

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

PAYMENTWALL INC.,

Respondent.

X- - - - -

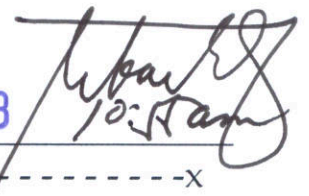
CTA EB No. 2510
(CTA Case No. 9727)

Present:

DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

Promulgated:

OCT 17 2023



X

DECISION

REYES-FAJARDO, J.:

Before the Court *En Banc* is a Petition for Review¹ filed by the Commissioner of Internal Revenue on October 27, 2021 assailing the Decision² promulgated on July 28, 2020 and the Resolution³ promulgated on March 18, 2021, both of the Third Division of this Court (Court in Division) in CTA Case No. 9727. The respective dispositions of the assailed Decision and Resolution read as follows:

¹ *Rollo*, pp. 6-23.

² Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justices Erlinda P. Uy and Maria Rowena A. Modesto-San Pedro concurring. *Rollo*, pp. 30-63.

³ Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justices Erlinda P. Uy and Maria Rowena A. Modesto-San Pedro concurring. *Rollo*, pp. 65-71.



Assailed Decision

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

Accordingly, respondent Geraldino's 48-Hour Notice dated September 14, 2017 and 5-day VAT Compliance Notice dated October 4, 2017, demanding the payment of deficiency VAT in the total amount of P16,030,957.76, inclusive of increments, as well as respondent Commissioner's Closure Order SN: RR8-047-008CO dated December 5, 2017, all issued against petitioner, are hereby **DECLARED NULL and VOID**.

SO ORDERED.

Assailed Resolution

WHEREFORE, in view of the foregoing, respondents' Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

FACTS

Petitioner CIR is vested with the power to decide disputed assessments and to cancel and abate tax liabilities under the National Internal Revenue Code (NIRC) of 1997, as amended, including those pertaining to value-added tax (VAT), and other tax laws, rules, and regulations.

On the other hand, respondent Paymentwall Inc. (Paymentwall) is a domestic corporation with business address at 5/F Builders Center Building, 170 Salcedo Street, Legaspi Village, Makati City. It is a business process outsourcing company that provides services (*e.g.*, customer service and risk and fraud analysis) exclusively to foreign companies.

The antecedents as narrated by the Court in Division are as follows:

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

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

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

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

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

The said 48-Hour Notice further reads:

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

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

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

In the said 5-day VAT Compliance Notice, respondent Geraldino reiterated the supposed violations of petitioner (as stated in the 48-Hour Notice dated September 14, 2017), and demanded from the latter to rectify, within five (5) days from receipt thereof, the said violations, by paying the VAT due in the total amount of P16,030,957.76, inclusive of increments.

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

On November 16, 2017, petitioner received the letter dated October 19, 2017, signed by respondent Geraldino, requiring petitioner to pay deficiency VAT in the amount of P16,187,281.09, inclusive of increments, per the 5-day VAT Compliance Notice dated October 4, 2017.

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

"KNOW ALL MEN BY THESE PRESENTS:

By virtue of the power vested in me under Section 115 of the National Internal Revenue Code of 1997 (as amended), and upon failure, refusal and/or neglect of the Taxpayer PAYMENTWALL, INC. with current address at Penthouse Unit, Heart Tower, 108 Valero Street, Salcedo Village, Makati City, with TIN: 008-330-420-0000, to comply with the requirements specified in the Five (5)-Day VAT Compliance Notice dated October 4, 2017. Order is hereby given this December 5, 2017, for the closure of the main office of the above-named Taxpayer at Penthouse Unit, Heart Tower, 108 Valero Street, Salcedo Village, Makati City, based on the enclosed recommendatory report of the Investigating Office, as reviewed by the Regional/National Review Board.

This Order shall remain in effect until it is lifted."

The foregoing prompted Paymentwall to file a Petition for Review⁴ before the CTA on December 1, 2017 to nullify the 48-Hour Notice dated September 14, 2017, to declare that it is not liable for

⁴ Docket - Vol. 1, pp. 10-38.

deficiency VAT on account of non-compliance of Revenue Memorandum Order No. (RMO) 3-2009 and Section 108(B)(2) of the Tax Code, and to suspend the collection of deficiency VAT as assessed by the CIR.

Ruling of the Court in Division

In the Assailed Decision, the Court in Division ruled in Paymentwall's favor and nullified the (a) 48-Hour Notice dated September 14, 2017, (b) 5-day VAT Compliance Notice dated October 4, 2017, and (c) Closure Order SN: RR8-047-008CO dated December 5, 2017. It explained as follows:

First, the CTA had jurisdiction to entertain Paymentwall's appeal. Based on Section 7(a)(1) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, the CTA has jurisdiction over the CIR's decisions in cases, not only those "involving disputed assessments, and refunds of internal revenue taxes, fees or other charges, penalties in relation thereto," but also regarding "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."

Second, the subject Bureau of Internal Revenue (BIR) officials issued the 48-Hour Notice, 5-Day VAT Compliance Notice, and Closure Order without observing the procedure prescribed in RMO 3-2009. Said issuance requires the conduct and conclusion of surveillance / stock-taking activities by authorized BIR personnel. However, the CIR did not deny the absence of a surveillance in Paymentwall's case before the issuance of the subject 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order. It was further admitted that there was no Mission Order issued against petitioner. Thus, for purposes of RMO No. 3-2009, petitioner cannot be considered as a "non-compliant taxpayer," warranting the issuance of the said Notices against it.

Third, the absence of a Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), and Formal Letter of Demand (FLD) rendered void the collection of the deficiency VAT. The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. The collection of the subject deficiency VAT in the amount of P16,187,281.09, inclusive of increments, cannot be allowed to proceed as it was not preceded by a valid PAN, FAN, and FLD.



The CIR moved for reconsideration,⁵ which was also denied⁶ by the Court in Division.

Hence, it filed the present petition.

The CIR's Arguments

Petitioner CIR maintains that (a) the CTA lacks jurisdiction over Paymentwall's appeal for the latter's failure to exhaust administrative remedies, (b) a mission order was not necessary because there had been a valid Letter of Authority (LOA) authorizing Revenue Officer (RO) Trazona to investigate Paymentwall, (c) the prior issuance of a PAN and FAN was not necessary because the subject notices were orders enforced pursuant to RMO 3-2009, not assessment notices, and (d) the issuance of a closure order is an administrative remedy independent from the collection of a deficiency tax assessment.

ISSUES

The issues in the present case may be restated as follows: *First*, did the CTA have jurisdiction over Paymentwall's Petition for Review assailing the subject BIR issuances? *Second*, is the CIR or any of its representatives authorized to issue the 48-hour Notice dated September 14, 2017, the 5-day VAT Compliance Notice dated September 27, 2017, and the Closure Order dated December 5, 2017 without a valid Mission Order? *Third*, does RMO 3-2009 empower the CIR or any of its authorized representatives to collect deficiency VAT summarily, without the need of a previous valid formal assessment against the taxpayer?

RULING

The Petition for Review lacks merit.

At the outset, We observe that the issues raised in the present petition are identical to those already passed upon by the Court in Division. After a careful deliberation of the facts and legal bases upon

⁵ *Rollo*, pp. 72-80.

⁶ In a Resolution dated March 18, 2021. *Rollo*, pp. 66-71.

which the Assailed Decision was founded, We do not find any reason to depart from the Court in Division's ruling.

The present controversy stems from the Closure Order issued by petitioner CIR against Paymentwall. The CIR's derives its authority to do so from Section 115 of the Tax Code, *viz*:

SECTION 115. *Power of the Commissioner to Suspend the Business Operations of a Taxpayer.*— The Commissioner or his authorized representative is hereby empowered to suspend the business operations and temporarily close the business establishment of any person for any of the following violations:

- (a) *In the Case of a VAT-registered Person.* —
 - (1) Failure to issue receipts or invoices;
 - (2) Failure to file a value-added tax return as required under Section 114; or
 - (3) Understatement of taxable sales or receipts by thirty percent (30%) or more of his correct taxable sales or receipts for the taxable quarter.

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

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

To implement the above-cited provision, the CIR issued RMO 3-2009, which outlines the "Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business."

Based on Section 115 of the Tax Code, the CIR is authorized to suspend the business operations of a VAT-registered taxpayer in cases where it (a) fails to issue receipts or invoices, (b) fails to file a VAT return, or (c) understates taxable sales or receipts by 30% in a given taxable quarter.

Under RMO 3-2009, the tax authorities shall determine the existence of any of the above-enumerated grounds to justify the closure of an establishment *via* the conduct of **surveillance activities**. In turn, "[n]o surveillance activities shall be conducted nor

apprehension effected unless the same has been authorized by a **[Mission Order]** issued in accordance with the provisions of [RMO 3-2009].”⁷

If the results of the surveillance reveal that there are grounds to close the establishment, the authorized revenue official⁸ shall issue a **48-hour Notice** requiring the taxpayer “to *explain under oath* within [48] hours why [it] should not be dealt with administratively, by suspension of business or temporary closure of his establishment, and/or criminally, for violation of pertinent provisions of the Tax Code.”⁹

If the BIR does not find merit in the explanation and there is sufficient basis to pursue administrative or criminal action, a **5-Day VAT Compliance Notice** shall be issued against the taxpayer.¹⁰ The notice shall contain the “details of the findings of the investigating office”¹¹ and “state the particular provision(s) of the [Tax Code] that was/were violated by the taxpayer, and for which rectification must be done, including payment of the required deficiency taxes and penalties due therefor.”¹² It “shall be served immediately to the taxpayer by the Regional Director/ACIR-LTS/ACIR-Enforcement Service, as the case may be.”¹³

The BIR shall evaluate¹⁴ the taxpayer’s defenses and explanations in its *protest*,¹⁵ if any. Should the response remain insufficient, the authorized BIR official shall recommend the closure of the establishment. Once approved by the CIR, such recommendation shall be the basis for the issuance of a **Closure Order** against the taxpayer.¹⁶

Once the Closure Order is issued, RMO 3-2009 does not provide any further opportunity for the taxpayer to appeal or otherwise respond thereto. *The Closure Order may be lifted only upon the taxpayer’s*

⁷ Part V(A), Paragraph 2.2, RMO 3-2009. Part IV, Paragraph 2 thereof also provides that, “All surveillance activities shall be covered by Mission Orders.”

⁸ Part V(B), Paragraph 3.1.3, RMO 3-2009.

⁹ Part V(B), Paragraph 3.1.3, RMO 3-2009.

¹⁰ Part V(B), Paragraph 3.3, RMO 3-2009.

¹¹ Part V(B), Paragraph 3.3.1, RMO 3-2009.

¹² Part V(B), Paragraph 3.3.1, RMO 3-2009.

¹³ Part V(B), Paragraph 3.3.2, RMO 3-2009.

¹⁴ Part V(B), Paragraph 3.3.3, RMO 3-2009.

¹⁵ Part V(B), Paragraph 3.3.3, RMO 3-2009.

¹⁶ Part V(C), Paragraph 1, RMO 3-2009.

compliance, that is, when it rectifies its violations, as required by Part VII of RMO 3-2009.

Coming now to the present case, Paymentwall, in its petition before the CTA Division, questioned the following BIR/CIR issuances leading to the actual closure of its establishment:

- 1) the 48-hour Notice dated September 14, 2017,
- 2) the 5-day VAT Compliance Notice dated September 27, 2017, and
- 3) the Closure Order dated December 5, 2017,

(Hereinafter referred to collectively as “Notices and Order”)

Having regard to the provisions of RMO 3-2009, We find as follows: *First*, the CTA had jurisdiction over Paymentwall’s petition. *Second*, without a Mission Order, revenue officers have no authority to conduct surveillance activities, apprehend the taxpayer, and, much less, close the business establishment. *Third*, the CIR or its representatives cannot proceed to collect deficiency taxes without a previous formal assessment against the taxpayer.

The CTA had jurisdiction over Paymentwall’s petition.

- a) Petitioner CIR’s reliance on the doctrine of non-exhaustion of administrative remedies is misplaced.

The CIR cites RMO 3-2009 and points out that Paymentwall went straight to the CTA when it should have, first, filed or corrected its VAT returns.¹⁷ It theorizes that Paymentwall’s recourse to the court after the issuance of the subject Closure Order amounts to a failure to exhaust administrative remedies, which, in effect, barred the CTA from taking cognizance of Paymentwall’s petition.

The CIR’s argument is misplaced.

The principle of exhaustion of administrative remedies bars courts from taking cognizance over cases emanating from

¹⁷ Rollo, p. 13.

administrative agencies or tribunals until such time the litigant seeking recourse has resorted to all remedies available on the administrative level. Such exhaustion is required to afford the administrative agency or tribunal concerned every opportunity to decide on a matter that comes within its jurisdiction.¹⁸

The doctrine shall apply when “the enabling statute indicates a procedure for *administrative review*, and provides a system of *administrative appeal*, or *reconsideration*.” In such a case, “the courts, for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.”¹⁹

In other words, the doctrine contemplates an existing framework on the administrative level that affords the litigant an opportunity to *challenge* the legality, propriety, and/or reasonableness of the administrative act or decision and convince the administrative agency or tribunal to reconsider its previous decision.

Verily, as discussed above, RMO 3-2009 expressly allows the taxpayer concerned to reply to the 48-hour Notice and, further, to protest the 5-day VAT Compliance Notice. In contrast, a Closure Order is effective immediately once issued. It may be lifted only when the taxpayer addresses the defects/violations noted by the BIR and, in fact, corrects them.

Resultantly, a suspension or closure under RMO 3-2009 is an *administrative sanction* imposed against a non-compliant taxpayer after the CIR determines that the taxpayer failed to comply with the terms of the 48-hour Notice and 5-day VAT Compliance Notice. The opportunity given to the erring taxpayer to correct its practices for the purpose of lifting the Closure Order under Part VII cannot be regarded as a *remedial measure* within the context of the doctrine of non-exhaustion of administrative remedies. The opportunity to rectify does not afford the taxpayer another opportunity to challenge the order; rather, it necessitates an implicit acknowledgement/acceptance of the

¹⁸ *Maglalang v. Philippine Amusement and Gaming Corp.* (G.R. No. 190566, December 11, 2013, 723 PHIL 546-561) citing *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.* (G.R. No. 170599, September 22, 2010, 645 PHIL 324-337)

¹⁹ *Carale v. Abarintos*, G.R. No. 120704, March 3, 1997, 336 PHIL 126-138.

BIR's findings (e.g., violations/existence of grounds for closure) and the consequences thereof.

There being no further remedy available on the administrative level to assail a Closure Order provided by either the Tax Code or RMO 3-2009, the taxpayer is regarded to have already exhausted all administrative remedies (e.g., responses to the 48-hour Notice and 5-day VAT Compliance Notice) and may properly seek recourse before the CTA.

- b) The legality of the issuance of the 48-hour Notice, 5-day VAT Compliance Notice, and Closure Order is a matter cognizable by the CTA.

As already discussed by the Court in Division, the CTA's jurisdiction to review decisions rendered by the CIR is not limited to disputed assessments or refunds. It is clear from Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282, that the CTA's jurisdiction extends to other matters arising under the NIRC or other laws administered by the BIR.

Thus, We agree with the Court in Division that the issuance of the subject 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order, arose out of the CIR/BIR's implementation of Sections 113, 237, and 114 of the NIRC of 1997, as amended. The CTA correctly exercised jurisdiction over Paymentwall's Petition for Review assailing the aforementioned Notices and Order.

Without a Mission Order, revenue officers have no authority to conduct surveillance activities and, much less, close a business establishment.

A close reading of the guidelines and procedures set out in RMO 3-2009 shows that a Closure Order may only issue after the taxpayer has already submitted its corresponding explanations in response to the 48-hour Notice and, later, the 5-day VAT Compliance Notice. In

turn, said Notices must have been based on the results of surveillance activities conducted pursuant to a valid Mission Order.

Notably, in the present case, the CIR admits that the closure implemented against Paymentwell was not preceded by surveillance activities nor supported by a valid Mission Order. Instead, it argues that a Mission Order was not necessary because, anyway, there was a Letter of Authority (LOA).²⁰ It insists that there was no need for surveillance “considering that [Paymentwall] was already caught not issuing official receipt[s] during the BIR’s authorized investigation.”²¹

However, We stress that an LOA cannot substitute the Mission Order as required by RMO 3-2009 and vice versa, as these pertain to two separate and distinct statutory powers of the CIR.²²

“A[n] LOA is the authority given to the appropriate 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 and for the purpose of collecting the correct amount of tax, 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. The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.”²³

On the other hand, a Mission Order empowers the concerned revenue officer to conduct surveillance activities necessary to expose violations that would serve as grounds for the issuance of a 48-hour Notice, 5-day VAT Compliance Notice, and, ultimately, Closure Order. It is required by RMO 3-2009 as part of implementing Section 115 of the Tax Code.

In other words, a LOA and Mission Order pertain to two different matters: the former to the assessment process and the latter

²⁰ *Rollo*, p. 13.

²¹ *Rollo*, p. 15.

²² In *Formula Sports, Inc. v. Commissioner of Internal Revenue* (C.T.A. Case No. 9625, March 2, 2022), the CTA held that, “The Mission Order cannot replace, supplant, or be converted to an LOA, considering that the functions of both issuances are different from each other.”

²³ *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. Nos. 196596, 198841 & 198941, November 9, 2016, 799 PHIL 141-211.

to the suspension of business operations and/or closure of an establishment. Thus, these are not interchangeable.²⁴

To be clear, LOA No. 201200033231 dated October 28, 2016 authorizing RO Trazona and Group Supervisor Ma. Teresa Reyes of Revenue District Office No. 47 – East Makati, to examine the books of accounts and other accounting records of petitioner for the taxable period January 1, 2015 to December 31, 2015 did not simultaneously authorize the revenue officers to conduct surveillance activities or, much less, recommend the closure of Paymentwall's place of business. Without a separate Mission Order, the closure effected in the present case is unauthorized and unwarranted.

The CIR's failure to observe the prescribed procedure amounts to a violation of Paymentwall's due process rights.

The attempts to collect taxes via the 5-day VAT Compliance Notice and Closure Order without a formal assessment are a violation of Paymentwall's due process rights.

We disagree with the CIR's theory that the issuance of a PAN and FAN was not necessary in Paymentwall's case, taken that the subject Notices and Order were issued pursuant to RMO 3-2009.

The Supreme Court has settled that tax authorities cannot collect taxes without a previous valid assessment. In *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*,²⁵ the Supreme Court discussed:

Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of

²⁴ See *Formula Sports, Inc. v. Commissioner of Internal Revenue* (C.T.A. Case No. 9625, March 2, 2022).

²⁵ G.R. Nos. 197945 & 204119, July 9, 2018.

law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.

In the normal course of tax administration and enforcement, the BIR must first make an assessment then enforce the collection of the amounts so assessed. "An assessment is not an action or proceeding for the collection of taxes. x x x It is a step preliminary, but essential to warrant distraint, if still feasible, and, also, to establish a cause for judicial action." **The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment.** A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf. (Emphasis supplied and citations omitted)

Further, in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,²⁶ the Supreme Court ruled:

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. x x x

Compliance with Section 228 of the [Tax Code] is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. **Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.** (Emphasis supplied and citations omitted)

Thus, guided by prevailing jurisprudence, this Court has been consistent in striking down attempts to collect taxes by mere implementation of the procedures in RMO 3-2009, viz.:

- *Sofgen Holdings Limited-Philippine Branch v. Commissioner of Internal Revenue*²⁷

Apropos, it must be emphasized that Section 115 and Section 228 (both of the NIRC of 1997) pertain to entirely different matters. Thus, the application of the said Section 115 by the BIR does not preclude compliance with the provisions of Section 228, which reads:

x x x

²⁶ G.R. No. 215957, November 9, 2016, 799 PHIL 391-420.

²⁷ C.T.A. Case No. 9691, April 21, 2022.

It must be emphasized that tax collection must be preceded by a valid assessment to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.

x x x

While it may be true that petitioner was accorded due process with the issuance of the said notices, prior to the issuance of the Closure Order dated August 30, 2017 in the exercise of respondent CIR's power under Section 115 of the NIRC of 1997, the same is not tantamount to, or should be equated with, the due process requirement in the issuance of tax assessments under Section 228 of the NIRC of 1997, and Section 3 of RR No. 12-99, as amended by RR No. 18-2013. To reiterate, Section 115 and Section 228 pertain to entirely different matters. Thus, the observance of due process under one provision is not the same as the observance of due process under the other. Both requirements should have been complied with by the BIR.

- *iScale Solutions, Inc. v. Commissioner of Internal Revenue*²⁸

Notably, no Preliminary Assessment Notice and Final Assessment Notice were issued in this case. In fact, during the pendency of the instant case, the tax audit of petitioner pursuant to LOA No. SN: eLA201500049326 dated June 28, 2017 was still ongoing.

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

It must be emphasized that the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Considering that there are no assessment notices issued yet, the collection of the alleged deficiency VAT as stated in the 5-day VAT Compliance Notice must fail.

In the present case, the subject Notice and Order were worded as follows:

- 5-day VAT Compliance Notice dated October 4, 2017²⁹

²⁸ C.T.A. Case No. 9845, June 30, 2021.

²⁹ Exhibits "R-9" and "R-10", BIR Records, pp. 82 to 83.

FIVE (5)-DAY VAT COMPLIANCE NOTICE

x x x

Notice is therefore hereby given, and demand made upon you, to rectify within five (5) days from receipt hereof the above stated violations committed, by:

- ☐ A. Complying with the registration requirements set forth in Section 236 and 238 of the National Internal Revenue of 1997 (as amended), in case of failure to register;
- ☐ B. Complying with the invoicing requirements as set forth in Section 113 and 237, in case of failure to issue receipts/invoices;
- ☒ C. **Paying the Value-Added Taxes due thereon (refer to attached computation); and**
- ☐ D. Reflecting the correct taxable sales/receipts which were previously understated due to failure to issue sale invoices/receipts or due to under-declaration of sales/[r]eceipts and pay the correct VAT deficiency including increments.

x x x

Very truly yours,
[signed]
GLEN A. GERALDINO
Regional Director

[next page]

COMPUTATION OF VAT DEFICIENCY³⁰

Sales/Revenue not subjected to VAT		₱79,247,245.00
Multiply VAT rate		12%
Basic Value Added Tax Due		9,509,669.40
Add: Penalties		
50% Surcharge	₱4,754,834.70	
Interest (10.26.16 to 9.30.17)	1,766,453.66	6,521,288.36
		<u>₱16,030,957.76</u>

(Emphasis supplied).

- Closure Order dated December 5, 2017³¹

CLOSURE ORDER

KNOW ALL MEN BY THESE PRESENTS:

³⁰ Exhibits "R-9" and "R-10", BIR Records, pp. 82 to 83.

³¹ Exhibit "R-13", BIR Records, p. 163.

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By virtue of the power vested in me under Section 115 of the National Internal Revenue Code of 1997 (as amended), and **upon failure, refusal and/or neglect of the Taxpayer, PAYMENTWALL, INC.**, with current address at Penthouse Unit, Heart Tower, 108 Valero Street, Salcedo Village Makati City, with TIN: 008-330-420-000, **to comply with the requirements specified in the Five (5)-Day VAT Compliance Notice dated October 4, 2017.** Order is hereby given this _____, for the closure of the main office of the above-named Taxpayer at Penthouse Unit, Heart Tower, 108 Valero Street, Salcedo Village Makati City, based on the enclosed recommendatory report of the Investigating Office, as reviewed by the Regional/National Review Board.

This Order shall remain in effect until it is lifted

Issued this December 5, 2017 in Makati City, Philippines.

[signed]
CAESAR R. DULAY
Commissioner of Internal Revenue

(Emphasis supplied).

From the foregoing, We observe the following: *First*, the 5-day VAT Compliance Notice contained an **express demand** by the BIR against Paymentwall to pay alleged deficiency VAT amounting to ₱16,030,957.76. *Second*, while taxpayers are generally given an opportunity to rectify their practices which have amounted to violations, the only manner by which Paymentwall could “comply” for the purpose of lifting the Closure Order was to pay the aforementioned amount.

These are evident attempts to collect deficiency taxes from Paymentwall. As discussed above, the CIR cannot do so without, first, formally issuing a tax assessment against the taxpayer. To be sure, the CIR’s power to suspend business operations under Section 115 of the Tax Code and its implementing rules under RMO 3-2009 cannot supplant the due process requirements in the course of the assessment process under Section 228 of the Tax Code. These separate provisions pertain to two different matters.³²

³² *Bakbak (1 and 2) Native Chicken Restaurant v. Secretary of Finance*, G.R. No. 217610, September 2, 2020. Also see *Sofgen Holdings Limited-Philippine Branch v. Commissioner of Internal Revenue* (C.T.A. Case No. 9691, April 21, 2022).

We underscore that the State may only collect deficiency taxes after it has given the taxpayer every opportunity to refute its alleged liability for it is fundamental that no person shall be deprived of property without due process of law.

On account of the CIR's violations against Paymentwall's due process rights, We find the Court in Division's nullification of the 48-hour Notice, 5-day VAT Compliance Notice, and Closure Order justified.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision promulgated on July 28, 2020 and the Resolution promulgated on March 18, 2021, both of the Third Division of this Court in CTA Case No. 9727 are **AFFIRMED**.

SO ORDERED.

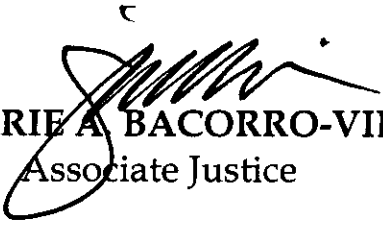

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice



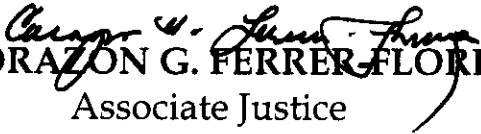
JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice

(on leave)
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.



ROMAN G. DEL ROSARIO
Presiding Justice

