REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SERBIZ MULTI-PURPOSE COOPERATIVE,
Respondent.

CTA EB NO. 3057
(CTA Case No. 10369)

Present:

RINGPIS-LIBAN, *P.J.*,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAY 28 2026 3:53 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is the petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) Petition for Review[1] filed on

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[1] *Rollo*, pp. 6-46, with annexes.
Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals (RRCTA).
Section 3. *Who may appeal; period to file petition.* —
...
(b) Any party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

15 January 2025, with respondent Serbiz Multi-Purpose Cooperative's (**respondent**'s) Comment to the Petition for Review[2] (**Comment**) filed on 10 March 2025. The instant Petition for Review assails the Decision dated 15 July 2024[3] (**assailed Decision**) and the subsequent Resolution dated 27 November 2024[4] (**assailed Resolution**) of the Second Division in CTA Case No. 10369, entitled *Serbiz Multi-Purpose Cooperative v. Commissioner of Internal Revenue.*

The assailed Decision cancelled the deficiency income tax assessment amounting to ₱9,617,720.91 and value-added tax (**VAT**) assessment amounting to ₱4,102,491.56, both inclusive of surcharges and interest, against respondent for the taxable year (**TY**) 2009. Meanwhile, the assailed Resolution denied, for lack of merit, petitioner's "Motion for Reconsideration (Decision dated 15 July 2024)"[5] (**MR**) filed on 06 August 2024.

Petitioner CIR is vested with the power to decide disputed assessments pursuant to Section 4[6] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with office address at the Bureau of Internal Revenue (**BIR**) National Office Building, Agham Road, Diliman, Quezon City.[7]

On the other hand, respondent is a multi-purpose cooperative duly registered with the Cooperative Development Authority (**CDA**), pursuant to the provisions of Republic Act (**RA**) No. 9520,[8] with Certificate of Registration No. 9520-16000670 dated 15 October 2009.[9]

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2 *Rollo*, pp. 49-69.

3 Division Docket, Volume II, pp. 548-565. Penned by Associate Justice (now Presiding Justice) Ma. Belen M. Ringpis-Liban with Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, concurring.

4 Id., pp. 604-610. Penned by Associate Justice (now Presiding Justice) Ma. Belen M. Ringpis-Liban with Associate Justice Maria Rowena Modesto-San Pedro concurring. Associate Justice Corazon G. Ferrer-Flores was on leave.

5 Id., pp. 566-571.

6 SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

7 See Paragraph 1.01, Joint Stipulation of Facts and Issues (**JSFI**), Division Docket, Volume I, p. 370.

8 An Act Amending the Cooperative Code of the Philippines to be known as the "Philippine Cooperative Code of 2008".

9 See Par. 1.02, Division Docket, Volume I, p. 371.

The antecedent facts follow.

On 12 November 2019, petitioner issued the Preliminary Assessment Notice (**PAN**)[10] with Details of Discrepancies, which respondent received on 18 November 2019.[11] In the PAN, petitioner found respondent liable for deficiency income tax and VAT amounting to ₱13,677,849.25, inclusive of interest and surcharge, for TY 2009. On 02 December 2019, respondent filed a Reply to Preliminary Assessment Notice[12] (**Reply to PAN**) with the BIR.

Thereafter, on 11 December 2019, petitioner issued the Formal Letter of Demand,[13] with Details of Discrepancies[14] and Assessment Notices[15] (**FLD/FAN**), which respondent received on the same day,[16] upholding the same amount of basic deficiency tax assessments and differing only as to interest, for an aggregate amount of ₱13,720,212.47, inclusive of interest and surcharge. On 10 January 2020, respondent filed a protest against the FLD/FAN by way of a request for reinvestigation[17] (**Protest to FLD/FAN**). Then, on 10 March 2020, respondent submitted the supporting documents to the Protest to FLD/FAN.[18]

Following petitioner's inaction on its Protest to FLD/FAN, respondent, on 06 October 2020, filed a Petition for Review[19] (**prior Petition for Review**) before Us. The case was raffled to the Third Division and was docketed as CTA Case No. 10369.

On 19 October 2020, the Court issued Summons[20] ordering petitioner to file an Answer within thirty (30) days from service. Petitioner received the same on 21 October 2020.[21] After the Court

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10 Exhibit "P-12", id., pp. 91-95; Exhibit "R-15", BIR Records, pp. 182-186.
11 Exhibit "R-15", BIR Records, pp. 182-186.
12 Exhibit "P-13", Division Docket, Volume I, pp. 96-139.
13 Exhibit "P-1", id., pp. 40-42; Exhibit "R-17", BIR Records, pp. 175-179.
14 Exhibit "P-2", id., pp. 43-44; id.
15 Exhibits "P-3" and "P-4", id., pp. 45-46; Exhibits "R-17-1" and "R-17-2", BIR Records, pp. 180-181.
16 See par. 4, JSFI, Division Docket, Volume I, p. 371.
17 Exhibit "P-5", id., pp. 47-64.
18 Exhibit "P-6", id., pp. 65-78.
19 Id., pp. 6-277, with annexes.
20 Id., p. 278.
21 Id.

granted extension,[22] petitioner filed an Answer[23] on 18 December 2020 and transmitted the BIR records on 01 March 2022.[24]

Earlier, on 20 January 2021, the Court referred the case for mediation before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[25] However, the parties agreed not to have their case mediated.[26] Thereafter, the case was set for Pre-Trial Conference on 17 August 2021,[27] but was reset to, and accordingly held on, 02 February 2022.[28] In compliance with the Court's directive, the respondent filed its Pre-Trial Brief on 13 August 2021,[29] while petitioner filed its Pre-Trial Brief on 23 February 2022.[30]

At the scheduled Pre-Trial Conference, the Court granted the parties a 30-day period to submit their Joint Stipulation of Facts and Issues (**JSFI**).[31] On 02 March 2022, the parties filed the same.[32] The Court approved and adopted the submitted JSFI in its Resolution dated 15 March 2022[33] and, subsequently, in its Pre-Trial Order[34] dated 05 April 2022. The pre-trial was then declared terminated.

On 05 May 2022, respondent presented its lone witness, Alex M. Mendoza (**Mendoza**), its treasurer,[35] who identified his Judicial Affidavit[36] dated 02 October 2020. His testimony was offered to prove that: (1) respondent complied with the jurisdictional requirements for filing the prior Petition for Review; (2) receipt of PAN and FLD/FAN; (3) filing of Reply to PAN and Protest to FLD/FAN; (4) prescription of petitioner's right to assess deficiency taxes; (5) respondent's registration with the CDA; and (6) exemption from income tax and VAT.

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22 See Resolution dated 29 December 2020, id., p. 285.
23 Id., pp. 286-291.
24 See Transmittal Letter dated 01 March 2022, id., p. 369.
25 See Resolution dated 20 January 2021, id., pp. 295-296.
26 See No Agreement to Mediate dated 10 March 2021 issued by the PMC-CTA, id., p. 297.
27 See Resolution dated 27 May 2021, id., pp. 299-300.
28 See Resolution dated 21 October 2021, id., p. 318.
29 Id., pp. 301-315.
30 Id., pp. 356-359.
31 See Order dated 02 February 2022, id., pp. 322-324.
32 Id., pp. 370-377.
33 Id., pp. 406-407.
34 Id., pp. 409-416.
35 See Order dated 05 May 2022, id., pp. 418-419.
36 Exhibit "P-14", id., pp. 140-277, with annexes.

Upon cross-examination, Mendoza confirmed that respondent filed the prior Petition for Review before the Court of Tax Appeals (**CTA**) Division within 180 days from submission of supporting documents after it filed its Protest to FLD/FAN.[37] No redirect examination followed.[38]

In response to the Court's questions, Mendoza clarified that respondent applied for a tax exemption certificate with the CDA in 2009, but the same was issued only in 2012.[39] Despite this, respondent believed that it was already tax exempt pursuant to: (1) its registration with the CDA; and (2) a BIR ruling confirming its tax exemption,[40] and thus, no longer needed a certificate of tax exemption.[41] As such, it did not pay income taxes in 2009.[42]

After completing the presentation of evidence, on 17 May 2022, respondent filed its Formal Offer of Documentary Exhibits,[43] consisting of Exhibits "P-1" to "P-19", *sans* petitioner's comment thereto.[44] In its Resolution dated 22 July 2022,[45] the Court admitted all the exhibits that respondent submitted, ***except*** the following:

1. Exhibits "P-9",[46] "P-17",[47] and "P-18",[48] for failure to present their originals for comparison;
2. Exhibit "P-16",[49] for failure to submit the duly marked exhibit and to identify the same; and
3. Exhibit "P-19",[50] for failure to present the original for comparison and to identify the said exhibit.

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37 TSN dated 05 May 2022, pp. 7-8.
38 Id, p. 8.
39 Id, pp. 9-11.
40 Id., p. 17.
41 Id, pp. 13-16.
42 Id, pp. 13.
43 Division Docket, Volume I, pp. 420-426.
44 See Records Verification Report dated 14 June 2022, id., p. 438.
45 Id., pp. 436-437.
46 BIR Ruling No. ECCP-005-2007 dated 22 February 2008.
47 Petitioner's (herein respondent's) List of Cooperative Members.
48 Petitioner's (herein respondent's) 2009 Audited Financial Statements.
49 Petitioner's (herein respondent's) By-Laws.
50 Petitioner's (herein respondent's) Income Tax Return for 2009.

On 29 July 2022, respondent filed its "Motion for Partial Reconsideration (of the Order dated 22 July 2022) with Tender of Excluded Evidence"[51] (**MPR**), while petitioner failed to file a comment thereto.[52] In its Resolution dated 12 October 2022,[53] the Court in Division partially granted the MPR, (1) admitting Exhibit "P-18",[54] (2) still denying the admission of Exhibit "P-16", for failure to identify the same, and (3) noting respondent's tender of Exhibits "P-9" and "P-17."

Thereafter, petitioner presented its first witness on 23 February 2023 – Group Supervisor (**GS**) Rogelio Delos Reyes (**Delos Reyes**),[55] who testified by way of his Judicial Affidavit[56] dated 16 February 2022, and its second witness on 18 April 2023 – Revenue Officer (**RO**) Ella D. Solon (**Solon**),[57] who also testified using her Judicial Affidavit[58] dated 26 January 2022. Both direct testimonies, combined, concern the issuance by petitioner of a Letter of Authority (**LOA**), Memorandum of Assignment, First Notice/Request for Presentation of Records, Second and Final Notice, Notice of Informal Conference, Memorandum and RO's Audit Report, PAN, and FLD/FAN, in relation to the audit and examination of respondent. No cross-examination was conducted during both hearings.[59]

Petitioner then filed his or her Formal Offer of Evidence[60] (**FOE**) on 03 May 2023, with respondent's Comment (to [Petitioner's FOE])[61] filed on 26 May 2023. In its Resolution dated 10 July 2023,[62] the Court in Division admitted only Exhibits "R-15,"[63] "R-17,"[64] "R-17-a,"[65] and "R-17-b,"[66] and denied the following:

51 Division Docket, Volume I, pp. 439-443.
52 See Records Verification dated 08 September 2022, id., p. 484.
53 Id., pp. 486-488.
54 Supra at note 48; Petitioner's (herein respondent's) 2009 Audited Financial Statements.
55 See Order dated 23 February 2023, Division Docket, Volume I, p. 490.
56 Exhibit "R-19", id., pp. 381-403, with annexes.
57 See Order dated 18 April 2023, id., p. 494.
58 Id., pp. 330-353, with annexes.
59 TSN dated 23 February 2023, p. 3; TSN dated 18 April 2023, p. 4.
60 Division Docket, Volume I, pp. 495-499.
61 Id., pp. 500-502.
62 Id., pp. 506-507.
63 Preliminary Assessment Notice (PAN) with Details of Discrepancies dated November 12, 2019.
64 Formal Letter of Demand (FLD) with Details of Discrepancies dated December 11, 2019.
65 Assessment Notice for deficiency Income Tax dated December 11, 2019.
66 Assessment Notice for deficiency VAT dated December 11, 2019.

1. Exhibits "R-19,"[67] "R-19-a,"[68] "R-20,"[69] and "R-20-a"[70] for failure to comply with Section 3(f) of the Judicial Affidavit Rule;[71] and

2. Exhibits "R-1,"[72] "R-2,"[73] "R-3,"[74] "R-4,"[75] "R-5,"[76] "R-6,"[77] "R-7,"[78] "R-8,"[79] "R-9,"[80] "R-10,"[81] "R-11,"[82] "R-12,"[83] "R-12-a,"[84] "R-12-b,"[85] "R-13,"[86] "R-14,"[87] "R-14-a,"[88] "R-14-b,"[89] "R-16,"[90] and "R-18"[91] for failure to identify the same.

On 01 June 2023, the case was transferred to the Second Division.[92]

Pursuant to the Court's directive, respondent submitted its Memorandum[93] on 16 August 2023, while the CIR failed to file the same.[94] On 30 August 2023, the case was submitted for decision.[95]

In the now assailed Decision of 15 July 2024,[96] the Second Division granted respondent's prior Petition for Review and cancelled

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67 Judicial Affidavit of RO Rogelio Delos Reyes.
68 Signature of RO Rogelio Delos Reyes.
69 Judicial Affidavit of RO Ella D. Solon.
70 Signature of RO Ella D. Solon.
71 Section 3. *Contents of judicial Affidavit.* - A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following:

...

(f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.

72 BIR Records of Petitioner (herein respondent).
73 Letter Notice dated May 23, 2011.
74 Follow up Letter dated June 14, 2011.
75 Letter of Authority (eLA201000064708) dated September 22, 2011 and Checklist of Requirements.
76 First Notice/Request for Presentation of Records dated October 19, 2011.
77 Undated Second and Final Notice.
78 Undated Recommendation for the Issuance of *Subpoena Duces Tecum.*
79 *Subpoena Duces Tecum* issued on January 31, 2012.
80 Affidavit of Service of *Subpoena Duces Tecum.*
81 Notice of Informal Conference dated June 20, 2013.
82 Memorandum Report to the Regional Director recommending for the issuance of Preliminary Assessment Notice dated July 11, 2013.
83 Revenue Officer's Audit Report on Income Tax.
84 Revenue Officer's Audit Report on VAT.
85 Revenue Officer's Audit Report on Expanded Withholding Tax.
86 Memorandum of Assignment dated February 19, 2019.
87 Letters of Third-Party Information.
88 Id.
89 Id.
90 Report on Personal/ Substituted Service.
91 Letter of Carag Zaballero Llamado & Abiera to the RDO dated March 10, 2020.
92 See Notice, Division Docket, Volume I, p. 504.
93 Id., pp. 508-542.
94 See Records Verification dated 22 August 2023, id., p. 545.
95 See Minute Resolution dated 30 August 2023, id., p. 546.
96 Supra at note 3.

petitioner's assessment. The dispositive portion of the said assailed Decision reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject assessments for deficiency income tax in the amount of **₱9,617,720.91** and VAT in the amount of **₱4,102,491.56**, both inclusive of surcharges and interests, covering taxable year 2009, are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**
>
> ...

In granting respondent's prior Petition for Review, the Second Division primarily held that a comparison of the figures stated in the PAN with those in the FLD/FAN would reveal that the BIR merely adjusted the interest. It did not address any of respondent's refutations in its Reply to PAN, an indication that the CIR did not consider the same when it issued the FLD/FAN. According to the Court, failure to so address the arguments of respondent is tantamount to failure to provide the particular facts and/or law upon which the FLD/FAN is based. Since respondent was left unaware of how petitioner appreciated the explanations made in the Reply to PAN, there was a clear violation of the respondent's right to administrative due process, rendering the assessments void.

On 06 August 2024, the CIR filed the MR,[97] contending that under Section 3 of Revenue Regulations (**RR**) No. 12-99,[98] as amended by RR No. 18-2013,[99] it is **not** mandatory to respond or provide the reason for rejecting the refutations made by respondent in its Reply to PAN. Moreover, respondent is not exempt from income tax and VAT for TY 2009 because the Certificate of Tax Exemption from the BIR was only obtained on 23 April 2012.

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97 Supra at note 5.

98 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 Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

On 04 September 2024, respondent filed its Comment (To [Petitioner's MPR]).[100]

In the now, similarly assailed Resolution of 27 November 2024,[101] the Second Division denied the CIR's MR, the dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Decision dated 15 July 2024) is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In denying the MR, the Second Division reiterated that petitioner ought to give due consideration to respondent's arguments and evidence. His or her failure to address them will deprive the respondent of due process of law. As for the respondent's non-exemption from income tax and VAT, it ruled that the fact that the Certificate of Tax Exemption was issued only in 2012 was inconsequential considering that its effectivity retroacts to the year that RA 9520 took effect, which is 2009. As such, respondent was already exempt from income tax and VAT as early as TY 2009.

Undeterred, on 15 January 2025, petitioner filed the instant Petition for Review[102] before the Court *En Banc*. On 10 March 2025, respondent filed a Comment to the Petition for Review.[103]

In a Minute Resolution dated 02 April 2025,[104] the Court *En Banc* referred the case to the PMC-CTA for mediation. However, the parties decided not to have their case mediated.[105] Hence, on 28 May 2025, the Court *En Banc* submitted for decision the instant Petition for Review.[106]

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100 Division Docket, Volume II, pp. 573-593.
101 Supra at note 4.
102 Supra at note 1.
103 Supra at note 2.
104 *Rollo*, p. 73.
105 See No Agreement to Mediate issued by the PMC-CTA, id., p. 74.
106 See Resolution dated 28 May 2025, id., p. 75.

The sole issue for the Court *En Banc*'s resolution is —

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT THE SUBJECT TAX ASSESSMENTS ARE VOID AND THAT RESPONDENT SERBIZ MULTI-PURPOSE COOPERATIVE IS NOT LIABLE FOR THE SUBJECT INCOME TAX AND VALUE-ADDED TAX (VAT) ASSESSMENTS FOR TAXABLE YEAR (TY) 2009.

In praying for the Court *En Banc* to reverse and set aside the assailed Decision[107] and Resolution,[108] petitioner forwards the arguments below —

First, Section 3 of RR No. 12-99, as amended by RR No. 18-2013, does not provide mandatory instructions for petitioner to respond to respondent's Reply to PAN. Instead, petitioner may opt to issue the FLD/FAN within fifteen (15) days from the filing of respondent's Reply to PAN – which is what happened in this case.

Second, under RA 9520, following the issuance of a Certificate of Registration, the registered cooperative must also secure a Certificate of Tax Exemption from the BIR, to be entitled to tax exemptions and other incentives. Here, respondent only obtained a Certificate of Tax Exemption on 23 April 2012, but it opted not to pay income tax as early as 2009. Thus, respondent is liable for deficiency taxes for TY 2009 as it was not yet exempt from income tax and VAT during that period.

In the Comment,[109] respondent counters that petitioner should have discussed in the FLD/FAN the reasons why it rejected respondent's refutations. By petitioner's outright issuance of the FLD/FAN without due consideration of respondent's evidence, supporting documents, and explanations, petitioner violated respondent's due process rights. On the issue of tax exemption, respondent retorts that the provisions of RA 9520 itself grant upon duly registered cooperatives, such as respondent, the privilege to be tax exempt *from the time of registration*, subject only to conditions laid down under said law. Since respondent complied with the same, it is exempt from income tax and VAT.

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107 Supra at note 3.
108 Supra at note 4.
109 Supra at note 2.

We resolve.

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the present Petition for Review insofar as the timeliness of the same is concerned.

THE PRESENT PETITION FOR REVIEW WAS TIMELY FILED AND THE COURT *EN BANC* ACQUIRED JURISDICTION OVER THE CASE.

Petitioner received the assailed Resolution[110] on 18 December 2024. Pursuant to Section 2(a)(1),[111] Rule 4 in relation to Section 3(b),[112] Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), the CIR had 15 days from said receipt, or until 02 January 2025, within which to file the instant Petition for Review.

On even date, petitioner filed a "Motion for Extension of Time to File Petition for Review"[113] praying for an additional period of 15 days from 02 January 2025, or until 17 January 2025, to file the Petition for Review. The Court *En Banc* granted the same per Resolution[114] dated 03 January 2025.

Thereafter, on 15 January 2025, petitioner timely filed the present Petition for Review.[115] As a result, the Court *En Banc* acquired jurisdiction over the instant case.

We now proceed to address its merits.

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110 Supra at note 4; see also Notice of Resolution dated 27 November 2024, Division Docket, Volume II, p. 603.

111 **SEC 2.** *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

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

(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied)

112 Supra at note 1.

113 *Rollo*, pp. 1-2.

114 See Notice dated 03 January 2025, id., p. 4.

115 Supra at note 1.

After thoroughly reviewing the records and evaluating the parties' arguments *vis-à-vis* the pertinent laws, rules, and jurisprudence, the Court *En Banc* finds the consolidated Petitions for Review **lacking in merit.** The Court *En Banc* notes that petitioner's arguments constitute the exact same arguments that he or she previously raised in the Answer, and MR filed in the prior Petition of respondent before the Court in Division. Evidently, the Second Division had thoroughly and exhaustively addressed and resolved said arguments in the assailed Decision and Resolution. Nevertheless, for emphasis, the Court *En Banc* shall oblige to discuss further.

RESPONDENT'S RIGHT TO DUE PROCESS WAS VIOLATED

To clarify, the Second Division never required petitioner to address the arguments in the Reply to PAN through a *separate* document apart from the FLD/FAN. What the Second Division held is that, in the FLD/FAN, the CIR must **consider** the arguments that the taxpayer raised in the Reply to PAN, as part of due process. Here, petitioner's issuance of the FLD/FAN that exactly mirrors the PAN, indicates that petitioner did not take into account respondent's arguments.

In the landmark case of *Ang Tibay, et al. v. The Court of Industrial Relations, et al.*[116] *(***Ang Tibay***)*, the Supreme Court laid out the due process rights that must be respected in trials and investigations of an administrative character, one of which is the requirement for the tribunal or administrative body to **consider the evidence presented**:

> ...
>
> (2) **Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *<u>must consider</u>* <u>the evidence presented</u>.** (Chief Justice Hughes in Morgan v. U.S. 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this court in *Edwards vs. McCoy*, 22 Phil., 598, "**the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.**"
>
> ...

[116] G.R. No. 46496, 27 February 1940; Italics in the original, emphasis and underscoring supplied.

While the case of *Ang Tibay* refers to administrative proceedings in general, the Supreme Court, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[117] *(***Avon***)*, applied the same ruling to tax cases, specifically in the issuance of tax assessments.

In *Avon*, upon receipt of the PAN, the taxpayer submitted its protest letter and supporting documents and even met with revenue examiners to explain the BIR's findings as stated in the PAN. This, notwithstanding, the BIR issued the FLD/FAN that merely reiterated the assessments in the PAN. There was no comment on or dicussion of the matters that Avon raised, precluding the taxpayer from knowing the various issues involved and the reasons for the assessments. The Supreme Court ruled –

> ...
> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, **when he or she rejects these explanations, he or she must give some reason for doing so.** He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.
> ...
>
> [D]espite Avon's submission of its explanations and pieces of evidence to the assessments, the **Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices**, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time.
> ...
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.**
>
> ...

Verily, the right to be heard is rendered useless if petitioner will simply disregard the taxpayer's submission of explanations and supporting documents. If the same is sanctioned, taxpayers will

117 G.R. Nos. 201398-99, 03 October 2018, Citations omitted and emphasis supplied.

essentially be beguiled into thinking that their responses and refutations would be given weight and consideration when, in truth, petitioner's mind is already made up. Such is a mockery of due process of law and would render compliance with the same an exercise in futility.

This Court *En Banc* emphasizes that due process of law is grounded on principles far too important for this Court, and anyone, much more the CIR, for that matter, to disregard. Protection of the taxpayers' due process rights prevails over even the most fundamental principle in taxation that taxes are the lifeblood of the government or the presumption of regularity or correctness of tax assessments. In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[118] (**Metrostar**), the Supreme Court elucidated that –

> ...
> 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.** Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Hence in *Commissioner of Internal Revenue v. Algue, Inc.*, it was said –
>
> > 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.
> > ...
> >
> > It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the

118 G.R. No. 185371, 08 December 2010; Citations omitted, italics and emphasis in the original text and supplied.

> running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> **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.**

...

Furthermore, it is well-established in jurisprudence that, as a consequence of the violation of the taxpayer's due process rights, the CIR's tax assessments shall be deemed null and void and, thus, his or her efforts towards examination and assessment shall bear no valid fruit.[119]

In the case at bar, petitioner issued the FLD/FAN without reference to the respondent's refutations as contained in the latter's Reply to PAN. As found by the Second Division, save for the closing paragraphs, the Details of Discrepancies attached to the FLD/FAN merely copied, *verbatim*, the Details of Discrepancies attached to the PAN. Consequently, **for petitioner's failure to consider the evidence presented, in violation of respondent's due process rights, the subject tax assessments are deemed void and of no effect.**

In light of the above disquisition, there appears no cogent reason to resolve petitioner's argument regarding the Certificate of Tax Exemption. Nevertheless, if only to put petitioner's mind at rest and to write *finis* to this issue, this Court will briefly address the same.

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119 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, supra at note 119; *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, supra at note 118; *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, 18 April 2016.

To underscore, even assuming arguendo that the subject assessments are valid, respondent could still not be made liable for the deficiency tax assessments as it is **exempt from income tax and VAT** pursuant to RA 9520.

RESPONDENT IS EXEMPT FROM INCOME TAX AND VALUE-ADDED TAX (VAT) SINCE TAXABLE YEAR 2009

Petitioner insists that respondent should have first secured a Certificate of Tax Exemption from the BIR (in addition to its Certificate of Registration with the CDA) before it could be exempted. According to the CIR, since respondent only obtained a Certificate of Tax Exemption on 23 April 2012, respondent is then liable for deficiency taxes for the TY 2009 as it was not yet exempt from income tax and VAT during that period.

As aptly explained by the Second Division in the assailed Resolution, Section 13 of the Joint Rules and Regulation Implementing Articles 60, 61, and 144 of RA 9520, otherwise known as the "Philippine Cooperative Code of 2008" in relation to RA 8424 or the National Internal Revenue Code, as amended[120] (**Joint Rules**) provides for the retroactive effect of the initial issuance of a Certificate of Tax Exemption:

> ...
> Exemption from taxes herein stated shall apply to the duly-registered cooperatives on the year the certificate of tax exemption/ruling was issued. However, **for the initial issuance of the Certificate of Tax Exemption/Ruling under RA 9520, the effectivity of such Certificate of Tax Exemption/Ruling issued shall commence from the year RA 9520 took effect:** Provided, That the cooperative has registered with the CDA as provided for under Article 144 of RA 9520.[121]
> ...

In other words, while petitioner is correct that in order to avail of the tax exemptions under RA 9520, respondent should secure a Certificate of Tax Exemption from the BIR in addition to the Certificate of Registration with the CDA, he or she failed to consider the above-

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120 As approved by the Joint Congressional Oversight Committee on Cooperatives during its meeting on 25 January 2010 at the Senate of the Philippines, Pasay City pursuant to Article 138 of RA 9520.

121 Emphasis supplied.

cited Joint Rules, which clearly provides that **for the initial issuance of the Certificate of Tax Exemption under RA 9520, its effectivity retroacts to 2009, the year RA 9520 took effect.**

Here, respondent was registered with the CDA on 15 October 2009, and its Certificate of Tax Exemption dated 23 April 2012 is the first certificate of such nature to be issued to it from the time that it was registered with the CDA. Clearly, it falls under the provision on "initial issuance of the Certificate of Tax Exemption/Ruling under RA 9520." Applying the above provision in the Joint Rules, therefore, **even if respondent's Certificate of Tax Exemption was issued only in 2012, its effectivity retroacts to 2009.** Stated differently, respondent was already tax-exempt beginning 2009, regardless of the fact that its Certificate of Tax Exemption was issued in 2012. This being the case, respondent was correct in not paying the subject deficiency taxes for TY 2009 pursuant to its statutory tax exemption.

Notably, Article 142 of RA 9520 provides for the liberal construction of the laws governing cooperatives:

> ...
> ART. 142. *Interpretation and Construction.* In case of doubt as to the meaning of any provision of his Code or the regulations issued in pursuance thereof, the same shall be **resolved liberally in favor of the cooperatives and their members.**[122]
>
> ...

This preferential tax treatment of cooperatives is well-recognized in jurisprudence, considering the crucial role they play in the economic development of the country. In *Dumaguete Cathedral Credit Cooperative (DCCCO) v. Commissioner of Internal Revenue,*[123] the Supreme Court declared that:

> ...
> In closing, cooperatives, including their members, deserve a preferential tax treatment because of the vital role they play in the attainment of economic development and social justice. Thus, **although taxes are the lifeblood of the government, the State's power to tax must give way to foster the creation and growth of cooperatives.** To borrow the words of Justice Isagani A. Cruz: "The

122 Emphasis supplied and italics in the original text.
123 G.R. No. 182722, 22 January 2010; Citation omitted and emphasis supplied.

power of taxation, while indispensable, is not absolute and may be **subordinated to the demands of social justice.**"

...

All told, the Court *En Banc* finds no cogent reason to reverse or modify the assailed Decision and Resolution of the Second Division in CTA Case No. 10369.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Commissioner of Internal Revenue, docketed as CTA EB No. 3057, is hereby **DENIED** for lack of merit. The Second Division's Decision dated 15 July 2024 and Resolution dated 27 November 2024 in CTA Case No. 10369 entitled *Serbiz Multi-Purpose Cooperative v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

Petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from pursuing any action against respondent relative to the above-mentioned void assessments.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice