REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SOLUTIONS USING RENEWABLE ENERGY, INC., *Petitioner,*	**CTA Case No. 8974**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 09 2020 1:39 pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review[1] filed on January 21, 2015 by petitioner Solutions Using Renewable Energy, Inc. against respondent Commissioner of Internal Revenue, seeking to reverse and set aside, for lack of factual and legal basis, two (2) Formal Letters of Demand and six (6) Assessment Notices, all dated January 13, 2014, finding petitioner liable for the following deficiency taxes for taxable year 2010: [1] deficiency income tax of ₱2,012,799.82; [2] deficiency value-added tax (VAT) of ₱22,421,948.59; [3] deficiency expanded withholding tax on compensation (WTC) of ₱377,826.27; [4] deficiency expanded withholding tax (EWT) of ₱490,209.36; [5] deficiency documentary stamp tax (DST) of ₱491,290.73; and, [6] compromise penalty of ₱17,000.00.

[1] CTA Docket vol. 1, pp. 6-20.

THE PARTIES

Petitioner Solutions Using Renewable Energy, Inc. is a domestic corporation organized and existing under Philippine laws, with principal office at Unit 602 OMM Citra Building, San Miguel Avenue, Ortigas Center, Pasig City 1608.[2]

Respondent Commissioner of Internal Revenue (CIR) is vested by law with the power to implement and enforce the provisions of the National Internal Revenue Code and other tax laws. He may be served with notices and other legal processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS

On January 18, 2012, petitioner received a Letter of Authority (LOA) No. LOA-43A-2012-00000111 dated January 16, 2012, authorizing Revenue Officer Dolores Gillego and Group Supervisor Ramon Navarro of Revenue District Office (RDO) No. 43A-East Pasig to conduct an examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable period January 1, 2010 to December 31, 2010.[4]

On January 7, 2014, petitioner allegedly received a Preliminary Assessment Notice (PAN) dated December 27, 2013.[5]

On January 13, 2014, respondent issued two (2) Formal Letters of Demand (FLDs),[6] and six (6) Assessment Notices,[7] assessing petitioner for the following deficiency taxes for taxable year 2010:[8]

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[2] Par. 1.1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket vol. 1, p. 214.
[3] Par. 1.2, Stipulation of Facts, JSFI, CTA Docket vol. 1, p. 215.
[4] Exhibit "R-2", BIR Records, p. 43; Exhibit "P-1", CTA Docket vol. 1, p. 90.
[5] Par. 3.1, Timeliness of the Petition for Review, CTA Docket vol. 1, p. 8.
[6] Exhibits "P-8" and "P-9", CTA Docket vol. 1, p. 97-105.
[7] Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", and "P-7", CTA Docket vol. 1, pp. 91-96.
[8] Exhibit "R-9", BIR Records, pp. 415-425.

Kind of Tax	Amount
Income Tax	₱ 2,012,799.82[9]
VAT	₱ 22,421,948.59[10]
WTC	₱ 377,826.27[11]
EWT	₱ 490,209.36[12]
DST	₱ 491,290.73[13]
Compromise Penalty	₱ 17,000.00[14]

Petitioner received the aforesaid FLDs and Assessment Notices on January 13, 2014.[15]

On February 11, 2014, petitioner filed its Protest / Letter dated February 10, 2014, addressed to then CIR Kim S. Jacinto-Henares, through Revenue Regional Director Jonas DP Amora.[16]

On March 5, 2014, Revenue Regional Director Amora wrote a letter to petitioner informing the latter that its case will be forwarded to Revenue District Office No. 43A for reconsideration.[17]

On March 13, 2014, Revenue District Officer Josephine S. Virtucio issued Memorandum of Assignment, referring petitioner's case to Revenue Officer Rogelio Delos Reyes and Group Supervisor Ramon Navarro for reinvestigation per protest letter/request for reinvestigation/reconsideration filed by petitioner.[18]

On April 11, 2014, petitioner submitted relevant documents in support of its protest, through a Letter dated April 10, 2014 addressed to Revenue District Officer Virtucio.[19]

On June 11, 2014, petitioner received a Letter dated June 6, 2014 from Revenue District Officer Virtucio, alleging that petitioner's sixty (60)-day period within which to submit relevant supporting documents had lapsed and giving petitioner, in the spirit of due

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[9] Exhibit "P-2", CTA Docket vol. 1, p. 91.
[10] Exhibit "P-3", CTA Docket vol. 1, p. 92.
[11] Exhibit "P-4", CTA Docket vol. 1, p. 93.
[12] Exhibit "P-5", CTA Docket vol. 1, p. 94.
[13] Exhibit "P-6", CTA Docket vol. 1, p. 95.
[14] Exhibit "P-7", CTA Docket vol. 1, p. 96.
[15] Exhibit "R-9-a", BIR Records, p. 425.
[16] Exhibit "P-10", CTA Docket vol. 1, pp. 106-107.
[17] Exhibit "R-12", BIR Records, p. 458.
[18] Exhibit "R-10", BIR Records, p. 460.
[19] Exhibit "P-11", CTA Docket vol. 1, pp. 351-363.

process, a period of fifteen (15) days from receipt of the June 6, 2014 Letter within which to file relevant documents in support of its protest.[20]

On June 25, 2014, petitioner re-submitted to respondent the relevant documents in support of its protest.[21]

In view of respondent's inaction on its protest to the FLDs and Assessment Notices, petitioner filed the present Petition for Review on January 21, 2015 or within thirty (30) days from the lapse of the 180-day period on December 22, 2014.

On March 18, 2015, within the extended period, respondent filed his Answer (Petition for Review, January 21, 2015),[22] with the following Special and Administrative Defenses: (i) the assessment is already final, executory and demandable due to the failure of petitioner to substantiate its request for reinvestigation with relevant documents; (ii) tax assessments are presumed correct and made in good faith, and that the taxpayer has the duty to prove otherwise; and, (iii) taxpayer's failure to overcome the presumption of the correctness of the tax assessment and the regularity in the performance of official duty will justify the judicial upholding thereof.

The Pre-Trial Brief for the Respondent[23] was filed on May 7, 2015, while the Petitioner's Pre-Trial Brief[24] was filed on May 11, 2015. The Pre-Trial Conference was held on August 25, 2015.[25]

On September 4, 2015, the parties filed their Joint Stipulation of Facts and Issues.[26] On September 24, 2015, the Court issued a Pre-Trial Order[27] thereby terminating the pre-trial.

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Ramie Kristina F. Buyser,[28] petitioner's Chief Accountant; and Ms. Maria Gracia L.

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[20] Exhibit "P-12", CTA Docket vol. 1, p. 109.
[21] Exhibit "P-13", CTA Docket vol. 1, pp. 364-366.
[22] CTA Docket vol. 1, pp. 54-57.
[23] CTA Docket vol. 1, pp. 59-62.
[24] CTA Docket vol. 1, pp. 65-73.
[25] CTA Docket vol. 1, p. 210.
[26] CTA Docket vol. 1, pp. 214-220.
[27] CTA Docket vol. 1, pp. 225-231.
[28] Exhibit "P-56-2", CTA Docket vol. 1, pp. 317-331; and Minutes of Hearing dated November 15, 2016, CTA Docket vol. 2, p. 565.

Morfe,[29] the Court-commissioned Independent Certified Public Accountant (ICPA).

On August 29, 2017, Petitioner's Formal Offer of Documentary Evidence[30] was filed. Petitioner's exhibits were admitted in evidence in the Resolution[31] dated March 7, 2018, save for Exhibits P-14 and its sub-markings, P-15 and its sub-markings, P-16 and its sub-markings, P-17 and its sub-markings, P-18, P-19, P-20, P-21, P-22, P-37, P-44 and its sub-markings, P-48, P-49, P-50 and its sub-markings, P-51, P-52, P-53, P-54 and its sub-markings, for petitioner's failure to present their originals for comparison.

On March 12, 2018, respondent filed a Motion to Dismiss[32] on the ground that the Petition for Review was filed out of time. Petitioner filed its Opposition [Respondent's Motion to Dismiss][33] on April 12, 2018.

The Court's Third Division denied respondent's Motion to Dismiss for lack of merit in its Resolution dated May 25, 2018.[34] Aggrieved, respondent filed his Motion for Reconsideration[35] on June 18, 2018, which the Court's Third Division also denied in the Resolution[36] dated September 6, 2018.

Pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, reorganizing the three (3) Divisions of the Court, the case was transferred to this Court through the Order dated September 20, 2018.[37]

Thereafter, respondent proceeded to present his sole witness, Revenue Officer Dolores Gillego.[38] On May 27, 2019, respondent filed a Motion to Admit Respondent's Formal Offer of Evidence,[39] which the

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[29] Exhibit "P-143", CTA Docket vol. 2, pp. 582-591; and Minutes of Hearing dated July 31, 2017, CTA Docket vol. 2, p. 593.
[30] CTA Docket vol. 2, pp. 610-619.
[31] CTA Docket vol. 2, pp. 652-653.
[32] CTA Docket vol. 2, pp. 663-666.
[33] CTA Docket vol. 2, pp. 674-678.
[34] CTA Docket vol. 2, pp. 691-696.
[35] CTA Docket vol. 2, pp. 697-703.
[36] CTA Docket vol. 2, pp. 714-718.
[37] CTA Docket vol. 2, p. 722.
[38] Exhibit "R-10", CTA Docket vol. 2, pp. 656-662; and Minutes of Hearing dated May 9, 2019, CTA Docket vol. 2, p. 742.
[39] CTA Docket vol. 2, pp. 749-751.

Court granted in the Resolution[40] dated June 11, 2019, thereby admitting the Formal Offer of Evidence (for Respondent).[41]. In the Resolution[42] dated September 3, 2019, the Court admitted in evidence all of respondent's formally offered exhibits.

After noting the parties' failure to file their respective memoranda within the given period,[43] the case was submitted for decision on December 5, 2019.[44]

ISSUE

The sole issue stipulated by the parties for the Court's resolution is whether or not petitioner is liable for deficiency income tax, VAT, WTC, EWT, DST and compromise penalty for the year 2010.[45]

PARTIES' ARGUMENTS

Petitioner argues that the FLDs and Assessment Notices are null and void for having been issued in violation of Revenue Regulations (RR) No. 12-99, as amended.

It claims that respondent served the FLDs and Assessment Notices on petitioner on the sixth (6^{th}) day of the fifteen (15)-day period within which petitioner may respond to the PAN. Petitioner insists that it was denied of its right to respond to the PAN which resulted in the violation of its right to due process. As a consequence thereof, the FLDs and Assessment Notices are void *ab initio*.

Petitioner further posits that even assuming that its right to due process was not violated, the FLDs and Assessment Notices should still be rendered void as they are bereft of any legal and factual basis.

On the other hand, respondent argues that the FLDs and Assessment Notices are already final, executory and demandable by reason of petitioner's failure to substantiate its request for reinvestigation with relevant supporting documents.

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[40] CTA Docket vol. 2, p. 760.
[41] CTA Docket vol. 2, pp. 752-757.
[42] CTA Docket vol. 2, pp. 778-779.
[43] CTA Docket vol. 2, p.780.
[44] CTA Docket vol. 2, p.782.
[45] Par. II. B. Issue, Pre-Trial Order, CTA Docket vol. 1, p. 226.

Respondent likewise asserts that it is well-settled that tax assessments by tax examiners are presumed correct and made in good faith, and that in the absence of proof of any irregularities in the performance of official duties, an assessment should not be disturbed.

THE COURT'S RULING

The Court finds the Petition for Review meritorious.

The Petition for Review was timely filed; hence, the Court has jurisdiction over the case

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the procedure and manner in which tax deficiency assessments should be issued and protested, *viz.*:

> "**SEC. 228.** ***Protesting of Assessment.*** — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> 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.
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> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice.** If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is **not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty**

> **(30) days** from receipt of the said decision, or **from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**" (*Boldfacing supplied.*)

Corollary thereto, Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, provides:

> "**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —***
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> **3.1.1** ***Preliminary Assessment Notice (PAN).*** – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
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> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> xxx
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> **3.1.4** ***Disputed Assessment.*** – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> > (i) **Request for reconsideration** – refers to a plea of reevaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> >
> > (ii) **Request for reinvestigation** – refers to a plea of reevaluation of an assessment on the basis of newly

discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

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For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. Xxx.

xxx

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or **from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period**; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

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If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other." (*Boldfacing supplied.*)

Indubitably, petitioner had thirty (30) days either (1) from receipt of denial of the protest or (2) from the lapse of 180-day period fixed by law for the CIR to act upon the protest, within which to file an appeal before this Court. In case of inaction, 180-day period shall be reckoned from the date of filing of the protest, in case of a request reconsideration; or from date of submission by the taxpayer of the required documents, which submission shall be made within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation.

In the present case, petitioner received the FLDs and Assessment Notices on January 13, 2014.[46] Thus, petitioner had until February 12, 2014 within which to file its protest against the FLDs and Assessment Notices. Petitioner timely filed its protest thereto on February 11, 2014[47].

Counting sixty (60) days from February 11, 2014, petitioner had until April 12, 2014 within which to submit the relevant supporting documents in support of its protest. Petitioner timely submitted its relevant supporting documents on April 11, 2014.[48] Thus, respondent had 180 days from April 11, 2014 or until October 8, 2014 within which to act on the protest. In view of respondent's inaction, petitioner had thirty (30) days from the lapse of the 180-day period on October 8, 2014 or until November 7, 2014 within which to file its Petition for Review with the Court of Tax Appeals (CTA) to appeal said inaction.

Records show, however, that petitioner filed its Petition for Review on January 21, 2015 or way beyond November 7, 2014. This, notwithstanding, the Court in Division, in the Resolution[49] dated May 25, 2018, found that the Petition for Review was filed on time. Consequently, the Court's Third Division denied respondent's Motion to Dismiss the present Petition for Review for lack of merit.

Pertinent portions of the Court's Third Division Resolution dated May 25, 2018 state:

> "Counting 180 days from submission of supporting documents on April 11, 2014, petitioner had until November 7, 2014 to appeal respondent's inaction. The record however reveals that respondent, through Revenue District Office No. 43A (East Pasig), Revenue Region No. 7, granted petitioner an additional fifteen (15) days from receipt of the Letter dated June 6, 2014 on June 11, 2014. Respondent's grant of extension in favor of petitioner was grounded on the principle of due process. Xxx:

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46 Exhibit "R-9-a", BIR Records, p. 425.
47 Exhibit "P-10", CTA Docket vol. 1, p. 106.
48 Exhibit "P-11", CTA Docket vol. 1, p. 351.
49 CTA Docket vol. 2, pp. 691-696.

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> Since the said Letter of June 6, 2014 was received on June 11, 2014, petitioner had 15 days or until June 26, 2014 to comply. On June 25, 2014, petitioner, through a Letter dated June 23, 2014, and in compliance with respondent's directive submitted additional supporting documents.
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> Xxx despite that petitioner already submitted supporting documents on April 11, 2014, which is within 60 days from the filing of the protest, nonetheless respondent, through an extension of period in the Letter dated June 6, 2014, directed petitioner to submit additional documents.
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> With petitioner's compliance with respondent's directive, respondent, by law, had 180 days or until December 22, 2014 to act on the protest. But as earlier observed, respondent failed to act on the protest giving petitioner 30 days or until January 21, 2015 to elevate its case to this Court.
>
> And as record shows, petitioner timely filed the present Petition for Review on January 21, 2015 in accordance with Section 228 of the NIRC, as amended, giving this Court the jurisdiction over the case."

As aptly observed by the Court's Third Division, respondent, through Revenue District Officer Virtucio, required petitioner to submit additional documents, albeit beyond the 60-day period from the filing of the protest. In compliance therewith, petitioner re-submitted, on June 25, 2014, the documents it previously submitted on April 11, 2014. In view of its re-submission of the relevant documents in support of its protest on June 25, 2014, petitioner reckoned the 180-day period for respondent to act on the protest from the June 25, 2014.

The Court agrees with petitioner that, in this particular case, the 180-day period should be reckoned from June 25, 2014, the extended period given by respondent (albeit *motu proprio* and *sans* any prior request from petitioner), through Revenue District Officer Virtucio's Letter dated June 6, 2014, within which to submit the relevant documents in support of its protest. Reproduced hereunder is Revenue District Officer Virtucio's Letter dated June 6, 2014:

(9)

Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Revenue Region No. 7
Revenue District Office No. 43A (East Pasig)
Pasig City

I PAY MY TAXES RIGHT
R P
REGISTER PAY

JUN 06 2014

"R-12"
EXHIBIT "R-11"
ORIGINAL OCT 19 2015 RESPONDENT

ATTY. CLARENCE DARROW DE GUIA
President
SOLUTIONS USING RENEWABLE ENERGY (SURE), INC.
Unit 602 OMM-Citra Building, San Miguel Avenue,
Ortigas Center, San Antonio, Pasig City

Sir:

This refers to your Protest Letter dated February 10, 2014 with the information that you are requesting for the **reinvestigation** of your internal revenue tax liabilities as per Assessment Notice and Formal Letter of Demand No. 043A-B147-10 both dated January 13, 2014 in the amounts of ₱2,012,799.62, ₱22,421,946.59, ₱377,826.27, ₱490,209.36, ₱491,290.73 and ₱17,000.00 representing deficiency Income Tax, Value Added Tax, Withholding Tax on Compensation, Expanded Withholding Tax, Documentary Stamp Tax and Compromise Penalty, respectively, covering the taxable year 2010 as authorized per Memorandum of Assignment (MOA) No. RR7-43A-CON-1040 dated March 13, 2013 in relation to the Letter of Authority (LOA) No. LOA-43A-2012-00000111 with SN: eLA201000085649 dated January 16, 2012.

Pursuant to the provisions of Section 228 of the National Internal Revenue Code (NIRC) of 1997, please be reminded that the sixty (60) day period within which to submit relevant supporting documents from filing of your protest had lapsed. However, in the spirit of due process, you are given another fifteen (15) days from receipt of this letter to submit said relevant documents to support your protest.

In the event however that you failed to comply with the extension of time within which to submit the additional documentary evidence, we are constrained that the report on your case, on the basis of the findings per our **reinvestigation**, shall be submitted to higher authorities for review and proper disposition.

We hope that you will give this matter your preferential attention.

Very truly yours,

6/6/14

JOSEPHINE S. VIRTUCIO
Revenue District Officer

Received by:
Jerry Reyes
6/11/14

rdo43a
rpdr/rdn/jsv

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It does not escape this Court that prior to the extended period given by respondent, through Revenue District Officer Virtucio, petitioner already submitted all relevant documents in support of its protest on April 11, 2014 or within sixty (60) days from the filing of its protest on February 11, 2014, through a Letter dated April 10, 2014 addressed to Revenue District Officer Virtucio. In truth, after the submission of petitioner's supporting documents on April 11, 2014, Revenue District Officer Virtucio endorsed the documents to Revenue Officer Rogelio Delos Reyes on April 14, 2014 for appropriate action.[50]

Thus, it is rather surprising that Revenue District Officer Virtucio issued a Letter dated June 6, 2014 to petitioner stating, among others, that the sixty (60)-day period from the filing of the protest within which petitioner may submit relevant supporting documents had lapsed. Nonetheless, petitioner, in compliance with the aforesaid Letter of Revenue District Officer Virtucio, opted to re-submit the relevant documents in support of its protest through its Letter dated June 23, 2014. Records show that upon receipt of the relevant documents re-submitted by petitioner on June 25, 2014, Revenue District Officer Virtucio again forwarded the aforesaid documents to Revenue Officer Rogelio Delos Reyes for appropriate action.[51] Based on these peculiar circumstances, petitioner appropriately reckoned the 180-day period from June 25, 2014.

To be clear, the Court is mindful of the procedure under Section 228 of the NRIC of 1997, as amended, and RR No. 2-98, as amended, anent the reckoning of the 180-day period. Nonetheless, the Court cannot close its eyes to the glaring injustice should it allow respondent to benefit from his mischievous scheme. Parenthetically, respondent should not, on his own, have extended the period to submit relevant supporting documents in support of the protest but - - having done so - - he cannot thereafter escape from its consequence and righteously argue that petitioner's Petition for Review was filed out of time.

In *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.),*[52] the Supreme Court was categorical in its pronouncement that parties must come to court with clean hands and that the doctrine of estoppel may be applied to prevent injustice, *viz.*:

> "Xxx, the Court has repeatedly pronounced that parties must come to court with clean hands. **Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing**. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.
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> Xxx. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the

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[50] BIR Records, p. 521.
[51] BIR Records, p. 623.
[52] G.R. 212825, December 7, 2015.

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> statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the **application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage**." (Boldfacing supplied)

As afore-discussed, it was respondent himself who required petitioner to submit documents in support of its protest beyond the sixty (60)-day period despite the fact that petitioner had earlier discharged its responsibility to do so within the required period. Undeniably, it was respondent who led petitioner to believe that the 180-day period should be reckoned from the re-submission of the supporting documents on June 25, 2014. Thus, petitioner appropriately filed its Petition for Review on January 1, 2015, well within the thirty (30)-day period counted from December 22, 2014 (the 180th day counted from June 25, 2014). He who comes to court must come with clean hands. Otherwise, he not only taints his name, but ridicules the very structure of established authority.[53]

Considering that the filing of the Petition for Review was made within the reglementary period to appeal,[54] this Court has jurisdiction to take cognizance of the same pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by Section 7 of RA No. 9282.[55]

The FLDs and Assessment Notices were issued in violation of petitioner's right to due process; hence, the same are void *ab initio*

Pursuant to Section 228 of the NIRC of 1997, as amended, and Section 3.1.2 of RR No. 12-99, as amended, the taxpayer shall be required to respond to the PAN within fifteen (15) days from receipt thereof. Upon the lapse of the 15-day period, the taxpayer is

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[53] *Ferdinand R. Marcos II vs. Court of Appeals*, G.R. No. 120880, June 5, 1997.
[54] CTA Docket vol. 1, p. 6.
[55] SEC. 7. Jurisdiction. — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx xxx xxx
(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 for action, in which case the inaction shall be deemed a denial.

considered in default and the BIR shall issue a formal letter of demand and assessment notice.

In paragraph 3.1 of the Petition for Review, petitioner alleges that it received the PAN on January 7, 2014.[56] In his Answer, respondent states that he specifically denies the allegations contained in paragraph 3.1, among others, of the Petition for Review, for lack of knowledge sufficient to form a belief as to the truth of the allegations contained therein.[57] In the Answer's Special and Affirmative Defense, respondent merely states that the assessment has become final, executory and demandable for petitioner's failure to substantiate its request for reinvestigation with relevant documents; and, that tax assessments should be presumed correct and made in good faith.[58]

Section 10, Rule 8 of the Rules of Court, as amended, requires a defendant to **specify each material allegations of fact**, the truth of which it does not admit, and whenever practicable, to **set forth the substance of the matters upon which respondent relies to support its denial**, to wit:

> SEC. 10. *Specific denial.-* A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as its true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.

It is settled that a denial is not specific simply because it is so qualified by respondent. A general denial does not become specific by the use of the word specifically. When the matters of whether the respondent alleges having no knowledge or information sufficient to form a belief, are plainly and necessarily within respondent's knowledge, its alleged ignorance or lack of information will not be considered as a specific denial. Section 11, Rule 8 of the said Rule, provides that material averments in the complaint other than those as to the amount of unliquidated damages shall be deemed admitted when not specifically denied.[59]

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[56] CTA Docket vol. 1, p. 8.
[57] Par. 2, Answer, CTA Docket vol. 1, p. 54.
[58] CTA Docket vol. 1, p. 56.
[59] *Philippine National Bank vs. Honorable Court of Appeals and Atty. Mordeno Cua*, G.R. No. 126153, January 14, 2004.

Ferdinand R. Marcos, Jr. vs. Republic of the Philippines[60] holds that when matters regarding which respondents claim to have no knowledge or information sufficient to form a belief are plainly and necessarily within their knowledge, their alleged ignorance or lack of information will not be considered a specific denial. An unexplained denial of information within the control of the pleader, or is readily accessible to him, is evasive and is insufficient to constitute an effective denial.

Also, *Fernando Medical Enterprises, Inc. vs. Wesleyan University Philippines, Inc.*[61] elucidates when an answer is deemed to have admitted the material allegations of ultimate facts of an adverse party's pleadings, *viz.*:

> "The answer admits the material allegations of ultimate facts of the adverse party's pleadings **not only when it expressly confesses the truth of such allegations but also when it omits to deal with them at all**. The controversion of the ultimate facts must only be by specific denial. Section 10, Rule 8 of the *Rules of Court* recognizes only three modes by which the denial in the answer raises an issue of fact. The first is by the defending party specifying each material allegation of fact the truth of which he does not admit and, whenever practicable, setting forth the substance of the matters upon which he relies to support his denial. The second applies to the defending party who desires to deny only a part of an averment, and the denial is done by the defending party specifying so much of the material allegation of ultimate facts as is true and material and denying only the remainder. The third is done by the defending party who is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint by stating so in the answer. **Any material averment in the complaint not so specifically denied are deemed admitted** except an averment of the amount of unliquidated damages." *(Boldfacing supplied)*

In the case at bar, the PAN was: (i) issued by Revenue Regional Director Amora; (ii) served upon petitioner; and, (iii) made part of the BIR Records. Respondent therefore had every opportunity to verify the veracity of petitioner's claim anent the date of receipt of the PAN so as to make a specific denial anent the date of petitioner's receipt of the PAN by perusing its own records. In short, since respondent ought to know the BIR records of the present case, respondent could have easily denied petitioner's claim that it received the PAN on January 7, 2014 by specifying the actual date of receipt thereof; yet, he failed to do so.

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[60] G.R. No. 189434, April 25, 2012.
[61] G.R. No. 207970, January 20, 2016.

Respondent's general denial of the material allegation in the Petition for Review anent the date of receipt by petitioner of the PAN on January 7, 2014, without setting forth the substance of the matter relied upon to support its general denial, when such matter was plainly within its knowledge and he could not logically pretend ignorance as to the same, therefore, failed to properly tender an issue anent the aforesaid date of receipt of the PAN. Thus, petitioner's receipt of the PAN on January 7, 2014 is deemed admitted by respondent.

Besides, since respondent failed to refute petitioner's evidence that it received the PAN on January 7, 2014, the latter had fifteen (15) days therefrom or until January 22, 2014 within which to file a reply or protest thereto. Interestingly, on January 13, 2014, or barely six (6) days after petitioner's receipt of the PAN on January 7, 2014, respondent issued the FLDs[62] and Assessment Notices,[63] assessing petitioner for deficiency income tax, VAT, WTC, EWT, DST, and compromise penalty. The FLDs and Assessment Notices were clearly issued prematurely, thereby depriving petitioner of the opportunity to be heard on the PAN, in complete violation of the due process requirement in issuing tax assessments.

Needless to say, the PAN is an important part of due process. It gives both the taxpayer and respondent the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.[64] To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment.

Truth to tell, the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. On this point, the eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[65] *and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[66] relative to the utmost importance of observing due process in issuing deficiency tax assessments is edifying, *viz.*:

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[62] Exhibits "P-8" and "P-9", CTA Docket vol. 1, p. 97-105.
[63] Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", and "P-7", CTA Docket vol. 1, pp. 91-96.
[64] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017, citing *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[65] G.R. Nos. 201398-99, October 3, 2018.
[66] G.R. Nos. 201418-19, October 3, 2018.

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and **always with regard to the basic tenets of due process.**
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.** Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
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> x x x
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.** *(Citations omitted; additional boldfacing supplied)*

In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,*[67] the Supreme Court categorically ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz.*:

> "In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **<u>While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued</u>**. Xxx." *(Boldfacing and underscoring supplied)*

It is worthy to note that the Court of Tax Appeals has consistently declared void any assessment that fails to comply with the due process requirement.[68] In *Roca Security and Investigation Agency, Inc. vs.*

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[67] G.R. No. 172598, December 21, 2007.

[68] *A Brown Co., Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6357, June 7, 2004; *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6980, October 4, 2010; *Yumex Philippines Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8331, November 28, 2013; *Commissioner of Internal Revenue vs. Linde Philippines, Inc.*, CTA EB No. 1515, March 7, 2018.

Commissioner of Internal Revenue,[69] the Court *En Banc*, through the *Honorable Associate Justice Esperanza R. Fabon-Victorino*, elucidated on the importance of observing the fifteen (15)-day period within which a taxpayer may respond to the PAN before the BIR may issue the FAN and the consequence of the latter's failure to comply therewith, *viz.*:

> "Thus, a taxpayer has fifteen (15) days from receipt of the PAN to respond or file a protest thereto. It is only upon the lapse of this 15-day period, with or without a response/protest from the taxpayer, that the CIR or his legally authorized representative may issue the FLD or final assessment notice.
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> xxx
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> Record however reveals that respondent issued the FLD with assessment notices 6 days before the 15-day period to file protest expired, or on April 12, 2013. Evidently, the FLD was prematurely issued in violation of petitioner's right to due process.
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> xxx
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> It cannot also be denied that with the premature issuance of the FLD on April 12, 2013, **any argument or evidence adduced by petitioner in support of its protest against the PAN was pointless, if not moot, for at that time, respondent was already dead-set or bent on upholding the assessment as contained in the PAN. This indubitably constitutes denial of due process as petitioner was not given the opportunity to dispute and present evidence against the PAN, before the final assessment was issued.**" *(Boldfacing supplied)*

The fatal infirmity that attended the issuance of the FLDs and Assessment Notices <u>prior</u> to the lapse of the fifteen (15)-day period to respond to the PAN was not cured by petitioner's filing of a protest to the FLDs and Assessment Notices.

In view of the palpable violation of petitioner's right to procedural due process, the FLDs and Assessment Notices - - being fatally infirm - - should be considered void; and must perforce be cancelled and set aside.

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[69] CTA EB No. 1523, March 7, 2018, penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr. Lovell R. Bautista, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan; Associate Justice Erlinda P. Uy was on leave.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Solutions Using Renewable Energy, Inc. is hereby **GRANTED**. Accordingly, the Formal Letters of Demands and Assessment Notices, all dated January 13, 2014, assessing petition for the following deficiency taxes for taxable year 2010, *viz.*: [1] deficiency income tax of ₱2,012,799.82; [2] deficiency value-added tax of ₱22,421,948.59; [3] deficiency expanded withholding tax on compensation of ₱377,826.27; [4] deficiency expanded withholding tax of ₱490,209.36; [5] deficiency documentary stamp tax of ₱491,290.73; and, [6] compromise penalty of ₱17,000.00, are **CANCELLED** and **SET ASIDE.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice