REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA *EB* No. 2415** (CTA Case No. 9433)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
TANN PHILIPPINES, INCORPORATED, *Respondent.*	Promulgated: SEP 14 2022 4:21 p.m.

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) assailing the Decision[2] dated March 3, 2020 (assailed Decision) and the Resolution[3] dated December 22, 2020 (assailed Resolution), promulgated by the Court of Tax Appeals (CTA) Third Division (Court in Division), holding respondent not liable for the surcharge, interest and compromise penalty in the aggregate amount of ₱1,552,212.62 for the one-day late payment of its quarterly value-added tax (VAT) for the 4th quarter of 2013.

[1] *En Banc* (*EB*) Docket, pp. 6-25.
[2] *EB* Docket, pp. 34-54; Division Docket – Vol. 2, pp. 542 to 562.
[3] *EB* Docket, pp. 56-63; Division Docket – Vol. 2, pp. 588 to 595.

THE PARTIES

Petitioner CIR is the head of the Bureau of Internal Revenue (BIR) and has the power, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, including abatement and compromise of penalties, and other matters arising under the National Internal Revenue Code of 1997, as amended (1997 NIRC or Tax Code) and other laws administered by the BIR. The CIR holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent Tann Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal business address at First Philippine Industrial Park, Brgy. Sta. Anastacia, Sto. Tomas, Batangas. It is registered with the BIR under Tax Identification Number 216-405-611-000.

THE FACTS

On January 24, 2014, respondent filed, without payment, through the BIR's Electronic Filing and Payment System (e-FPS) its Quarterly VAT Return (BIR Form 2550Q) for the 4th quarter of 2013.[4]

On January 28, 2014 (Tuesday), respondent paid the tax due stated in the aforesaid quarterly VAT Return *via* the e-FPS; however, the same was considered by the revenue officer as late payment of one day, the deadline being January 27, 2014 (Monday),[5] on which 25% surcharge, interest, and compromise penalties were imposed.[6]

On September 8, 2014, respondent received the Audit Results/Assessment Notice No. 122-0159-14 (Assessment Notice) dated August 11, 2014 from the Large Taxpayers Division-Makati (LTD-Makati), signed by Mr. Nestor S. Valeroso, OIC-ACIR Large Taxpayers Service. The Assessment Notice seeks to collect from respondent the amount of ₱1,552,212.62

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[4] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 242; Exhibits "P-9" to "P-9-2", Division Docket – Vol. 1, pp. 366 to 368; Refer also to Par. 7, Petition for Review, Division Docket – Vol. 1, p. 14, *vis-à-vis* Par. 3, Answer with Motion to Dismiss, Division Docket – Vol. 1, p. 68.

[5] The deadline for the filing and payment of 2550Q for the 4th quarter of 2013 was on January 25, 2014 (Saturday). Taxpayers were given until the next working day, January 27, 2014 (Monday) to file and pay their 2550Qs.

[6] Par. 7, Summary of Admitted Facts, JSFI, Division Docket – Vol. 1, p. 241; Refer also to Par. 8, Petition for Review, Division Docket – Vol. 1, p. 14, *vis-à-vis* Par. 3, Answer with Motion to Dismiss, Division Docket – Vol. 1, p. 68.

for the one-day late payment of its Quarterly VAT for the 4th quarter of 2013, broken down as follows:[7]

Surcharge	1,498,927.42
Interest (1/28/2014)	3,285.20
Compromise	50,000.00
Total	**₱1,552,212.62**

On October 8, 2014, respondent, through its counsel, filed a protest against the subject Assessment Notice *via* an application for the abatement of surcharge dated October 5, 2014.[8] In said protest, respondent requested for a reconsideration of the assessment by way of abatement of the 25% surcharge of ₱1,498,927.42[9] and stated its amenability to pay the interest and compromise penalty,[10] setting forth its grounds, as follows:

> **RMO 5-2002 does not impose any penalty on taxpayers who filed at an earlier date but paid on a later date.**
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> *Section III(G)(1st par.), RMO 5-2002* states:
>
>> Taxpayers who shall file their returns through EFPS may pay the taxes due thereon either manually or electronically. Following the "pay as you file" principle, payment of taxes shall be made within the banking hours of the day the return was electronically filed in case of manual payment, or within the day of e-filing in case of electronic payment. However, no penalties shall be imposed for taxpayers who e-filed earlier and paid at a later date **but on or before the due date for the applicable tax**... *(Underscoring on the original; boldfacing supplied)*
>
> In the case of TPI, its 4th quarter, 2013 VAT return was due on January 25, 2014, following regulations as an e-FPS filer. January 25, 2014, however, falls on a Saturday. Consequently, the next working day, January 27, 2014, Monday was deemed to be the deadline for filing the quarterly VAT return (Form 2550Q). As it is, **TPI filed Form 2550Q on January 24, 2014, Friday; though admittedly, it paid the amount due thereon on January 28, 2014, Tuesday[.]** ... *(Boldfacing supplied)*
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> ... ...

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[7] Exhibit "P-4", Division Docket – Vol. 1, p. 347; Par. 6, Petition for Review, Division Docket – Vol. 1, pp. 13 to 14, *vis-à-vis* Par. 3, Answer with Motion to Dismiss, Division Docket – Vol. 1, p. 68.
[8] Exhibit "P-5", Division Docket – Vol. 1, pp. 350 to 353.
[9] Par. 9, Petition for Review, Division Docket – Vol. 1, p. 14, *vis-à-vis* Par. 3, Answer with Motion to Dismiss, Division Docket – Vol. 1, p. 68; Par. 8, Summary of Admitted Facts, JSFI, Division Docket – Vol. 1, p. 242.
[10] Exhibit "P-5", Division Docket – Vol. 1, par. 3, p. 350 and par. 4, p. 353.

> ... **Discovery of the erroneous gross sales** reflected in the original return filed on previous Friday, January 24, **was made only upon review of the return on Monday, January 27**. In the ordinary course of a business day, the company can only rectify the error on that day itself, by correcting its working papers and the VAT quarterly return itself, and procuring the necessary approvals/authorization for payment of the correct amount of tax. Consequently, **the actual e-payment itself cannot be effected until the following day, January 28, Tuesday**...[11] *(Boldfacing supplied)*

Respondent's application for abatement was denied in the Collection Letter dated April 29, 2015, issued by the LTD-Makati,[12] which advised respondent to settle the amount of ₱1,552,212.62. This was followed by the Final Notice Collection Letter dated May 21, 2015, which was received by respondent on June 2, 2015.[13]

On June 5, 2015, respondent appealed[14] the decision of the LTD-Makati to the Office of the Commissioner and reiterated its request for the abatement of surcharge and its willingness to pay the interest and compromise penalty as a way of settlement.

Subsequently, on July 22, 2016, respondent received the Notice of Denial dated May 10, 2016, from the CIR,[15] denying its application for abatement, and reiterating the collection and payment of the amount of ₱1,552,212.62, plus all increments incident to delinquency *via* the e-FPS, within fifteen (15) days from receipt thereof; otherwise, petitioner shall enforce the collection thereof without any further notice[16] through administrative summary remedies provided by law.

On August 18, 2016, respondent filed a Petition for Review,[17] praying that the Court in Division find respondent not liable for the surcharge, interest, and compromise penalty, in the aggregate amount of ₱1,552,212.62.

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[11] Exhibit "P-5", Division Docket – Vol. 1, pp. 352-353.
[12] Par. 10, Petition for Review, Division Docket – Vol. 1, p. 14, *vis-à-vis* Par. 3, Answer with Motion to Dismiss, Division Docket – Vol. 1, p. 68; Par. 9, Summary of Admitted Facts, JSFI, Division Docket – Vol. 1, p. 242.
[13] *Id.*, Exhibit "P-6", Division Docket – Vol. 1, p. 360.
[14] Exhibit "P-7", Letter dated June 3, 2015, Division Docket – Vol. 1, pp. 362 to 363.
[15] Exhibit "P-8", Division Docket – Vol. 1, p. 364; Par. 1, Summary of Admitted Facts, JSFI, Division Docket – Vol. 1, p. 241.
[16] Par. 12, Petition for Review, Division Docket – Vol. 1, p. 15, *vis-à-vis* Par. 3, Answer with Motion to Dismiss, Division Docket – Vol. 1, p. 68; Par. 11, Summary of Admitted Facts, JSFI, Division Docket – Vol. 1, p. 242.
[17] Division Docket – Vol. 1, pp. 12 to 24.

On October 24, 2016, petitioner filed an Answer with Motion to Dismiss,[18] interposing, among others, the following special and affirmative defenses:

> (1) the deficiency surcharge, interest and compromise penalty assessments issued by the petitioner to respondent, amounting to ₱1,552,212.62, and subject of Audit Result/Assessment Notice No. 122-0159-14 dated August 11, 2014, has already been fully paid and satisfied by respondent on September 15, 2016 as evidenced by EFPS Payment Confirmation (Payment Transaction No. 164416056) and Payment Form No. 0605; hence, there is no disputed assessment nor any justiciable issue for this Court to hear;
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> (2) respondent should have paid the amount due of ₱5,977,112.34 on January 27, 2014 and amended its VAT return and paid the difference thereafter. Respondent's cited instance when penalties and/or interest imposed on the taxpayer may be abated or cancelled on the ground that the imposition thereof is unjust or excessive, *i.e.*, late payment of the tax under meritorious circumstances such as one day late filing and remittance due to failure to beat bank cut-off time was deleted under RR No. 4-2012; and,
>
> (3) it is well-settled that the payment of surcharge is mandatory and the CIR is not vested with any authority to waive or dispense with the collection thereof, citing the case of *Philippine Refining Company (now known as "Unilever Philippines [PRC], Inc.") v. Court of Appeals, CTA, and the CIR.*[19]

On December 16, 2016, respondent filed its Comment on the Motion to Dismiss with Manifestation of Supervening Events and Motion to Include Additional Prayer to Petition for Review,[20] arguing, among others, that there was no voluntary payment of tax; rather, respondent's bank account was debited the amount of ₱1,552,212.62 on September 14, 2016[21] pursuant to a Warrant of Garnishment dated August 14, 2016.[22]

In the Resolution dated January 6, 2017,[23] the Court in Division noted respondent's Manifestation of Supervening Events, denied petitioner's Motion to Dismiss, and ordered petitioner to file a comment on respondent's Motion to Include

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[18] Division Docket – Vol. 1, pp. 68 to 76.
[19] G.R. No. 118794, May 8, 1996.
[20] Division Docket – Vol. 1, pp. 80 to 89.
[21] *Manifestation of Supervening Events*, Division Docket – Vol. 1, par. 4, p. 81; *Supplemental Petition for Review to Include Additional Prayer for Claiming Refund*, Division Docket – Vol. 1, pars. 4-5, p. 304.
[22] Exhibit "P-14-2", Division Docket – Vol. 1, p. 385.
[23] Division Docket – Vol. 1, pp. 93 to 95.

Additional Prayer to Petition for Review. On February 6, 2017, petitioner filed a Comment/Opposition.[24]

In the Resolution dated March 2, 2017,[25] the Court in Division granted respondent's Motion to Include Additional Prayer to Petition for Review.

The pre-trial was initially set on May 30, 2017.[26] However, upon petitioner's filing on May 15, 2017[27] of Urgent *Ex-Parte* Motion to Reset Pre-Trial Conference, the pre-trial conference was reset to, and held on, August 8, 2017.[28] Meanwhile, petitioner's Pre-Trial Brief was filed on May 17, 2017;[29] while respondent's Pre-Trial Brief was submitted on May 25, 2017.[30] The parties submitted their Joint Stipulation of Facts and Issues (JSFI) on August 23, 2017.[31] In the Pre-Trial Order dated September 13, 2017,[32] the Court in Division deemed the pre-trial terminated.

On September 22, 2017, respondent filed a Motion to Amend and/or Correct the Pre-Trial Order to include its final list of documentary evidence.[33] Petitioner failed to file a comment thereon.[34]

In the meantime, petitioner transmitted the BIR records of the instant case on October 2, 2017.[35]

On October 27, 2017, respondent filed its Supplemental Petition for Review to Include Additional Prayer Claiming Refund.[36] Respondent additionally prayed that: (a) the Warrant of Garnishment dated August 16, 2016, be declared null and void for being improperly issued; and (b) respondent be refunded the amount of ₱1,552,212.62 previously garnished by petitioner, or that a tax credit certificate for the same amount be issued in favor of respondent.

[24] Division Docket – Vol. 1, pp. 99 to 101.
[25] Division Docket – Vol. 1, pp. 106 to 110.
[26] Notice of Pre-Trial Conference dated March 6, 2017, Division Docket – Vol. 1, pp. 111 to 112.
[27] Division Docket – Vol. 1, pp. 113 to 115.
[28] Resolution dated May 17, 2017, Division Docket – Vol. 1, p. 123; Minutes of the hearing held on, and Order dated, August 8, 2017, Division Docket – Vol. 1, pp. 238 to 240.
[29] Division Docket – Vol. 1, pp. 117 to 120.
[30] Division Docket – Vol. 1, pp. 194 to 205.
[31] Division Docket – Vol. 1, pp. 241 to 247.
[32] Division Docket – Vol. 1, pp. 256 to 264.
[33] Division Docket – Vol. 1, pp. 268 to 275.
[34] Records Verification Report dated October 18, 2017 issued by the Judicial Records Division of this Court, Docket – Vol. 1, p. 302.
[35] Refer to Division Docket – Vol. I, p. 284.
[36] Division Docket – Vol. 1, pp. 303 to 310.

In the Resolution dated November 9, 2017,[37] the Court in Division granted respondent's Motion to Amend and/or Correct the Pre-Trial Order, admitted respondent's Supplemental Petition for Review, and ordered petitioner to file an Answer to respondent's Supplemental Petition for Review within fifteen (15) days from notice.

On December 6, 2017, petitioner filed an Answer to respondent's Supplemental Petition for Review,[38] interposing, among others, the following special and affirmative defenses:

(a) respondent failed to comply with the mandatory requirements under Section 229 of the 1997 Tax Code in relation to filing a prior administrative claim for refund; that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation; hence, the Court has no jurisdiction to act on the instant petition;

(b) respondent has not been candid before the Court because the deficiency surcharge, interest and compromise penalty assessments issued by the petitioner to respondent, amounting to ₱1,552,212.62 and subject of Audit Result/Assessment Notice No. 122-0159-14 dated August 11, 2014, has already been paid in full and satisfied by respondent on September 15, 2016 as evidenced by e-FPS Payment Confirmation (Payment Transaction No. 164416056) and Payment Form No. 0605; hence, there is no disputed assessment nor any justiciable issue for the CTA to hear;

(c) the Audit Result/Assessment Notice No. 122-0159-14 dated August 11, 2014, bearing the deficiency surcharge, interest and compromise penalty assessments of petitioner, in the amount of ₱1,552,212.62 for late payment of the Quarterly VAT for the 4th Quarter of 2013 issued by the petitioner to herein respondent was made in accordance with RMO 5-2002,[39] Sections 248(a) and 249 of the Tax Code; and

(d) that the payment of surcharge is mandatory and the CIR is not vested with any authority to waive or dispense with the collection thereof, citing the cases of *Lim Co Chua v. Posadas,*[40] *Republic Cement Corp. v. CIR,*[41] and *Philippine Refining Company (now known as*

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[37] Division Docket – Vol. 1, pp. 316 to 320.
[38] Division Docket – Vol. 1, pp. 323 to 330.
[39] Guidelines and Procedures in the Adoption of Electronic Filing and Payment System (EFPS), April 1, 2022.
[40] G.R. No. 23487, February 11, 1925.
[41] G.R. No. L-20660, June 13, 1968.

> *"Unilever Philippines [PRC], Inc.") v. Court of Appeals, CTA, and the CIR.*[42]

Trial ensued. Respondent presented documentary and testimonial evidence and offered the testimonies of the following witnesses: (1) Ms. Rosseni De Leon,[43] respondent's Accounting and Corporate Affairs Manager; and (2) Ms. Roanne Ramos,[44] respondent's Financial Accounting Assistant.

On January 22, 2018, respondent filed its Formal Offer of Evidence,[45] without petitioner's comment.[46]

In the Resolution dated February 22, 2018,[47] the Court admitted respondent's exhibits.

Petitioner, in turn, presented documentary and testimonial evidence by offering the testimony of the lone witness, Ms. Annabelle DG. Bennett,[48] Revenue Officer III (RO Bennett) of the BIR. On May 15, 2018, petitioner filed a Formal Offer of Evidence.[49]

In the Resolution dated July 5, 2018,[50] the Court in Division resolved to admit petitioner's exhibits, without respondent's comment.[51]

Respondent filed its Memorandum on August 14, 2018,[52] while petitioner filed a Manifestation and Motion on August 24, 2018, adopting the arguments in the Answer with Motion to Dismiss dated October 21, 2016, and in the Answer to [Petitioner]'s Supplemental Petition for Review dated December 4, 2017, as part of petitioner's Memorandum.[53]

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[42] G.R. No. 118794, May 8, 1996.
[43] Exhibit "P-16", Division Docket – Vol. 1, pp. 393 to 403; Minutes of the hearing held on, and Order dated, November 27, 2017, Division Docket – Vol. 1, pp. 321 to 322.
[44] Exhibit "P-17", Division Docket – Vol. 1, pp. 445 to 451; Minutes of the hearing held on, and Order dated, January 15, 2018, Division Docket – Vol. 1, pp. 333 to 334.
[45] Division Docket – Vol. 1, pp. 335 to 341.
[46] Records Verification Report dated February 9, 2018 issued by the Judicial Records Division of this Court, Division Docket – Vol. 1, p. 463.
[47] Division Docket – Vol. 1, pp. 465 to 466.
[48] Exhibit "R-14", Division Docket – Vol. 1, pp. 210 to 218; Minutes of the hearing
[49] Division Docket – Vol. 1, pp. 473 to 478.
[50] Division Docket – Vol. 1, pp. 482 to 483.
[51] Records Verification Report dated June 14, 2018 issued by the Judicial Records Division of this Court, Division Docket – Vol. 1, p. 480.
[52] Division Docket – Vol. 1, pp. 484 to 508.
[53] Division Docket – Vol. 1, pp. 515 to 517.

On October 2, 2018, respondent filed a Motion to Admit Comment, with attached Comment on [Petitioner]'s Manifestation and Motion.[54] Petitioner failed to file a comment thereon.[55]

In a Resolution dated March 11, 2019,[56] the Court in Division (1) noted and denied petitioner's Manifestation and Motion; (2) granted respondent's Motion to Admit Comment; (3) admitted respondent's Comment; and (4) submitted the case for decision.

On March 3, 2020, the Court in Division promulgated the assailed Decision, and disposed of the case in this wise:

> **WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* and *Supplemental Petition for Review* are **GRANTED**. Petitioner is not liable for the surcharge interest and compromise penalty in the aggregate amount of ₱1,552,212.62.
>
> The *Assessment Notice* dated August 11, 2014 and *Warrant of Garnishment* dated August 16, 2016 issued against petitioner are declared **VOID** and thus, hereby **CANCELLED** and **SET ASIDE**.
>
> Respondent is **ORDERED TO REFUND** petitioner, or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in, the amount of **₱1,552,212.62**.
>
> **SO ORDERED.**

On December 22, 2020, the Court in Division promulgated the assailed Resolution, denying petitioner's Motion for Reconsideration[57] filed on June 29, 2020, for lack of merit.

Aggrieved, petitioner elevated an appeal before this Court *via* a Petition for Review posted on February 5, 2021, to which respondent filed its Comment/Opposition[58] thereto on July 30, 2021.

[54] Division Docket – Vol. 2, pp. 522 to 527.
[55] Records Verification Report dated October 23, 2018 issued by the Judicial Records Division of this Court, Division Docket – Vol. 2, p. 532.
[56] Division Docket – Vol. 2, pp. 536 to 539.
[57] Division Docket – Vol. 2, pp. 563-577.
[58] *EB* Docket, pp. 76-85.

On November 11, 2021, the Court referred the case to mediation before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).[59] However, on December 14, 2021, the Court received the PMC-CTA's "Back to Court" report[60] indicating that respondent had refused mediation.

On February 15, 2022, the Court submitted this case for decision.[61]

THE ISSUES

WHETHER OR NOT THE THIRD DIVISION OF THIS HONORABLE COURT ERRED IN CANCELLING THE ASSESSMENT NOTICE DATED AUGUST 11, 2014, AND WARRANT OF GARNISHMENT DATED AUGUST 16, 2016 ISSUED BY PETITIONER WHICH SEEKS TO COLLECT FROM RESPONDENT ITS DEFICIENCY SURCHARGE, INTEREST, AND COMPROMISE PENALTY IN THE AGGREGATE AMOUNT OF ₱1,552,212.62, FOR LATE PAYMENT OF ITS QUARTERLY VAT LIABILITY FOR THE 4TH QUARTER OF 2013.

WHETHER OR NOT THE THIRD DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF ₱1,552,212.62.

Petitioner claims that the collection of respondent's deficiency surcharge, interest, and compromise penalty in the amount of ₱1,552,212.62 for respondent's late payment of its quarterly VAT for the 4th quarter of 2013 was anchored on Sections 205 and 207, in relation to Sections 248(A)(4) and 249(A) of the 1997 NIRC, as amended. Hence, no Letter of Authority (LOA) is needed to collect the same. It adds that there is no need to issue a Preliminary Assessment Notice (PAN) considering that respondent merely held the unremitted and/or unpaid VAT as a "special fund in trust" for the Government under Section 3, par. 3.1.2(i)(ii) of Revenue Regulations (RR) No. 18-2013.

[59] *EB* Docket, pp. 87-88.
[60] *EB* Docket, p. 89.
[61] *EB* Docket, pp. 91-92.

Petitioner argues that respondent is estopped from questioning the validity of the subject deficiency interest and compromise penalty sought to be collected by petitioner by virtue of respondent's judicial admission and its payment of the subject amount in full. Hence, this Court should dismiss the issue for being moot and academic. Petitioner insists that respondent failed to comply with the condition precedent for filing a claim for refund with the BIR before a suit for its recovery may proceed in this Court.

Respondent contends that the Court in Division primarily based its decision on the fact that no Letter of Authority had been issued as would authorize the conduct of a tax assessment on respondent. This finding of fact has not been subverted by petitioner either in the Motion for Reconsideration or in this Petition for Review.

Respondent further adds that the arguments raised by petitioner were the same issues ruled upon by the Court in Division; and so, this Petition has no merit.

THE COURT *EN BANC*'S RULING

Before proceeding to the merits of the case, We shall first determine whether the instant Petition was timely filed and whether the Court *En Banc* has jurisdiction over the same.

The Petition for Review is timely filed.

On January 13, 2021, the petitioner received a copy of the assailed Resolution denying the Motion for Reconsideration for lack of merit. On January 18, 2021, petitioner filed a Motion for Extension of Time to File Petition for Review,[62] which the Court granted in a Minute Resolution dated January 29, 2021, giving petitioner a final and non-extendible period of fifteen (15) days from January 28, 2021, or until February 12, 2021, within which to file his petition for review.

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[62] *EB* Docket, pp. 1-3.

On February 5, 2021, petitioner filed this Petition. Hence, under Sections 3(b)[63] and 4(b),[64] Rule 8 of the Revised Rules of the CTA (RRCTA), the same is timely filed. Thus, the Court *En Banc* has jurisdiction over this case.

We now proceed to determine the merits of the Petition.

However, before We rule on the validity of Assessment Notice No. 122-0159-14 dated August 11, 2014, and the Warrant of Garnishment dated August 16, 2016, We must first ascertain whether the imposition of surcharge, interest and compromise penalty is proper.

Respondent is liable to pay the "one-day late payment" penalties.

Section 114 of the 1997 NIRC, as amended, and its implementing regulations, *i.e.*, Section 2 of RR No. 8-2002,[65] Section 6 of RR No. 2-2002,[66] and RMO No. 5-2002,[67] provide the procedures and deadline for filing and payment of quarterly VAT returns, to wit:

> SEC. 114. ***Return*** <u>*and*</u> ***Payment*** *of Value-Added Tax.* –
>
> (A) *In General.* - **Every person liable to <u>pay</u> the value-added tax** imposed under this Title **shall file a quarterly return** of the amount of his gross sales or receipts **within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: ...
>
> (B) *Where to **File** the Return **<u>and</u>** **Pay** the Tax.* - Except as the Commissioner otherwise permits, **the return shall be filed with *<u>and</u>* the tax paid** to an authorized agent bank, Revenue Collection Officer or duly authorized city or municipal Treasurer in the Philippines located within the revenue

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[63] SEC 3. *Who May Appeal; Period to File Petition.* - ... (b) A 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.
[64] SEC. 4. *Where to appeal; mode of appeal.* - ... (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal.
[65] Amending Further Pertinent Provisions of Revenue Regulations No. 7-95, as amended, with respect to the Time of Filing of Quarterly VAT Returns; Contents and Submission of Quarterly Total of Monthly Sales and Purchases Per Supplier or Customer, and Providing for the Penalties and Effect of Non-Submission Thereof; and Clarifying Further the Mode of Remittance of VAT Due From Non-Residents., Revenue Regulations No. 08-02, June 13, 2002.
[66] Amending the Coverage of the Electronic Filing and Payment System (EFPS) By Making It Mandatory for Large Taxpayers and Optional for Certain Identified Non-Large Taxpayers to Avail of the EFPS in the Filing of Their Tax Returns and the Payment of Taxes Due Thereon, March 5, 2002.
[67] Guidelines and Procedures in the Adoption of Electronic Filing and Payment System (EFPS), April 1, 2002.

district where the taxpayer is registered or required to register. (*Emphasis supplied*)

RR No. 8-2002

SEC. 2. ***Filing*** *of Return* and ***Payment*** *of VAT.* — Sec. 4.110-1 (A), (B), (C), and (D) of RR 7-95, as amended by RR6-2001 and RR 4-2002, is hereby further amended to read as follows:

> "SEC. 4.110-1. *Filing of return and payment of VAT.* —
>
> A) *Filing of Return.* — **Every person liable to pay VAT shall file a quarterly return** of the amount of his quarterly gross sales or receipts **within twenty-five (25) days following the close of the taxable quarter** using the latest version (April 2002 (ENCS) version) of Quarterly VAT Return (BIR Form 2550Q-April 2002 (ENCS)) hereto attached as Annex "A". The term "taxable quarter" shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (i.e., calendar quarter or fiscal quarter).
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> ... ...
>
> B) *Payment of VAT.* — ...
>
> ... ...
>
> **Taxpayers filing via EFPS shall comply with the provisions of RR 9-2001, as amended by RR 2-2002. ... .** (*Emphasis supplied*)

RR No. 9-2001, as amended by RR No. 2-2002:

SEC 6. *Time and Place of Payment.* – A provision is hereby added as last paragraph of Section 8 of RR 9-2001, as follows:

... ...

"The provision of the foregoing paragraphs notwithstanding, **the filing of the return ahead of the payment of the tax due thereon is still in accordance with the "pay-as-you-file" principle as long as the payment of the tax is made on or before the due date** of the applicable tax." (*Emphasis supplied*)

RMO No. 5-2002

... ...

> G. Taxpayers who shall file their returns through EFPS may pay the taxes due thereon either manually or electronically. **Following the "pay as you file" principle, payment of taxes shall be made within the banking hours of the day the return was electronically filed** in case of manual payment, or **within the day of e-filing** in case of electronic payment. However, **no penalties shall be imposed for taxpayers who e-filed earlier *and* paid at a later date but *on or before* the due date for the applicable tax**. ... (*Emphasis supplied*)

From the foregoing, every person liable to pay quarterly VAT shall file the VAT return *and* pay the net VAT within twenty-five (25) days following the close of the taxable quarter.

Further, a taxpayer filing through the e-FPS, such as respondent, may pay the tax due either manually or electronically following the "pay-as-you-file" principle. The electronic filing of the return *ahead* of the payment of the tax due is still in accordance with the **"pay-as-you-file"** principle, and no penalties shall be imposed for taxpayers who e-filed earlier *and* paid later but **on** or **before the due date** of the applicable tax.

It logically follows, therefore, that if the applicable tax is paid *after* the due date, the corresponding penalties shall be imposed.

Here, respondent's quarterly VAT return for the 4th quarter of 2013 was due for filing *and* payment on or before January 25, 2014. Considering that January 25, 2014, fell on a Saturday, it had until the next working day or on January 27, 2014 (Monday) to file *and* pay the said return. Respondent filed the return, through e-FPS, on January 24, 2014 (Friday), or three (3) days before the deadline, but paid the ₱5,995,709.68 VAT, also through e-FPS, on January 28, 2014 (Tuesday), or one (1) day after the deadline. Consequently, the payment was considered *one-day late*.[68] Thus, petitioner sought to collect from respondent the amount of ₱1,552,212.62 with the following breakdown:

Surcharge (25%)	₱1,498,927.42
Interest (1/27/2014-1/28/2014)	3,285.20
Compromise Penalty	50,000.00
Total	**₱1,552,212.62**

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[68] Par. 7, Summary of Admitted Facts, JSFI, Division Docket – Vol. 1, p. 241; Refer also to Par. 8, Petition for Review, Division Docket – Vol. 1, p. 14, vis-à-vis Par. 3, Answer with Motion to Dismiss, Division Docket – Vol. 1, p. 68.

Considering the express provisions of Section 114 and its implementing rules, even if respondent filed its 2013 4th quarterly VAT on January 24, 2014, which is ahead of the January 27, 2014 deadline, it is still liable to pay the late payment penalties because it paid the VAT on January 28, 2014, which is one (1) day after its due date.

Respondent argues, however, that a surcharge may be imposed only on failure to file a return *and* pay the tax under Section 248(A)(1)[69] of the 1997 NIRC, as amended. Respondent further avers that following the "pay-as-you-file" system, for the surcharge under Section 248(A)(1) to apply, the taxpayer should have failed to both file a return *and* pay the tax. Since it was able to file its quarterly VAT Return on time although the VAT due was *paid late*, the imposition of a surcharge for its late payment is unjustified.

We disagree.

To reiterate, Section 114 of the Tax Code specifically provides that the filing of return *and* payment of VAT must be done on or before the 25th day following the close of the taxable quarter. The filing of the return ahead of the payment of the tax due is still in accordance with the "pay-as-you-file" principle if the payment of the tax is made on or before the due date of the applicable tax, or VAT as in this case.[70]

Following the reasoning of respondent, taxpayers may defer the payment of their taxes *even after their due dates*, if they are able to file their returns on time. This distorted maneuver is not what the law and regulations provide.

To adopt respondent's view is to give an illogical interpretation of the "pay-as-you-file" principle, resulting in absurdity. The said principle is very simple: taxpayers' timely filing of return must also be accompanied by a timely payment of the tax due; otherwise, they shall be meted civil penalties.[71]

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[69] SEC. 248. *Civil Penalties*. –

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

> (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or ...

[70] Section 6, RR No. 9-2001, as amended by RR No. 2-2002.

[71] Sections 248, 249, 1997 NIRC, as amended.

The Court cannot countenance an incomplete reading of Section 248 of the 1997 NIRC, as amended, to improperly benefit respondent. In fact, a holistic appreciation of the said section belies respondent's contention. Respondent's late payment of VAT squarely falls under Section 248(A)(4) thereof,[72] and not under Section 248(A)(1). Section 248(A)(4) imposes a civil penalty upon respondent's failure to pay the full amount of the VAT due as shown in its 4th quarterly VAT return of 2013 on or before the deadline.

The Court emphasizes that while the filing *and* payment of taxes may not be simultaneous, *both must be done on or before the statutory deadline.*[73] Consequently, there is no legal impediment for petitioner to declare respondent's VAT payment as "late". Hence, the corresponding civil penalties must be imposed against respondent.

Having established that respondent is liable for the "one-day late payment" penalties, consisting of surcharge and interest, We shall proceed to determine whether petitioner may assess and collect the amount of ₱1,552,212.62, without a prior LOA and a PAN.

The imposition of late payment surcharge and interest is mandatory and automatic; hence, Assessment Notice No. 122-0159-14 is valid even if issued and served without an LOA and a PAN.

After a judicious examination of the records, the arguments of both parties, and the applicable law and jurisprudence, the Court *En Banc* finds that the imposition of the 25% surcharge and 20% interest is in accord with the law

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[72] SEC. 248. *Civil Penalties.* –
(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

...

(4) **Failure to pay the full** or part of the **amount of tax shown on any return required to be filed** under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, **on or before the date prescribed for its payment.** *(Emphasis supplied)*

[73] RR No. 2-2002, SEC. 8. TIME AND PLACE OF PAYMENT – ...
The provisions of the foregoing paragraphs notwithstanding, **the filing of the return ahead of the payment of the tax due thereon is still in accordance with the "pay-as-you-file" principle as long as the payment of the tax is made on or before the due date of the applicable tax.** (*Emphasis supplied*)

and jurisprudence, even without the prior issuance of LOA and PAN.

An LOA is the authority given to the designated revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct *internal revenue liabilities*[74] and for the purpose of collecting the correct amount of *tax*,[75] in accordance with Section 5 of the Tax Code, which gives the CIR the power to obtain information, to summon/examine, and take testimony of persons.[76] The LOA commences the audit process and informs the taxpayer that it is under *audit* for possible *deficiency tax assessment.*[77]

In the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[78] the Supreme Court clarified that the audit process normally commences with the issuance by the CIR of an LOA to the concerned taxpayer. At the same time, the LOA authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books of accounts and other accounting records, in relation to internal revenue tax liabilities for a particular period.[79]

Given the purposes of an LOA, there is no basis for its issuance in this case; hence, the late payment assessment issued against respondent must stand.

The cases of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,*[80] *Commissioner of Internal Revenue v. Sony Philippines, Inc.,*[81] *Commissioner of Internal Revenue v.*

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[74] Revenue Audit Memorandum Order No. 2-95, Updated Handbook on Audit Procedures and Techniques, October 18, 1995.

[75] SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -*

(A) Examination of Returns and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may **authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. ... (*Emphasis supplied*)

SEC. 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax**, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (*Emphasis supplied*)

[76] *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. No. 196596, November 9, 2016.

[77] *Id.*

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

[79] Revenue Audit Memorandum Order No. 2-95, Updated Handbook on Audit Procedures and Techniques, October 18, 1995.

[80] G.R. No. 222743, April 5, 2017.

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

McDonald's Philippines Realty Corp.,[82] and other jurisprudence prescribing the need for an LOA presuppose a *deficiency tax assessment* or a *deficiency tax liability* that is determined after a tax audit and investigation. Said cases are doctrinal in that the assessment for all internal revenue taxes, resulting from the audit investigation/examination undertaken on taxpayers' books of accounts and other accounting records, would be void if it did not arise from a valid LOA that empowers and authorizes the revenue officers to proceed with the audit or investigation.

This case, however, is markedly different from *Medicard*, *Sony*, and *McDonald's* cases. Here, the circumstances prevailing in the above-cited cases are not at all present in this case. Strictly speaking, there was neither a showing that deficiency taxes *per se*[83] were being assessed and collected from respondent, nor was there any proof that a tax audit/investigation on respondent's books was made to be able to arrive at the amount of late payment penalties. Hence, no violation of due process occurred considering that only civil penalties for late payment were assessed and collected from respondent, which was determined from the fact of respondent's late payment as shown in the BIR's electronic system, and not through respondent's books of accounts.

On the other hand, a PAN is issued to the taxpayer informing him of the findings of the revenue officer if, after review and evaluation of taxpayer's records, there is sufficient basis to assess the taxpayer for any deficiency taxes. Again, since respondent's books were not reviewed nor evaluated for any tax deficiency, a PAN is likewise not required.

Since this case involves self-assessed VAT, which is assessed or computed by respondent, the Supreme Court explained that "no further assessment by the government is required to create the tax liability."[84] Hence, a self-assessed tax

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[82] G.R. No. 242670, May 10, 2021.

[83] In *Commissioner of Internal Revenue v. Vda. De Prieto* (G.R. No. L-13912, September 30, 1960), the Supreme Court citing Mertens, held that penalties are to be distinguished from taxes and must be differentiated in this manner as explained in *Anderson v. Posadas, Jr., Collector of Internal Revenue* (G.R. No. 44100, September 22, 1938):

> It appears, therefore, that in the opinion of the writer Black and of the Department of Finance, **fines imposed for violation of law cannot be considered taxes paid to the Government**, which should be deducted from income subject to the payment of income tax. The **tax** under consideration is **levied on <u>income</u>, while the fine is paid as <u>penalty for violation</u> of the Internal Revenue Law.**
>
> The **fine,** therefore, **<u>cannot</u> be considered a tax, inasmuch as it is <u>not</u> levied on income. In providing that the fine should be added to the tax and collected at the same time and as a part thereof, the law had for its purpose merely to *<u>facilitate</u>* <u>the collection</u>** of the **fine or surcharge.** *(Emphasis supplied)*

[84] *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999, citing Vitug and Acosta, Tax Law and Jurisprudence, 1st Edition, 1997, p. 267; *Philippine National Oil Co. v. Court of Appeals*, G.R. Nos. 109976 & 112800, April 26, 2005.

falls due without need of any prior assessment by the BIR, and non-payment of a self-assessed tax on the date prescribed by law results in *penalties* even in the absence of any assessment by the BIR.[85]

The imposition and collection of civil penalties, as additions to the tax, is mandated under Sections 247(a), 248 (A), and 249 of the 1997 NIRC, as amended, *viz.*:

> SEC. 247. *General Provision.* –
>
> (a) The **additions to the tax** or deficiency tax prescribed in this Chapter **shall apply to all taxes, fees, and charges** imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner, and as part of the tax. ... (*Emphasis supplied*)
>
> SEC. 248. *Civil Penalties.* –
>
> (A) There shall be imposed, **in addition to the tax required to be paid**, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
>
> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> (4) **Failure to pay the full** or part of the **amount of tax shown on any return required to be filed** under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, **on or before the date prescribed for its payment.** *(Emphasis supplied)*
>
> SEC. 249. *Interest.* -
>
> (A) *In General.* - There shall be **assessed** and **collected on any unpaid amount of tax**, interest at the rate of twenty percent (20%) per annum,[86] or such higher rate as may be prescribed

[85] *Philippine National Oil Co. v. Court of Appeals*, G.R. Nos. 109976 & 112800, April 26, 2005.
[86] Republic Act No. 10963 (or the TRAIN Law) amends the rate of interest from a fixed rate of 20% per annum to a rate which is double the legal interest for loans, in the absence of an express stipulations set by the Bangko Sentral ng Pilipinas.

> by rules and regulations, **from the <u>date</u> prescribed for <u>payment</u> until the amount is <u>fully paid</u>**.
>
> ... ...
>
> (C) *Delinquency Interest.* - In case of **failure to <u>pay</u>**:
>
> (1) **The <u>amount of the tax due on any return</u> to be <u>filed</u>**, or
>
> (2) The amount of the tax due for which no return is required, or
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. (*Emphasis supplied*)

Section 247 considers surcharge and interest as *additions to the tax,* and the proviso that they shall be collected at the same time, in the same manner, and as part of the tax is merely to *facilitate* their collection.[87]

Section 248 (A), as implemented by RR No. 12-99,[88] dictates the imposition of surcharge in cases specifically enumerated therein. Section 248(A)(4), which is applicable to respondent, imposes the surcharge upon taxpayer's failure to *pay* the *full amount of tax shown* on any *return filed, on* or *before* the date prescribed for its payment.

On the other hand, Section 249 governs the assessment and collection of interest from the date prescribed for payment until the amount is fully paid. Specifically, Section 249 (C)(1) applies to respondent, which states that delinquency interest

[87] *Anderson v. Posadas, Jr., Collector of Internal Revenue,* G.R. No. 44100, September 22, 1938: "...In providing that the fine should be added to the tax and collected at the same time and as a part thereof, the law had for its purpose merely to *facilitate* the collection of the fine or surcharge."
[88] RR No. 12-99. SEC. 4. *Civil Penalties.* —
4.1 Twenty-Five Percent (25%) Surcharge. — There shall be imposed, in addition to the basic tax required to be paid, a penalty equivalent to twenty-five percent (25%) thereof, in any of the following cases:
4.1.1 Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
4.1.2 Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
4.1.3 Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
4.1.4 Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

shall accrue on any unpaid amount of tax due appearing on the filed return from the payment deadline until full payment.

A fundamental rule of statutory construction is that "where the terms of the statute are clear and unambiguous, no interpretation is called for, and the law is applied as written, for *application* is the *first* duty of courts, and interpretation [arises] only where literal application is impossible or inadequate."[89]

The law is clear. The imposition of the 25% surcharge and the 20% interest is **mandatory**[90] and **automatic**[91] in case of late payment of taxes due as shown on the filed return. Sections 247, 248 (A)(4) and 249(C)(1) do not require an LOA nor a PAN before the surcharge and the interest can be imposed and collected. Besides, had the law intended that an LOA/PAN is required under Sections 248 (A)(4) and 249(C)(1) before the assessment and collection of civil penalties, it must have stated a "notice" as found in Sections 248 A(3) and 249 (C)(3), which speaks of a notice of assessment in the case of "deficiency" taxes made known after audit/investigation.

The Supreme Court highlighted the mandatory nature to collect penalty and interest at the prescribed rate in case of late payment of taxes because strong reasons of policy support a strict observance of the rule regarding the payment of tax.[92] The laws imposing penalties for delinquencies are intended to hasten tax payments or punish evasions or neglect of duty in respect thereof.[93]

For the validity of the collection of late payment surcharge and interest to be made contingent upon the existence of an LOA would serve no practical purpose, since an LOA is issued to notify taxpayers that their books and accounting records shall be audited/investigated in order to determine their possible tax deficiency. There is no tax deficiency in this case nor were respondent's books and records examined to arrive at the civil penalties.

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[89] *Thunderbird Pilipinas Hotels and Resorts, Inc., v. Commissioner of Internal Revenue*, G.R. No. 211327, November 11, 2020, citing *CIR v. Limpan Investment Corporation and the Court of Tax Appeals*, G.R. Nos. L-28571 and L-28644, July 31, 1970.
[90] *CIR v. Limpan Investment Corporation and the Court of Tax Appeals*, G.R. Nos. L-28571 and L-28644, July 31, 1970.
[91] *Republic v. Lim Tian Teng Sons and Co., Inc.*, G.R. No. L-21731, March 31, 1966; *Republic v. Luzon Industrial Corporation and Manila Surety & Fidelity Co., Inc.*, G.R. No. L-7992, October 30, 1957; *Lim Co Chui v. Juan Posadas*, G.R. No. 23487, February 11, 1925.
[92] *Aguinaldo Industries Corporation (Fishing Nets Divisions) v. CIR and the CTA*, G.R. No. L-29790, February 25, 1982, citing *Jamora v. Meer*, G.R. No. L-48129, November 11, 1942.
[93] *Id.*

The Court cannot afford to always blindly construe the issuance of an LOA as imperative, especially if the purpose of the same would be rendered useless in cases where neither an audit/investigation nor a deficiency tax assessment is involved.

To accept respondent's stance that the collection of surcharge and interest for its late payment should be voided in the absence of an LOA would give rise to a dangerous precedent in that taxpayers would be given an unbridled opening to question or invalidate their late payment penalties, on the sheer basis that there was no LOA issued against them, even if it is wholly unnecessary for the purpose of determining their civil penalties. The Court cannot tolerate this. Otherwise, the purpose of the LOA as embodied in the Tax Code would be meaningless surplusage.

The Court also notes that respondent had knowledge of its non-payment of the 4th quarterly VAT for 2013 on or before the deadline for payment as testified to by its witness Mr. Rosseni De Leon, its Accounting and Corporate Affairs Manager:

> 23: Q: You mentioned earlier that this assessment came about for the alleged late payment of the quarterly VAT for the 4th quarter of 2013. What are the circumstances surrounding your filing of your company's 2013 4th quarter VAT returns?
>
> A: **Our quarterly VAT for the 4th quarter of 2013 was supposed to be filed on or before January 25, 2014**. January 25, 2014 falls on a Saturday, so we filed our quarterly VAT return, using BIR Form 2550Q, on January 24, 2014, Friday.
>
> Upon review of the filed Form 2550Q the following Monday, January 27, we noticed that there was an error in the total sales figure. ...
>
> ... ...
>
> 26: Q: And how do you know these to be the documents demonstrating the fact of filing and payment of subject quarterly VAT?
>
> A: Because I was the one who ordered the filing and payment of subject quarterly VAT.
>
> 27: Q: To clarify the fact of filing and payment of your 4th quarter 2013 VAT, **did you make a payment when you filed the original quarterly VAT return on Thursday, January 24, 2014?**

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A: **No, we did not make any payment. We simply filed the return.**[94] (*Emphasis supplied*)

This shows respondent's deliberate omission in not paying the VAT as shown in its 4th quarterly VAT return as soon as it was filed on January 24, 2014. Respondent also failed to give any meritorious reason to defer the lawful payment of the VAT as shown in its return on or before the deadline.

Taxpayers' non-payment or late payment of their self-assessed taxes after the filing of tax returns and skirting their legal obligation to pay the corresponding civil penalties in the hope that the burden may be passed on to the Government due to its alleged "lack" of prior notice through an LOA, is not the intention of the law. The mere filing of a tax return without any corresponding payment within the due date would be good as filing a mere scrap of paper. No amount of LOA or PAN would be able to rectify this.

In *Republic v. Lim Tian Teng Sons and Co., Inc.*,[95] the Supreme Court underscored the **mandatory** and **automatic** imposition of civil penalties and interest once the tax is not paid on time,[96] *viz.*:

> We now come to the appeal of the Government. It maintains that the lower court erred in not imposing on defendant's tax liability a surcharge of 5% for late payment. Subsection (c), Section 51 of the Tax Code states:
>
> > SEC. 51. Assessment and payment of income tax. —
> >
> > ... ...
> >
> > (c) **Surcharge** and **interest** in case of **delinquency**. - To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum a month upon said tax from the time the same became due . . . .
>
> As may be gleaned from the above-quoted provision, the 5% **surcharge is <u>mandatory and automatically due,</u> once the tax is not paid on time**. "Shall" is the word that law uses a

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[94] Division Docket – Vol. 1, Sworn Statement of Rosseni De Leon (In Lieu of Direct Testimony), Exhibit "P-16", pp. 397-399.
[95] G.R. No. L-21731, March 31, 1966.
[96] *Republic v. Lim Tian Teng Sons and Co., Inc.*, G.R. No. L-21731, March 31, 1966; *Republic v. Luzon Industrial Corporation and Manila Surety & Fidelity Co., Inc.*, G.R. No. L-7992, October 30, 1957; *Lim Co Chui v. Juan Posadas*, G.R. No. L-23487, February 11, 1925.

word normally imperative and a "language of demand". Applicable herein is what has been said of a similar provision — the present Section 183 of the Tax Code — stating that:

> If the percentage tax on any business is not paid within the time prescribed above the amount of the tax shall be increased by twenty-five per centum, the increment to be part of the tax.

Said this Court in *Lim Co Chui vs. Posadas*:

> This provision is **mandatory**. It provides a plan which works out **automatically**. **It confers no discretion on the Collector of Internal Revenue**. That official may not disregard the law and substitute therefor his own personal judgment. *(Emphasis supplied)*

It is long ingrained in our law and jurisprudence that civil penalties automatically accrue the moment a taxpayer failed to pay its taxes on time.[97] Thus, the provision imposing surcharge and interest confers no discretion on the CIR[98] and "no room is left for the exercise of purely personal discretion" on the part of the revenue officials.[99] If the imposition and collection of surcharge and interest were made to depend on the superfluous issuance of an LOA and PAN, then it would set at naught the purpose of the law establishing definite dates for the payment of various taxes.[100]

Indeed, the intention of the law is precisely to discourage *delay* in the payment of taxes due to the State and, in this sense, the imposition of a surcharge is not penal but compensatory in nature — it is compensation to the State for the delay in payment, or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State.[101]

Respondent electronically paid the basic amount of VAT, although late, on January 28, 2014. It failed to pay the late payment penalties consisting of 25% surcharge and 20% interest which should have been settled at the time it paid the

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[97] *Id.*
[98] *Republic v. Lim Tian Teng Sons and Co., Inc.*, G.R. No. L-21731, March 31, 1966, citing *Lim Co Chui vs. Posadas*, G.R. No. L-23487, February 11, 1925; reiterated in *Republic v. Luzon Industrial Corporation and Manila Surety & Fidelity Co., Inc.*, G.R. No. L-7992, October 30, 1957.
[99] *CIR v. Abad*, G.R. No. L-19627, June 27, 1968, citing *Acoje Mining Co. v. CIR*, G.R. No. L-19378, March 27, 1968.
[100] See *CIR v. Abad*, G.R. No. L-19627, June 27, 1968.
[101] *Thunderbird Pilipinas Hotels and Resorts, Inc., v. Commissioner of Internal Revenue*, G.R. No. 211327, November 11, 2020; *Philippine Refining Co. v. Court of Appeals*, G.R. No. 118794, May 8, 1996; *Commissioner of Internal Revenue v. Royal Interocean Lines and the CTA*, L-26806, July 30, 1970.

basic tax on January 28, 2014, pursuant to Sections 247 to 249 above.[102]

Hence, petitioner issued Assessment Notice No. 122-0159-14 on August 11, 2014 to inform and demand from respondent the settlement of ₱1,552,212.62 due to the late payment of its 4th quarterly VAT for the year 2013.

The imposition of the said late payment penalties without LOA and PAN and the subsequent issuance of the subject Assessment Notice, which is akin to a "Collection Notice," find basis in RMO No. 4-2009:[103]

> Based on existing EFPS rules and regulations, EFPS taxpayers are mandated to use the e-file and e-payment facility of the Bureau in the filing of their tax returns and payment of the taxes due thereon.
>
> Data culled from the ITS-Returns Processing System (RPS), however, reveals that **a growing number of e-filed tax returns by these taxpayers have not been accompanied with the corresponding e-payment for the taxes due per the e-filed tax returns.** Since these *delinquent taxes* constitute part of the accounts receivable of the Bureau, it is therefore necessary that **enforcement measures be employed in order to *collect* the taxes due at the earliest possible time**.
>
> In view thereof, all Revenue District Offices, LTDOs, LTS Offices are hereby directed to immediately review and check if the necessary payments have been made on the e-filed tax returns by all EFPS taxpayers. **After validation that <u>no</u> payments were actually made either manually or through the e-payment facility, you are to issue and serve immediately the corresponding <u>Collection Notices</u> to enforce the collection of the basic taxes due thereon <u>including the penalties imposed for the failure to pay the amount of tax due as appearing on the tax returns</u>.** In the

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[102] *See also* BIR Form No. 2550Q - Quarterly Value-Added Tax Return Guidelines and Instructions, https://efps.bir.gov.ph/efps-war/EFPSWeb_war/help/help2550q2006.html
Penalties
There shall be imposed and collected as part of the tax:
1. A **surcharge of** twenty five percent (**25%**) for each of the following violations:
a. Failure to file any return and pay the amount of tax or installment due on or before the due date;
b. Unless otherwise authorized by the Commissioner, filing a return with a person or office other than those with whom it is required to be filed;
c. **Failure to pay the full** or part of **the amount of tax shown on the return**, or the full amount of tax due for which no return is **required to be filed on or before the due date**;
d. Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment.
2. ...
3. **Interest at** the rate of twenty percent (**20%**) **per annum on any unpaid amount of tax, from the date prescribed for the payment until the amount is fully paid.**
4. **Compromise penalty.**

[103] Directive to Intensify Collection of Taxes Not Paid by EFPS Taxpayers Due on the E-filed Tax Returns, January 29, 2009.

> imposition of surcharge for late payment, the 50% rate shall be applied to those EFPS taxpayers whose periodically e-filed tax returns have consistently not been covered by any tax payment.
>
> ...
>
> All concerned revenue officials are hereby enjoined to strictly comply with this directive. (*Emphasis supplied*)

The above RMO, therefore, authorizes the issuance of a Collection Notice, even in the absence of an LOA or a PAN, after validation that *no* payments have been made on the e-filed returns by e-FPS taxpayers like respondent.

Finally, the Court finds the recent case of *Qatar Airways Company with Limited Liability v. CIR*[104] *(Qatar Airways)*, where the factual circumstances bear some striking resemblance to this case, highly instructive.

There, the Supreme Court upheld the imposition of surcharge due to one-day late filing and payment of return even if the Assessment Notice therein was issued without an LOA and a PAN.

In *Qatar Airways*, Qatar Airways Company (QAC) e-filed its 2nd Quarterly Income Tax Return (ITR) for the Fiscal Year ending March 31, 2012, and e-paid the corresponding tax through the e-FPS one day after the deadline; hence, the 2nd Quarterly ITR is considered *one-day late*, on which 25% surcharge, interest, and compromise penalties were imposed. Like the instant case, QAC was issued an Assessment Notice seeking to collect from it a 25% surcharge, 20% interest, and compromise penalty for the late filing and payment of its quarterly return. Notably, the Assessment Notice was issued without a prior LOA and a PAN.[105] Recognizing that it incurred a one-day delay, QAC sent a letter to the CIR requesting for the abatement of surcharge.[106] But the request was likewise denied.

In upholding the imposition of surcharge against QAC, the Supreme Court held:

> ... Undeniably, a technical malfunction is not a situation too bleak so as to render petitioner completely

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[104] G.R. No. 238914, June 8, 2020.
[105] CTA Case No. 8816, Docket, Petition for Review, p. 16; JSFI, p. 253; Memorandum (for [QAC]), pars. 12-14, pp. 332-333.
[106] CTA Case No. 8816, Docket, Memorandum (for [QAC]), par. 12, p. 332.

> without recourse. As correctly observed by the CTA, **petitioner would not incur delay in the filing of its ITR if only it filed the same before the deadline and not at the 11th hour or on the last day of filing**. On petitioner's averment that it had difficulty in interpreting the correct Gross Philippine Billings Computation for income tax under the then newly-issued RR No. 11-2011, the CTA aptly stated that:
>
>> To avoid delay, petitioner could file a tentative quarterly income tax return if it was still unsure with the figures contained therein to avoid paying the [25%] surcharge for late filing. Thereafter, it could modify, change, or amend the tentative return already filed if warranted, pursuant to Section 6(A) of the 1997 NIRC.
>
> Further, the Court agrees that **the surcharge imposed upon petitioner was not unjust or excessive pursuant to Section 248(A)(1) of the 1997 NIRC which provides for the imposition of a penalty equivalent to 25% of the amount due for failure to timely file any return and pay the tax due thereon**. *Dura lex sed lex.* While the Court commiserates with the unfortunate plight of petitioner, the Court, like the CTA, is still bound to apply and give effect to the applicable law and rules. (*Emphasis supplied; citations omitted*)

Based on the foregoing legal and jurisprudential pronouncements, the issuance of the Assessment Notice No. 122-0159-14, assessing respondent of the 25% surcharge, 20% interest, and compromise penalty in the amount of ₱1,552,212.62, without an LOA and PAN, did not violate its right to due process.

Accordingly, We find the imposition of the 25% surcharge and 20% interest on respondent to be proper and the Assessment Notice to be valid, insofar as the surcharge and interest are concerned, even if its issuance was not preceded by an LOA and a PAN.

However, the CIR may abate the surcharge under meritorious circumstances – here, there is none.

Petitioner's imposition of surcharge and interest are not unjust or excessive; hence, cannot be abated.

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Respondent insists that the surcharge sought to be imposed is excessive and unjustly assessed, thereby justifying its abatement.[107]

We disagree.

Under Section 204 (B) of the 1997 NIRC, as amended, the CIR may abate or cancel a tax liability in two (2) cases, *viz.*:

> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or
>
> (2) The administration and collection costs involved do not justify the collection of the amount due.

Records reveal that respondent's failure to pay on time was due to the last-minute revision of the original 4th quarterly VAT Return. Respondent admitted that it only reviewed the said VAT return *after* it was filed, specifically, on the day of the deadline, or on January 27, 2014 (Monday).[108] Instead of paying the VAT payable as declared in the original return, respondent filed an amended return and paid ₱5,995,709.68 as against the original return's ₱5,977,112.34,[109] on January 28, 2014 (Tuesday). As such, its payment was considered as one-day late.

We find respondent's justification for paying late without merit. The grounds[110] relied upon by respondent in requesting the abatement do not fall under "meritorious circumstances" or "circumstances beyond control" when penalties and/or interest imposed may be abated or cancelled for being unjust or excessive.[111] Respondent's discovery of the error on the filed quarterly VAT return on the January 27, 2014 deadline does not justify its delayed payment nor does it sufficiently explain why respondent took no positive action to cause the immediate payment of the quarterly VAT on or before said date. In order to avoid the surcharge and interest, respondent could have paid its quarterly VAT due on January 27, 2014, and paid the ₱18,597.34[112] difference when it filed its amended quarterly VAT return on January 28, 2014.

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[107] Petition for Review, Division Docket – Vol. I, p. 18; Memorandum, Division Docket – Vol. I, pp. 497-498.
[108] Petition for Review, Docket – Vol. I, par. 23, p. 18.
[109] Exhibit "P-5", Letter dated October 5, 2014, Division Docket – Vol. I, pp. 350 to 353.
[110] Petition for Review, Division Docket – Vol. I, par. 23, p. 18; Exhibit "P-5", Letter dated October 5, 2014, Division Docket – Vol. I, pp. 350 to 353.
[111] RR 4-2012, Amending RR 13-2001, Regarding Abatement or Cancellation of Internal Revenue Tax Liabilities, March 28, 2012.
[112] ₱5,995,709.68 (quarterly VAT due as per amended return filed on January 28, 2014) - ₱5,977,112.34 (quarterly VAT due as per original return filed on January 24, 2014).

Besides, the review made by respondent on the date of the deadline itself, which led to the discovery of the error, is an event that could not be considered unavoidable or unforeseen that places the timely payment of its quarterly VAT beyond its control. No plausible explanation was advanced by respondent as to why its payment was made only after four (4) days from the filing of its quarterly VAT return. The explanation given by respondent was to justify the *filing* of its amended 4th quarterly VAT return but not the *late payment* of its 4th quarterly VAT.

To add, respondent was not given the usual twenty-five (25) days but a period of twenty-seven (27) days following the end of the quarter to file and pay its 4th quarterly VAT return, since the 25th day following the close of the said taxable quarter fell on a Saturday. Respondent was able to file early but chose to pay late when it could have paid the VAT at the time of filing of the return on January 24, 2014, or even on January 27, 2014, following the "pay-as-you-file" principle.

Further, the imposition of the late payment surcharge amounting to ₱1,498,927.42 may be harsh but surely not unjust or excessive for it is a mandate under Section 248 (A)(4) of the 1997 NIRC, as amended, that the Court must observe.

We are not unmindful of several cases where the Supreme Court deleted the imposition of surcharges and interests because of taxpayer's good faith and the BIR's previous erroneous interpretations of the law.[113] Those grounds, however, are not present here.

Hence, absent any showing of circumstances beyond respondent's control that would excuse its late payment, respondent is liable to pay the 25% surcharge and 20% interest for the late payment of its quarterly VAT for the 4th quarter of 2013.

Respondent is not liable to pay compromise penalty.

Despite the validity of the imposition of surcharge and interest against respondent, it cannot be liable to pay compromise penalty since a compromise, by its nature, is mutual in essence.[114]

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[113] *Thunderbird Pilipinas Hotels and Resorts, Inc., v. Commissioner of Internal Revenue*, G.R. No. 211327, November 11, 2020.

[114] *Vda. De San Agustin v. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

In *Wonder Mechanical Engineering Corporation v. The Court of Tax Appeals, et al.,*[115] the Supreme Court ruled that a "compromise penalty cannot be imposed without an agreement or conformity of a taxpayer." In fact, the imposition of compromise penalties without the conformity of the taxpayer is considered illegal and unauthorized.[116]

Respondent's offer to pay the interest and compromise penalty assessed against it in lieu of the abatement of surcharge[117] in the administrative proceedings was effectively abandoned when it filed the Petition for Review before the Court in Division questioning not only the imposition of the surcharge and interest, but also the compromise penalty. In the absence of proof that respondent expressly consented to the collection or payment of compromise penalty thereafter, there would be no basis for the imposition of compromise penalty in the instant case. Accordingly, the amount of ₱50,000.00 representing payment of compromise penalty must be refunded.

The issuance of the Warrant of Garnishment to enforce the collection of surcharge and interest is proper.

Finding Assessment Notice No. 122-0159-14 to be valid, insofar as the imposition of surcharge and interest is concerned, We likewise rule that the issuance of a Warrant of Garnishment to enforce the collection of the same, in the amounts of ₱1,498,9927.42 and ₱3,285.20, respectively, is proper and not violative of respondent's right to due process.

Section 205 of the 1997 NIRC, as amended, authorizes the BIR to pursue civil remedies for the collection of delinquent taxes, and Section 207 specifies the summary remedies for said purpose, to wit:

> SEC. 205. *Remedies for the Collection of Delinquent Taxes.* - The **civil remedies for the collection of** internal revenue taxes, **fees or charges, and any increment thereto resulting from delinquency** shall be:

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[115] G.R. Nos. L-22805 & L-27858, June 30, 1975.
[116] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc. and the CTA*, G.R. No. L-35266, January 21, 1991.
[117] Protest to the Assessment Notice dated October 5, 2014, Exhibit "P-5", Division Docket – Vol. 1, p. 350; Appeal on Assessment Notice dated June 3, 2015; Exhibit "P-7", Division Docket – Vol. 1, p. 362.

> (a) By **distraint of goods, chattels, or effects, and other personal property** of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and ...
>
> SEC. 207. *Summary Remedies.* -
>
> (A) Distraint of Personal Property. - **Upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same at the time required**, the Commissioner or his duly authorized representative, if the amount involved is in excess of One million pesos (₱1,000,000), or the Revenue District Officer, if the amount involved is One million pesos (₱1,000,000) or less, **shall seize and distraint any goods, chattels or effects, and the personal property,** including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property **of such persons**; in sufficient quantity **to satisfy the tax, or charge, together with any increment thereto incident to delinquency**, and the expenses of the distraint and the cost of the subsequent sale. ... (*Emphasis supplied*)

A delinquent account refers to the amount of tax due from a taxpayer who failed to pay the same within the time prescribed for its payment, that arises from (1) a self-assessed tax, whether or not a tax return was filed, or (2) a deficiency assessment issued by the BIR which has become final and executory.[118]

Internal revenue taxes are self-assessing and no further assessment by the BIR is required to create the tax liability[119] where the taxpayer merely filed its tax return showing an amount of tax due, without paying the same or paying only a portion thereof. In such a case, the taxpayer is considered as delinquent with respect to the unpaid amount of tax after the due date.

Here, it is undisputed that respondent paid the 4th Quarter VAT one day after the deadline on January 28, 2014, but it did not pay the corresponding surcharge and interest. Under Section 247 of the Tax Code, respondent was supposed to settle the increments or additions to tax, *i.e.*, surcharge and interest, at the time it settled and paid the basic amount of VAT. Hence, it is considered delinquent with respect to the unpaid surcharge

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[118] *Philippine National Oil Co. v. Court of Appeals*, G.R. Nos. 109976 & 112800, April 26, 2005.
[119] *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999.

and interest, and the collection of the same through garnishment is warranted.

Moreover, RMO No. 4-2009[120] directs the issuance of a Warrant of Garnishment should e-FPS taxpayers like respondent fail to pay the *total* delinquent taxes due, *viz.*:

> **Should these EFPS taxpayers fail to pay the total delinquent taxes due within the period prescribed in the Notice/s sent, you are hereby likewise directed to fully utilize the summary remedies** provided for under Sections 205, 206, and 207 of the 1997 National Internal Revenue Code, as amended, such as the issuance and service of the Warrant of Distraint/Levy and/or Garnishment to be signed and approved by the concerned BIR Official based on existing Revenue Delegation Authority Orders (RDAOs). (*Emphasis supplied*)

The Court has jurisdiction to hear respondent's claim for refund.

Petitioner argues that the Court has no jurisdiction to decide over the case for respondent's failure to comply with the jurisdictional requirements under Sections 204 (C) and 229 of the 1997 NIRC, as amended, in its claim for refund; thereby, failing to exhaust administrative remedies.

As aptly cited by the Court in Division, the Supreme Court in *Vda. De San Agustin v. CIR*[121] allowed the refund case to prosper even without a prior administrative claim, and reiterated therein its ruling in *Roman Catholic Archbishop of Cebu v. CIR*,[122] which held:

> We agree with petitioner that Section 7 of Republic Act No. 1125, creating the Court of Tax Appeals, in providing for appeals from —
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>> (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue —

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[120] Directive to Intensify Collection of Taxes Not Paid by EFPS Taxpayers Due on the E-filed Tax Returns, January 9, 2009.
[121] G.R. No. 138485, September 10, 2001.
[122] G.R. No. L-16683, January 31, 1962.

> allows an appeal from a decision of the Collector in cases involving 'disputed assessments' as distinguished from cases involving 'refunds of internal revenue taxes, fees or other charges, xxx'; that the present action involves a disputed assessment'; because from the time petitioner received assessment nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court *a quo*, only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. **To hold that the taxpayer has now lost the right to appeal from the ruling on the disputed assessment but must prosecute his appeal under Section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment.** The law should not be interpreted as to result in absurdities.
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> The Court sees no cogent reason to abandon the above *dictum* and to require a useless formality that can serve the interest of neither the government nor the taxpayer. The tax court has aptly acted in taking cognizance of the taxpayer's appeal to it. (*Emphasis supplied*)

Hence, petitioner is mistaken in citing the doctrine of exhaustion of administrative remedies. Said doctrine is not absolute and recognizes certain exceptions, including, among others, when the requirement thereof would be unreasonable.[123] As pointed out by the Court in Division, the filing of an administrative claim in this case would be a useless formality because it would also be denied by petitioner in the same way as respondent's application for abatement was denied.[124]

Also, guided by the Supreme Court's ruling in *Philippine National Bank v. Spouses Manalo,*[125] a judgment may be rendered not simply based on the issues alleged but also on the

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[123] *Jacinto-Henares v. Philippine Plaza Holdings, Inc.*, G.R. No. 247662 (Notice), December 10, 2019, *citing Maglalang v. Philippine Amusement and Gaming Corp.*, G.R. No. 190566, December 11, 2013; Land *Bank of the Phils. v. Dumlao*, G.R. No. 167809, November 27, 2008.
[124] Resolution dated December 22, 2020, EB Docket, p. 61.
[125] G.R. No. 174433, February 24, 2014.

issues discussed and the assertions of fact proved during trial. Consequently, the Court may treat the pleading as if it had been amended to conform to the evidence, although it had not been so amended.[126]

Hence, the Court has jurisdiction to hear respondent's claim for refund.

In fine, the garnishment pertaining to surcharge and interest in the amount of ₱1,502,212.62[127] is proper; but the compromise penalty in the amount of ₱50,000.00 should be refunded in the absence of mutual agreement.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The Decision dated March 3, 2020, and the Resolution dated December 22, 2020, of the Court's Third Division in CTA Case No. 9433 are **MODIFIED.** Respondent is liable for the surcharge and interest in the amount of ₱1,502,212.62. Having collected the sum of ₱1,552,212.62, petitioner is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of respondent, the amount of ₱50,000.00 representing the erroneously collected compromise penalty.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[126] *Id.*
[127] Surcharge ₱1,498,927.42 + Interest (1/28/2014) ₱3,285.20

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice