REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10338

PRISTINE ENERGY TRANSFER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. FELY ROSE R. DAGANTA
Bureau of Internal Revenue - Revenue Region No. 8B
2/F, Legal Division, BIR Regional Office Bldg.
313 Sen. Gil Puyat Ave., Makati City

CARAG JAMORA SOMERA & VILLAREAL LAW OFFICES
4th Floor, G&A Building
2303 Don Chino Roces Avenue Extension
1231 Makati City

GREETINGS:

You are hereby notified by these presents that on **May 6, 2025,**a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 7, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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PRISTINE ENERGY TRANSFER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10338

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 06 2025 ; 4:00PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Pristine Energy Transfer Corporation (**petitioner/PETC**) against respondent Commissioner of Internal Revenue (**respondent/CIR**) pursuant to Section 3(a)[2], Rule 8[3] in relation to Section

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1 Filed on 26 August 2020, Division Docket, pp. 6-16.

2 **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 PROCEDURE IN CIVIL CASES.

3(a)(2)[4], Rule 4[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It prays that judgment be rendered ordering the cancellation and withdrawal of the assessment against petitioner, as laid out in the Formal Letter of Demand with Details of Discrepancies and Assessment Notices (**FLD/FAN**), all dated 27 December 2019.[6] The said FLD/FAN demands payment of petitioner's alleged tax deficiencies aggregating ₱10,987,744.07, comprised of Income Tax (**IT**), Value-Added Tax (**VAT**), Expanded Withholding Tax (**EWT**), Withholding Tax on Compensation (**WTC**), Documentary Stamp Tax (**DST**) and Compromise Penalties amounting to ₱8,348,102.86, ₱2,229,407.84, ₱237,276.22, ₱120,553.72, ₱42,403.43 and ₱10,000.00, respectively. The FLD/FAN's issuance stems from the examination of the latter's books of accounts and other accounting records for the taxable period from 01 January 2016 to 31 December 2016, or the calendar year (**CY**) 2016, for brevity.

PARTIES TO THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines and is primarily engaged in general construction and other allied businesses.[7] Its principal office is at Pristine Building, Block 51, Lot 8, Pinagsama Village Phase 2, Taguig City.[8]

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4 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

5 JURISDICTION OF THE COURT.

6 Exhibits "P-6" to "P-6-6" and "R-10" to "R-16", BIR Records, pp. 436-451.

7 See I. Corporate Information, Notes to the Financial Statements, id., p. 269.

8 Id.

Respondent, on the other hand, is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof, administered by the Bureau of Internal Revenue (**BIR**). He or she holds office at the BIR National Office Building, Sen. Miriam P. Defensor-Santiago Avenue, Diliman, Quezon City. In the present case, he or she is represented by the Legal Division of Revenue Region No. 8B – South NCR, which is located at 2nd Floor, BIR Building, 313 Gil Puyat Avenue, Makati City.[9]

FACTS OF THE CASE

On 26 October 2018, the BIR's Revenue District 044 – Taguig-Pateros (of Revenue Region 008 – Makati City) issued a Letter of Authority (**LOA**) with Reference No. LOA-044-2018-00000274[10] (SN: eLA201500088992) with an attached Checklist of Requirements[11], through then Regional Director Glen A. Geraldino (**RD Geraldino**). The LOA authorized Revenue Officer Maria Teresa Revilala (**RO Revilala**) and Group Supervisor Emilio Romero (**GS Romero**), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2016.

On 04 January 2019, RO Revilala served the said LOA (with the Checklist of Requirements) to one Mellany A. Almazan (**Almazan**), petitioner's HR/Admin Officer.[12] On 15 March 2019, RO Revilala again served the "First Notice" of even date[13] to Almazan.

On 14 May 2019, the BIR's Revenue District 044 – Taguig-Pateros issued a replacement LOA with Reference No. LOA-044-2019-0000244[14] (SN: eLA201600068761). GS Romero's transfer to a different District Office necessitated the issuance of the new LOA.[15] The new LOA

9 Paragraph 7, Respondent's Answer, Division Docket, p. 127.
10 Exhibit "P-1". Division Docket, p. 66; Exhibit "R-1", BIR Records, p. 2.
11 Exhibit "P-2", Division Docket, p. 67; Exhibit "R-2", id., p. 1.
12 Q6, Judicial Affidavit of Edgar G. Orpilla, Exhibit "P-10", Division Docket, p. 341.
13 Exhibit "R-3" BIR Records, p. 3.
14 Exhibit "P-3". Division Docket, p. 68; Exhibit "R-4", BIR Records, p. 4.
15 Q22, Judicial Affidavit of Revenue Officer (RO) Maria Teresa Revilala, Exhibit "R-19", Division Docket, p. 185.

authorized GS Marilyn Dumapias (**GS Dumapias**) in place of GS Romero, alongside RO Revilala. It indicated on its face that "this is a replacement [LOA] for the continuation of herein tax liabilities for the taxable period from 01/01/2016 to 12/31/2016 because of reassignment of the case due to: Transfer of Revenue Officer to another district office."[16]

On 03 July 2019, RO Revilala served on petitioner the replacement LOA, a "Second & Final Notice" dated 17 June 2019[17], and a "Checklist of Audit Requirements Under RMO No. 53-98, as Amended".[18] This time, petitioner's Accounting Staff, Judith A. Alegato (**Alegato**), received the aforementioned documents.[19]

On 12 July 2019, petitioner, through Alegato, transmitted to the BIR copies of its tax returns, contracts and agreements, and regulatory compliance documentation, as well as its original check vouchers and books of accounts.[20] RO Revilala received petitioner's submissions.[21]

On 24 July 2019, RO Revilala served to petitioner a Notice for Informal Conference (**NIC**) dated 22 July 2019.[22] The NIC stated that the investigation of petitioner under the present LOA for CY 2016 uncovered deficiency taxes due from it, as computed and detailed the deficiency computation sheets attached thereto. Accordingly, it invited petitioner to air its side of the case within ten (10) days from the NIC's receipt.

On 09 August 2019, RO Revilala recommended the issuance of a Preliminary Assessment Notice (**PAN**) through a Memorandum addressed to RD Geraldino, outlining her audit findings following her examination of petitioner's records.[23]

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16 Supra at note 14.
17 Exhibit "R-6", BIR Records, p. 7.
18 Exhibit "R-5", id., pp. 5-6.
19 Q8, Judicial Affidavit of Edgar G. Orpilla, Exhibit "P-10", Division Docket, p. 342.
20 Petitioner's Transmittal Letter dated 12 July 2019, BIR Records, pp. 252-254.
21 Id.
22 Exhibit "R-7", id., pp. 291-305.
23 Exhibit "R-8", id., pp. 312-316.

Pursuant thereto, on 29 November 2019, the BIR issued the PAN with attached Details of Discrepancies.[24] It assessed petitioner with alleged deficiency IT, VAT, EWT, WTC, and DST, aggregating ₱11,084,094.48, inclusive of surcharges and interest, to wit:

Tax Type	Basic Tax Due	Surcharge	Interest	Total
IT	₱6,000,034.55	-	₱2,283,629.59	₱8,283,664.14
VAT	1,680,053.74	-	713,079.25	2,393,132.99
EWT	164,699.95	-	70,807.45	235,507.40
WTC	83,679.65	-	35,975.37	119,655.02
DST	25,000.00	₱6,250.00	10,884.93	42,134.93
Compromise	10,000.00	-	-	10,000.00
Total	**₱7,963,467.89**	**₱6,250.00**	**₱3,114,376.59**	**₱11,084,094.48**

On 09 December 2019, RO Revilala, through Alegato, served on petitioner the said PAN.[25] On 23 December 2019, petitioner filed a "Reply Letter to the [PAN]" of even date signed by its President, Edgar G. Orpilla (**Orpilla**), contesting the deficiency assessment in the PAN and requesting that the same be cancelled.[26]

Thereafter, on 27 December 2019, the BIR issued the FLD/FAN with an attached Details of Discrepancies.[27] It demanded anew the payment of substantially the same basic tax deficiencies as stated in the PAN, this time totaling ₱10,987,744.07 (as adjusted for incremental interest and a change in the computation of an item of the VAT deficiency), broken down as follows:

Tax Type	Basic Tax Due	Surcharge	Interest	Total
IT	₱6,000,034.55	-	₱2,348,068.31	₱8,348,102.86
VAT	1,553,401.54	-	676,006.30	2,229,407.84
EWT	164,699.95	-	72,576.27	237,276.22
WTC	83,679.65	-	36,874.07	120,553.72
DST	25,000.00	₱6,250.00	11,153.43	42,403.43
Compromise	10,000.00	-	-	10,000.00
Total	**₱7,836,815.69**	**₱6,250.00**	**₱3,144,678.38**	**₱10,987,744.07**

24 Exhibit "R-9", id., pp. 380-389.
25 Id.
26 Id., pp. 429-433.
27 Exhibits "P-6" and "R-10"; supra at note 6.

Petitioner received a copy of the said FLD/FAN on 10 January 2020.[28]

On 24 January 2020, the BIR issued a letter[29] addressed to petitioner, signed by RD Geraldino. It referenced the earlier-issued PAN and acknowledged petitioner's reply thereto, then informed petitioner that the FLD/FAN has been issued (and outlined how it may protest the same). Accordingly, on 04 February 2020, petitioner filed with the BIR its Letter-Protest, denominated as a "Reply Letter to the [FLD]".[30]

In a letter dated 04 March 2020[31], RD Geraldino informed petitioner that its Request for Reinvestigation is granted and would be acted upon. As a result, the docket for its case was returned to the audit team for further examination and verification. In this regard, the letter directed petitioner to submit supporting documents within sixty (60) days from the filing of its Letter-Protest (as required for a Request for Reinvestigation).

After receiving the aforementioned letter, petitioner allegedly wrote the BIR back to clear up an inconsistency observed in the latter's inaction on its Letter-Protest.[32] Thus, Orpilla, acting for petitioner, prepared a letter dated 29 July 2020[33] stating that its Letter-Protest is a request for reconsideration, not a request for reinvestigation. With this in mind, he manifested that PETC is already awaiting the issuance of an FDDA. Accordingly, noting respondent's extended inaction, petitioner deemed its Letter-Protest denied by 02 August 2020 (or the 180th day following the filing of its protest).[34]

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28 Id.

29 "Action on Reply to Preliminary Assessment Notice (PAN) Dated November 29, 2019" dated 24 January 2020, BIR Records, p. 435.

30 Exhibits "P-7" and "R-17, id., pp. 460-465.

31 Exhibits "P-8" and "R-18", id., p. 467.

32 Par. 3.6, Statement of Relevant Facts, Petition for Review, Division Docket, p. 8.

33 Exhibit "P-9", id., pp. 99-102.

34 Par. 3.7, Statement of Relevant Facts, Petition for Review, id., p. 8.

Thus, on 26 August 2020, pursuant to Section 228[35] of the NIRC of 1997, as amended, petitioner filed the instant Petition for Review.[36] The case was raffled to this Court's First Division.

PROCEEDINGS BEFORE THIS COURT

On 14 January 2021, the Court served Summons[37] on respondent, requiring the latter to submit an Answer within thirty (30) days from service. Respondent received the same on 15 January 2021.[38] However, on 15 February 2021, respondent filed a "Motion for Extension of Time to File Answer"[39] asking for an additional 30 days to file an Answer, which the Court granted in the Order dated 10 March 2021.[40] The same Order included a directive for respondent to elevate the BIR Records for this case within ten (10) days from filing an Answer.[41]

On 16 March 2021, respondent filed his or her Answer[42] *via* registered mail, essentially citing the following special and affirmative defenses: (1) the assessment had become final and executory after petitioner failed to submit supporting documents within 60 days from the time it allegedly filed its request for reconsideration; (2) the BIR validly served LOAs on petitioner; and (3) petitioner is liable for the assessed deficiency taxes (as the assessment had sufficient legal and

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35 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: ...

...

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.

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. ...

...

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. (Emphasis supplied)

36 Supra at note 1.

37 Division Docket, p. 117.

38 Id.

39 Id., pp. 120-121.

40 Id., p. 124.

41 Id.

42 Id., pp. 126-143.

factual basis and petitioner failed to submit sufficient evidence to rebuke it).[43]

In the Resolution dated 09 June 2021[44], the Court noted respondent's Answer and directed the parties to appear before the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation proceedings, pursuant to Parts I.1.A[45] and II[46] of A.M. No. 11-1-5-SC-PHILJA or the Interim Guidelines for Implementing Mediation in the CTA.

On 26 October 2021, in compliance with the Court's earlier directive, respondent transmitted to the Court the BIR Records[47] (a folder with 476 pages), which the Court noted in the Minute Resolution dated 25 November 2021.[48]

Later, on 14 February 2022, the PMC-CTA filed its Mediator's Report[49], informing the Court that the parties' conciliation efforts were unsuccessful. The Court noted this development in the Resolution dated 09 March 2022[50], and accordingly set the Pre-Trial Conference on 05 May 2022. The same Resolution set forth that, as a consequence of respondent's failure to attach any judicial affidavits for witnesses he or

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43 Id.

44 Id., p. 148.

45 I. *Coverage*
I.1. The following cases may be referred to mediation:
A. *Cases within the jurisdiction of the Divisions*
1. Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC), or other laws administered by the Bureau of Internal Revenue (BIR);
2. Inaction by the CIR in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period for action, in which case the inaction shall be deemed a denial upon the lapse of said period[.]

46 II. *Referral to Mediation*
The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.
A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

47 See Compliance dated 12 April 2021, Division Docket, pp. 149-150.

48 Id., p. 153.

49 Id., p. 156.

50 Id., pp. 166-167.

she intended to present, the chance to file them has been deemed waived.[51] On 19 April 2022, in an effort to remedy the situation, respondent filed, through registered mail, an "Omnibus Motion"[52] asking the Court to reconsider its previous Resolution and to admit the Judicial Affidavit of his or her witness attached thereto. Thus, in the Resolution dated 29 April 2022[53], the Court put the Pre-Trial Conference on hold and gave petitioner five (5) days from receipt to file a Comment or Opposition, but it neglected to do so.[54]

Finding respondent's reasons meritorious, the Court granted the Omnibus Motion in its Resolution dated 05 July 2022.[55] In the said Resolution, the Court allowed respondent to present his or her witness during trial, admitted the said witness' Judicial Affidavit into the records, and set the Pre-Trial Conference anew on 25 August 2022.

Meanwhile, on 28 April 2022, respondent filed his or her Pre-Trial Brief.[56] Petitioner then filed its Pre-Trial Brief[57] on 04 May 2022.

On 25 August 2022, the Pre-Trial Conference proceeded as rescheduled. The Court set the presentation of each party's witnesses, and the marking of their documentary exhibits.[58] It likewise ordered the parties to file their Joint Stipulation of Facts and Issues (**JSFI**) by 26 September 2022.

During the Pre-Trial Conference, the Court also pointed out that petitioner failed to submit the judicial affidavits of two (2) witnesses it intended to present (namely, Almazan and Alegato), and afforded it an opportunity to submit the same, subject to the payment of fine.[59]

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51 Id.

52 Respondent's "Omnibus Motion (i) For Reconsideration (of the Resolution dated 09 March 2022) and (ii) To Admit the Attached Judicial Affidavit of Revenue Office Maria Teresa Revilala" dated 19 April 2022, id., pp. 169-177.

53 Id., p. 277.

54 See Records Verification dated 16 June 2022, id., p. 296.

55 Id., pp. 299-301.

56 Id., pp. 259-275.

57 Id., pp. 284-291.

58 See Minutes of the Hearing and Order, both dated 25 August 2022, id., pp. 302-302B and 305A-305C, respectively.

59 Id.

However, on 30 August 2022, petitioner manifested that it would no longer be submitting additional judicial affidavits, thus dispensing with the presentation of its other witnesses.[60]

In the Resolution dated 11 October 2022[61], the Court deemed the parties' right to file a JSFI waived (considering their failure to file the same[62]) and terminated the Pre-Trial.

On 07 February 2023[63], trial proceeded with petitioner presenting Orpilla, petitioner's President, as its first and only witness.

On the witness stand, Orpilla identified the exhibits he had referred to in his Judicial Affidavit.[64] He confirmed that, as President of PETC, he caused the filing of the instant case before this Court. He contested the BIR's examination pursuant to LOAs served on PETC beyond 30 days from issuance. He detailed, that, on 04 January 2019, Mellany A. Almazan, PETC's HR/Admin Officer, received the initial LOA No. LOA-044-2018-00000274 dated 26 October 2018; while on 08 July 2019, Judith A. Alegato, PETC's Accounting Staff, received the replacement LOA No. LOA-044-2019-00000244 dated 14 May 2019.

Orpilla declared further, that after receiving the LOAs, PETC complied by forwarding the required documents and records to the BIR, after which the BIR later issued the FLD/FAN. He added that, on 04 February 2020, he wrote a Letter-Protest to the FLD/FAN wherein he disputed the validity of the LOAs as well as laid down petitioner's defenses against the items of the assessment. He narrated further that the BIR later sent a letter stating that petitioner's request for *reinvestigation* was granted. In response, he wrote the BIR once more to clarify that the earlier Letter-Protest was a request for *reconsideration*, and not a request for *reinvestigation*, but the BIR did not take further action. As such, he explained that, by 02 August 2020, petitioner assumed that the Letter-Protest was denied, and from there, it decided to file the present Petition for Review.

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60 Petitioner's Manifestation dated 30 August 2022, id., pp. 306-307.
61 Id., p. 369.
62 See Records Verification dated 29 September 2022, id., p. 337.
63 See Minutes of the Hearing and Order, both dated 07 February 2023, id., pp. 374-374C and 375-375A, respectively.
64 Exhibit "P-10", Judicial Affidavit of Edgar G. Orpilla, id., pp. 340-345.

In his cross-examination[65], Orpilla clarified that while he had acted as petitioner's President since its inception, the Accounting Unit primarily handled petitioner's accounting affairs. He manifested that PETC had protocol in place to prioritize government requirements and immediately bring such requirements to the management's attention. He confirmed that he learned of the issuance of the LOAs (and that they were purportedly served beyond 30 days from issuance) through his Accounting staff, but he had not personally witnessed their receipt or service. He explained that, while he was not well-versed with the nuances of tax compliance, he understood when he was told that the initial LOA was invalidly served (when it was served beyond 30 days from issuance), but he neglected to advise his employees to receive subsequent similar "expired" LOAs that the BIR would attempt to serve. As to petitioner's compliance when the BIR asked for its documents and records, Orpilla clarified that petitioner submitted all that it had available. Respondent's counsel then interposed an inquiry into whether petitioner received a PAN prior to the FLD/FAN, to which Orpilla answered in the affirmative, but he was unable to recall whether petitioner filed a reply thereto. Either way, he believes that it was in petitioner's Letter-Protest that petitioner would raise the issue of the LOAs' invalid service for the first time. When questioned as to his seemingly contradictory position (that petitioner's Letter-Protest is in the nature of a request for *reconsideration* but it reserved the right to present additional documents), he admitted that he did not know the difference between a reconsideration and reinvestigation at the time of the Letter-Protest's filing.

During his redirect examination[66], Orpilla reiterated that he filed a follow-up letter to make clear with the BIR that the Letter-Protest was one requesting for *reconsideration*, and not for *reinvestigation*. Meanwhile, in his re-cross examination[67], he declared that he was able to discern the difference between the two after petitioner had received the letter from BIR granting its request for reinvestigation.

Upon the Court's inquiry on petitioner's aforementioned letter to the BIR, Orpilla explained that while petitioner's accountants assisted in its preparation, he is unaware whether they were aware of the

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65 TSN dated 07 February 2023, pp. 15-29.
66 Id., pp. 29-30.
67 Id., pp. 30-31.

difference between requests for *reconsideration* and for *reinvestigation*. He also testified that, at the time, no lawyer guided him though he is unsure whether his accountants sought legal advice on their own.[68]

With no other witnesses to present, the Court gave petitioner ten (10) days, or until 17 February 2023, to file its Formal Offer of Evidence (FOE). Correspondingly, respondent was given ten (10) days from receiving a copy of the FOE to file a Comment thereon. The Court also set the hearing for respondent's initial presentation of evidence on 07 June 2023.[69]

On 15 February 2023, petitioner filed its FOE[70], offering Exhibits "P-1" through "P-10-1", inclusive of sub-markings. Respondent failed to file a Comment thereto.[71] Accordingly, on 13 March 2023, the Court admitted all but denied one of petitioner's offered exhibits, namely, Exhibit "P-4"[72] (for petitioner's failure to identify the marked document).[73]

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68 Id., p. 31.
69 Supra at note 63.
70 Division Docket, pp. 380-383.

Exhibit No.	Exhibit Description
"P-1"	Letter of Authority (LOA) No. eLA201500088992 (LOA-044-2018-00000274) dated 26 October 2018.
"P-1-1"	The written name and signature of MELLANY A. ALMAZAN appearing on the Letter of Authority No. eLA201500088992 (LOA-044-2018-00000274).
"P-2"	Checklist of Requirements attached to the Letter of Authority No. eLA201500088992 (LOA-044-2018-00000274).
"P-3"	LOA No. eLA201600068761 (LOA-044-2019-000002744).
"P-3-1"	The name and signature of JUDITH A. ALEGATO and the date of receipt appearing on the lower left hand corner of LOA No. eLA201600068761.
"P-4"	Second and Final Notice of the Bureau of Internal Revenue (BIR) to Pristine Energy Transfer Corporation (PETC) dated 17 June 2019.
"P-5"	Checklist of Audit Requirements under Revenue Memorandum Order (RMO) No. 53-98, as amended.
"P-6"	Formal Letter of Demand (FLD) of the BIR to PETC dated 27 December 2019 with Details of Discrepancies.
"P-6-1" to "P-6-6"	Assessment Notices attached to the FLD dated 27 December 2019.
"P-7"	Reply Letter of PETC to the FLD of the BIR dated 04 February 2020.
"P-8"	BIR letter to PETC dated 04 March 2020.
"P-9"	Reply Letter of PETC to the BIR Letter of Action on PETC Protest Letter dated 29 July 2020.
"P-10"	Judicial Affidavit of Edgar G. Orpilla dated 07 October 2022.
"P-10-1"	Signature of Edgar G. Orpilla on the lower right hand portion of Judicial Affidavit dated 07 October 2022.

71 See Records Verification dated 28 February 2023, id., p. 428.
72 Second and Final Notice dated 17 June 2019, id., p. 70.
73 See Resolution dated 13 March 2023, id., pp. 434-435.

Later, the presentation of respondent's lone witness proceeded, with RO Revilala taking the witness stand.[74]

On the witness stand, she identified her Judicial Affidavit[75] where she declared that she and GS Dumapias conducted the examination of petitioner's books of accounts for the CY 2016, deriving their authority to audit and investigate petitioner's records from the replacement LOA No. 044-2019-00002744 dated 14 May 2019. Recalling when she attempted to serve the original and replacement LOA, in both instances, petitioner's employees refused receipt, stating that they need to first consult with their third-party consultant (though she reasoned that receiving the same was not up to their discretion), forcing her to leave without serving the LOA. She attributes the delay in the LOA's service to petitioner's refusal but she clarified that she, on subsequent attempts, was able to serve each LOA on petitioner through its authorized representative. She narrated that she later served the "First Notice" (prior to the replacement LOA), the "Second & Final Notice", the NIC, the PAN (pursuant to her recommendation through a Memorandum), and later on, the FLD/FAN. She likewise verified having served the letter dated 04 March 2020 informing petitioner that its request for reinvestigation was granted and reminding it to submit the necessary supporting documents within 60 days from filing the protest. Finally, she declared that petitioner did nothing after receiving the said letter. According to her, petitioner did not file any supporting documents in connection with its reinvestigation.

During her cross-examination[76], RO Revilala confirmed that she made several attempts to serve each LOA, but she is unable to recall the specific dates when she did so. As to the assessment item interposing deficiency IT based on undeclared receipts or income, she detailed that she extrapolated sales (as supposedly authorized under BIR's audit rules) after observing skipped invoices without proof that they were cancelled. When confronted why she did not try to compel petitioner to submit additional supporting documentation, she admitted that she was aware it was within her authority (nor was there a prohibition of exercising such measures at the time) but she did not pursue the

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[74] See Order dated 29 November 2023, id., pp. 443-444.

[75] Exhibit "R-19", Judicial Affidavit of Revenue Officer (RO) Maria Teresa Revilala, id., pp. 179-198.

[76] TSN dated 29 November 2023, pp. 9-43.

same as the examination transpired in the middle of the COVID-19 pandemic. In this regard, she likewise confirmed that, in this phase of the examination prior to the issuance of the assessment, there was no such direction from her superiors to compel petitioner to submit any additional documents. Nevertheless, she doubled down that it is for the taxpayer to prove whether it received any payment pertaining to any allegedly skipped invoices. RO Revilala continued to elucidate the basis behind each item of the assessment, in line with how they had been described in the PAN and FLD/FAN. She noted that petitioner verbally raised justifications and objections to her findings during the Informal Conference, but retorted that the same should have been in writing and adequately supported with documentation.

No redirect examination followed, but the Court interposed a few clarificatory questions.[77] The Court looked into her familiarity with the issuances dealing with the 30-day deadline to serve an LOA, pursuant to its initial observation that the service of the LOA in the present case precedes the removal of the requirement in 2020. In response, RO Revilala pointed out that the removal of the pertinent inscription (regarding the deadline for service) in the newer LOAs already rendered service beyond 30 days valid. In an inquiry regarding their office policy, she manifested that even before 2020, the BIR did not consider service beyond 30 days invalid.

Later, the Court directed respondent to file his or her FOE within ten (10) days, or until 11 December 2023. In turn, it gave petitioner five (5) days from receiving a copy thereof, to file his Comment. Finally, it gave each of the parties 30 days to file their Memoranda from receiving a copy of the Court's later resolution acting on respondent's FOE.[78]

On 11 December 2023, respondent filed his or her FOE *via* accredited courier.[79] On 18 December 2023, petitioner filed his Comment thereto.[80] In the Resolution dated 08 February 2024[81], the Court admitted all of respondent's offered exhibits.

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77 Id., pp. 44-49.
78 Supra at note 74.
79 Division Docket, pp. 446-455.
80 Petitioner's "Comment/Objection (On/To Respondent's Formal Offer of Evidence)" dated 18 December 2023", id., pp. 458-461.
81 Id., pp. 466-467.

The same Resolution reiterated its directive of ordering the parties to file their respective memoranda.[82] In compliance, petitioner filed its Memorandum[83] on 04 April 2024. Respondent, on the other hand, did not file one.[84] Accordingly, in its Resolution dated 22 April 2024[85], the Court submitted the case for decision, taking into consideration petitioner's Memorandum without respondent's.

ISSUES

As laid out in the Pre-Trial Order[86], the following issues were forwarded for this Court's determination —

I.

WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S RIGHT TO COLLECT ON THE DEFICIENCY TAX ASSESSMENT ISSUED AGAINST PETITIONER PRISTINE ENERGY TRANSFER CORPORATION FOR THE CALENDAR YEAR (CY) ENDED 31 DECEMBER 2016 HAS PRESCRIBED; AND

II.

WHETHER PETITIONER PRISTINE ENERGY TRANSFER CORPORATION IS LIABLE FOR DEFICIENCY INCOME TAX (IT), VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT), WITHHOLDING TAX ON COMPENSATION (WTC), DOCUMENTARY STAMP TAX (DST), AND COMPROMISE PENALTIES, IN THE AGGREGATE AMOUNT OF ₱10,987,744.07, INCLUSIVE OF INTEREST AND SURCHARGES, FOR THE CALENDAR YEAR (CY) ENDED 31 DECEMBER 2016.

ARGUMENTS OF THE PARTIES

In support of its petition, petitioner foremost argues that the disputed assessment in the present case is null and void, as it stemmed from an examination conducted pursuant to a void LOA. For petitioner, a LOA that was served after 30 days had lapsed from its issuance, absent any showing that it had been revalidated, is null and void.

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82 Id.
83 Id., pp. 468-477.
84 See Records Verification dated 05 April 2024, id., p. 478.
85 Id., p. 479.
86 Id., p. 421.

Petitioner further contends that, in any event, respondent's findings as laid out in the FLD/FAN are all erroneous. Petitioner adds that, with respect to some of the taxes covered in the assessment, respondent's right to assess and/or collect had already prescribed.

On the other hand, respondent counters that with petitioner's failure to submit supporting documents within 60 days from filing its request for reinvestigation, the assessment has become final and executory. Respondent claims that it is evident from the Letter-Protest that it is a request for reinvestigation (as opposed to one for reconsideration as petitioner alleges), as petitioner repeatedly and categorically declared that it is reserving the right to submit additional supporting documents. Furthermore, respondent highlights that the nature of the findings being disputed demands new or additional documents from petitioner, else they cannot be cancelled. In particular, he or she cites items of the assessment that emanate from petitioner's failure to proffer sufficient supporting evidence or documentation. Taking the foregoing into consideration, respondent concludes that the clear implication is that petitioner intended to provide additional supporting documents to refute the assessments; thus, its protest partakes the nature of a request for reinvestigation.

Respondent maintains that petitioner had been validly served with Electronic Letters of Authority (**eLAs**). He or she cites Revenue Memorandum Order (**RMO**) No. 62-2010[87], dated 28 June 2010, which discontinued the issuance of manual LOAs. For respondent, Revenue Audit Memorandum Order (**RAMO**) No. 1-00[88], dated 17 March 200, (which contains the requirement to serve a LOA within 30 days from its issuance), only applies to manual LOAs, not eLAs. Moreover, respondent interposes that there is no such requirement in the NIRC of 1997, as amended, nor other revenue issuances or audit programs and policies.

Finally, respondent maintains that petitioner is liable for the deficiency taxes, as set forth in the PAN and FLD/FAN. According to respondent, his or her assessments are made in accordance with the

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87 Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.

88 Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).

prevailing laws and rules and are presumed to be correct and made in good faith, while the taxpayer bears the burden to prove otherwise. He or she stresses that, in this case, petitioner had failed to submit sufficient documentation to disprove the BIR's findings.

RULING OF THE COURT

Before delving into the merits of the case, We find it propitious to first determine whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE PRESENT PETITION FOR REVIEW.

The CTA, being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[89]

Section 11 of the Republic Act (**RA**) No. 1125, as amended by RA 9282, in relation to Section 3(a), Rule 8 of the RRCTA, provides for the proper period during which petitioner may bring an appeal invoking the CTA's jurisdiction, to wit:

> ...
>
> 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.**
>
> ...
>
> SEC. 3. *Who may appeal; period to file petition.* —

[89] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, 12 March 2014.

> (a) **A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments**. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[90]
>
> ...

On the other hand, Section 228 of the NIRC of 1997, as amended, outlines how a taxpayer may administratively protest an assessment issued by the CIR or his or her duly authorized representative and later on, if necessary, appeal the same to the CTA:

> ...
>
> **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 preassessment notice shall not be required in the following cases:
>
> ...
>
> 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.
>
> 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.
>
> **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**

[90] Italics in the original text, emphasis and underscoring supplied.

> **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.[91]
>
> ...

Relevantly, Revenue Regulations (**RR**) No. 18-2013[92], amending RR No. 12-99[93], pinpoints the start of the 180-day period for the CIR to act upon a taxpayer's protest:

> ...
>
> 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 re-evaluation 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 re-evaluation 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.
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and

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91 Emphasis supplied and italics in the original text.

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

93 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.

(iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

...

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. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

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.

...

> 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.[94]
>
> ...

From the foregoing, it is clear that a taxpayer would be given 30 days to file a Petition for Review with the CTA. However, the reckoning of the 30-day period varies with whether the CIR (or his or her duly authorized representative) had rendered a decision within the 180-day period to act provided under the law.

In evaluating the CIR's period to act on an administrative protest (to determine the proper period to appeal in case of the CIR's inaction), there is a need to further distinguish whether the taxpayer filed a **request for reinvestigation** or a **request for reconsideration**. In the former, the CIR is given 180 days from the taxpayer's submission of the relevant supporting documents, as required for a valid request for reinvestigation. In the alternative, the CIR has 180 days commencing right from when taxpayer files the request for reconsideration.

In the instant case, through the BIR's personal service, petitioner received the FLD/FAN[95] on 10 January 2020 and filed its Letter-Protest[96] on **04 February 2020**. By its representation, it filed its protest in the form of a **request for reconsideration**. Following this assumption, the protest would have been denied by respondent's inaction on **02 August 2020**. From there, petitioner would have had 30 days, or until **01 September 2020**, to file a Petition for Review before this Court.

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94 Emphasis supplied and italics in the original text.
95 Exhibits "P-6" to "P-6-6" and "R-10" to "R-16"; supra at note 6.
96 Exhibits "P-7" and "R-17; supra at note 30.

Incidentally, the parties contest the nature of petitioner's protest. Respondent insists that what petitioner filed is a **request for reinvestigation**, and that for whatever reason, it failed to submit the relevant supporting documents within 60 days, rendering the assessment final. In any event, there is no record of subsequent actions from the BIR for an extended period after granting the reinvestigation and reverting the case docket to the audit team (*i.e.*, issuance of an FDDA or equivalent, or the initiation of collection efforts).

A thorough reading of petitioner's Letter-Protest shows that it did not state clearly whether it is a request for *reconsideration* or one for *reinvestigation*. Respondent maintains that the BIR correctly treated it as a request for *reinvestigation*, pointing to petitioner's repeated statements throughout the body of the Letter-Protest in this tenor: "*we reserve the right to submit further information and supporting documents for this item of assessment.*"

Endeavoring to shed light into petitioner's actions, Orpilla, petitioner's President, who supposedly prepared[97] the Letter-Protest, testified[98] regarding the preparation thereof, maintaining that it was a request for *reconsideration*:

> ...
>
> **<u>CROSS-EXAMINATION OF ATTY. FELY ROSE R. DAGANTA:</u>**
>
> ...
>
> ATTY. DAGANTA:
>
> Yes, your Honors, because when the protest was filed by the petitioner, it was interpreted by the BIR as a request for reinvestigation, that's why they sent a letter in May 2020 asking to submit the supporting documents based on the reservations made by the petitioner in the letter.
>
> ...
>
> JUSTICE DEL ROSARIO:
>
> While asking for a reconsideration, he is saying that he reserves the right to present additional documents. So, what you're saying is that the position is apparently contradictory.
>
> ATTY. DAGANTA:
>
> Yes, your Honors.

---

97 Q14, Judicial Affidavit of Edgar G. Orpilla, Exhibit "P-10", Division Docket, p. 343.

98 TSN dated 07 February 2023, pp. 27-31.

JUSTICE DEL ROSARIO:

So, witness, kindly answer. If you are asking for a mere reconsideration, then why were you intending or reserving the right to present additional documents? At the time that you made that letter, are you aware of the distinction between a reconsideration and a reinvestigation? Just answer the Court. You are not a lawyer, right? Mr. Witness, you are not a lawyer?

MR. ORPILLA:

Your Honors, no.

JUSTICE DEL ROSARIO:

Since you are not a lawyer, be frank with the Court, do you know the distinction at that time between a reconsideration and a reinvestigation?

MR. ORPILLA:

No, your Honors.

JUSTICE DEL ROSARIO:

Okay. That is the answer. Proceed.

ATTY. DAGANTA:

No further questions, your Honors.

JUSTICE DEL ROSARIO:

Any redirect?

ATTY. JAMORA, JR.:

Just one question, Your Honors.

JUSTICE DEL ROSARIO:

All right.

REDIRECT EXAMINATION OF ATTY. ELPIDIO C. JAMORA, JR.:

ATTY. JAMORA, JR.:

Mr. Witness, you were asked earlier by counsel about the letter, which was marked as, your letter, which was marked as Exhibit [P-9], about whether your company was asking for a reconsideration or reinvestigation from the BIR. Did you clarify or make it clear to the BIR that you were asking for a reconsideration?

MR. ORPILLA:

Yes, your Honors.

ATTY. JAMORA, JR.:
And did you manifest this by way of a written document or letter to the BIR?

MR. ORPILLA:
Yes, your Honors.

ATTY. JAMORA, JR.:
Q: I am presenting to you this Exhibit P-9. Will you tell the Honorable Court if this was the letter which you sent wherein you mentioned that you were asking for reconsideration and not reinvestigation?

MR. ORPILLA:
A: Yes, your Honors.

ATTY. JAMORA, JR.:
That's all for the witness, your Honors.

JUSTICE DEL ROSARIO:
Recross?

<u>RECROSS-EXAMINATION OF ATTY. FELY ROSE R. DAGANTA:</u>

ATTY. DAGANTA:
Q: Mr. Witness, for clarification, so when did you determine or learned of the difference between reconsideration and reinvestigation?

...

MR. ORPILLA:
A: I cannot (paused) Your Honors, I cannot directly answer the difference.

ATTY. DAGANTA:
Q: But is it safe to say that you were able to determine that after you received the letter from the BIR asking you to submit supporting documents relative to your protest letter dated February 4, 2020, correct?

MR. ORPILLA:
A: Yes, your Honors.

ATTY. DAGANTA:
No further recross, your Honors.

JUSTICE DEL ROSARIO:
Mr. Orpilla, just to clarify, in so far as Exhibit P-9 is concerned, were you already assisted by a lawyer at that time?

MR. ORPILLA:
Your Honors, I was assisted by our accountants and the accountants probably they asked [advice].

JUSTICE DEL ROSARIO:
So, when you actually sent out Exhibit P-9, you were already assisted by an accountant, who may have known the difference between reconsideration and reinvestigation?

MR. ORPILLA:
I could only guess, your Honors.

...

Though a copy of the letter dated 29 July 2020[99] stating that the Letter-Protest is a request for reconsideration cannot be found in the BIR Records for this case, nor is it apparent from the face of the letter that it was duly received by the BIR, respondent did not dispute its filing. The letter in question elucidates petitioner's actual intentions regarding its Letter-Protest:

...
July 29, 2020

BUREAU OF INTERNAL REVENUE
Revenue District Officer No. 44 – Taguig-Pateros
3/F Bonifacio Tech Center, 31st St, cor. 2nd Ave.
Bonifacio Global City, Taguig City

ATTENTION: **MR.RAY ANTHONY O. GELI**
Revenue District Officer

RE: **Pristine Energy Transfer Corporation**
For the period January 1, 2016 to December 31, 2016
Reply Letter to the Letter of Action on Protest Letter

Sir Ray Anthony:

This has reference with the Letter of Action on Protest Letter dated March 4, 2020 and received last June 30, 2020 (Please see Annex A). The protest letter dated February 4, 2020 is relative to the Formal letter of Demand (FLD) received by Pristine Energy Transfer

[99] Exhibit "P-9", supra at note 33.

> Corporation (PETC or the Company) on January 10, 2020 under replacement Letter of Authority, LoA-044-2019-00000244 eLA20160006876l dated May 14, 2019 and received on July 3, 2019, covering taxable year 2016.
>
> The said protest letter is a request for reconsideration rather than a request for reinvestigation. The protest letter already contained the legal and factual bases and the supporting documents against the FLD. We are now waiting for the Final Decision on Disputed Assessment (FDDA).
>
> We respectfully submitted in the protest letter contesting the formal deficiency tax assessment per FLD issued against PETC and specifically request the alleged tax deficiency assessment findings be cancelled.
>
> ...

According to petitioner, it filed the above letter in response to the BIR's own letter dated 04 March 2020 granting its request for *reinvestigation* and directing petitioner to submit the relevant supporting documents within 60 days.[100]

Petitioner's follow-up letter unequivocally declares that what it had filed was a request for *reconsideration*, and that it expects the course of its remedy it availed to be in line with a reconsideration. Petitioner set forth that it was awaiting the issuance of an FDDA. Indeed, upon the expiry of the 180-day period for the CIR to act on the protest, it filed the instant Petition for Review within the trailing 30-day period.

It is worth noting that the letter makes mention of supporting documents supposedly attached to the Letter-Protest earlier filed. Upon inspection, these consist of copies of the LOAs that petitioner received in the present case.

While a case can be made to deem the protest a request for reinvestigation, it is likewise true that it is the taxpayer that would ultimately decide on what will be deemed relevant or complete to meet the requirement for submission of relevant supporting

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100 See Exhibits "P-8" and "R-18", supra at note 31.

documents in a request for reinvestigation. It is settled that the term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. It cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[101] As petitioner declared in its letter to the BIR, "[t]he protest letter already contained the legal and factual bases and the supporting documents against the FLD". Thus, if the alternative were to be entertained, the logical conclusion is that the 180-day period for the CIR to act on petitioner's request for reinvestigation would begin on the same day (the filing of the Letter-Protest), as petitioner no longer intended to proffer any additional documentation beyond those it already transmitted on the same day as it filed its Letter-Protest.

Nonetheless, petitioner's actions in the administrative level, as well as its witness' testimony, had been consistent with its availment of the remedy of a request for *reconsideration*. Apart from its "reservations" in the protest, what can be plainly inferred therefrom is that petitioner merely disagreed with the BIR's findings (after which petitioner proceeds to outline its factual and legal bases therefor). Moreover, aside from later clarifying that the Letter-Protest is a request for *reconsideration*, petitioner did not indicate anywhere that it sought a *reinvestigation*. This course of action aligns as well with petitioner purportedly not knowing the difference between the available remedies.

RMO No. 26-2016[102] dated 13 June 2016 is particularly instructive:

> ...
> II. Policies and Guidelines
> ...
>
> 5. Within thirty (30) days from receipt of the FLD/FAN, the taxpayer shall either:

---

[101] *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, 16 June 2009.

[102] Policies and Guidelines in Handling Disputed Assessments.

a. Accept the assessment, fully or partially, and pay the amount due on the assessment accepted, or

b. **Protest the assessment fully or partially by filing either of the following remedy, and the filing of one precludes the filing of the other remedy:**

i. **Request for Reconsideration if the taxpayer is not going to submit any other additional evidence or documents and merely pleas for a re-evaluation of an assessment;**

ii. Request for a Reinvestigation on the basis of newly discovered evidence or if the taxpayer intends to present or submit additional evidence or documents.

...

7. If a request for Reinvestigation was made, the taxpayer shall submit all the relevant supporting documents in support of his/her/its protest within sixty (60) days from the date of the filing of the taxpayer's letter of protest. Evaluation of the protest shall be based exclusively on the documents submitted within this period, and no further document shall be accepted after the expiration of the said period. The assessment shall become final and executory in the event the taxpayer fails to submit the relevant supporting documents within this 60 days period, and a Collection Letter and other collection remedies such as but not limited garnishment, warrant and levy shall be issued against the taxpayer.

...

9. **All protest shall be considered a request for reconsideration, unless said protest clearly indicates that the request is for reinvestigation.**[103]

...

As it stands, the Letter-Protest cannot be considered a request for *reinvestigation*, but rather a request for *reconsideration.*

Accordingly, as described further above, with petitioner having filed its request for reconsideration on **04 February 2020**, the same is deemed to have been denied by respondent's inaction on **02 August 2020**. Petitioner had 30 days therefrom, or until **01 September 2020**,

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[103] Emphasis and underscoring supplied.

to file a Petition for Review before this Court. Clearly then, petitioner timely filed the instant Petition for Review on **26 August 2020**.[104]

We then proceed with a discussion of the merits of the case.

After an assiduous review of the case records and the parties' arguments, this Court finds grounds warranting the cancellation of the present assessment against petitioner. For an orderly discussion, We shall consecutively go over the contested aspects of the instant assessment.

THE LETTER OF AUTHORITY (LOA) WAS VALIDLY SERVED ON PETITIONER.

Under the NIRC of 1997, as amended, it is the CIR who principally exercises the power to make assessments. The same law, however, also delegates this power to the Revenue Regional Directors (**RRDs**). The NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> > *(A) Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> ...
>
> **SEC. 10.** *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue**

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104 Supra at note 1.

> **Regional Director shall, within the region and district offices under his jurisdiction, among others**:
>
> (a) Implement laws, policies, plans, programs, rules and regulations of the department or agencies in the regional area;
>
> (**b**) Administer and enforce internal revenue laws, and rules and regulations, **including the assessment and collection of all internal revenue taxes, charges and fees;**
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.][105]
>
> ...

While the CIR and the RRDs may perform assessments themselves by the express authority of the NIRC of 1997, as amended, assessments are usually carried out by ROs by way of delegation. This delegation is in the form of an LOA.

The LOA is the authority given to the appropriate RO assigned to perform assessment functions.[106] It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[107] An RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a validly issued LOA.[108] Stated differently, under the NIRC of 1997, as amended, the investigatory powers of the ROs flow from the LOA, which is the statutorily designated means by which the CIR delegates its investigative powers to the ROs.[109]

Section 13 of the NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 13.** *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned**

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105 Emphasis supplied and italics in the original text.
106 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, 14 May 2021.
107 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.
108 *Republic of the Philippines v. Robiegie Corporation*, G.R. No. 260261, 03 October 2022.
109 Id.

> **to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[110]
>
> ...

In relation to the foregoing, the substance of the subject LOAs (*i.e.*, the grant of authority to the RO and GS named therein) *per se*, *vis-à-vis* the officers' degree of participation in the petitioner's audit are not strictly in question. Petitioner, however, disputes the LOAs' manner of service.

For the examination of its CY 2016 books, petitioner received the first LOA dated 26 October 2018 on 04 January 2019 (or seventy [70] days from issuance). Following the reassignment of the assigned GS, it received a replacement LOA dated 14 May 2019 on 03 July 2019 (or fifty [50] days from issuance). Petitioner posits that respondent's LOAs were void as they were served after more than 30 days had lapsed from their issuance, without revalidation. It underscores that the resulting assessment issued pursuant to a void LOA would be similarly void.

Petitioner mainly anchors its argument on RAMO No. 1-00 dated 17 March 2000[111]:

> VIII. Preliminary Approach to Examination.
>
> ...
>
> *C. Contact With Taxpayer*
>
> ...
>
> 2. *Serving of Letter of Authority*
>
> ...
>
> > 2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated.

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110 Emphasis supplied and italics in the original text.
111 Supra at note 88.

> The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on ____________" on the face of the copy of the Letter of Authority issued.

...

Petitioner also referenced the BIR's General Audit Procedures and Documentation (**GAPD**), as cited in the CTA *En Banc*'s ruling in *Dakay Construction and Development Corporation v. Commissioner of Internal Revenue*[112], which mirrors the requirement:

> ...
>
> 4.) When must a Letter of Authority be served?
>
> A Letter of Authority **<u>must</u> be served to the concerned Taxpayer within thirty (30) days from its date of issuance, otherwise, it <u>shall</u> become null and void.** The Taxpayer shall then have the right to refuse the service of this LA, unless the LA is revalidated.
>
> ...

Petitioner's contentions deserve scant consideration.

The BIR and its officers are bound to perform their duties in accordance with law and especially with their own rules of procedure.[113]

It is true that an LOA that remained unserved for more than 30 days is invalidated under RAMO No. 1-00. This persisted as the general rule until the BIR issued RAMO No. 1-2020[114] dated 17 September 2020, which removed the provision that imposed the 30-day deadline precisely to dispense with the requirement. In

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[112] CTA EB No. 1294, 20 September 2016; Emphasis and underscoring in the original text.

[113] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 and 201418-19, 03 October 2018.

[114] Updated Handbook on Audit Procedures and Techniques.

Revenue Memorandum Circular (**RMC**) No. 82-2022[115] dated 28 June 2022, the BIR clarified:

> ...
>
> This Circular is hereby issued to address the issues and concerns on the service of the electronic Letter of Authority (eLA) to the taxpayer within the 30-day period from the date of issuance thereof.
>
> Item No. VIII of RAMO No. 1-2000 provides:
>
> *"2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue, otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on ____' on the face of the copy of the Letter of Authority issued"*
>
> In the Decision of the Court of Tax Appeals (CTA) in the case of *Dakay Construction and Development Corporation vs. Commissioner of Internal Revenue* (CTA EB No. 1294), which Decision is anchored on the above quoted provision, the CTA-En Banc ruled that ***"The Letter of Authority no longer has any force or effect having been served on the petitioner beyond the prescribed 30-day period. The assessment conducted by the Revenue Officers was already unauthorized, because there is no valid LOA covering it."***
>
> Let it be clarified, that RAMO No. 1-2000 was already amended by RAMO No. 1-2020, thereby deleting the above quoted provision to read as follows:
>
> *"**1. Serving of eLA***
>
> *a. On the first opportunity of the RO to have a personal contact with the taxpayer, he should present the eLA together with the checklist of requirements. The eLA should only be served by the RO assigned to the case. He should have the proper identification card and should be in uniform. However, the service of eLA may*

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115 Clarification on the Service of Letter of Authority Pursuant to Revenue Audit Memorandum Order (RAMO) No. 1-2000.

> *likewise be done in other manners as prescribed in existing policies.*
>
> *b. An eLA authorizes or empowers a designated RO to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.*
>
> ***2. Request for Accounting Records***
>
> xxx xxx xxx."[116]

...

In the present case, the service of both LOAs (on 04 January and 03 July 2019) precede the removal of the rule with the issuance of RAMO No. 1-2020 on 17 September 2020.

The said rule, however, is far from absolute.

In *AFP General Insurance Corporation v. Commissioner of Internal Revenue*[117] (**AFP General Insurance**), the Supreme Court had occasion to explore RAMO No. 1-00[118] and ruled that the taxpayer's belated objection to the alleged irregularity in the service (of the LOA) is only a mere afterthought to escape tax liability. The pertinent part provides –

> ...
>
> *Third*, even if the Court brushes aside these recognized principles and follows AGIC's reasoning, it is clear that they would have had the legal right to refuse service of an LOA it believed was defective due to lack of revalidation. However, **it is undisputed that AGIC did not contest the LOA upon receipt and allowed the tax authorities to proceed with and complete the audit**.
>
> Moreover, AGIC did not question the timeliness of the LOA's service in any of the following: reply to the PAN, two-page formal administrative protest to the FLD, Petition for Review, and Motion for Reconsideration before the CTA Division. AGIC raised this argument only on appeal (to the CTA *En Banc*).

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116 Emphasis and italics in the original text.

117 G.R. No. 222133, 04 November 2020; Citations omitted, italics in the original text and emphasis supplied.

118 Supra at note 88.

> To the Court's mind, **AGIC's failure to exercise its right to refuse the service of an allegedly defective LOA shows that they had acquiesced to the tax authorities' investigation. That it waited until after the issuance of the PAN, FLD, as well as the CTA Division's adverse decision before objecting to this irregularity could only be interpreted as a mere afterthought to resist possible tax liability.**
>
> ...

In petitioner's case, it received the subject LOAs, both "expired" and without revalidation, and proceeded to accede to the BIR's investigation and comply with the audit team's requirements. The first instance supported in the case's records of petitioner's dissent to the validity of the examination (premised on the supposed invalidity of the LOA's service) would be its Letter-Protest[119] to the FLD/FAN.

Apart from petitioner's arguments in its Letter-Protest in the administrative level, the facts established (from the evidence on record and even through the proceedings before this Court) that support its position are observably sparse.

From its enunciation of relevant facts in the Petition for Review, petitioner plainly described the LOA's service and skipped directly to the FLD's later service:

> ...
>
> 3. **Statement of Relevant Facts**
>
> 3.1. On January 04, 2019, PETC was served Letter of Authority No LOA-044-2018-00000274 dated October 26, 2018 advising it that the bearer(s) RO- Maria Theresa Revilala / GS - Emilio Romero of RDO No. 044, Taguig, Pateros is/are authorized to examine the books of accounts and other accounting records of PETC for all internal revenue taxes for the period from January 1, 2016 to December 31, 2016;
>
> 3.2 On July 3, 2019, PETC received LOA-044-2019-00000244 dated May 14, 2019 advising it this time that RO- Maria Theresa Revilala GS- Marilyn Dumapias of RDO No. 044 – Taguig, Pateros is/are authorized to examine its books of accounts and other

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119 Exhibits "P-7" and "R-17, supra at note 30.

accounting records for the period from January 1, 2016 to December 31, 2016;

3.3 On January 10, 2020, PETC received a Formal Letter of Demand dated December 27, 2019 ["FLD"] from Glen A. Geraldino, BIR Regional Director, Revenue Region 8B - South NCR consisting of a) FLD Part 1, b) Details of Discrepancies, c) FLD Part II and 6 separate Assessment Notices[.][120]

...

Orpilla, petitioner's President and lone witness, corroborates[121] the narration in the Petition but similarly skimps on any particulars that would illustrate its refusal. Instead, its witness' actions lean more towards the alternative:

...

Q10.: What happened, if you know, after you received the First LOA and the Second LOA?

A10.: **We complied by submitting the required documents and other financial records to the BIR examiner(s) assigned.**

Q11.: What happened after you had submitted the required documents and records of PETC to the BIR?

A11.: On January 10, 2020, PETC received a Formal Letter of Demand dated December 27, 2019 ("FLD") from Glen A. Geraldino, BIR Regional Director, Revenue Region 8-B- South NCR.[122]

...

He likewise admitted to not having taken any responsive measures after being apprised with the knowledge regarding the LOAs' possible invalidity:

...

ATTY. DAGANTA:

Q: So, at the time, did you already consider that it was an invalid service?

---

120 Petition for Review, Division Docket, p. 7; Citations omitted.

121 Q4-Q9, Judicial Affidavit of Edgar G. Orpilla, Exhibit "P-10", id., pp. 341-342.

122 Judicial Affidavit of Edgar G. Orpilla, Exhibit "P-10", id., p. 342; Emphasis supplied.

MR. ORPILLA:
A: I was informed by my accounting people who are more *(inaudible)* because I am not well-versed when it comes to time and execution or compliance. But given the organization that we have, they know what are the priorities so we should not miss our obligations, your Honors.

ATTY. DAGANTA:
Q: So, it is correct that at that time, you were informed by your accounting staff that the LOA was served beyond 30 days, and you were informed that the service was invalid, is it correct?

MR. ORPILLA:
A: Yes, your Honors.

ATTY. DAGANTA:
Q: Okay. And my next question is, if that is the case then, why did you still accept the service of the second LOA, considering that according to you, it was served beyond 30 days?

MR. ORPILLA:
A: As I mentioned, I was not around during the time it was served, your Honors.

ATTY. DAGANTA:
Q: But did you not instruct or advised or accounting staff not to receive a LOA that is served beyond 30 days, since you have already experienced that?

MR. ORPILLA:
Your Honors, in all honesty, I can't remember or recall that. I have to track because as I mentioned, I *(interrupted)*

JUSTICE MANAHAN:
Witness, you can just answer yes or no. There's no need to explain. Their question is answerable by yes or no, so there's not need to explain.

MR. ORPILLA:
A: No, your Honors.[123]
...

As can be gleaned from the testimony of its witness, there is no indication that petitioner attempted to refuse the LOAs' service, but

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[123] TSN dated 07 February 2023, pp. 20-21.

there are abundant badges of its participation and assent to the examination. While it is for petitioner and its counsel to decide what extent of the relevant facts they will incorporate into the Petition, there is surprisingly little to go on in an effort to establish that petitioner actually intended to question the LOAs' service. Truth to tell, petitioner's evidence would plainly show that it received the "expired" LOAs without contest.

Further perusal of the BIR Records, as supported by the witnesses' testimonies would only continue to paint petitioner's invocation of the rule as an afterthought.

RO Revilala actually attested to multiple instances of petitioner's employees' refusal to receive each LOA during previous attempts at service, even attributing the delay (*i.e.* service 30 days beyond issuance) to these refusals:

> ...
>
> Q14: What happened during your previous attempts to serve the Letter of Authority No. eLA20150008899 2 (LOA-044-2018-00000274)?
>
> A: During my first attempt to serve the letter of authority, when I arrived at petitioner's registered business address and looked for the authorized representative of petitioner to receive the letter of authority, an employee of petitioner advised me to wait at the lobby while she's referring the matter to their Financial Department. After that, an employee from the said Department approached me and told me that they need to consult first with their company's third-party consultant whether they should accept the service. I tried to reason out that the receipt of the letter of authority is not discretionary on the part of petitioner and the same should be received by an authorized representative of petitioner. However, I was still asked to wait. After several hours of waiting at the lobby nobody returned to give me feedback. When I inquired from the receptionist, I was advised to just return because there was no advice yet from their third-party consultant. Considering that I had another schedule on that day, I was compelled to leave without serving the letter of authority. Same thing happened to my subsequent attempts. Until finally, when I returned on 04 January 2019 at petitioner's registered business address the letter of authority

> was received by Mellany A. Almazan, who represented herself as the person authorized by petitioner to receive the same.[124]
>
> ...

While there were supposed refusals of service, petitioner failed to establish whether it ever made clear that such is due to the LOA's invalidity. RO Revilala's cross-examination on the matter revolved only around the veracity of the number and timing of her claimed previous attempts to serve the LOAs. As it is, petitioner eventually accepted both LOAs without reservations. Petitioner would later on deliver its records to the BIR, then reply to the PAN, and eventually to the FLD/FAN.[125]

In line with the Supreme Court's pronouncements in *AFP General Insurance*, with petitioner's failure to contest the LOAs' alleged improper service, coupled with its apparent acceptance of the BIR's authority when it began to carry out its investigation (which continued until the BIR eventually completed the same), it is thus deemed to have acquiesced to the conduct of the audit.

Allowing a litigant to assume a different posture when he or she comes before the court and challenge the position he or she had accepted at the administrative level would be to sanction a procedure whereby the court — which is supposed to review administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum.[126] Well-settled is the principle that a party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.[127]

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124 Q14, Judicial Affidavit of Revenue Officer (RO) Maria Teresa Revilala, Exhibit "R-19", id., p. 183. See also Q30, pp. 187-188.

125 Supra at notes 20, 26, 30.

126 *Aguinaldo Industries Corporation (Fishing Nets Division) v. Commissioner of Internal Revenue*, G.R. No. L-29790, 25 February 1982.

127 *Joker P. Arroyo v. House of Representatives Electoral Tribunal (HRET) and Augusto L. Syjuco, Jr.*, G.R. No. 118597, 14 July 1995.

In consideration of the foregoing, it would be improper to consider the subject LOAs invalidly served.

We thus proceed to tackle the particulars of the assessment.

THE PERIOD TO ASSESS SELECT TAXES FOR THE CALENDAR YEAR (CY) 2016 HAD ALREADY PRESCRIBED.

In refuting the assessment, petitioner alleges that respondent's right to assess deficiency taxes for select periods within the taxable year subject of the assessment had already prescribed by the time respondent issued the FLD/FAN. Meanwhile, in the Details of Discrepancies[128] accompanying the FLD/FAN, respondent insinuates that the assessment for deficiency DST, in particular, is subject to the *extraordinary* ten (10)-year prescriptive period due to petitioner's failure to file the necessary DST return.

Pertinently, Sections 203 and 222(a) of the NIRC of 1997, as amended, provide:

> ...
>
> 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-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.[129]
>
> ...
>
> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

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128 Supra at note 6.

129 Emphasis supplied and italics in the original text.

(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.[130]

...

The foregoing considered, with respect to IT, VAT, EWT, and WTC, the applicable period of prescription would be **three (3) years counted after the last day prescribed by law (for the filing of the return, pursuant to Section 203 of the NIRC of 1997, as amended).**

Correspondingly, when respondent issued the FLD/FAN on **27 November 2019**[131], which petitioner received on 10 January 2020, *respondent's right to assess petitioner for deficiency VAT for the first to third quarters of CY 2016 as well as EWT and WTC for the first ten (10) months of CY 2016 had already prescribed*:

Period covered	**Date of actual filing**	**Last day prescribed by law to file the return**[132] [133] [134]	**Last day to assess under Section 203**[135] **of the NIRC of 1997, as amended**	**Page Reference** *(BIR Records)*
VAT				
1st Quarter, CY 2016	25 April 2016	25 April 2016	25 April 2019	108
2nd Quarter, CY 2016	25 July 2016	25 July 2016	25 July 2019	102
3rd Quarter, CY 2016	25 October 2016	25 October 2016	25 October 2019	96
4th Quarter, CY 2016	25 January 2017	25 January 2017	25 January 2020	90
EWT				
January 2016	10 February 2016	10 February 2016	10 February 2019	52
February 2016	9 March 2016	10 March 2016	10 March 2019	50

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130 Emphasis supplied and italics in the original text.

131 Supra at note 27.

132 National Internal Revenue Code (NIRC) of 1997, as amended, Section 114(A).

133 NIRC of 1997, as amended, Section 58(A); Cf.: Revenue Regulations (RR) No. 2-98, Section 2.58(A)(2).

134 NIRC of 1997, as amended, Section 81; Cf.: RR No. 2-98, Section 2.81.

135 **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-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. (Emphasis supplied)

Period covered	**Date of actual filing**	**Last day prescribed by law to file the return**[132] [133] [134]	**Last day to assess under Section 203**[135] **of the NIRC of 1997, as amended**	**Page Reference** *(BIR Records)*
VAT				
1st Quarter, CY 2016	25 April 2016	25 April 2016	25 April 2019	108
2nd Quarter, CY 2016	25 July 2016	25 July 2016	25 July 2019	102
3rd Quarter, CY 2016	25 October 2016	25 October 2016	25 October 2019	96
4th Quarter, CY 2016	25 January 2017	25 January 2017	25 January 2020	90
March 2016	8 April 2016	10 April 2016	10 April 2019	49
April 2016	10 May 2016	10 May 2016	10 May 2019	48
May 2016	10 June 2016	10 June 2016	10 June 2019	47
June 2016	10 July 2016	10 July 2016	10 July 2019	46
July 2016	9 August 2016	10 August 2016	10 August 2019	45
August 2016	9 September 2016	10 September 2016	10 September 2019	44
September 2016	10 October 2016	10 October 2016	10 October 2019	43
October 2016	11 November 2016	10 November 2016	11 November 2019	39-42
November 2016	10 December 2016	10 December 2016	10 December 2019	38
December 2016	13 January 2017	15 January 2017	15 January 2020	37
WTC				
January 2016	11 February 2016	10 February 2016	10 February 2019	77
February 2016	9 March 2016	10 March 2016	10 March 2019	75
March 2016	8 April 2016	10 April 2016	10 April 2019	73
April 2016	10 May 2016	10 May 2016	10 May 2019	71
May 2016	10 June 2016	10 June 2016	10 June 2019	69
June 2016	9 July 2016	10 July 2016	10 July 2019	67
July 2016	9 August 2016	10 August 2016	10 August 2019	65
August 2016	9 September 2016	10 September 2016	10 September 2019	63
September 2016	10 October 2016	10 October 2016	10 October 2019	61
October 2016	11 November 2016	10 November 2016	11 November 2019	57-59
November 2016	10 December 2016	10 December 2016	10 December 2019	56
December 2016	13 January 2017	15 January 2017	15 January 2020	54

Accordingly, only the portion of the assessment for deficiency VAT for the 4th quarter of CY 2016 and deficiency EWT and WTC for the last two (2) months of CY 2016 were issued within the three (3)-year prescriptive period allowed by law.

Consequently, in line with what has been established above, *respondent's right to assess petitioner for deficiency IT, as well as VAT, for the 4th quarter of CY 2016, and EWT and WTC for November and December 2016 had not yet prescribed* when the FLD/FAN was issued (within the three [3]-year prescriptive period allowed by law).

On the other hand, as to DST, *without delving into the merits of the transaction upon which respondent imputed deficiency DST,* absent any showing that petitioner filed a DST Return for the said transaction imputed in the FLD/FAN, *the corresponding DST assessment has thus*

not prescribed (in accordance with Section 222 of the NIRC of 1997, as amended[136]).

RESPONDENT'S PERIOD TO COLLECT
HAS NOT YET PRESCRIBED.

As for the right to collect taxes, Section 203 of the NIRC of 1997, as amended, provides the reckoning date by which respondent's power to collect commences. The provision reads:

> ...
> 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.[137]
> ...

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[138], the Supreme Court clarified that, when the BIR issues the assessment within the three(3)-year prescriptive period, it has another three (3) years, counted from the date the assessment notice is released, mailed or sent to the taxpayer, within which to collect the tax due by distraint, levy or court proceeding as follows:

> ...
> [P]etitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. The assessment of the tax is deemed made and the three (3)-year**

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136 Supra at pp. 40-41.
137 Emphasis supplied and italics in the original text.
138 G.R. No. 197515, 02 July 2014; Citations omitted and emphasis supplied.

> **period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.**
>
> ...

Relative to the running of the said three (3)-year prescriptive period, Section 223 of the NIRC of 1997, as amended, categorically provides that when the CIR grants a taxpayer's request for reinvestigation, the running of the period to collect is *tolled*:

> ...
>
> SEC. 223. *Suspension of Running of Statute of Limitations.* – The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided*, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.[139]
>
> ...

In the case at bar, while it is true that respondent "granted" a request for *reinvestigation*[140], We have previously established that what petitioner filed is one for *reconsideration*. Resultantly, in the context of Section 223 which triggers the interruption of the period to collect "when the taxpayer requests for a reinvestigation which is granted by the Commissioner", there is nothing to grant as the taxpayer did not request for a *reinvestigation*.

Notwithstanding the above circumstance, respondent's right to collect had *not* prescribed.

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139 Emphasis supplied and italics in the original text.

140 Supra at note 31.

Here, petitioner received the FLD/FAN on **10 January 2020.**[141] Without any event to toll the three (3)-year period to collect the deficiency assessments, the same was set to end on **09 January 2023**. By the time respondent filed his or her Answer on **16 March 2021**[142], his or her right to collect (on the subsisting portions of the assessment) had clearly not yet prescribed.

Regardless, as will be discussed below, the subject assessment for CY 2016 must be invalidated.

THE ASSESSMENT SHOULD BE CANCELLED AS IT WAS ISSUED IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

The evolution of the BIR's assessment from (1) the computation sheets attached to the NIC[143], (2) the PAN[144], and finally, (3) the FLD/FAN[145] is laid out below:

	***Per* FLD/FAN**	***Per* PAN**	***Per* NIC**
I. Income Tax (IT)			
Taxable income *per* return	₱3,063,884.00	₱3,063,884.00	₱3,063,884.00
Add: Adjustments/disallowances			
Undeclared sales	10,789,034.33	10,789,034.33	10,789,034.33
Unsupported loss on telegraphic transfer	1,124,588.00	1,124,588.00	1,124,588.00
Unsupported interest expense	211,655.00	211,655.00	211,655.00
Disallowed expenses due to non-withholding	4,996,154.37	4,996,154.37	8,482,634.37
Disallowed salaries and wages due to non-withholding	511,169.00	511,169.00	686,964.00
Unsupported expenses	634,471.14	634,471.14	634,471.14
Adjusted taxable income	₱21,330,955.84	₱21,330,955.84	₱24,993,230.84
Multiply by: Income tax rate (30%)	x 30%	x 30%	x 30%
Adjusted income tax due	₱6,399,286.75	₱6,399,286.75	₱7,497,969.25
Less: Tax credits/payments			
Prior year excess credits	(539,064.00)	(539,064.00)	(539,064.00)
Excess MCIT applied	(505,616.00)	(505,616.00)	(505,616.00)

141 Supra at note 27.
142 Supra at note 42.
143 Exhibit "R-7", supra at note 22.
144 Exhibit "R-9", supra at note 24.
145 Exhibits "P-6" and "R-10", supra at note 6.

Payments	(157,475.00)	(157,475.00)	(157,475.00)
Creditable tax withheld	(519,913.00)	(519,913.00)	(519,913.00)
Add back: Adjustments/disallowances			
Unsupported/disallowed creditable withholding tax	519,913.00	519,913.00	519,913.00
Excess credits carried forward to succeeding period	802,902.80	802,902.80	802,902.80
Basic tax due	**₱6,000,034.55**	**₱6,000,034.55**	**₱7,098,717.05**
II. Value-Added Tax (VAT)			
Taxable sales/receipts *per* VAT return	₱27,315,154.94	₱27,315,154.94	₱27,315,154.94
Add: Adjustments/disallowances			
Undeclared sales	10,789,034.33	10,789,034.33	10,789,034.33
Receipts not subjected to VAT	1,450,156.28	2,505,591.33	2,505,591.33
Disallowed zero-rated sales	545,000.00	545,000.00	545,000.00
Adjusted VAT-able sales	₱40,099,345.55	₱41,154,780.60	₱41,154,780.60
Multiply by: VAT rate	x 12%	x 12%	x 12%
Output tax due	₱4,811,921.47	₱4,938,573.67	₱4,938,573.67
Less: Allowable input tax per audit			
Input tax from current period	(909,715.83)	(909,715.83)	(909,715.83)
Add back: Unsupported/disallowed input tax	19,298.67	19,298.67	19,298.67
VAT payable	₱3,921,504.31	₱4,048,156.51	₱4,048,156.51
Less: VAT payments *per* return	(2,368,102.77)	(2,368,102.77)	(2,368,102.77)
Basic tax due	**₱1,553,401.54**	**₱1,680,053.74**	**₱1,680,053.74**
III. Expanded Withholding Tax (EWT)			
Basic tax due	**₱164,699.95**	**₱164,699.95**	**₱164,699.95**
IV. Withholding Tax on Compensation (WTC)			
Basic tax due	**₱83,679.65**	**₱83,679.65**	**₱83,679.65**
V. Documentary Stamp Tax (DST)			
Basic tax due	**₱25,000.00**	**₱25,000.00**	**₱25,000.00**
VI. Compromise Penalties (FLD Part II)			
Compromise penalty for EWT and WTC	-	-	**₱35,000.00**
Failure to file and pay DST on original issuance of stock	**₱10,000.00**	**₱10,000.00**	**10,000.00**

Admittedly, a plain comparison at face bares a conclusion that their contents are not total mirror reproductions of each other. Backtracking from the FLD/FAN to the NIC computation sheets, there are a few observable variances:

1. Disallowed expenses due to non-withholding *per* FLD/FAN and PAN vs. *per* NIC computations;

2. Disallowed salaries and wages due to non-withholding *per* FLD/FAN and PAN vs. *per* NIC computations;

3. Receipts not subjected to VAT *per* FLD/FAN vs. *per* PAN; and,

4. Additional compromise penalty items in the NIC.

We shall scrutinize the deviations between each iteration of the computation, *in seriatim.*

First, from the NIC to the PAN and FLD/FAN, the total expense disallowance due to non-withholding dropped by ₱3,486,480.00, representing the additions to Property, Plant, and Equipment (**PPE**) during the period.

As calculated in the Details of Discrepancies attached to the PAN and FLD/FAN, the amount of disallowed expense due to non-withholding is calculated as the difference between the expense amount declared in the Audited Financial Statements (**AFS**) (or claimed as deductions in the Annual Income Tax Return [**ITR**]) and the amount of income payments reported as the tax base in the EWT returns (BIR Form No. 1601-E). The computation is summarized as follows:

	***Per* ITR/AFS** [A]	***Per* 1601-E** [B]	**Disallowed expense** [C=A-B]
Purchase of goods			
Direct charges (materials, supplies, and facilities)	₱3,826,739.00		
Fuel and oil	138,695.00		
Office supplies	268,300.00		
Additions to PPE	3,486,480.00		
Subtotal	₱7,720,214.00	₱2,274,937.12	₱5,445,276.88
Rentals	753,386.00	529,268.23	224,117.77
Purchase of services and payments to contractors	8,550,404.00	6,066,214.28	2,484,189.72
Professional fees	409,050.00	80,000.00	329,050.00
Total			₱8,482,634.37
Less: Additions to PPE			(3,486,480.00)
Disallowed expenses due to non-withholding			**₱4,996,154.37**

It is apparent that its erroneous inclusion in the NIC total was an oversight, considering additions to PPE (or acquisitions of equipment) are generally not treated as outright expenses in the AFS or claimed as deductions in the ITR. In any case, the amount added to the equipment asset balance is not a proper tax base for disallowed expenses. It only makes sense to exclude the line item from the actual assessment later on.

Second, the difference in disallowed salary expense (in the NIC computation) appears to arise from an inadvertent pickup of the amount of salaries before government contributions had been accounted for:

	***Per* PAN and FLD/FAN**	***Per* NIC**
Personnel cost *per* ITR		
Salaries and allowances - general and admin expense	₱3,259,621.00	₱3,259,621.00
Direct charges - salaries, wages, and benefits	9,568,543.00	9,568,543.00
SSS, GSIS, PHIC, and HDMF	-	175,795.00
Total salaries and wages subject to withholding	₱12,828,164.00	₱13,003,959.00
Less: Sales, wages, and benefits, *per* 1601-C	(12,316,995.00)	(12,316,995.00)
Salaries, wages, and employee benefits not subjected to WTC	₱511,169.00	₱686,964.00
Less: SSS, GSIS, PHIC, and HDMF	-	(175,795.00)
Salaries, wages, and employee benefits not subjected to WTC	**₱511,169.00**	**₱511,169.00**
Multiplied by: Average withholding tax rate *(see below)*	16.37%	16.37%
Basic tax due	**₱83,679.65**	**₱83,679.65**
Tax due *per* alphalist	₱551,276.69	₱551,276.69
Divided by: Taxable salaries *per* alphalist	₱3,367,570.16	₱3,367,570.16
Average withholding tax rate	16.37%	16.37%

The calculation aptly excludes mandatory government contributions from WTC. The formula in the PAN and FLD/FAN is more straightforward, doing away with the government contributions (which were added at the start only to be deducted at the end).

Third, in assessing deficiency VAT from receipts supposedly not subjected to VAT, the computation in the PAN and NIC compared an adjusted sales figure with the amount of receipts recorded in petitioner's cash receipts journal. The FLD/FAN corrected the

calculation, using instead the amounts of VAT-able receipts reported per its VAT returns. The variations are presented side-by-side below:

	Per FLD/FAN	*Per* PAN and NIC
Sales/receipts *per* sales journal	₱33,184,454.08	₱33,184,454.08
Add: Trade receivables, beginning, net of VAT	-	-
Total	₱33,184,454.08	₱33,184,454.08
Less: Trade receivables, ending, net of VAT	(4,419,142.86)	(4,419,142.86)
Adjusted sales *per* FS/ITR	₱28,765,311.22	₱28,765,311.22
Less: Receipts		
Receipts *per* cash receipts journal	-	(26,259,719.89)
Receipts *per* VAT returns	(27,315,154.94)	-
Receipts not subjected to VAT	**₱1,450,156.28**	**₱2,505,591.33**

Indeed, receipts reported in the cash receipts journal do not necessarily correlate with VAT-able sales or receipts that a taxpayer would eventually report (*i.e.*, sales on account reported as VAT receipts at point of sale but cash collections only come at a later period or in installments).

The BIR actually had occasion to flag the inaccuracy prior to the issuance of the PAN. A perusal of the BIR Records revealed that, in a Memorandum dated 14 October 2019[146], the BIR's Assessment Division flagged the error during its review of the audit team's findings:

> ...
>
> 4. Determine the veracity of receipts not subjected to VAT. Your schedule shows that receipts per cash receipts journal were used instead of receipts per VAT returns in comparison to receipts per sales journal.
>
> ...

Notably, the said review was subsequent to the audit team's report recommending issuance of the PAN on 09 August 2019[147] and prior to the actual issuance of the PAN on 29 November 2019[148], but it would not be until the issuance of the FLD/FAN that the lapse would be rectified.

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146 BIR Records, pp. 336-338.
147 Supra at note 23.
148 Supra at note 24.

Finally, attachments to the same memorandum[149] for the aforementioned review also called out the lack of basis for two (2) of the three (3) imposed compromise penalties:

> ...
> Remarks:
> ...
>
> E - RO has no basis for assessing Compromise Penalty on Expanded Withholding Tax.
> F - RO has no basis for imposing Compromise Penalty on Withholding Tax on Compensation.
> ...

Only the penalty corresponding to "failure to file and pay DST on original issuance of stock" had been left intact in the PAN.

After thoroughly analyzing all of the foregoing, it is evident that all movements in the basic deficiency tax due (beginning from the NIC computations, to the PAN, and finally to the FLD/FAN) were attributable to either error or inadvertence. It is readily apparent that the assessment received updates pursuant to BIR's own internal review when finalizing its particulars, and not as fruits of considering evidence or arguments presented by the taxpayer.

Suffice to say, with the documentation speaking for themselves, it is undeniable that petitioner had no hand in downgrading the assessment. The nature of the adjustments reveals as much.

It is undisputed that petitioner submitted its records when the BIR demanded its presentation. Though We opt not to linger on the extent thereof, petitioner's submissions clearly form part of the BIR Records. Likewise, petitioner's reply to the PAN[150] conspicuously challenges the assessment on its merits. However, none of petitioner's actions beckoned any meaningful acknowledgment or reaction when the BIR eventually issued the FLD/FAN.

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149 Supra at note 146, p. 336.
150 Supra at note 26.

The BIR's casual indifference was further exemplified in a letter dated 24 January 2020[151] entitled "Action on Reply to [PAN] Dated November 29, 2019" addressed to petitioner after it replied to the PAN:

> ...
>
> This has reference to your letter dated **December 23, 2019** which we received on the same date relative to our Preliminary Assessment Notice (PAN) dated November 29, 2019 and received by the Company on **December 09, 2019** covering deficiency **Income Tax, Value[-]Added Tax, Expanded Withholding Tax, Withholding Tax on Compensation, Documentary Stamp Tax** and **Compromise Penalty** in the amounts of **P8,283,664.14, P2,393,132.99, P235,507.40, P119,655.02, P42,134.93** and **P10,000.00**, respectively, inclusive of statutory increments for **Taxable Year 2016**.
>
> In reply, please be informed that **Formal Letter of Demand (FLD) dated December 27, 2019 has been issued covering the above deficiency taxes**, pursuant to Section 3.1.1 of Revenue Regulations (RR) No. 18-2013. Nevertheless, in order to afford you the opportunity to explain your side of the case, you are required to submit your **valid protest against our FLD within thirty (30) days from receipt** thereof in accordance with Section 228 of the National Internal Revenue Code (NIRC), as amended, to contain the following data in accordance with Revenue Regulations Nos. 12-85 and 12-99, as amended by RR 18-2013:
>
> a) Nature of protest whether **reconsideration or reinvestigation** specifying, newly discovered or additional evidence you intend to present, if it is a request for reinvestigation.
> b) The taxable period covered.
> c) Date of receipt of Formal Letter of Demand (FLD).
> d) Itemized statement of the findings which the taxpayer agrees to as a basis for computing the tax due.
> e) Itemized schedule of the adjustments which the taxpayer does not agree. **Further, if the request is for reinvestigation, the necessary documents to support your claims or defenses must be submitted to RDO No. 44 – Taguig/Pateros within sixty (60) days from date of filing of your protest** pursuant to Section 3.1.5 of Revenue Regulations No. 12-99, as amended by RR No. 18-2013.
> f) A statement of facts and/or law in support of your protest.

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151 Supra at note 29.

> Kindly give this matter your preferential attention and submit the protest letter within 30 days from receipt of Formal Letter of Demand (FLD) at the **Office of the Regional Director of this Region, located at 2nd Floor, BIR Building, 313 Sen. Gil Puyat Avenue, Makati City**, pursuant to RMC 39-13. Otherwise, his office shall be constrained to enforce collection of the aforesaid deficiency tax liabilities through summary remedies provided for by law without further notice.[152]
>
> ...

After reading through the letter in its entirety, its essence is understood to be – that the BIR acknowledged receipt of petitioner's reply to the PAN, and that **in reply**, it informed petitioner than an FLD/FAN had been issued and that it is giving petitioner an opportunity to contest the same *via* an administrative protest.

Thus, to a reasonable reader, with respect to petitioner's reply to the PAN, beyond acknowledging receipt, the BIR apparently took no further action on the reply, brushing it aside then pushing out the FLD/FAN. This notion is only bolstered by Our foregoing observations in the near-total reproduction of the findings in the FLD/FAN.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[153] (**Avon**), citing *Ang Tibay, et al. v. Court of Industrial Relations, et al.*[154], the Supreme Court emphasized the CIR's duty to: (1) inform the taxpayer of the legal and factual bases of the assessment, (2) consider the taxpayer's explanations or defenses regarding the assessment, and (3) provide reasons for rejecting such explanations or defenses. Failure to comply with these requirements **renders the assessment void**, *viz*:

> ...
>
> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to

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152 Emphasis in the original text and underscoring supplied.
153 G.R. Nos. 201398-99 & 201418-19, 03 October 2018; Citations omitted, italics in the original text, emphasis and underscoring supplied.
154 G.R. No. L-46496, 27 February 1940.

show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

...

On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

...

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.**

...

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 inaction and omission to give due consideration to the arguments and evidence 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.

In Edwards v. McCoy:

> The object of a hearing is as much to have evidence considered as it is to present it. **The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.**
>
> In *Ang Tibay*, **this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he *asserts but the tribunal must consider the evidence presented.*"**
> ...
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.**
>
> **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 Regulations No. 12-99.**
> ...
>
> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. **Her disregard of the standards and rules renders the deficiency tax assessments null and void**.
> ...

Guided by the precepts in *Avon*, as has been thoroughly demonstrated further above, the BIR had been flagrantly remiss in its duty to uphold the due process standard in its conduct of administrative proceedings for the present assessment.

Verily, in *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[155], the Supreme Court has consistently emphasized the importance of observing procedural due process:

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155 G.R. No. 222476, 05 May 2021 citing G.R. Nos. 201398-99 & 201418-19, supra at note 153; Citation omitted and italics in the original text.

> ...
>
> In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon case*), the Court enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices with due regard for the taxpayers' constitutional rights. It is mandatory that the BIR not only inform the taxpayer through the PAN, FLD, and FAN of the facts, law and regulations, and jurisprudence on which the assessment against it is based, but it must also accord the taxpayer the opportunity to be heard through the entire process, *i.e.*, from tax investigation until tax assessment.
>
> ...

For failure to sufficiently afford petitioner due process, respondent's assessment is *inescapably void*.

In relation thereto, We note that the parties did not specifically raise the aforementioned issue in the proceedings before this Court. Nevertheless, We cannot turn a blind eye to the injustice committed against petitioner.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[156], the Supreme Court had the occasion to rule on whether the CTA did not err in ruling on an issue not raised therein at any stage of the proceedings before the CTA:

> ...
>
> **On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also **rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> SECTION 1. *Rendition of judgment.* — x x x

[156] G.R. No. 183408, 12 July 2017; Citation omitted, italics in the original text, emphasis and underscoring supplied.

> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

...

Thus, for a complete and orderly disposition of the case before Us, it is only proper for the Court to take cognizance of the BIR's actions impairing petitioner's due process rights.

WHEREFORE, with the foregoing premises, the Petition for Review filed by petitioner Pristine Energy Transfer Corporation on 26 August 2020 is hereby **GRANTED.** Accordingly, the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Withholding Tax on Compensation, Documentary Stamp Tax, and Compromise Penalty for the calendar year ended 31 December 2016, in the aggregate amount of ₱10,987,744.07, as found in the Formal Letter of Demand with Details of Discrepancies and Assessment Notices, all dated 27 December 2019, are **CANCELLED** and **SET ASIDE**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice