR Records, pp. 72 to 75.

[12] Par. 13, *Petition for Review*, Docket – Vol. 1, p. 15, vis-à-vis Par. 7, *Answer*, Docket – Vol. 1, p. 283; Par. 1(n), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 399; Exhibit "P-4", Docket – Vol. 1, pp. 46 to 48; Par. 1(q), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 400; Exhibit "P-5", Docket – Vol. 1, p. 49; Exhibit "R-7", BIR Records, pp. 79A to 79F.

In the said *5-day VAT Compliance Notice,*[13] respondent Geraldino reiterated the supposed violations of petitioner (as stated in the *48-Hour Notice* dated September 14, 2017), and demanded from the latter to rectify, within five (5) days from receipt thereof, the said violations, by paying the VAT due in the total amount of ₱16,030,957.76, inclusive of increments.

On October 6, 2017, petitioner submitted its *Reply* (dated October 5, 2017) to the same *5-day VAT Compliance Notice*, re-emphasizing the basis of the zero-rated nature of its transactions, and explaining that respondent's legal bases are misplaced.[14]

On November 16, 2017, petitioner received the letter dated October 19, 2017, signed by respondent Geraldino, requiring petitioner to pay deficiency VAT in the amount of ₱16,187,281.09, inclusive of increments, per the *5-day VAT Compliance Notice* dated October 4, 2017.[15]

Thereafter, petitioner received, on December 5, 2017, respondent Commissioner's *Closure Order* SN: RR8-047-008CO issued on the same date, the contents of which are as follows:

> "KNOW ALL MEN BY THESE PRESENTS:
>
> 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 **PAYMENTWALL, INC.** with current address at *Penthouse Unit, Heart Tower, 108 Valero Street, Salcedo Village, Makati City*, with TIN: *008-330-420-0000*, to comply with the requirements specified in the Five (5) – Day VAT Compliance Notice dated October 4, 2017. Order is hereby given this December 5, 2017, for the closure of the main office of the above-named Taxpayer at *Penthouse Unit, Heart Tower, 108 Valero Street, Salcedo Village, Makati City*, based on the enclosed recommendatory report of the Investigating Office, as reviewed by the Regional/National Review Board.
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> This Order shall remain in effect until it is lifted."[16]

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[13] Exhibit "P-5", Docket – Vol. 1, p. 49; Exhibit "P-6", Docket – Vol. 1, p. 50; Exhibits "R-9" and "R-10', BIR Records, pp. 82 to 83.

[14] Par. 14, *Petition for Review*, Docket – Vol. 1, p. 14, vis-à-vis Par. 7, *Answer*, Docket – Vol. 1, p. 283; Par. 1(r), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 400; Exhibit "P-7", Docket – Vol. 1, pp. 51 to 53; Exhibit "R-12", BIR Records, pp. 91 to 93.

[15] Par. 5, *Petition for Review*, Docket – Vol. 1, p. 12, vis-à-vis Par. 4, *Answer*, Docket – Vol. 1, p. 283; Par. 1(s), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 400; Exhibit "P-8", Docket – Vol. 1, pp. 61 to 63.

[16] Par. 1(u), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 399; Exhibit "R-13", BIR Records, p. 163.

On December 1, 2017, petitioner filed with this Court the instant *Petition for Review With Urgent Motion for: 1. Special Raffle; and 2. Issuance of a Status Quo Ante Order and/or Order Suspending the Collection of the Alleged VAT Deficiency and Implementation of any Closure Order.*[17]

In the Resolution dated December 19, 2017,[18] the Court ordered respondents to comment on petitioner's *Urgent Motion for Issuance of a Status Quo Ante Order and/or Order Suspending the Collection of the Alleged VAT Deficiency and Implementation of any Closure Order*, within five (5) days from notice. In the same Resolution, the Court set the case for hearing on petitioner's *Urgent Motion* on January 9, 2018. Respondent, however, failed to file his comment.[19]

Subsequently, respondent filed on December 29, 2017 a *Motion to Admit Comment and Extension to File Answer*,[20] wherein he prayed that (1) the *Motion* with Attached *Comment* be admitted; (2) the *Comment* attached as Annex "A" be admitted as part of the records of this case;[21] (3) the *Urgent Motion for the Issuance of Status Quo Ante Order and/or Order Suspending the Collection of the Alleged VAT Deficiency* be decided considering respondent's *Comment*; and (4) that respondent be given an extension of thirty (30) days from January 5, 2018 within which to file said *Answer.*

In the Resolution dated January 9, 2018,[22] the Court: (1) granted respondent's *Motion*; (2) admitted respondent's *Comment against the Issuance of Status Quo Ante Order and/or Order Suspending the Collection of the Alleged VAT Deficiency*;[23] and (3) granted respondent an extension of thirty (30) days from January 5, 2018, or until February 5, 2018, within which to file his *Answer.*

In the meantime, petitioner presented testimonial and documentary evidence in support of its *Urgent Motion for Issuance of a Status Quo Ante Order and/or Order Suspending the Collection of the alleged Value Added Tax Deficiency.* For its testimonial evidence, petitioner presented its lone witness, Ms. Kimberly Anne S. Laddaran,[24] petitioner's Corporate Secretary and Country Manager.

During the hearing on January 9, 2018,[25] the Court gave: (1) petitioner three (3) days, or until January 12, 2018, to file its *Formal Offer of Evidence*; and (2) respondents the same period from receipt thereof, to file their *Comment*

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[17] Docket – Vol. 1, pp. 10 to 38.
[18] Docket – Vol. 1, pp. 125 to 126.
[19] Records Verification Report issued by the Judicial Records Division of this Court dated December 28, 2017, Docket – Vol. 1, p. 128.
[20] Docket – Vol. 1, pp. 165 to 169.
[21] *Comment against the Urgent Motion for the Issuance of Status Quo Ante Order and/or Order Suspending the Collection of the Alleged VAT Deficiency,* Docket – Vol. 1, pp. 170 to 183.
[22] Docket – Vol. 1, pp. 200 to 201.
[23] Docket – Vol. 1, pp. 170 to 183.
[24] Exhibit "P-1", Docket – Vol. 1, pp. 71 to 91; Minutes of the hearing held on, and Order dated, January 9, 2018, Docket – Vol. 1, pp. 202, and 205 to 206, respectively.
[25] Docket – Vol. 1, pp. 202, and 205 to 206.

thereto. The Court also granted the parties three (3) days, or until January 12, 2018, to simultaneously file their *Memoranda.*

Thereafter, petitioner filed its *Memorandum with Formal Offer of Evidence* on January 11, 2018.[26] On January 12, 2018, the *Memorandum for the Respondent regarding the Issuance of a Status Quo Ante Order and/or Order Suspending the Collection of the Alleged VAT Deficiency and Implementation of any Closure Order* was submitted.[27] However, respondents failed to file their *Comment* on petitioner's *Formal Offer of Evidence.*[28] In the Resolution dated January 30, 2018,[29] the Court admitted petitioner's Exhibits.

On February 5, 2018, respondent Commissioner filed his *Answer,*[30] interposing, *inter alia*, the following special and affirmative defenses:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

11) Respondent reiterates and re-pleads the preceding paragraphs of the Answer as part of the Special and Affirmative Defenses.

FACTUAL BACKGROUND

12) To reiterate, Electronic Letter of Authority No. 201200033231 dated October 28, 2016 authorizing Revenue Officer Ma. Victoria Trazona and Group Supervisor Ma. Teresa Reyes of RDO No. 047 – East Makati to examine the books of accounts and other accounting records of herein Petitioner, Paymentwall Inc., for all Internal Revenue Taxes for the taxable period from January 1, 2015 to December 31, 2015 was issued and was received by the Petitioner on November 8, 2016.

Attached hereto and forming integral part hereof is Annex 'A', photocopy of the Electronic Letter of Authority No. 201200033231 dated October 28, 2016.

13) After 1st and 2nd Notice, on May 8, 2017, the Petitioner submitted the following documents to the Respondent:

a) 10 Booklets of Official Receipt Booklet
b) General Ledger
c) Cash Receipt Book
d) Cash Disbursement Book

[26] Docket – Vol. 1, pp. 207 to 227.
[27] Docket – Vol. 1, pp. 255 to 276.
[28] Records Verification Report issued by the Judicial Records Division of this Court dated January 16, 2018, Docket – Vol. 1, p. 278.
[29] Docket – Vol. 1, pp. 280 to 281.
[30] Docket – Vol. 1, pp. 282 to 305.

e) Journal

Attached hereto and forming integral part hereof is Annex 'B', photocopy of the Petitioner's Transmittal Letter dated September 8, 2017.

14) During the conduct of actual audit/investigation based on the Petitioner's submitted documents, it was found that no official receipts were issued by the Petitioner. Verification with the Respondent's Client Support Section disclosed that the Petitioner has Authority to Print No. 9AU0000609551 issued on July 4, 2013, however, the Petitioner is not issuing registered VAT official receipts/sales invoices as a requirement for a VAT-registered person which is a clear violation of Sections 113 and 237 of the National Internal Revenue Code of 1997 (hereinafter 'NIRC'). This is one of the grounds for suspension or temporary closure of business.

15) Consequently, pursuant to RMO No. 3-2009, Revenue Officer Trazona filed with the Regional Evaluation Board (hereinafter 'REB') for the issuance of Forty-Eight (48) Hour Notice against herein Respondent.

Attached hereto and forming integral part hereof is Annex 'C', photocopy of the Memorandum Report 'Request for a Forty Eight Hour Notice' dated September 14, 2017 recommending that the Petitioner be subjected to suspension or temporary closure of business.

16) Thereafter, Respondent issued Forty-Eight Hour Notice dated September 14, 2017 commanding Petitioner: (1) to issue sales invoices or receipts pursuant to Section 113 and 237 of the Tax Code; (2) Pay VAT Tax pursuant to Section 114 of the Tax Code; And, (3) ***<u>Reflect correct taxable sales/receipts for the taxable period January 1, 2015 to December 31, 2015</u>***.

17) The aforementioned 48 Hour Notice dated September 14, 2017 was received by the Petitioner on September 20, 2017.

Attached hereto and forming integral part hereof is Annex 'D', photocopy of the 48 Hour Notice dated September 14, 2017.

18) On September 22, 2017, Petitioner filed its Letter Reply dated September 20, 2014 against the Forty-Eight Hour Notice. **Petitioner among others, submitted BOI Certificate of Income Tax Holiday Entitlement and alleged that it renders services with only foreign based clients and never serviced any local company and further alleged that its sale**

of service is subject to VAT zero-percent rate and is directly attributable to the revenue derived from abroad as evidence by Certificates of Inward Remittances paid in USD, hence, no VAT due for the said service.

Attached hereto and forming integral part hereof is Annex 'E', photocopy of the Petitioner's Letter dated September 20, 2017.

19) The Respondent replied through Letter dated September 27, 2017 which was received by the Petitioner on October 4, 2017. **Petitioner answered that the invoicing requirements for a zero-rated sale is necessary as provided under Section 108(B)(2) in relation to Section 113(A)(2) of the Tax Code, as amended and failure to issue receipts will result to assessment for deficiency VAT; the submitted Ten (10) booklets of Official Receipts (OR) bearing the Serial Nos. 0501 to 1000 under BIR ATP No. OCN-9AU0000609551 dated July 4, 2013 will not justify claim for VAT zero rating since they were found unused; and, Section 108 of the Tax Code is applicable in this case and must be complied with in order to avail of the zero-rating of sales, this does not in any way disregard the law on invoicing requirement under Section 113 and 237 of the Tax Code.**

Attached hereto and forming integral part hereof is 'Annex `F', photocopy of the Respondent's letter dated September 27, 2017.

20) Thereafter, the REB approved the memorandum dated September 27, 20147 finding Petitioner's allegations without basis, thus, there is a ground for the issuance of Five (5) Day VAT Compliance Notice (hereinafter 'VCN') against the Petitioner.

Attached hereto and forming integral part hereof is Annex 'G', photocopy of the Memorandum dated September 27, 2017.

21) On October 4, 2017, Respondent issued **VCN with attached Computation of VAT Deficiency** which were received by Petitioner on October 4, 2017.

Attached hereto and forming integral part hereof is Annex 'H', photocopy of the Five (5) Day VAT Compliance Notice.

22) On October 6, 2017, Petitioner filed Letter dated October 6, 2017 as reply against the VCN.

Attached hereto and forming integral part hereof is Annex 'I', photocopy of the Petitioner's Letter dated October 6, 2017 against the Petitioner's VCN.

23) On October 11, 2018, Revenue Officer Trazona and REB, by memorandum, requested the Commissioner of Internal Revenue for the issuance of Closure Order. Said request was received by DCIR-Operations Group CIR on October 20, 2017.

Attached hereto and forming integral part hereof is Annex 'J', photocopy of the Memorandum dated October 11, 2018.

24) Thereafter, Respondent sent Letter dated October 19, 2017 to the Petitioner as reply to Petitioner's letter dated October 6, 2017. Said Respondent Letter was received by the Petitioner on November 16, 2017.

Attached hereto and forming integral part hereof is Annex 'K', photocopy of the aforementioned Respondent's Letter dated October 19, 2017.

25) On November 16, 2017, Respondent returned Petitioner's unused Official Receipt.

Attached hereto and forming integral part hereof is Annex 'L', photocopy of the Transmittal Letter dated November 16, 2017 for the return of Petitioner's unused official receipt.

26) The Petitioner failed to comply with the Five (5) Day VAT Compliance Notice, thus, on December 5, 2017, the Respondent issued 'Closure Order' which was received by the Petitioner on December 5, 2017.

Attached hereto and forming integral part hereof is Annex 'M', photocopy of the said Closure Order.

27) **On November 22, 2017, Respondent sent Letter dated November 22, 2017, said letter was received by Respondent on November 22, 2017. However, The Petitioner considered the Respondent's Letter dated October 19, 2017 as final decision appealable to this Honorable Court, hence, this Petition for Review.**

Attached hereto and forming integral part hereof is Annex 'N', photocopy of the aforementioned Respondent's Letter dated November 22, 2017.

LACK OF JURISDICTION AND FAILURE TO

EXHAUST ADMINISTRATIVE REMEDY

28) The Respondent prays for the summary dismissal of the instant Petition for Review on the ground of lack of jurisdiction and for failure of the Petitioner to exhaust administrative remedy.

29) As alleged by the Petitioner, this instant Petition for Review was filed to appeal Respondent's letter dated October 19, 2017. However, with all due respect, the aforementioned letter dated October 19, 2017 is not an appealable decision to this Honorable Court.

30) Jurisprudence is replete with cases holding that what seems to be considered a final decision appealable to the CTA depends on the tenor of the notice or letter issued by the BIR. There are many instances, however, where no FDDA (Final Decision of Disputed Assessment) is issued. Instead, the documents received by the taxpayer after the filing of its protest is any or all of the following: Preliminary Collection Notice (PCN), Final Notice Before Seizure (FNBS), Warrant of Distraint and/or Levy (WDL), subpoena for collection cases filed in court, demand letter, among others. However, perusal of the aforementioned letter dated October 19, 2017 shows that it is not yet final and appealable to the CTA.

31) Respondent posits that the Petitioner in this case failed to observe the procedures for protesting assessment established by Sec. 228 of the Tax Code. In this instant case, the Petitioner failed to request for reconsideration or reinvestigation. Thus, this instant Petition for Review must be dismissed. The pertinent provision thereof provides:

> **SEC. 228. Protesting of Assessment.** – x x x
>
> x x x
>
> 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 <u>prescribed by implementing rules and regulations</u>.** 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis provided)

32) It must be noted that Sec. 228 is being implemented by Revenue Regulations R.R. No. 12-99 as amended by R.R. No. 18-2013.

33) The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction (Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150). Its jurisdiction may only be invoked in the particular instances enumerated in Section 7 of Republic Act (RA) No. 1125, as amended by Section 7 of RA No. 9282 (Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA EB No. 44, May 10, 2005). Verily, **Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals provides that only decisions of the Commissioner of Internal Revenue (CIR) in cases involving <u>disputed assessments</u>, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue can be subject of appeal before this Court.**

34) Jurisdiction is the power with which the courts are invested for administering justice, that is, for hearing and deciding cases (Velunta vs. Chief of Phil. Constabulary 157 SCRA 147). Consequently, whenever it appears that the Court has no jurisdiction over the subject matter, the action shall be dismissed (La Naval Drug Corp. vs. Court of Appeals, 236 SCRA 78).

35) The established rule is that all the taxpayer needs do before elevating its case to the CTA is to wait for the FDDA. The Respondent should have waited for the FDDA, thus, this instant Petitioner was filed prematurely.

36) Worth mentioning is that recourse to court action cannot prosper until after all such administrative remedies have been exhausted based on the doctrine of exhaustion of

administrative remedies. Petitioner filed directly to this Honorable Court which is in contravention of the aforestated doctrine.

37) In view of the foregoing, the Respondent prays for the immediate dismissal of this Petition for Review.

THE 48- HOUR NOTICE AND 5 DAY-VCN ARE VALID

38) The Petitioner alleged that the 48-Hour Notice and 5-day VCN are null and void for non-compliance with Revenue Memorandum Order No. 3-2009.

39) RMO are issuances that provide directives or instructions; prescribe guidelines and outline operational process, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau of Internal Revenue on all areas of operations, except auditing.

40) RMO No. 3-2009 is merely guidelines and directory in nature. It must be noted that paragraphs 2.4.2 and 4 thereof read:

> '2.4.2 Overt Surveillance
>
> X X X
>
> The procedures outlined in this Order are general guides in the conduct of surveillance. **The implementing officer is not precluded from applying additional procedures which he may deem necessary** based on his findings or initial evaluation of the case, provided, that the same are carried out with due regard for the SUBJECT's legal right'
>
> '4. Action on Surveillance Results
>
> X X X
>
> 'x x x. the Commissioner or Regional Director concerned shall issue a Letter of Authority (LA) for the investigation of the taxpayer. **The Revenue Officer named in the <u>LA shall proceed with the audit and cause the assessment of the taxpayer's internal revenue tax liabilities</u>, based on : (1)**

> **surveillance, pursuant to Section 6[C]; (2) best evidence rule, as provided under Sectin 6[B], NIRC as amended; and/or <u>(3) the result of the tax audit.</u>**' (Emphasis provided)

41) The issuance 48-Hour Notice, VCN, Closure Order, and VAT deficiency in this case were result of a valid tax audit/investigation of Petitioner's taxable year 2015. The aforementioned VCN, Closure Order, and VAT deficiency is incidental and within the scope of the investigation conducted by Revenue Officer Trazona pursuant to the issued Electronic Letter of Authority No. 201200033231 dated October 28, 2016. To reiterate, Revenue Officer Ma. Victoria Trazona and Group Supervisor Ma. Teresa Reyes of RDO No. 047 – East Makati were authorized to examine the books of accounts and other accounting records of herein Petitioner, Paymentwall Inc., for all Internal Tax Revenue including VAT and for the taxable period of January 1, 2015 to December 31, 2015.

42) It must be noted that statute conferring powers on their administrative agencies must be liberally construed to enable them to discharge their assigned duties in accordance with legislative purpose, to strictly adhere to RMO No. 3-2009 for the implementation of Sec. 115 and 113 of the NIRC would result to absurdity considering the Petitioner is subject of tax audit by virtue of Electronic Letter of Authority No. 201200033231, based on the records, it was palpable that the Petitioner did not issue Official Receipt, thus, there is no need to issue a Mission Order and to conduct a covert surveillance pursuant to RMO No. 3-2009.

43) In this case, the record shows that the Petitioner did not issue Official Receipt, thus, the issuance of closure order and VAT deficiency is justified. It is the rule that administrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings.

THE CLOSURE ORDER DATED DECEMBER 5, 2017 HAS LEGAL BASIS

44) The legal basis for the issuance of Closure Order and dated December 5, 2017 against the Petitioner is Sec. 115 of the NIRC in relation to Sec. 113 of the NIRC, the pertinent provisions read as follows:

> 'Sec. 115. Power of the Commissioner to Suspend the Business Operations of a Taxpayer. - **The**

Commissioner or his authorized representative is hereby empowered to suspend the business operations and temporarily close the business establishment of any person 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 or receipts by thirty percent (30%) or more of his correct taxable sales or receipts for the taxable quarter.

(b) Failure of any Person to Register as Required under Section 236. -

The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements prescribed by the Commissioner in the closure order.' (Emphasis provided)

'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**

(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 of 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) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer if made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.' (Emphasis supplied)

45) The investigation and closure of the Petitioner has factual and legal basis. There is no doubt that the Petitioner failed to comply with the Five (5) Day VAT Compliance Notice, thus, its closure is justified.

46) As shown by the Memorandum Report 'Request for Forty Eight Hour Notice' dated September 14, 2017, the Petitioner did not issue Official Receipt as a requirement for a VAT-registered person which is a clear violation of Sections 113 and 237 of the National Internal Revenue Code of 1997 and one of the grounds for suspension or temporary closure of business.

47) Moreover, the Petitioner does not dispute the fact that it did not issue Official Receipt. As claimed by the Petitioner on its letter dated September 20, 2017, Petitioner does not issue Official Receipt because it is a company rendering services to a non-resident company that is outside the Philippines and is in fact located in the United States of America when the services are performed and accepting payment in foreign currency, our company clearly falls under this category and is therefore subject to zero-rated VAT under Sec. 108 (B), of the NIRC.

48) Under the NIRC and Revenue Regulations, the Closure Order will only be lifted after the Petitioner paid the VAT Deficiency and complied with its obligation as VAT registered entity. The closure of a business establishment shall last for a period of not less than five (5) days, and shall be in force until the violation is rectified.

PETITIONER IS LIABLE TO PAY VAT DEFICIENCY

49) During the conduct of actual audit/investigation based on the Petitioner's submitted documents, it was found that no official receipts were issued by the Petitioner. **Petitioner failed to comply with the following requirements as a VAT-registered person:**

a) Issue Sales Invoices or Official Receipts in its intercompany sales transactions, in violation of Sections 113 and 237 of the Tax Code.

b) Reflect correct taxable sales/receipts for the calendar year January 1, 2015 to December 31, 2015.

c) Pay the correct VAT deficiency including increments.

50) Thus, Petitioner has been assessed with deficiency VAT representing Sales/Revenue not subjected to VAT amounting to PHP 79,247,245.00. Thus, the Petitioner is liable for VAT deficiency amounting to PHP 16,030,957.76.

Attached hereto and forming integral part hereof is Annex 'O', photocopy of Petitioner's Summary of Export Sales showing Petitioner's Export Sales amounting to PHP 79,247,245.00.

51) Petitioner alleged that it is not liable to remit any VAT because all its transactions are zero rated pursuant to Section 108 (B), Item 1 of the NIRC, it does not require the issuance of an Official Receipt.

52) Petitioner's allegation is unworthy of consideration, as concluded by Respondent's Letter dated October 19, 2017, while the aforesaid Sec. 108 (B) of the NIRC is applicable to this case, it does not in any way disregard the law on invoicing requirements under Sections 113 and 237 of the NIRC. The decision of the Court of Appeals in Philippine Airlines, Inc. vs. CIR, (Case No.8134) ruling that without proper VAT official receipts issued to its clients, the Petitioner cannot claim such sales as zero-rate VAT not subject to output tax.

53) Additionally, in the case of Northern Mindanao Power Corporation vs. CIR, G.R. No. 185115 dated February 18, 2015, the Supreme Court ruled that failure to print the word

> `zero-rated' in its claim for VAT refund or credit of input VAT on zero sales is fatal to Petitioner's claim for zero rated sales.
>
> Attached hereto and forming integral part hereof is Annex 'P', photocopy of Petitioner's sample of Official Receipt.
>
> 54) In view of the foregoing, the Respondent prays that the Petitioner be held liable for VAT deficiency amounting to PHP 16,030,957.76.
>
> 55) The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et. al., 19 SCRA 903 [1967] Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil 967 [1960])
>
> 56) Assessments are presumed correct and official functions are regularly done. The burden of proving that the assessments are not correct rests on the Petitioner. All presumptions are in favor of the correctness of tax assessments. (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).
>
> 57) Tax assessments by examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments."

In the Resolution dated February 14, 2018,[31] the Court denied petitioner's *Urgent Motion for Issuance of a Status Quo Ante Order and/or Order Suspending the Collection of the alleged Value Added Tax Deficiency* for lack of merit.

The pre-trial conference was set and held on May 15, 2018.[32]

On March 1, 2018, respondent transmitted the *BIR Records* for the instant case.[33]

Thereafter, petitioner filed on March 15, 2018 a *Motion for Reconsideration*,[34] praying that the Resolution dated February 14, 2018 be

[31] Docket – Vol. 1, pp. 346 to 352.
[32] *Notice of Pre-Trial Conference* dated February 19, 2018, Docket – Vol. 1, pp. 353 to 354; Minutes of the hearing held on, and Order dated, May 15, 2018, Docket – Vol. 1, pp. 393, and 395 to 396, respectively.
[33] Respondent's *Transmittal* Letter, Docket – Vol. 1, p. 355.

reconsidered, and a new one be issued granting petitioner's motion for the issuance of *a Status Quo Ante Order* and/or Order Suspending the Collection of the Alleged VAT deficiency and the lifting of the *Closure Order* dated December 5, 2017. Respondent then filed his *Opposition to the Motion for Reconsideration* on March 26, 2018.[35] In the Resolution dated April 19, 2018,[36] the Court denied petitioner's *Motion for Reconsideration* for lack of merit.

Petitioner filed its *Pre-Trial Brief* on May 10, 2018,[37] while *Respondent's Pre-Trial Brief* was submitted on May 11, 2018.[38]

On June 4, 2018, the parties submitted their *Joint Stipulation of Facts and Issues.*[39] On June 22, 2018, the Court issued the *Pre-Trial Order.*[40]

The trial of the case proceeded.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimony of Ms. Laddaran,[41] who previously testified on petitioner's *Urgent Motion for Issuance of a Status Quo Ante Order and/or Order Suspending the Collection of the alleged Value Added Tax Deficiency.*

On August 2, 2018, petitioner filed its *Formal Offer of Evidence.*[42] Respondent Commissioner then filed his *Comment (To Petitioner's Formal Offer of Evidence)* on August 7, 2018.[43] In the Resolution dated October 12, 2018,[44] the Court admitted petitioner's Exhibits.

Respondent Commissioner likewise presented documentary and testimonial evidence. His lone witness is Ms. Victoria S. Trazona,[45] an RO of the BIR.

Thereafter, the *Respondent's Formal Offer of Evidence* was filed on October 23, 2018.[46] Petitioner filed its *Comment (To: Respondent's Formal Offer of Evidence dated 23 October 2018)* on November 15, 2018.[47]

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[34] Docket – Vol. 1, pp. 357 to 363.
[35] Docket – Vol. 1, pp. 366 to 368.
[36] Docket – Vol. 1, pp. 370 to 372.
[37] Docket – Vol. 1, pp. 373 to 378.
[38] Docket – Vol. 1, pp. 379 to 390.
[39] Docket – Vol. 1, pp. 397 to 408.
[40] Docket – Vol. 1, pp. 411 to 421.
[41] Exhibit "P-21", Docket – Vol. 1, pp. 425 to 429; Minutes of the hearing held on, and Order dated, July 30, 2018, Docket – Vol. 1, pp. 430 to 432.
[42] Docket – Vol. 1, pp. 438 to 443.
[43] Docket – Vol. 1, pp. 444 to 445.
[44] Docket – Vol. 1, pp. 502 to 503.
[45] Exhibit "R-14", Docket – Vol. 1, pp. 451 to 472; Minutes of the hearing held on, and Order dated, October 18, 2018, Docket – Vol. 1, pp. 504 to 506.
[46] Docket – Vol. 2, pp. 507 to 523.
[47] Docket – Vol. 2, pp. 572 to 573.

In the Resolution dated February 11, 2019,[48] the Court admitted respondent's Exhibits, *except* for the following:

1. Exhibits "R-14" and "R-14-a", for failure to comply with Section 3(f) of the Judicial Affidavit Rule in relation with Section 10(c) of the same Rule;
2. Exhibits "R-3", "R-3-a", and "R-10-c", for failure to identify the same; and
3. Exhibits "R-10", "R-10-a", and "R-10-b", for failure to identify and to present the originals for comparison.

Respondent Commissioner then filed, on March 11, 2019, its *Motion for Reconsideration and Manifestation [RE: Resolution promulgated on February 19, 2019*,[49] praying that: (1) this Court admit respondent's Exhibits "R-3", "R-3-a", "R-10", "R-10-a", "R-10-b", "R-10-c", "R-14", and "R-14-a", for the purposes they are being/have been offered and for other purposes that the Court may deem just and proper under the premises; (2) hold in abeyance the Resolution dated February 19, 2018, directing the parties to submit their respective memoranda within a period of thirty (30) days from receipt of said Resolution pending the final resolution of this Motion. On April 2, 2019, petitioner filed its *Comment with Entry of Appearance (To: Respondent's Motion for Reconsideration with Manifestation dated 11 March 2019)*.[50]

In the Resolution dated June 17, 2019,[51] the Court: (1) granted respondents' *Motion for Reconsideration*; (2) admitted Exhibits "R-3", "R-3-a", "R-10", "R-10-a", "R-10-b", "R-10-c", "R-14", and "R-14-a"; and (3) gave the parties a period of thirty (30) days from notice to file their respective memorandum.

Subsequently, the *Memorandum for Respondent* was filed on July 17, 2019,[52] while petitioner's *Memorandum* was filed on July 23, 2019.[53]

The instant case was deemed submitted for decision on July 30, 2019.[54]

THE ISSUES

The parties submitted the following issues for this Court's resolution,[55] to wit:

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[48] Docket – Vol. 2, pp. 575 to 576.
[49] Docket – Vol. 2, pp. 577 to 582.
[50] Docket – Vol. 2, pp. 609 to 612.
[51] Docket – Vol. 2, pp. 616 to 619.
[52] Docket – Vol. 2, pp. 624 to 644.
[53] Docket – Vol. 2, pp. 646 to 666.
[54] Resolution dated July 30, 2019, Docket – Vol. 2, p. 668.
[55] Par. 2(a), (b), and (c), JSFI, Docket – Vol. 1, p. 402.

"a. Whether or not this Honorable Court has jurisdiction over the present *Petition for Review.*

b. Whether or not the 48-Hour Notice dated 14 September 2017, the Five (5) Day VAT Compliance Notice dated 27 September 2017, and the *Closure Order* dated 5 December 2017 were validly issued.

c. Whether or not Petitioner is liable to pay the VAT discrepancy."

THE ARGUMENTS OF THE PARTIES

Petitioner argues that respondents did not comply with certain provisions of RMO No. 3-2009; that no *Mission Order* was presented, authorizing the surveillance, the type of surveillance, and respondents' agents; that to date, petitioner was not given a copy of the *Mission Order*; that petitioner was neither given a copy, nor signed a surveillance form; that respondents' *48-Hour Notice* does not have the details of petitioner's alleged violations; that respondents' *48-Hour Notice* directed petitioner to pay the alleged VAT deficiency, but there was neither an amount, nor computation attached thereto, thereby preventing the latter to comply; that respondents' *5-day VAT Compliance Notice* herein does not have the "details of the findings of the investigating office as approved by the Review Board", because the computation was submitted separately, and does not contain any details on where the figures were obtained and the legal basis for the computation; that respondent's *5-day VAT Compliance Notice* directed petitioner to pay the alleged VAT deficiency, but there was neither an amount nor computation attached thereto, thereby preventing the latter to comply; that respondents' letter dated October 19, 2017 likewise does not have any finding, especially on the basis of the computation of the alleged VAT deficiency; and that respondents' issued another letter dated November 22, 2017 that is identical to its earlier letter dated October 19, 2017.

Moreover, petitioner points out that the non-issuance of the official receipts was done under an honest belief that their transactions were zero-rated, pursuant to Section 108(B)(2) of the NIRC; and that for unknown reasons, respondents did not follow the processes of assessment, and instead opted to use the *48-Hour Notice* and the *5-day VAT Compliance Notice* which procedure was likewise not followed.

Lastly, petitioner avers that its constitutional right to due process was grossly violated because of respondents' non-observance of RMO No. 3-2009; and that the issuance of the *48-Hour Notice* and the *5-day VAT Compliance Notice* with the corresponding computations of alleged deficiency taxes are null and void.

On the other hand, respondent Commissioner primarily claims, in effect, that this Court lacks jurisdiction and there was failure to exhaust administrative remedy. He points out that the established rule is that before elevating a case to this Court is to wait for the *Final Decision on Disputed Assessment* (FDDA); and that the instant *Petition* was filed prematurely.

Furthermore, respondent Commissioner contends that *48-Hour Notice* and the *5-day VAT Compliance Notice* are valid; that the issuance thereof, and the *Closure Order* and VAT deficiency in this case were a result of a valid tax audit/investigation of petitioner's taxable year 2015; the *Closure Order* dated December 5, 2017 has legal basis; that petitioner is liable to pay deficiency taxes; and that petitioner failed to prove that it is tax exempted.

THE RULING OF THE COURT

The instant *Petition for Review* is meritorious.

This Court has jurisdiction to entertain the present appeal.

Respondent Commissioner argues that this Court has no jurisdiction over the case. He points out that the established rule is that before elevating a case to this Court, the concerned taxpayer must wait for the FDDA.

Section 7(a)(1) of Republic Act (RA) No. 1125,[56] as amended by RA No. 9282,[57] provides as follows:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue</u>;**" *(Emphases and underscoring supplied)*

[56] AN ACT CREATING THE COURT OF TAX APPEALS.
[57] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

Based on the foregoing provision, this Court has jurisdiction over the decisions of respondent in cases, not only those *"involving disputed assessments, and refunds of internal revenue taxes, fees or other charges, penalties in relation thereto"*, but also regarding *"other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."*

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[58] the Supreme Court held as follows, to wit:

> "**The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple.** It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.
>
> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*,[59] we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*,[60] the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." *(Emphasis supplied)*

The foregoing jurisprudential pronouncements confirm that this Court's appellate jurisdiction is not limited to cases involving decisions of respondent on matters relating to assessments or refunds; and that it is clear and simple that the wordings employed by the law are to the effect that the said appellate jurisdiction covers other cases that arise out of the NIRC or related laws administered by the BIR.

In this case, it is apparent that the issuance of the subject *48-Hour Notice*, *5-day VAT Compliance Notice*, and *Closure Order*, arose out of respondents' implementation of Sections 113, 237, and 114 of the NIRC of 1997, as amended. Such being the case, this Court has jurisdiction to take cognizance of the present *Petition for Review.*

[58] G.R. No. 162852, December 16, 2004.
[59] 111 Phil. 197 (1961).
[60] G.R. No. 115712, February 25, 1999.

The issuance of the subject 48-Hour Notice, 5-Day VAT Compliance Notice, and Closure Order violated petitioner's constitutional right to due process.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[61] Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. 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.[62]

Simply put, the BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. **The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.**[63]

In this case, however, respondents clearly failed to observe the prescribed procedure in the issuance of the subject *48-Hour Notice*, *5-day VAT Compliance Notice*, and *Closure Order*. Particularly, respondents did not fully comply with the procedure prescribed under RMO No. 3-2009[64] in the issuance of the said notices.

At this juncture, it must already be emphasized that We cannot subscribe to respondent Commissioner's contention that *"RMO No. 3-2009 is merely guidelines* [sic] *and directory in nature."* This must be so because administrative issuances, such as the said RMO, have the force and effect of law; and that they benefit from the same presumption of validity and constitutionality enjoyed by statutes.[65] Thus, any provision in any administrative issuance must be accorded with the same level as any statute, so long as they are not contrary to the laws

[61] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.
[62] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[63] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, etseq.*, G.R. Nos. 197945 and 204119-20, July 9, 2018.
[64] SUBJECT: Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Adminstrative Sanction of Suspension and Temporary Closure of Business.
[65] *Chevron Philippines, Inc. vs. Bases Conversion and Development Authority, et al.*, G.R. No. 173863, September 15, 2010.

or the Constitution.[66] Pertinently, since there is no showing that RMO No. 3-2009 is contrary to law or the Constitution, the same must be given legal effect.

Part III(1) of RMO No. 3-2009 states who is a *"non-compliant taxpayer"*, to wit:

> "A **non-compliant taxpayer** is defined as a taxpayer who, **as a result of surveillance / stocktaking activities,** has been found to have committed the violations enumerated in Item (1), Section IV of this Order, and who, notwithstanding the issuance of several notices of violations, continues to refuse to comply with the requirements provided under existing rules and regulations." *(Emphases ours)*

Based on the foregoing, for purposes of RMO No. 3-2009 or the issuance of a *48-Hour Notice*, *5-day VAT Compliance Notice*, and *Closure Order*, a taxpayer, to be considered as *"non-compliant"*, must have resulted from *"surveillance / stocktaking activities"* by the BIR. In other words, before the issuance of the said Notices against a particular taxpayer, the BIR must have initially conducted a surveillance or stocktaking against the latter. Otherwise, said taxpayer may not be categorized as a *"non-compliant taxpayer"*, warranting the issuance of the same Notices.

The prerequisite conduct and conclusion of surveillance by certain BIR personnel before the issuance of the said Notices is axiomatic under the following pertinent provisions of RMO No. 3-2009, to wit:

> "V. GUIDELINES AND PROCEDURES
>
> A. Surveillance Activities
>
> xxx xxx xxx
>
> 2. Conduct of Surveillance
>
> 2.1. Revenue Officer Authorized to Conduct Surveillance Activities on Business establishments for Possible Violations of Sections 113, 114, 236, 237 and 238 of the NIRC, as amended. – **At least two (2) implementing officers comprised of Revenue Officers (ROs) (Assessment/Excise), Intelligence Officers (IOs) and special Investigators (SIs) assigned in the following investigating offices/ divisions shall be authorized to**

[66] Article 7, Civil Code of the Philippines (Republic Act No. 386).

conduct surveillance activities on identified business establishment <u>based on validly issued mission order</u> signed by the concerned authorized revenue official:

xxx xxx xxx

2.2. **<u>Mandatory Requirement</u> for the Conduct of Surveillance and Apprehension of Business Establishments for Non-Compliance with the Provisions of Section 113, 114, 236, 237 and 238 of the NIRC, as amended. – No surveillance activities shall be conducted nor apprehension effected <u>unless the same has been authorized by a mission order issued in accordance with the provisions of this Order</u>.**

xxx xxx xxx

4. Action on Surveillance Results

If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided under Section 115 of the NIRC, as amended, **a recommendation shall be made to effect such closure.**

xxx xxx xxx

B. Suspension or Temporary Closure of Business

xxx xxx xxx

3. Confrontational Requirements

3.1. **Consistent with the requirements of due process, the report of the handling Revenue Officer shall be concurred in by the Head of the investigating office.** The findings of the investigating office shall be reviewed by a Review Board composed of the following:

xxx xxx xxx

If a report is approved by a Review Board, the concerned Regional Director or the ACIR, Enforcement Service/LTS, as the case may be, shall, in his capacity as Chair

of the Review Board, sign and issue to the taxpayer concerned a Forty-Eight (48) Hour Notice, requiring him to explain under oath within forty eight (48) hours why he should not be dealt with administratively, by suspension of business or temporary closure of his establishment, and/or criminally, for violation of pertinent provisions of the Tax Code.

xxx xxx xxx

3.3. **If a Review Board deems it necessary to pursue administrative or criminal action against a <u>non-compliant taxpayer</u>, it shall cause the preparation of a 5-Day VAT Compliance Notice (VCN)** [Annex 'D'], which shall be issued in lieu of the 10-Day VCN, to expedite the resolution of the case at hand. The 5-Day VCN shall be signed by the Chair of the Review Board concerned.

xxx xxx xxx

C. Execution and Enforcement

xxx xxx xxx

2. **The signed Closure Order** shall be returned by the Office of the Commissioner, together with all supporting documents, to the Review Board concerned, **for immediate service to the <u>non-compliant taxpayer</u>**." *(Emphases and underscoring ours)*

Based on the foregoing provisions, it is clear that a surveillance by certain officers is necessary before the BIR can issue a *48-Hour Notice*, *5-day VAT Compliance Notice*, and *Closure Order*, to a *"non-compliant taxpayer"*. The surveillance, in turn, must be covered by, or authorized through, a Mission Order duly issued under RMO No. 3-2009.

In this case, however, respondents do not deny that no surveillance was ever conducted against petitioner before the issuance of the subject *48-Hour Notice*, *5-day VAT Compliance Notice*, and *Closure Order*.[67] In fact, they even further admitted that there was no Mission Order issued against petitioner.[68]

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[67] Par. 1(cc), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 401.
[68] Par. 1(dd), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 401.

Thus, for purposes of RMO No. 3-2009, petitioner cannot be considered as a *"non-compliant taxpayer"*, warranting the issuance of the said Notices against it.

Thus, respondents violated petitioner's right to due process when they failed to act in accordance with the prescribed procedure before issuing the subject notices.

The absence of a Preliminary Assessment Notice and Formal Letter of Demand renders void the collection of the deficiency VAT, inclusive of increments

Section 228 of the NIRC of 1997 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 the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has 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.

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.

xxx xxx xxx." *(Emphases ours)*

Based on the foregoing provision, as a general rule, the concerned taxpayer must first be informed of the findings of the BIR which warrant the assessment of proper taxes. Thereafter, it is required that an assessment be issued, informing the concerned taxpayer, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Implementing the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[69] as amended by RR No. 18-2013,[70] 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).

[69] 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

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

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 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) 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.*** — Pursuant to Section 228 of the Tax Code, as amended, a PAN shall not be required in any of the following cases:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) 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

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

In the above-cited cases, a FLD/FAN shall be issued outright.

3.1.3 *Formal Letter of Demand and Final Assessment Notice.* — **The Formal Letter of Demand <u>and</u> 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)." *(Emphases ours)*

On the basis of the foregoing provision, **parts of the due process requirement in the issuance of a deficiency tax assessment** are the following:

1) The issuance of a *Preliminary Assessment Notice* (PAN), unless the case falls under any of the above-enumerated exceptions;
2) The issuance of a *Formal Letter of Demand* (FLD) and *Final Assessment Notice* (FAN); and
3) The said FLD and FAN must call for the payment of the taxpayer's deficiency tax or taxes, and must state the facts, the law, rules and regulations, or jurisprudence, on which the assessment is based; otherwise, the assessment is void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,[71] the Supreme Court said:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** **While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
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> **The importance of providing 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[72] of Revenue Regulation 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[73] requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** xxx.

[71] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[72] Now the aforequoted Section 3.1.1 of RR No. 12-99, as amended by RR 18-2013.
[73] Now the aforequoted Section 3.1.3 of RR No. 12-99, as amended by RR 18-2013.

'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</u>, and the Final Decision on Disputed Assessment.

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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.*,[74] 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 Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations – that taxpayers should be able to present their case and adduce supporting evidence. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes*,[75] 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*,[76] 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

[74] 652 Phil. 172 (2010) [Per J. Mendoza, Second Division]
[75] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[76] 565 Phil. 613 (2007) [Per J. Velasco, Jr., Second Division].

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.*:[77]

> 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
>
> **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 tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)

xxx. ***[The Commissioner of Internal Revenue's]*** **disregard of the standards and rules renders the deficiency tax assessments null and void**. xxx." *(Emphases and underscoring ours)*

Based on the foregoing doctrinal pronouncements, a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the PAN, but also in the FLD and FAN. Thus, the issuance of these Notices is indispensable, except in the case of the PAN in certain instances.

In case respondent or the BIR fails or effectively fails to observe, *inter alia*, the said requirement, it shall have the effect of rendering the collection of deficiency tax void.

No PAN or FAN was issued in this case.[78] In fact, during the pendency of the instant case, the tax audit of petitioner for other taxes pursuant to LOA No. 201200033231 dated October 28, 2016 was still on-going.[79]

[77] 241 Phil. 829 (1988) [Per J. Cruz, First Division].
[78] Par. 1(hh), Joint Stipulation of Facts, JSFI, Docket – Vol. 1, p. 402.
[79] *Id.*

Parenthetically, the issuance of the PAN in this case is indispensable, since there is no indication that petitioner's case falls under any of the exceptions in the issuance thereof as enumerated under Section 228 of the NIRC, and Section 3.1.2 of RR No. 12-99, as amended by RR No. 18-2013.

It must be emphasized that the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.[80] Correspondingly, since the collection of the subject deficiency VAT in the amount of ₱16,187,281.09, inclusive of increments, was not preceded by a PAN, FAN and FLD, the same must perforce fail.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.

Accordingly, respondent Geraldino's *48-Hour Notice* dated September 14, 2017 and *5-day VAT Compliance Notice* dated October 4, 2017, demanding the payment of deficiency VAT in the total amount of ₱16,030,957.76, inclusive of increments, as well as respondent Commissioner's *Closure Order* SN: RR8-047-008CO dated December 5, 2017, all issued against petitioner, are hereby **DECLARED NULL** and **VOID**.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[80] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

ATTESTATION

I attest 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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice