CTA Form No. 8

23-000093-0053

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 11104

ENERJA ENTERPRISES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

GALIAS & RIVERA LAW OFFICES
3rd Floor, Prestige Tower, F. Ortigas Jr. Road
Ortigas Center, 1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **August 4, 2026,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 5, 2026.**

Atty. Mary Grace S. Ringpis
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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SPECIAL FIRST DIVISION

ENERJA ENTERPRISES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **11104**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
AUG 04 2026 2:25 PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Enerja Enterprises, Inc., (**petitioner**) on 20 March 2023, pursuant to Section 7(a)(1)[2] and Section 11,[3] of Republic Act (**RA**) No. 1125,[4] as amended by

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1 Division Docket, pp. 7-98, with annexes.

2 SEC. 7. *Jurisdiction.* — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

3 SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.

4 AN ACT CREATING THE COURT OF TAX APPEALS.

RA 9282.[5] It assails the validity of respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Warrant of Distraint and/or Levy (**WDL**) No. WDL-RR10-AMS-2023-015 dated 01 February 2023[6] and received by petitioner on 17 February 2023,[7] which was issued in relation to petitioner's alleged delinquent internal revenue taxes, inclusive of increments, for taxable year (**TY**) 2018, as follows:

Tax Type/Fee	**Total**
Income Tax	₱ 5,314,630.18
Value-Added Tax (**VAT**)	3,598,553.66
Improperly Accumulated Earnings Tax (**IAET**)	1,946,728.09
Expanded Withholding Tax (**EWT**)	55,335.00
Documentary Stamp Tax (**DST**)	212,040.00
Total	**₱ 11,127,286.93**

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under Philippine laws with principal place of business at Washington Drive, Legazpi City, and is engaged in the business of operating a gasoline station.[8]

Respondent, on the other hand, is the duly appointed CIR who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith.[9] He or she holds office at the Bureau of Internal Revenue (**BIR**) National Office Building, BIR Road, Diliman, Quezon City, where judicial processes, orders, and resolutions, and other legal processes of this Court may be served.[10]

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

6 Exhibit "P-2", Division Docket, p. 31.

7 Id.

8 Paragraph 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (**JSFI**), id., p. 269.

9 Par. 2., id.

10 Id.

FACTS OF THE CASE

On 07 January 2020, respondent issued Letter of Authority (**LOA**) No. LOA-067-2019-00000191/eLA201600011362[11] through Florante R. Aninag (**Aninag**), Regional Director (**RD**) of BIR Revenue Region (**RevReg**) No. 10, Legazpi City. The LOA authorized Revenue Officer (**RO**) Alen Mae Egar (**Egar**) and Group Supervisor (**GS**) Annalee Pagorogon (**Pagorogon**) to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including DST and other taxes, for the period of 01 January 2018 to 31 December 2018.

On 09 February 2020, RO Egar issued a First Request for Presentation of Records[12] (**First Notice**) with attached Checklist of Requirements[13] requested from petitioner. After a supposed non-compliance from petitioner's end, a Second and Final Request for Presentation of Records[14] (**Second Notice**) was issued by Officer-in-Charge (**OIC**) Revenue District Officer (**RDOr**) Atty. Gerlo C. Cacatian (**Cacatian**) reiterating the previous request for accounting records from petitioner. Petitioner received the Second Notice on 11 March 2020.[15]

Subsequently, on 12 November 2021, petitioner received an undated Notice of Discrepancy[16] (**NOD**) wherein RDOr Arnel R. Cosinas (**Cosinas**) informed petitioner of the discrepancies noted during the investigation of petitioner's books of accounts and invited the latter to a Discussion of Discrepancy to present its side of the discrepancies.

Meanwhile, on 01 December 2021, due to GS Pagorogon's transfer,[17] respondent, through RD Rozil R. Lozares (**Lozares**), issued LOA No. LOA-067-2021-00000339/eLA201700027892[18] replacing LOA-067-2019-00000191/eLA201600011362 dated 07 January 2020.[19] The said LOA authorized RO Egar and GS Sheryl Arcilla (**Arcilla**) to examine petitioner's books of accounts and other accounting records for all

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[11] Exhibit "P-3" / "R-1", BIR Records, p. 64.
[12] Id., p. 63.
[13] Id., p. 62.
[14] Id., p. 61.
[15] Id.
[16] Exhibit "P-4", id., pp. 164-165.
[17] See Q&A No. 9, Revenue Officer Alen Mae A. Egar's Judicial Affidavit, Division Docket, pp. 183-184.
[18] Exhibit "R-2", BIR Records, p. 65.
[19] Supra at note 11.

internal revenue taxes, including DST and other taxes for the period of 01 January 2018 to 31 December 2018.

On 25 May 2022, RO Egar recommended the issuance of a Preliminary Assessment Notice (**PAN**) to petitioner through a Memorandum Report for the RDOr.[20] Thereafter, on 22 June 2022, petitioner received a PAN with Details of Discrepancies (**DOD**) dated 15 June 2022,[21] finding petitioner liable for deficiency taxes for TY 2018 amounting to ₱11,127,286.93, computed as follows:

Tax Type	Basic Tax	Surcharge	Interest	Total
Income Tax	₱ 3,372,637.68	₱ 843,159.42	₱ 1,098,833.08	₱ 5,314,630.18
IAET	1,212,614.56	303,153.64	430,959.89	1,946,728.09
VAT	1,970,937.37	985,468.69	642,147.60	3,598,553.66
EWT	29,750.00	14,875.00	10,710.00	55,335.00
DST	114,000.00	57,000.00	41,040.00	212,040.00
Total	**₱ 6,699,939.61**	**₱ 2,203,656.75**	**₱ 2,223,690.57**	**₱ 11,127,286.93**

In addition, in lieu of instituting a criminal action, respondent assessed petitioner with compromise penalties amounting to ₱138,000.00[22] for the following violations:

Violation	Compromise Penalty
Failure to submit Inventory List	₱ 5,000.00
Failure to file Summary List of Sales and Purchases (SLSP)	25,000.00
Failure to file BIR Form No. 1701Q for the First to Third Quarter at the time or times prescribed by law or rules and regulations	3,000.00
Failure to file BIR Form No. 1601C and Alphalist of Employees at the time or times prescribed by law or rules and regulations	25,000.00
Late payment of deficiency Income Tax	40,000.00
Late payment of deficiency IAET	40,000.00
Total	**₱ 138,000.00**

The case records reveal that petitioner did not file a Protest to the PAN. Thus, on 12 July 2022, respondent issued a Final Assessment Notice with Formal Letter of Demand[23] (**FLD/FAN**) and DOD reiterating the

20 Exhibit "R-3", BIR Records, pp. 191-199.
21 Exhibit "P-5" / "R-4", id., pp. 292-300.
22 See PAN Part II, id., p. 293.
23 Exhibit "P-6" / "R-5", id., pp. 321-335.

findings in the PAN. Petitioner received the said FLD/FAN on 10 August 2022.[24]

On 16 August 2022, unable to agree with respondent's findings, petitioner, by way of a request for reconsideration, filed its Protest against the FLD/FAN,[25] which respondent received on 06 September 2022.[26]

In response to petitioner's request for reconsideration, on 13 October 2022, OIC-RD V.C. Cadangen (**Cadangen**) issued the Final Decision on Disputed Assessment[27] (**FDDA**) which denied petitioner's request for reconsideration and consequently, upheld the assailed FLD/FAN.

Undeterred, petitioner filed an administrative appeal to the CIR on 14 November 2022.[28] Pending the resolution of the said appeal, on 17 February 2023, petitioner received WDL No. WDL-RR10-AMS-2023-015 dated 01 February 2023[29] issued by OIC-RD Cadangen, commanding RO/Seizure Agent Shiela Marie C. Mendioro (**Mendioro**) to distrain the goods, chattels, or effects, and other personal property of petitioner or levy upon the real property and interest in/or rights to real property of petitioner. In addition, Mendioro was ordered to sell and/or forfeit, in favor of the State, so much of petitioner's personal/real property to satisfy in full the sum of ₱11,127,286.93 representing petitioner's alleged delinquent taxes for TY 2018.[30]

PROCEEDINGS BEFORE THE COURT

Aggrieved, petitioner elevated the matter to this Court by filing the instant Petition for Review[31] on 20 March 2023. The case was

24 Id.
25 Exhibit "P-7", Division Docket, pp. 61-75 (with annexes); BIR Records, pp. 469-477.
26 See Transmittal of Records, BIR Records, p. 478.
27 Exhibit "P-8" / "R-6", id., pp. 560-561.
28 Exhibit "P-9", Division Docket, pp. 78-87.
29 Supra at note 6.
30 Id.
31 Supra at note 1.

docketed as CTA Case No. 11104 and was initially raffled to the Second Division.[32]

In its petition, petitioner argued that: (1) respondent's right to assess it for deficiency income tax, VAT, and withholding taxes has already prescribed; (2) an amount equivalent to ₱45,000.00 had been illegally added to the alleged deficiency taxes; (3) it was deprived of due process when respondent merely reiterated the findings in the FLD/FAN and the FDDA without considering petitioner's defenses in its Protest to the FLD/FAN; (4) petitioner is not liable for DST because it is the bank and not petitioner who is obligated to remit the same pursuant to Revenue Regulations (**RR**) No. 9-2000;[33] and (5) it cannot be held unilaterally liable for compromise penalty.

On 29 March 2023, summons was issued to respondent directing him or her to file an Answer within thirty (30) days from the date of receipt thereof.[34] Following petitioner's receipt of the summons on 03 April 2023,[35] he or she filed a "Motion for Extension of Time to File Answer"[36] (**Motion for Extension**) on 28 April 2023.

In a Resolution dated 10 May 2023,[37] the Court granted respondent's Motion for Extension and gave him or her a non-extendible period of 30 days from 03 May 2023, or until 02 June 2023, to file his or her Answer. Respondent was likewise ordered to submit the entire BIR Records to the Court within ten (10) days from filing his or her Answer.[38]

Subsequently, in view of the reorganization of the three (3) Divisions of the Court effective 29 May 2023,[39] the present case was transferred to the First Division.[40]

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32 The Second Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.
33 Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.
34 Division Docket, p. 99.
35 Id., p. 100.
36 Id., pp. 101-104.
37 Id., p. 107.
38 Id.
39 See Notice dated 29 May 2023, id., p. 108.
40 The First Division is composed of Presiding Justice Roman G. Del Rosario (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

On 02 June 2023, respondent filed his or her Answer[41] where he or she interposed the following defenses: (1) respondent's right to assess petitioner for deficiency income tax, VAT, and withholding taxes has not yet prescribed; (2) there is no violation of petitioner's right to due process; and (3) petitioner is liable for DST.

On 09 June 2023, the Court noted respondent's Answer and referred the case to the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**) for mediation.[42] The parties signed the Agreement to Mediate and Selection of Mediator Form[43] on 31 July 2023 and were scheduled for a mediation conference on 14 August 2023 with Retired Associate Justice Amelia R. Cotangco-Manalastas (**Justice Cotangco-Manalastas**) as Mediator.[44] Pursuant to A.M. No. 01-10-5-PHILJA-SC,[45] the 30-day period allowed for the settlement of the case would have expired on 13 September 2023.

Meanwhile, in compliance with the Court's previous order, on 20 June 2023, respondent forwarded the entire BIR Records for TY 2018 consisting of three (3) folders with 626 pages.[46] The Court noted the same, albeit belatedly filed.[47]

On 01 August 2023, petitioner manifested that it has agreed with respondent to have the case mediated for a possible compromise agreement.[48]

On 06 September 2023, the parties filed a Request for Extension[49] signed by Justice Contangco-Manalastas. On 14 September 2023, the Court granted the parties a non-extendible period of 30 days from 13 September 2023, or until 13 October 2023, within which to reach an amicable settlement.[50]

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41 Division Docket, pp. 109-122.
42 See Notice dated 09 June 2023, id., p. 124.
43 Id., pp. 324-325.
44 See Mediation Schedule issued by the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on 31 July 2023, id., p. 133.
45 Second Revised Guidelines for the Implementation of Mediation Proceedings approved by the PHILJA Board of Trustees Approved during its 18 September and 01 October 2001 Meetings.
46 See Compliance filed by respondent on 20 June 2023, Division Docket, pp. 127-129.
47 See Notice dated 30 June 2023, id., p. 131.
48 See Manifestation filed by petitioner on 01 August 2023, id., pp. 140-142.
49 Id., p. 147.
50 See Resolution dated 14 September 2023, id., p. 150.

Subsequently, on 25 October 2023, the parties filed a "Joint Motion to Suspend Proceedings"[51] stating that petitioner's application for compromise remains pending although the parties are optimistic that the offer of compromise would eventually be approved. Thus, the parties prayed for a suspension of proceedings for 30 days.[52] On 16 November 2023, the Court granted the parties a final and non-extendible period of 30 days from 25 October 2023, or until 24 November 2023, to reach an amicable settlement.[53]

On 07 December 2023, the parties filed another "Joint Motion to Suspend Proceedings"[54] stating that petitioner's application for compromise is still pending with the National Evaluation Board (**NEB**). Thus, the parties moved that the proceedings in the instant case remain suspended. On 16 January 2024, the Court denied the parties' "Joint Motion to Suspend Proceedings" and ordered the parties to file their respective Pre-Trial Briefs at least three (3) days before the Pre-Trial Conference which was set on 02 April 2024.[55]

The Pre-Trial Conference was then held as scheduled on 02 April 2024 following respondent and petitioner's submission of their respective Pre-Trial Briefs on 19 March 2024[56] and 26 March 2024,[57] respectively.

At the Pre-Trial Conference, the Court granted the parties a 30-day period, or until 02 May 2024, to file their Joint Stipulation of Facts and Issues (**JSFI**).[58] The parties filed their JSFI[59] on 02 May 2024.

In a Resolution dated 13 May 2024,[60] the Court admitted and approved the parties' JSFI and declared the pre-trial terminated. Thereafter, the Court issued a Pre-Trial Order[61] on 04 June 2024, again confirming its approval of the JSFI and formally declaring the pre-trial proceedings terminated.

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51 Id., pp. 152-154.
52 Id.
53 See Resolution dated 16 November 2023, id., pp. 156-157.
54 Id., pp. 159-161.
55 See Resolution dated 16 January 2024, id., pp. 164-166.
56 Respondent's Pre-Trial Brief, id., pp. 173-176.
57 Petitioner's Pre-Trial Brief, id., pp. 230-239.
58 See Order dated 02 April 2024, id., p. 258-260.
59 Id., pp. 269-276.
60 Id., p. 281.
61 Id., pp. 285-296.

On 04 June 2024, petitioner presented its witness, Mylene M. Atos (**Atos**), who testified *via* her Judicial Affidavit.[62] In her testimony, Atos stated that she is the Secretary of Mr. John Richardson Yanzon (**Yanzon**) who serves as petitioner's president.[63] As President Yanzon's secretary, she is tasked, among others, to supervise petitioner's administrative and accounting functions.[64] She likewise narrated the events that transpired in relation to the instant petition, particularly, the issuance of the LOA, petitioner's receipt of an undated NOD followed by its receipt of the PAN and the FLD/FAN, petitioner's filing of its Protest to the FLD/FAN and its subsequent receipt of the FDDA, its filing of an appeal before the CIR, its receipt of a WDL while awaiting the CIR's decision on its appeal, and finally, petitioner's filing of the instant Petition for Review before the Court.[65] Atos also identified the pieces of evidence in support of her statements, including the PAN dated 15 June 2022,[66] the FLD/FAN dated 12 July 2022,[67] petitioner's Protest to the FLD/FAN dated 16 August 2022,[68] the FDDA dated 13 October 2022,[69] and the WDL dated 01 February 2023,[70] among others.[71]

On cross-examination, Atos clarified that there was an explanation in the FDDA on why the 10-year prescriptive period was applied but Atos claimed that the explanation was not substantiated.[72] Atos likewise confirmed that the Protest against the FLD/FAN which petitioner filed is a "Motion for Reconsideration" and not a "Motion for Reinvestigation", thus, petitioner did not submit additional documents in support of its Protest but it raised several issues in the said Protest.[73]

On redirect examination, Atos reiterated that petitioner filed a Protest against the FLD/FAN.[74] No re-cross examination followed.[75]

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62 Judicial Affidavit (Witness Ms. Mylene M. Atos) dated 22 March 2024, Exhibit "P-12", id., pp. 240-249.
63 Id.
64 Id.
65 Id.
66 Supra at note 21.
67 Supra at note 23.
68 Supra at note 25.
69 Supra at note 27
70 Supra at note 6.
71 Supra at note 652.
72 TSN dated 04 June 2024, p. 9-10.
73 Id., pp. 10-12.
74 Id., p. 12.
75 Id., p. 13.

On 10 June 2024, petitioner filed its "Formal Offer of Evidence"[76] (**FOE**) consisting of Exhibits "P-1" to "P-12-a", with sub-markings. On 18 June 2024, respondent filed his or her "Comment (on Petitioner's [FOE])",[77] thus, the same was submitted for resolution on 02 July 2024.[78] In a Resolution dated 21 August 2024,[79] the Court admitted all of petitioner's offered exhibits.

On 28 January 2025, respondent presented its witness, RO Egar, who testified *via* her Judicial Affidavit.[80] RO Egar stated that she was tasked to conduct the audit and investigation of respondent's books of accounts for TY 2018 by virtue of a LOA dated 07 January 2020, which was subsequently replaced by a LOA dated 01 December 2021.[81] She also narrated the events that transpired during the audit of petitioner's books of accounts, from the issuance of the LOA up to the issuance of the FDDA, and identified the pieces of evidence in support thereof.[82] RO Egar particularly recounted her recommendation for the issuance of a PAN against petitioner as a result of her examination and the subsequent issuance thereof, the issuance of an FLD/FAN, respondent's filing of a Protest to the FLD/FAN, and the issuance of the FDDA on respondent's case.[83] In open court, RO Egar was allowed to correct the date of the PAN's service on petitioner in her Judicial Affidavit.[84]

On cross-examination, RO Egar clarified that she provided and prepared the basis for the PAN's issuance, which was forwarded to the Regional Office, RD-Assessment Division for review and preparation of the PAN.[85] She likewise confirmed that the PAN contains the same findings as the FLD/FAN.[86] Lastly, RO Egar recalled that she was the one who served the PAN to petitioner and she executed an Affidavit of Service.[87]

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76 Division Docket, pp. 306-314.
77 Id., pp. 316-318.
78 See Notice dated 02 July 2024, id., p. 320.
79 Id., pp. 338-339.
80 Judicial Affidavit of Revenue Officer Alen Mae A. Egar dated 11 January 2024, Exhibit "R-8", id., p. 182-191.
81 Id.
82 Id.
83 Id.
84 TSN dated 28 January 2025, pp. 7-9.
85 Id., p. 10.
86 Id.
87 Id., p. 11.

No redirect examination followed.[88]

On 03 February 2025, respondent filed his or her FOE.[89] Petitioner subsequently filed its "Comments/Objections (To Respondent's [FOE]) dated 03 February 2025"[90] on 07 February 2025. In a Resolution dated 29 May 2025,[91] the Court admitted respondent's offered exhibits consisting of Exhibits "R-1" to "R-7" and directed the parties to file their respective memoranda within 30 days from receipt thereof.

Respondent manifested that he or she will adopt the arguments stated in the Answer dated 02 June 2023 as his or her Memorandum.[92] Petitioner, on the other hand, filed its Memorandum[93] on 09 July 2025, which the Court admitted through a Resolution dated 11 August 2025,[94] albeit belatedly filed. The case was likewise submitted for decision through the same Resolution.[95]

ISSUE

As can be gleaned from the JSFI,[96] the sole issue for this Court's resolution is -

> WHETHER PETITIONER ENERJA ENTERPRISES, INC. IS LIABLE TO PAY THE TOTAL AMOUNT OF ₱11,127,286.93 FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX (VAT), FINAL TAX, WITHHOLDING TAX (FWT) AND DOCUMENTARY STAMP TAX (DST), FOR TAXABLE YEAR (TY) 2018.

ARGUMENTS

In support of the instant petition, petitioner argues that respondent's right to assess it for deficiency income tax, VAT, and withholding taxes has already prescribed when it received the

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88 Id.
89 Division Docket, pp. 366-371.
90 Id., pp. 375-379.
91 Id., pp. 389-390.
92 See Manifestation filed by respondent on 25 June 2025, id., p. 392.
93 Id., pp. 401-419.
94 Id., p. 423.
95 Id.
96 Supra at note 59.

FLD/FAN. It claims that respondent erroneously relied on Revenue Memorandum Circular (**RMC**) No. 136-2020[97] which allegedly extended the prescriptive period. Petitioner further contends that even with the later BIR issuance, particularly RMC No. 80-2021,[98] its case will still not be covered by the extension of the prescriptive period. In addition, petitioner claims that the applicable prescriptive period is only three (3) years and not 10 years since there are no allegations of willful neglect to file returns on the part of petitioner and the alleged substantial underdeclaration of sales and overstatement of deductions was not established.

Petitioner also asserts that an amount equivalent to ₱45,000.00 had been illegally added to the alleged deficiency taxes, thus, assuming *arguendo* that petitioner is indeed liable for deficiency taxes, it should only be for ₱11,082,286.93 instead of ₱11,127,286.93.

Citing *Commissioner of Internal Revenue v. Unioil Corporation*[99] (**Unioil**), petitioner likewise contends that it was deprived of due process as the FDDA contains the exact findings indicated in the FLD/FAN, including the amount of interests. Petitioner argues that respondent failed to consider and properly address its defenses in its Protest to the FLD/FAN. Further, petitioner reasons that respondent violated his or her own procedures by refusing to answer point by point with a detailed explanation the defenses it has set forth in its Protest to the FLD/FAN.

Petitioner also argues that it is not liable for DST as it is the bank and not petitioner who is obligated to remit the same pursuant to RR No. 9-2000.[100] Petitioner claims that its Audited Financial Statements (**AFS**) for TY 2007 clearly disclosed that it obtained its short-term and long-term borrowings from various local banks. Accordingly, it is not the party liable for DST for the said loans.

Lastly, petitioner challenges the imposition of compromise penalty. Citing *The Philippines International Fair, Inc. v. The Collector of*

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97 Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020.
98 Clarifying the Suspension of the Statute of Limitations on Assessment and Collection of Taxes Due to the Declaration of Quarantine in Various Areas in the Country.
99 G.R. No. 204405, 04 August 2021.
100 Supra at note 33.

Internal Revenue, et al.,[101] petitioner argues that a compromise is supposed to be a bilateral agreement freely and voluntarily entered into by both contracting parties. Petitioner claims that it never applied for a compromise considering its firm belief that it has paid the correct amount of taxes. Thus, absent its consent, the compromise penalties imposed by respondent should be cancelled.

On the other hand, respondent counters that his or her right to assess petitioner for deficiency income tax, VAT, and withholding taxes has not yet prescribed, explaining that the table provided in RMC No. 136-2020[102] merely illustrated the counting of the period of suspension of the statute of limitations and the related extended prescriptive date when the state of emergency was declared due to the Corona Virus Disease 2019 (**COVID-19**) pandemic.

Respondent also maintains that petitioner is subject to the extraordinary 10-year prescriptive period since it substantially underdeclared its sales and purchases. Citing *Commissioner of Internal Revenue v. Asalus Corporation*,[103] respondent claims that a mere showing that the returns filed by the taxpayer are false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the 10-year prescriptive period under Section 222 of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

In addition, respondent avers that petitioner failed to file its EWT and DST returns for TY 2018. As such, the 10-year prescriptive period shall begin from 12 November 2021, when respondent discovered the said omission.

Respondent likewise argues that petitioner's right to due process was not violated considering that the explanation for the assessment was made clear to petitioner in the DOD attached to the FLD and the FDDA. Moreover, respondent claims that the FDDA contains the detailed report as to why the 10-year prescriptive period was applied in petitioner's case. Citing *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*,[104] petitioner argues that the right to due process is not

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101 G.R. Nos. L-12928 and L-12932, 31 March 1962.
102 Supra at note 97.
103 G.R. No. 221590, 22 February 2017.
104 G.R. No. 193100, 10 December 2014.

violated when respondent had fully informed petitioner in writing of the factual and legal bases of deficiency taxes assessment, which enabled the latter to file an effective protest.

Respondent also contends that petitioner is liable for DST because RR No. 9-2000[105] only pertains to the remittance of DST and not to the liability to pay DST. Further, respondent claims that petitioner did not offer evidence to prove that the debt instrument subjected to DST was entered with an entity required to remit tax under RR No. 9-2000.[106]

Finally, respondent underscores that all presumptions are in favor of the correctness of tax assessments and failure on the part of petitioner to satisfactorily overcome the same would mean that the presumption still stands.

RULING OF THE COURT

Before delving into the merits of the case, We shall first resolve whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

At the outset, it should be emphasized that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[107] Section 7(a)(1) and (2) of RA 1125,[108] as amended by RA 9282,[109] provides:

> ...
>
> **Sec. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> > a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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105 Supra at note 33.
106 Supra at note 33.
107 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.
108 Supra at note 4.
109 Supra at note 5.

> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code **or other laws administered by the Bureau of Internal Revenue**;
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.][110]
>
> ...

Taking cue from the foregoing, the Court in Division's appellate jurisdiction is not limited to cases involving decisions of the CIR in relation to disputed assessments or refunds. The second portion of Section 7(a)(1) and (2) of RA 1125, as amended by RA 9282, clearly covers "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the BIR.

The CTA's "other matters" jurisdiction includes the determination of the validity of the WDL, as ruled by the Supreme Court in the case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*[111] (**La Flor**), citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,*[112] to wit:

> ...
>
> In *Philippine Journalists,* **we ruled that the CTA's appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessments or refunds. Section 7(a)(2) of RA 9282 also covers "other matter[s] arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." <u>Clearly, the CTA has jurisdiction to determine whether the WDL issued by the BIR is valid</u>** and rule on the validity of the five waivers of the statute of limitations and La Flor's application for tax amnesty under RA 9480.
>
> ...

---

110 Emphasis supplied and italics in the original text.

111 G.R. No. 202105, 28 April 2021; italics in the original text, emphasis and underscoring supplied.

112 G.R. No. 162852, 16 December 2004.

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital),*[113] the Supreme Court reiterated the CTA's jurisdiction to determine the validity of a WDL, *viz*:

> ...
> Contrary however to the CIR's argument, Section 7(a)(1) of [RA] 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC:
>
> > SEC. 7. Jurisdiction. — The CTA shall exercise:
> >
> > (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue [Code] or other laws administered by the Bureau of Internal Revenue[.]
>
> As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.**
> ...

Here, petitioner received the FDDA[114] signed by OIC-RD Cadangen on 28 October 2022, assessing it for deficiency income tax, VAT, IAET, EWT, DST, and Compromise Penalties for TY 2018. Since the FDDA was issued by respondent's authorized representative, petitioner sought reconsideration before the CIR. However, while the administrative appeal was pending, on 17 February 2013,[115] petitioner received WDL No. WDL-RR10-AMS-2023-015 dated 01 February 2023[116] likewise issued by OIC-RD Cadangen.

113 G.R. No. 255473, 13 February 2023; Citations omitted, italics and emphasis in the original text and supplied.
114 Supra at note 27.
115 Supra at note 6.
116 Id.

Thus, petitioner filed the instant Petition for Review before this Court on 20 March 2023 praying for the Court to declare as void the PAN dated 15 June 2022, the FLD/FAN dated 12 July 2022, the FDDA dated 13 October 2022, and WDL No. WDL-RR10-AMS-2023-015 dated 01 February 2023.

Considering that the issuance of a WDL falls under the CTA's jurisdiction to review "other matters arising under the NIRC", this Court can take cognizance of this case.

To be clear, the Court can rule not only on the validity of the WDL in question, but also on the propriety of the related deficiency tax assessments for TY 2018. While respondent has not issued his or her final decision on petitioner's administrative appeal before his or her Office, the Answer filed before this Court shall be considered as his or her final decision thereon.

Notably, in his or her Answer, respondent did not challenge this Court's jurisdiction over the instant case, instead, it argued on the merits of the subject deficiency tax assessment and prayed that the Court sustain the assessment *in toto* and order petitioner to pay the total amount of ₱11,127,286.93 representing its alleged deficiency income tax, VAT, IAET, EWT, and DST for TY 2018. Clearly, respondent's Answer can be considered as his or her decision on petitioner's administrative appeal, subject to this Court's review.

As to the timeliness of the instant Petition for Review, petitioner had 30 days from its receipt of the assailed WDL on 17 February 2023, or until 19 March 2023, to file a Petition for Review with the CTA. At first glance, it may appear that the Petition for Review was filed on the 31st day from the receipt of the assailed WDL. However, it is noteworthy that the last day or the 30th day for filing the Petition fell on a weekend. Therefore, petitioner had until the next working day within which to file the Petition. Section 1 of Rule 22[117] of the Rules of Court, which applies suppletorily to the RRCTA,[118] reads:

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117 Computation of Time.

118 Sec. 3, Rule 1 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals.

> ...
>
> Section 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.**[119]
>
> ...

Since 19 March 2023 falls on a Sunday, petitioner had until the next working day to file a Petition for Review. Thus, petitioner timely filed the instant Petition for Review[120] on <u>20 March 2023</u>.

WARRANT OF DISTRAINT AND/OR LEVY (WDL) NO. WDL-RR10-AMS-2023-015 IS VOID FOR BEING PREMATURELY ISSUED.

To recall, petitioner filed an administrative appeal to the CIR[121] on 14 November 2022 assailing the FDDA issued by OIC-RD Cadangen. While awaiting the CIR's decision on its administrative appeal, it received WDL No. WDL-RR10-AMS-2023-015 dated 01 February 2023.[122] OIC-RD Cadangen likewise issued the same following petitioner's failure and refusal to pay delinquent taxes amounting to ₱11,127,286.93 for TY 2018.[123]

In *Light Rail Transit Authority v. Bureau of Internal Revenue*[124] (**LRTA**), the Supreme Court ruled that an FDDA elevated to the CIR is not final, executory, and demandable, thus, a WDL emanating from it is void, *viz.*:

> ...
>
> Subsection 3.1.5 of Revenue Regulations No. 12-99 is clear that **if the protest is elevated to the respondent Commissioner of Internal Revenue, "the latter's decision shall not be considered final,**

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119 Emphasis supplied and italics in the original text.
120 Supra at note 1.
121 Supra at note 28.
122 Supra at note 6.
123 Id.
124 G.R. No. 231238, 20 June 2022; Citations omitted, emphasis and underscoring supplied.

> **executory and demandable, in which case, the protest shall be decided by the Commissioner.**" The Final Decision on Disputed Assessment was timely elevated to the Commissioner; hence, **it never became final, executory, and demandable.**
>
> **Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances:** the Preliminary Collection Letter, the Final Notice Before Seizure, **the Warrant of Distraint and/or Levy**, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. **Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner.** More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise. **<u>To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made.</u>** The Preliminary Collection Letter, the Final Notice Before Seizure, **the Warrant of Distraint and/or Levy**, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration **all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect.**
>
> ...

In the instant case, WDL No. WDL-RR10-AMS-2023-015, dated 01 February 2023, was undisputably issued while respondent was yet to decide on petitioner's administrative appeal. Thus, applying the Supreme Court's pronouncement in *LRTA*, WDL No. WDL-RR10-AMS-2023-015 shall be declared void and without force and effect.

We shall now proceed to discuss the parties' arguments in relation to the issue identified, *in seriatim*.

RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR (TY) 2018 HAS NOT YET PRESCRIBED.

Section 203 of the NIRC of 1997, as amended, provides that taxes may be assessed and collected within three (3) years after the last day prescribed by law for the filing of the return or the day the return was filed, whichever is later:

> ...
>
> SEC. 203. *Period of Limitation Upon Assessment and Collection.* — **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* **That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.** For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[125]
>
> ...

Pursuant to Section 223[126] of the NIRC of 1997, as amended, by operation of law, the original three (3)-year prescriptive period may be suspended during a period where respondent or his or her authorized representative is prohibited from making the assessment and for sixty (60) days thereafter. In this regard, Section 4(z)[127] of RA 11469,[128] which declared a national emergency due to the COVID-19 pandemic, and the subsequent issuance of RR No. 7-2020,[129] as amended by RR Nos. 10-2020[130] and 11-2020,[131] and Operations Memorandum

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125 Emphasis supplied and italics in the original text.

126 *Suspension of Running of Statute of Limitations.*

127 Section 4. *Authorized Powers.* - Pursuant to Article VI. action 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:

...

(z) Move statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine[.]

128 AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECIDED NATIONAL POLICY AND FOR OTHER PURPOSES.

129 Implementing Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act", particularly on the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes.

130 Amends Section 2 of Revenue Regulations No. 7-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

131 Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes

No. 66-2022,[132] must be taken into account. These regulations excluded from the computation of prescriptive periods the days when affected areas were under Enhanced Community Quarantine (**ECQ**) or Modified Enhanced Community Quarantine (**MECQ**), recognizing that the BIR (specifically RevReg No. 10 – Legazpi City [who conducted the audit]) could not perform audit, assessment, or collection functions during such periods. Accordingly, in computing the prescriptive period to assess from 2020 to 2022, restrictive quarantine periods imposed in Legazpi City must be considered.

As pointed out by respondent, Legazpi City, Albay was under ECQ from 16 March 2020 to 31 May 2020,[133] or for a total of seventy-seven (77) days. Consequently, in accordance with Section 223 of the NIRC of 1997, as amended, Section 4(z) of RA 11469, and the related issuances, the prescriptive period to assess petitioner is suspended for a total of 137 days.[134] As such, the extended prescriptive period to assess petitioner for deficiency income tax and VAT are as follows:

Tax Type/ Period	Date of Filing and Payment/Due Date	Original End of the Regular Prescriptive Period[135] + 137 days
Income Tax (TY 2018)	11 March 2019[136] / 15 April 2019[137]	30 August 2022
VAT (Quarter 1 – 2018)	17 April 2018[138] / 25 April 2018[139]	09 September 2021
VAT (Quarter 3 – 2018)	19 October 2018[140] / 25 October 2018[141]	11 March 2022
VAT (Quarter 4 – 2018)	22 January 2019[142] / 25 January 2019[143]	11 June 2022

pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

132 Further Clarification on the Suspension of the Running of the Statute of Limitations on Assessment and/or Collection of Internal Revenue Taxes Under Sections 203 and 222 of the 1997 Tax Code, As Amended, in View of the Declaration of Enhanced Community Quarantine (ECQ)/Modified Enhanced Community Quarantine (MECQ).

133 See Presidential Proclamation No. 929 dated 16 March 2020, Inter-Agency Task Force (**IATF**) Resolution No. 20 dated 06 April 2020, IATF Resolution No. 28 dated 23 April 2020.

134 Computed as 77 days plus 60 days.

135 Three (3) years from the actual filing of the return or the date prescribed by law to file the return, whichever is later, as provided in Sec. 203 of the NIRC of 1997, as amended.

136 See BIR Received Stamp on BIR Form No. 1702-RT filed by petitioner for TY 2018, BIR Records, p. 57.

137 See RMC No. 75-2016 and Sec. 77(B) of the NIRC of 1997, as amended.

138 See BIR Payment Slip, BIR Records, p. 9.

139 See RMC No. 75-2016 and Sec. 114(A) of the NIRC of 1997, as amended.

140 See BIR Payment Slip, BIR Records, p. 1.

141 Supra at note 139.

142 See par. 9 of RO Egar's Memorandum Report to the RDOr, supra at note 20.

143 Supra at note 139.

Petitioner contends that respondent erroneously applied RMC No. 136-2020[144] in claiming that his or her right to assess petitioner has not yet prescribed. It claims that its case is not covered by the suspension of the prescriptive period to assess since the original prescriptive period to assess its income tax return is on 15 April 2022, which is a year after the period contemplated in RMC No. 136-2020. Petitioner further claims that even RMC No. 80-2021,[145] which was later issued by the BIR, still does not cover petitioner's case as it only covers cases where the original prescriptive period falls either on 15 April 2021 or 15 August 2021.

Petitioner's contention is devoid of merit.

As respondent argued aptly, RMC No. 136-2020 only provided for sample cases to illustrate the application of item 32 of RR No. 11-2020, which pertains to the suspension of the prescriptive period provided under Sections 203 and 223 of the NIRC of 1997, as amended, and Section 4(z) of RA 11469. These illustrations are not intended to limit the applicability of RR No. 11-2020, much less can they be interpreted to narrow the scope of application of Section 223 of the NIRC of 1997, as amended, and Section 4(z) of RA 11469.

With regard to RMC No. 80-2021, petitioner is correct that the same does not cover its case, but for the reason that it was issued to clarify the suspension of statute of limitations on assessment and collection of taxes due to the declaration of ECQ in Metro Manila, Bulacan, Cavite, Laguna, and Rizal from 29 March 2021 to 12 April 2021. The province of Albay, where petitioner and RevReg No. 10–Legazpi City (who conducted the audit) are located, is not among the areas covered by the said issuance.

Guided by the foregoing, We find that respondent's right to assess petitioner for deficiency income tax for TY 2018 has not yet prescribed when he or she issued the FLD/FAN on 12 July 2022 and when petitioner received it on 10 August 2022. The same, however, cannot be said for respondent's right to assess petitioner for deficiency VAT for the first (1st), third (3rd), and fourth (4th) quarters of TY 2018, which has

144 Supra at note 97.
145 Supra at note 98.

already prescribed on 09 September 2021, 11 March 2022, and 11 June 2022, respectively.

THE EXTRAORDINARY PRESCRIPTIVE PERIOD OF TEN (10)-YEARS DOES NOT APPLY TO PETITIONER'S VALUE-ADDED TAX (VAT) FOR THE FIRST (1^{st}), THIRD (3^{rd}), AND FOURTH (4^{th}) QUARTERS OF 2018.

Respondent argues that the extraordinary 10-year period to assess under Section 222 of the NIRC of 1997, as amended, finds application in this case since petitioner substantially underdeclared its sales and purchases, rendering its VAT returns false and fraudulent.

We are not convinced.

As previously discussed, Section 203 of the NIRC of 1997, as amended, provides for the three (3)-year prescriptive period in the assessment and collection of internal revenue taxes. By exception, in case of filing of a false or fraudulent return with intent to evade tax, or failure to file a return, the prescriptive period to assess extends to 10 years from discovery of the falsity, fraud, or omission. Section 222 of the NIRC of 1997, as amended, provides:

> ...
> **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within **ten (10) years after the discovery of the falsity, fraud or omission:** *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.[146]
> ...

146 Emphasis supplied and italics in the original text.

However, the extraordinary period of 10 years to assess cannot be invoked haphazardly and purely at the whim or convenience of the parties. Instead, it must be consistent with the taxpayer's fundamental right to due process. The Supreme Court, in *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*[147] (**McDonald's**) elucidated that:

> ...
> [W]hile the law accords the tax authorities an extended period within which they may investigate the taxpayer and issue a corresponding tax assessment, **the law does so by exception.** Furthermore, it is recognized that the *law on prescription should be* ***liberally construed in favor of the taxpayer***, to afford them protection against unreasonable examination, investigation, or assessment.
>
> Thus, when invoking the benefit of the extraordinary 10-year assessment period, as well as the presumption of falsity or fraud, the **tax authorities are duty-bound to respect a taxpayer's *fundamental right to due process of the law.*** There is due process when the taxpayer is provided with information necessary to mount an *intelligent and timely protest/defense to the assessment.*
>
> Consequently, *first*, the **tax authorities are required to *communicate* to the taxpayer, in a clear and adequate manner, the basis for extending the assessment period.** Guided by the pronouncements in *Asalus, Fitness by Design*, and *Spouses Magaan*, the tax authorities are obligated to indicate in the *assessment notice* that the extraordinary prescriptive period is being applied and the bases of allegations of falsity or fraud (First Due Process Requirement).
>
> *Second*, they are likewise *proscribed from adopting a position inconsistent with the invocation of the extended period* or that which will mislead the taxpayer and prejudice its defense (Second Due Process Requirement).
> ...

The Supreme Court went on to summarize the due process requirements for a valid extension of assessment period in case of a false return as follows:

> ...
> ii. Due Process Requirements

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147 G.R. No. 247737, 08 August 2023; Citations omitted, italics and emphasis in the original text and supplied.

> (1) **First Due Process Requirement. The assessment notice issued to the taxpayer must <u>clearly state</u>** the following:
>
> a. **that extraordinary prescriptive period (not the basic three year period) is being applied**, and
>
> b. the bases of allegations of falsity or fraud, e.g., if the CIR seeks to rely on the *presumption of falsity or fraud particularly, the formal notice to the taxpayer must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold.*
>
> (2) **Second Due Process Requirement**. The tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied.[148]
>
> ...

Specifically on the allegation of falsity or fraud, the Supreme Court explicitly declared that:

> ...
>
> Thus, it must be understood that ***falsity* and/or *fraud with respect to any tax return* cannot be presumed to the extent that these are relied upon as grounds for the extension of the assessment period to 10 years.** In keeping with their duty to preserve due process in tax assessments, as enunciated in *BF Goodrich, Fitness by Design, Samar Electric, Asalus,* and *Spouses Magaan*, the **tax authorities bear the burden of establishing, with *clear and convincing proof*, the existence of grounds warranting the application of the 10-year period.**[149]
>
> ...

In the case at bar, nothing in the PAN and the FLD/FAN stated that respondent is applying the extraordinary prescriptive period of 10 years. The imposition of 50% surcharge on petitioner's alleged deficiency VAT is not sufficient to warrant the application of the extraordinary prescriptive period in light of the jurisprudential requirement that the assessment notice must **<u>clearly state</u>** that the extraordinary prescriptive period (not the basic three (3) year period) is being applied.

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[148] Id.; Emphasis and italics in the original text, emphasis and underscoring supplied.

[149] Id.; Emphasis supplied and italics in the original text.

Respondent's belated invocation of the extraordinary prescriptive period in the FDDA will not cure the defect in the PAN and the FLD/FAN. Jurisprudence is clear that the invocation of the extraordinary prescriptive period must be clearly stated in the **assessment notices**, and not in respondent's final decision on any protest filed.

Based on the foregoing, the extraordinary prescriptive 10-year period will not apply on petitioner's VAT for the 1st, 3rd, and 4th quarters of TY 2018.

THE EXTRAORDINARY PRESCRIPTIVE PERIOD OF TEN (10)-YEARS APPLIES TO PETITIONER'S VALUE-ADDED TAX (VAT) FOR THE SECOND (2nd) QUARTER OF 2018 AND EXPANDED WITHHOLDING TAX (EWT) FOR JANUARY TO DECEMBER 2018.

As for respondent's right to assess petitioner for deficiency VAT for the second (2nd) quarter of TY 2018 and deficiency EWT for the months of January to December 2018, the records are bereft of any indication that petitioner filed returns for EWT and VAT for the said periods. Notably, petitioner did not allege in its petition the actual date of filing of its VAT and EWT returns for TY 2018. Neither did petitioner offer in evidence the said returns.

Section 222(a)[150] of the NIRC of 1997, as amended, provides that in case of failure to file a tax return, the tax may be assessed at any time within 10 years after the discovery of the omission.

Respondent alleges that petitioner's non-filing of its returns was discovered on 12 November 2021, petitioner's date of receipt of the NOD.[151] A review of the computation attached to the NOD as Annex A[152] indeed suggests that respondent discovered petitioner's non-filing of the EWT returns when the NOD was prepared and issued, since the amount of EWT remitted *per* return in the said computation was left blank. Regarding petitioner's non-filing of a VAT return for the 2nd quarter of 2018, the same cannot be deduced from the NOD. However,

150 Supra at pp. 23-24.
151 Supra at note 16.
152 BIR Records, pp. 160-162.

RO Egar mentioned in her Memorandum Report for the RDOr dated 25 May 2022[153] that petitioner did not file a VAT return for the 2nd quarter of 2018.

In view of the foregoing, respondent has 10 years from 25 May 2022 and 12 November 2021 to assess petitioner for deficiency VAT for the 2nd quarter of TY 2018 and deficiency EWT for the months of January to December 2018, respectively.

We summarize the prescription of respondent's right to assess petitioner for deficiency income tax, VAT, and EWT for TY 2018 *vis-à-vis* respondent's issuance of the FLD/FAN on 12 July 2022 and petitioner's subsequent receipt thereof on 10 August 2022, as follows:

Tax Type and Period	**Applicable Prescriptive Period**	**End of the Prescriptive Period**	**Court's Finding**
Income Tax for TY 2018	Regular	30 August 2022	not yet prescribed
VAT for Q1 2018	Regular	09 September 2021	prescribed
VAT for Q2 2018	Extraordinary	25 May 2032	not yet prescribed
VAT for Q3 2018	Regular	11 March 2022	prescribed
VAT for Q4 2018	Regular	11 June 2022	prescribed
EWT for TY 2018	Extraordinary	12 November 2031	not yet prescribed

PETITIONER'S ALLEGATION THAT AN AMOUNT EQUIVALENT TO ₱45,000.00 HAS BEEN ILLEGALLY ADDED TO THE ALLEGED DEFICIENCY TAXES HAS NO FACTUAL AND LEGAL BASIS.

Petitioner asserts that a simple mathematical computation would readily show that respondent has added an amount equivalent to ₱45,000.00 to the alleged total deficiency income tax without any basis. Accordingly, petitioner contends that assuming arguendo that it is liable for deficiency taxes, it should only be for ₱11,082,286.93 instead of ₱11,127,286.93. Petitioner added that this typographical error was not only made in the PAN, but carried over to the FLD/FAN, indicating that the examiners did not bother to review its reports despite its protest and merely "copied and pasted" the amounts from the PAN to the FLD/FAN.

153 Supra at note 20.

Petitioner illustrated the alleged illegal addition as follows:

INCOME TAX	Alleged incorrect computation	Alleged correct computation
Basic Tax Deficiency	₱ 3,327,637.68	₱ 3,327,637.68
Surcharge	843,159.42	843,159.42
Interest	1,098,833.08	1,098,833.08
Total	**₱ 5,314,630.18**	**₱ 5,269,630.18**

At the outset, We find no irregularity in respondent's act of merely reiterating the findings in the PAN in the FLD/FAN considering that petitioner did not file a Protest to the PAN within the period allowed for it to do so. With no defense or explanations to consider, respondent cannot be faulted for merely restating his or her initial findings.

On respondent's alleged error in computation, noticeably, the difference between petitioner's and respondent's computations pertains to the amount of basic income tax deficiency. The basic income tax deficiency determined by respondent was ₱3,372,637.68, while petitioner used ₱3,327,637.68 in its computation.

Respondent computed the basic tax deficiency as follows:

Tax Due (whichever is higher between RCIT and MCIT)			₱ 3,675,460.68
Less: Income Tax Paid /Withheld			
CWT (BIR Form No. 2307)			
CWT claimed per return	₱ 10,485.00		
Less: Unsupported with Form No. 2307	10,485.00	₱ -	
Excess Credits Carried Over from Previous Periods		544,723.00	544,723.00
Deficiency Income Tax			₱ 3,130,737.68
Add: Excess Credits Carried Over to Succeeding Periods			241,900.00
Deficiency Income Tax			**₱ 3,372,637.68**

On the other hand, petitioner did not show how it arrived at the amount of ₱3,327,637.68 as basic deficiency income tax. Thus, based on the information presently available in the case records, it seems that petitioner committed a transposition error in its Petition for Review,[154] which was carried over to its Memorandum.[155]

[154] Supra at note 1, pp. 9-10.
[155] Supra at note 93, pp. 409-410.

Therefore, We find petitioner's claim that an amount equivalent to ₱45,000.00 was illegally added to the alleged total deficiency income tax to be *unfounded*.

PETITIONER'S RIGHT TO DUE PROCESS WAS NOT VIOLATED IN RESPONDENT'S ISSUANCE OF THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA).

Petitioner argues that its right to due process was violated when respondent issued the FDDA which contains the exact same findings as the FLD/FAN. It claimed that respondent did not take time to consider its defenses in its Protest to the FLD/FAN.

We are not persuaded.

Section 228 of the NIRC of 1997, as amended, outlines the due process requirements for the issuance of deficiency tax assessments. It states:

> ...
>
> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his [or her] duly authorized representative finds that proper taxes should be assessed, he [or she] shall first notify the taxpayer of his [or her] findings[.]...
>
> ...
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.[156]
>
> ...

The above requirement is implemented by Section 3 of RR No. 12-99,[157] as amended by RR No. 18-2013,[158] which provides:

156 Italics in the original text.

157 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

...

SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. **It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** ...

...

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his [or her] duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based;** ***otherwise, the assessment shall be void*** ...

...

3.1.5 *Final Decision on a Disputed Assessment (FDDA).* — **The decision of the Commissioner or his [or her] duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based,** ***otherwise, the decision shall be void*** (see illustration in ANNEX "C" hereof), and (ii) that the same is his *final decision*.[159]

...

In the landmark case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[160] (**Avon**), citing *Ang Tibay, represented by Toribio Teodoro, manager and proprietor, and National Workers' Brotherhood v. The Court of Industrial Relations and National Labor Union, Inc.*,[161] the Supreme Court held that the CIR deprived demonstrably petitioner therein of administrative due process. The relevant portion of the decision reads:

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159 Italics in the original text and emphasis supplied.

160 G.R. Nos. 201398-99 & 201418-19, 03 October 2018; Citations omitted, italics and emphasis in the original text and supplied, and underscoring supplied.

161 G.R. No. 46496, 27 February 1940.

...

The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no under declaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period." This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation[s] No. 12-99.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

Indeed, **the Commissioner's <u>inaction and omission to give due consideration to the arguments and evidence</u> submitted before her by Avon** are deplorable **transgressions of Avon's right to due process.** The right to be heard, which includes the right to present evidence, is meaningless if **the Commissioner can simply ignore the evidence without reason.**

...

Similarly, in this case, **despite Avon's submission of its explanations and pieces of evidence to the assessments**, the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign

> simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple."
>
> ...

Based on the foregoing, the BIR violated Avon's right to due process when it disregarded the latter's submitted evidence from the PAN's issuance until the release of the Collection Letter, which was ultimately appealed before this Court and the Supreme Court. Such is not the case here.

A perusal of petitioner's Protest to the FLD/FAN shows that it is divided between two (2) principal issues: (1) that prescription against the cause of action had set in; and (2) that due process was not observed in the issuance of the FAN. In addressing these arguments, respondent found it proper to likewise divide the FDDA into two (2) corresponding parts, each intended to specifically resolve the issues raised by petitioner in its Protest to the FLD/FAN, *viz*:

Protest to the FLD/FAN (Request for Reconsideration)	FDDA dated 13 October 2022
... **GROUNDS FOR RECONSIDERATION, RECALL, SETTING ASIDE AND CANCELLATION OF THE FORMAL LETTER OF DEMAND AND FINAL ASSESSMENT NOTICES** **1. Prescription Against the Cause of Action Had Set In.** **A. INCOME TAX** ... As a consequence, with all due respect to the Bureau of Internal Revenue, the provision under Section 203 of the Tax Code applies and to quote: "SEC. 203. Period of Limitation Upon Assessment and Collection. - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. x x x" The Income Tax Return for taxable year 2018 was filed by ENERJA ENTERPRISES, INC. on	... After a careful review of the case and the laws applicable thereto, we regret to inform you that your request for consideration is **DENIED** for the following reasons: 1. You have stated in your PROTEST that the prescription to assess the following taxes had already set in prior to the issuance of Formal Letter of Demand/Final Assessment Notice. However, upon evaluation by this Office of the period to assess said taxes, the following were noted: **a. Income Tax:** Your Annual Income Tax Return (AITR) for the taxable year 2018 was filed on March 11, 2019, with the last day of filing on April 15, 2019, on which the three (3) year prescriptive period shall reckon. While it is true that Section 203 of the Tax Code provides that the Bureau of Internal Revenue (BIR) has three (3) years to assess deficiency taxes, this was suspended and further extended due to the circumstances brought by the pandemic. Under Revenue Memorandum Circular (RMC) No. 136 - 2020, the three (3) year prescriptive period to assess was extended for a

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March 11, 2019 with the last day supposedly on March 10, 2022. It cannot be denied after more than three (3) years from the last date of filing the return that the Final Notice of Assessment for Income Tax with the Formal Letter of Demand, (issued on July 12, 2022) have already lost their functions and can no longer be enforced against Enerja Enterprises, Inc. due to the three (3) year time-bar under Section 203 of the National Internal Revenue Code of 1997, as amended. For having lost the functions of the said Final Assessment Notices and Formal Letter of Demand, the issuance thereof must be reconsidered; must be recalled, set-aside and cancelled for the reasons that the cause of action by the Bureau of Internal Revenue to enforce assessment and collection have obviously prescribed. In a decision by the Court of Tax Appeals entitled "United Church of Christ in the Philippines v. Commissioner of Internal Revenue"-CTA Case No. 9134, it was held and to quote:
<blockquote>
"Ordinarily, respondent has a period of 3 years within which to assess internal revenue taxes counted from the last day prescribed by the law to file the necessary return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond the 3-year prescriptive period shall not be valid.
Hence, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time".
</blockquote>
B. DEFICIENCY IMPROPERLY ACCUMULATED EARNINGS TAX
...
Revenue Regulations No. 2-2001 quoted hereunder:
<blockquote>
"Period for payment of Dividend/payment of improperly Accumulated tax (IAET). The dividends must be Declared and paid or issued not later than one year following the close of the taxable year, otherwise the IAET, if any should be paid within 15 days thereafter."
</blockquote>
The taxable income being subjected to IAET is my current or taxable year 2018 Earnings. Applying the above law, I have until December
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total of 137 days reckoned from the suspension of the statute of limitations on March 16 to May 31, 2020, plus 60 days thereafter.
Applying the above provision, the three (3) year prescriptive period shall end on August 30, 2022. Hence, the assessment relative to the Income Tax was timely received on August 10, 2022, and the right to assess has not yet prescribed.
b. Value Added Tax:
Our assessment on Value Added Tax revealed under declaration of sales and purchases which constitute substantial under declaration of taxable sales, rendering your value added tax returns filed for the taxable year 2018 as false and fraudulent returns.
Evidently, your case falls under Section 222 of the Tax Code, which provides that, in case of a false and fraudulent return or of failure to file a return, the tax may be assessed at any time within ten (10) years after the discovery of the falsity, fraud or omission.
Applying the above provision, the ten (10) year prescriptive period shall begin from the date of service of the Notice of Discrepancy on November 12, 2021, when the BIR Officials discovered, after investigation, that you are liable to pay deficiency Value Added Tax and shall prescribe on November 12, 2031. Hence, the assessment relative to the Value Added Tax was timely received on August 10, 2022, and the right to assess has not yet prescribed.
c. Improperly Accumulated Earnings (IAET), Expanded Withholding (EWT) and Documentary Stamp Taxes (DST):
Based on the investigation conducted, you failed to file IAET, EWT and DST returns for the taxable year 2018. Clearly, this also falls under Section 222 of the Tax Code for willful failure to file returns. Consequently, the assessment may be made within ten (10) years after discovery of the omission. Hence, the ten (10) year prescriptive period shall begin on November 12, 2021, when the BIR Officials discovered the omission to file said returns and the right to assess shall prescribe on November 12, 2031. Taking into consideration that the assessment was timely received on August 10, 2022, the right to assess has not yet prescribed.
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31, 2019 to either declare it as dividend or appropriate the same for future use. Therefore, it may be concluded intelligently that if I failed to do either or both within the taxable year 2019, the IAET can only be demandable after January 15, 2020. **C. VALUE ADDED TAX** ... **D. WITHHOLDING TAX** ... BIR Revenue Memorandum Circular (RMC) 75-2016 signed by Commissioner Caesar Dulay, stated, " "The issue of prescription is crucial to the assessment and collection function. There is no Uniform date for the reckoning of the prescriptive period for all types of taxes. Considering the different period for the filling of various tax returns, the reckoning for the counting of the prescription period differs for each type of tax. To be specific, for withholding taxes, the 3-year prescriptive period shall be counted from the date required for the filling of the monthly return: for value added Tax, it shall be the prescribed filing date of the quarterly return; and for income tax, the prescription period is counted from the required filling date for the annual income tax return. Hence the reckoning for the counting for the prescriptive period of the following types is shown in the attached Revenue Memorandum Circular 75-2016 mark as annex - "I". Therefore, the First (1) Quarter, Second (2nd) Quarter, Third (3rd) Quarter and fourth (4th) Quarter of VAT return for taxable year 2018 has already prescribed on January 25, 2022. And the same Withholding Tax Expanded for taxable year 2018 has already prescribed on January 10-15, 2022. It cannot be denied **after more than Three (3) years** from the last date of filing the VAT return and Withholding Tax return that the Final Letter of demand and Final Assessment Notices for Value Added Tax and Withholding tax expanded issued on July 12, 2022) have already lost their functions and can no longer be enforced against Enerja Enterprises Inc. due to the three (3) year time-bar under Section 203 of the National Internal Revenue Code of 1997, as amended.	

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For having lost the functions of the said Final Letter of Demand, the issuance thereof must be reconsidered, recalled, set aside and cancelled for the reasons that the cause of action by the Bureau of Internal Revenue to enforce assessment and collection have obviously prescribed. In a decision by the Court of Tax Appeals entitled "United Church of Christ in the Philippines v. Commissioner of Internal Revenue"-CTA Case No. 9134, it was held and to quote:
"Ordinarily, respondent has a period of 3 years within which to assess internal revenue taxes counted from the last day prescribed by the law to file the necessary return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond the 3-year prescriptive period shall not be valid. Hence, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time".
E. DOCUMENTARY STAMP TAX
...
CTA Case No. 8459, promulgated on Nov. 23, 2015. This is a case between the BIR and a corporate taxpayer who is being assessed for various deficiency taxes, including DST.
In this case, the taxpayer was assessed for deficiency DST on its Short-term borrowings and advances to various parties. The short-term borrowings were obtained from various local banks. The taxpayer contested the assessment on the ground that the DST was already deducted from the proceeds of such loans.
The CTA ruled that the taxpayer is not liable to pay the DST on its short-term borrowings. While the rule provides that either party to the transaction shall pay the DST to the BIR, in transactions where one of the parties is a bank, the remittance of the DST shall be the responsibility of the bank.
The court took note of the fact that some of the taxpayer's tax returns were amended. However, in determining the basis for counting the three-year prescriptive period for the statute of limitations, the court still used the filing dates
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of the original tax returns and not the amended returns, even though the general rule is that the later date should apply. **F. OTHER COMPROMISE PENALTIES** ... It is well-settled that compromise penalties are amounts collected by the Bureau of internal Revenue in lieu of criminal prosecution for violations committed by taxpayer. The payment of which is based on a compromise agreement validity entered into between the taxpayer and the BIR chief (Collector of Internal Revenue vs UST, 104 Phil 1062) a compromise implies mutual agreement. Absent any showing that petitioner concerned to the compromise penalty its composition should not be allowed. As already established, the imposition of the same without the conformity of the taxpayer is illegal and unauthorized (CIR vs. Lianga bay Logging co., inc. 193 SCRA 92-93). Since conviction for failure to make/file returns or supply information are wanting in the instant case, and since there is no showing that petitioner voluntarily entered into compromise agreement with respondent, the compromise penalty of P25,000 is hereby ordered cancelled (CTA Case No. 7363, June 9, 2010)	
2. Lack of Due Process in Arriving to the Final Assessment Notices Respectively for the Income Tax, Withholding Tax and Value-Added Tax, Others Final Tax, Docs Stamp Tax and Others Compromise Penalty A perusal of the last paragraph of your Letter of Authority dated January 7, 2020, says "You will be duly informed of the results of the examination upon approval of the report submitted by the aforementioned Revenue Officer. That provision in the said Letter of Authority took place after six hundred sixty-nine (669) days. Enerja Enterprises Inc. was informed about the final report/results of the examination by the assigned Revenue Officer Alen Mae Egar and Group Supervisor Annalee Pagorogon of Revenue District Office 067, Legazpi City. Pursuant to RMO 36-997 an Internal Revenue Officer is allowed only 120 days from the date of receipt of a Letter of Authority by the taxpayer to conduct the audit and submit the required report investigation. If the Revenue Officer is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the LA for revalidation. The failure of revalidation	2. You have also contended lack of due process in arriving to the Final Assessment Notices (FAN) for failure to revalidate the Letter of Authority (LOA) before the end of the 120-day period to conduct the audit, making the assessment null and void. To refute this argument, Revenue Memorandum Order (RMO) No. 19 - 2015 provides that revalidation of LOA for failure of the Revenue Officer (RO) to render a report of investigation within the prescribed period is no longer needed. It further provides that, failure on the part of the RO to render a report of investigation/verification within the time frame prescribed shall not nullify the LOA. Hence, the LOA remains to be valid and enforceable despite the fact that the RO failed to submit report of investigation within the prescribed period.

rendered the Letter of Authority issued on January 7, 2020 before 120 days is null and void. Likewise, there is no showing that the Revenue Officer assigned to conduct an audit was able to submit his report of investigation within the 120-day period which requires to state whether or not the taxpayer agrees with his findings on the liability for deficiency tax or taxes or if not amenable the taxpayer to be informed in writing by the Revenue District Office or by the Special Investigation Division or by the Chief of Division concerned in Revenue Regional Offices about the discrepancy or discrepancies in the taxpayer's payment of internal revenue taxes for the purpose of "**Informal Conference**" in order to afford the latter with an opportunity to present his side of the case (**Sec. 3.1.1, RR 12-99, as amended by RR 13-18, RR 7-2018, January 22, 2018**). This "Informal Conference" happened after 669 days to Enerja Enterprises Inc. about the discrepancy in the payment of its internal revenue tax for taxable year 2018. Lack of the required due process rendered all proceedings, processes and notices of the Bureau of Internal Revenue including the Five 5) Final Assessment Notices and Formal Letter of Demand **null and void and have no effect.**	

As can be gleaned from the foregoing, respondent considered petitioner's submitted Protest to the FLD/FAN (request for reconsideration) in the issuance of the FDDA. Further, in rejecting petitioner's contentions that the right to assess had already prescribed and that due process was not observed in the issuance of the FLD/FAN, respondent sufficiently set forth the relevant facts and the applicable law, rules, and regulations in the FDDA.

Clearly, unlike in *Avon*, respondent duly considered herein petitioner's arguments in its Protest to the FLD/FAN and communicated in writing the basis of the decision to sustain the findings indicated therein. This demonstrates compliance with the due process requirements under Section 228 of the NIRC of 1997, as amended, and as implemented by RR No. 12-99, as amended by RR No. 18-2013.

PETITIONER FAILED TO SUBSTANTIATE ITS CLAIM THAT IT IS NOT LIABLE FOR DEFICIENCY DOCUMENTARY STAMP TAX (DST).

Respondent assessed petitioner with deficiency DST on its Advances from Related Parties and Long-Term Payables. Petitioner argues that it should not be liable for DST as it is the bank which is obligated to remit the same pursuant to RR No. 9-2000.[162]

Section 3(c)(4)(a) of RR No. 09-2000 states that when one of the parties to a document or transaction subject to DST is a bank, quasi-bank or a non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company, the latter shall be responsible for the remittance of the DST, *viz.*:

> ...
>
> SEC. 3. *Mode of Payment and Remittance of the Tax.* –
>
> ...
>
> (c) *Person liable to remit the DST.* – In general, the full amount of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction, except in the following cases:
>
> ...
>
> > (4) **When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax** prescribed under Title VII of the Code: *Provided*, however, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding:
> >
> > > **(a) A bank, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company**[.][163]
>
> ...

Petitioner claims that its AFS for TY 2007 clearly disclosed that it obtained its short-term and long-term borrowings from various local banks. Thus, it is not the party liable for DST for the said loans. However, petitioner did not offer this AFS in evidence before this Court. Further, nothing in the records show that it was submitted to

162 Supra at note 33.
163 Emphasis supplied and italics in the original text.

respondent during the course of the audit of petitioner's books of accounts.

Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[164] As such, petitioner's mere allegations, unsubstantiated by sufficient documentary evidence, cannot be given credence by the Court.

Tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[165] The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[166] Accordingly, the assessment against petitioner for deficiency DST shall remain.

PETITIONER CANNOT BE HELD LIABLE FOR COMPROMISE PENALTY WITHOUT ITS CONSENT.

Respondent assessed petitioner with compromise penalties amounting to ₱138,000.00 for the following violations:

Violation	Compromise Penalty
Failure to submit Inventory List	₱ 5,000.00
Failure to file Summary List of Sales and Purchases (SLSP)	25,000.00
Failure to file BIR Form No. 1701Q for the First to Third Quarter at the time or times prescribed by law or rules and regulations	3,000.00
Failure to file BIR Form No. 1601C and Alphalist of Employees at the time or times prescribed by law or rules and regulations	25,000.00
Late payment of deficiency Income Tax	40,000.00
Late payment of deficiency IAET	40,000.00
Total	**₱ 138,000.00**

We disagree.

164 *LNS International Manpower Services v. Armando C. Padua Jr.*, G.R. No. 179792, 05 March 2010.
165 *Commissioner of Internal Revenue v. Hon. Raul M. Gonzales, Secretary of Justice, et al.*, G.R. No. 177279, 13 October 2010.
166 *Ferdinand R. Marcos II v. Court of Appeals, et al.*, G.R. No. 120880, 05 June 1997.

The nature of a compromise penalty is explained in the case of *Commissioner of Internal Revenue v. Armando L. Abad, et al.*:[167]

> ...
>
> [A] compromise implies **agreement**. One party cannot impose it upon the other. If an offer of compromise is rejected by the taxpayer, as in this case, the Commissioner of Internal Revenue should file a criminal action if he believes that the taxpayer is criminally liable for violation of the tax law as the only way to enforce a penalty. As penalty can be imposed only on a finding of criminal liability.
>
> ...

Clearly, there can be no compromise if there is no agreement between the parties. A compromise penalty *cannot* be imposed or collected without the agreement or conformity of the taxpayer.[168] A compromise, after all, by its nature, is *mutual* in essence.[169] It cannot be imposed in the absence of a preceding agreement. Thus, the fact that the taxpayer protested the assessment only signifies that there was no agreement to speak of.[170] Accordingly, the assessment against petitioner for compromise penalty shall be cancelled.

RESPONDENT'S ASSESSMENT AGAINST PETITIONER FOR DEFICIENCY VALUE-ADDED TAX (VAT) SHALL BE CANCELLED.

As earlier discussed, respondent's right to assess petitioner for deficiency VAT for the 1st, 3rd, and 4th quarters of TY 2018 has already prescribed. On the other hand, due to petitioner's failure to file its VAT return for the 2nd quarter of TY 2018, respondent can still assess petitioner for deficiency VAT for the said period up to 10 years from his or her discovery of such omission.

However, respondent's assessment against petitioner for deficiency VAT covers the entire TY 2018, rather than on a *per*-quarter basis. Moreover, nothing in the records enables Us to isolate or

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167 G.R. No. L-19627, 27 June 1968; Citation omitted and emphasis supplied.

168 *Wonder Mechanical Engineering Corporation v. The Hon. Court of Tax Appeals, et al.*, G.R. Nos. L-22805 & L-27858, 30 June 1975.

169 *Dr. Felisa L. Vda. De San Agustin v. Commissioner of Internal Revenue*, G.R. No. 138485, 10 September 2001.

170 *Manila Bankers' Life Insurance Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 199729-30 & 199732-33, 27 February 2019.

determine the deficiency VAT assessment attributable solely to the 2nd quarter of 2018. As such, We are constrained to order the cancellation of respondent's entire assessment for deficiency VAT against petitioner for TY 2018.

RESPONDENT'S ASSESSMENT AGAINST PETITIONER FOR DEFICIENCY INCOME TAX, IMPROPERLY ACCUMULATED EARNINGS TAX (IAET), AND EXPANDED WITHHOLDING TAX (EWT) FOR TAXABLE YEAR (TY) 2018 SHALL BE UPHELD.

All presumptions are in favor of the correctness of respondent's assessment against petitioner.[171] It is incumbent upon the taxpayer to prove the contrary.[172]

Notably, nothing in the records show that petitioner questioned before this Court the propriety of respondent's computation of deficiency Income Tax, IAET, and EWT. Thus, in view of the presumption of correctness of respondent's assessment, We are constrained to likewise uphold respondent's assessments against petitioner for deficiency Income Tax, IAET, and EWT for TY 2018.

We note, however, that the computation of interests in the FLD/FAN is not in accordance with existing law and regulations. Section 249 of the NIRC of 1997, as amended, provides:

> ...
> SEC. 249. *Interest.* —
>
> (A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of **double the legal interest rate** for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: *Provided*, That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.

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171 *Commissioner of Internal Revenue v. Antonio Tuason, Inc.*, G.R. No. 85749, 15 May 1989.
172 Id.

> (B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, **which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.**[173]
>
> ...

The above provision on deficiency interests was implemented by RR No. 21-2018[174] which provides that the rate imposable under Section 249 of the NIRC of 1997, as amended, shall be twelve percent (12%).

Thus, the deficiency interests and the total amount due for TY 2018, including the 25%/50% surcharge imposed, as indicated in the FLD/FAN, but excluding delinquency interests, shall be recalculated as follows:

Tax Type	Basic Tax	Surcharge	Deficiency Interest[175]	Total
Income Tax	₱ 3,372,637.68	₱ 843,159.42	₱ 1,346,098.24[176]	₱ 5,561,895.34
IAET	1,212,614.56	303,153.64	374,349.06[177]	1,890,117.26
EWT	29,750.00	14,875.00	12,597.70[178]	57,222.70
DST	114,000.00	57,000.00	49,173.04[179]	220,173.04
Total	**₱ 4,729,002.24**	**₱ 1,218,188.06**	**₱ 1,782,218.04**	**₱ 7,729,408.34**

173 Emphasis supplied and italics in the original.

174 Regulations implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".

175 Generally computed from the prescribed due date of the related tax return up to 11 August 2022, which is the due date for the payment of the assessed deficiency taxes as indicated on the Final Assessment Notices issued on 12 July 2022.

176 Computed from 15 April 2019 (deadline of filing the Annual Income Tax Return for Corporations for Calendar Year ended 31 December 2018) up to 12 July 2022.

177 Computed from 15 January 2020 (deadline of payment of IAET for Calendar Year 2018 in case of non-distribution of dividends [See Section 6 of RR No. 2-2001]) up to 12 July 2022.

178 Computed from 31 January 2019 (deadline of filing EWT Return for the last quarter of Calendar Year 2018 [See Section 2.58 of RR No. 2-1998, as amended by Section 5 of RR No. 11-2018]) up to 12 July 2022. Due to limited information available in the case records, the entirety of the basic deficiency EWT due was considered to be part of the EWT due for the last quarter of 2018.

179 Computed from 07 January 2019 (deadline of filing DST Return for transactions entered into in December 2018 [See Section 5 of RR No. 6-2001, the deadline was moved to the next working day as it fell on a weekend]) up to 12 July 2022. Due to limited information available in the case records, the entirety of the basic deficiency DST due was considered to be part of the DST due for the last month of 2018.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Enerja Enterprises, Inc. is **PARTIALLY GRANTED.** Consequently, Warrant of Distraint and/or Levy (WDL) No. WDL-RR10-AMS-2023-015 dated 01 February 2023 and the assessments for Value-Added Tax (VAT) and Compromise Penalties are **CANCELLED and SET ASIDE.**

Respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from pursuing any action against petitioner Enerja Enterprises, Inc. relative to the abovementioned WDL and assessments for VAT and Compromise Penalties.

Meanwhile, the assessments for deficiency Income Tax, Improperly Accumulated Earnings Tax (IAET), Expanded Withholding Tax (EWT), and Documentary Stamp Tax (DST) are **UPHELD.** Accordingly, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of **₱7,729,408.34**, representing the deficiency basic income, VAT, and EWT, inclusive of the 25%/50% surcharge, and 20% deficiency interest.

In addition, petitioner is **ORDERED TO PAY** delinquency interests on ₱7,729,408.34 at the rate of 12%, computed from 11 August 2022[180] until full payment thereof, pursuant to Section 249(C)[181] of the NIRC of 1997, as amended by the TRAIN Law.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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180 The due date indicated in the FLD/FAN, supra at note 23.

181 SEC. 249. *Interest.* —

...

(C) *Delinquency Interest.* — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, 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.

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 1st Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice