CTA Form No. 8

22-000253-0052

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10868

PENTAGON GAS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and MANUEL V. MAPOY, in his capacity as OIC Asst. Commissioner, LARGE TAXPAYERS SERVICE,
Respondents.

NOTICE OF DECISION

To:

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

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

MR. MANUEL V. MAPOY
OIC-Asst. Commissioer, Large Taxpayers Service
Room 307, 3rd Floor, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. APOLLO J. UMADHAY
Capitol Compound, Sto. Niño
City of San Fernando, Pampanga

GREETINGS:

You are hereby notified by these presents that on **July 19, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 22, 2024.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PENTAGON GAS CORPORATION, Petitioner,	**CTA CASE NO. 10868**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA, CUI-DAVID,** *and JJ.*
COMMISSIONER OF INTERNAL REVENUE and MANUEL V. MAPOY, in his capacity as OIC-Asst. Commissioner, LARGE TAXPAYERS SERVICE, Respondents.	Promulgated: JUL 19 2024; 3:20PM

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Pentagon Gas Corporation (**petitioner**), pursuant to Rule 8, Section 3(a)[2] in relation

[1] Filed on 27 May 2022, Division Docket, Volume I, pp. 6-37, inclusive of the Motion to Suspend the Collection of Tax and to Lift the Warrant of Distraint and/or Levy, and Warrants of Garnishment.

[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.

to Rule 4, Section 3(a)(1)[3] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks to cancel and set aside the Warrant of Distraint and/or Levy[4] (**WDL**) and Warrants of Garnishment[5] (**WoGs**), which respondent Commissioner of Internal Revenue (**respondent CIR**) issued to collect the alleged deficiency tax assessments in the aggregate amount of ₱27,666,395.21 for taxable year (**TY**) 2014 as contained in the Final Decision on Disputed Assessment[6] (**FDDA**).

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Barangay San Isidro, San Fernando City, Pampanga. As stated in its Amended Articles of Incorporation (**AOI**), petitioner's primary purpose is to engage in the manufacture and production of oxygen gas and acetylene gas and allied products, and to lease, operate and or manage, for or on account of other persons or entities, plants, equipment and machineries for the manufacture and production of oxygen and acetylene gas.[7]

Respondent, on the other hand, is the duly appointed CIR vested with authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising 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**). In addition, petitioner impleaded respondent Manuel V. Mapoy as then Officer-in-Charge, Assistant Commissioner (**OIC-ACIR**) of the Large Taxpayers Service (**LTS**).

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[3] **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:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

[4] Exhibit "P-27", Division Docket, Volume I, p. 546.

[5] Exhibits "P-29", "P-30", "P-31", "P-32" and "P-33", id., pp. 548, 549, 550, 551 and 552 respectively.

[6] Exhibit "R-19", BIR Records, pp. 1334-1336.

[7] Exhibit "P-1-c" to "P-1-f", Division Docket, Volume II, pp. 633-636.

FACTS OF THE CASE

On 03 February 2016, respondents issued Letter of Authority (**LOA**) No. AUDR05/005818/2016/eLA201200042451[8] (**first LOA**), authorizing Revenue Officers (**ROs**) Maritess Aseo (**Aseo**), Michelle Dela Cruz (**Dela Cruz**), Ranilo Sy (**Sy**), Josephine Gaerlan (**Gaerlan**) and Group Supervisor (**GS**) Nicasio Lumagui Jr. (**Lumagui**) of Excise Large Taxpayer Division II (**ELTAD II**), to examine petitioner's books of accounts for all internal revenue taxes for the period of 01 January 2014 to 31 December 2014, or TY 2014. Petitioner's authorized representative, Ana Leah Peligros (**Peligros**), received the LOA on 08 March 2016.

Thereafter, or on 28 February 2017, petitioner, through its President Ronnie G. Emata (**President Emata**), executed a Waiver of the Defense of Prescription under Statute of Limitations of NIRC (**first waiver**)[9] which extended the period of assessment until 31 December 2017. GS Lumagui of ELTAD II accepted the first waiver on 03 March 2017. Petitioner received the copy of the signed waiver on 21 March 2017.[10] Subsequently, or on 13 October 2017, President Emata executed a second waiver that extended the period of assessment until 31 December 2018.[11] GS Lumagui also accepted the latter waiver, but no date of acceptance was indicated. Petitioner, through Peligros, again received a copy of the signed waiver on 19 December 2017.[12]

Later, or on 07 August 2018, petitioner received an undated Notice of Informal Conference[13] (**NIC**) assessing it for deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), documentary stamp tax (**DST**) and miscellaneous compromise penalties in the aggregate amount of ₱39,715,071.62.

On 07 November 2018, petitioner received the Preliminary Assessment Notice (**PAN**) dated 27 September 2018[14], with Details of Discrepancies and computation sheet. The PAN increased its alleged tax

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8 Exhibit "P-16", id., p. 462/ "R-1", BIR Records, p. 903.
9 Exhibit "R-5", id., p. 912.
10 See written marks on the lower portion of the waiver, id.
11 Exhibit "R-6", id., p. 913.
12 See written marks on the lower portion of the waiver, id.
13 Exhibits "P-17" series, Division Docket, Volume I, pp. 463-482.
14 Exhibit "P-18" series, id., pp. 483-506.

liabilities to ₱40,255,206.71 (inclusive of surcharge, interests and compromise penalty). Petitioner appears to have not filed a reply thereto.

On 04 December 2018, respondents issued the Formal Letter of Demand[15] (**FLD**) with attached Assessment Notices (**ANs**) and Details of Discrepancies, finding petitioner liable for deficiency IT, VAT, EWT, DST and compromise penalties in the total amount of ₱40,820,537.21. The ANs indicated that petitioner should pay the said liabilities on or before 31 December 2018.

On 03 January 2019, petitioner filed a one (1)-page Protest[16] to the FLD (**Protest**) and requested for a reconsideration or a reinvestigation to clarify the basis of the alleged tax deficiencies. It also sought additional time to submit the necessary documents to justify the components of its financial statement.

On 13 June 2019, respondents issued LOA No. LOA-124-2019-00000225/eLA201600096940[17] (**second LOA**), authorizing ROs Jessie Lumba Jr. (**Lumba**), Fiona Margarita Aytona (**Aytona**), Ma. Socorro Concepcion (**Concepcion**), Ma. Cecilia Tan (**Tan**) and GS Aurelio Agustin Zamora (**Zamora**) of ELTAD II to conduct the audit of petitioner's books for TY 2014.

On 15 October 2019, petitioner sent a follow-up letter[18] on its Protest and claimed that after filing thereof, it did not receive any communication or response from the respondents. It also averred that the BIR made no mention as to whom or before which office will it submit its supporting documents (for the Protest).

In reply to petitioner's Protest and follow-up letter, respondents advised petitioner (in their letter dated 05 December 2019[19]) to settle its tax liabilities for EWT, DST and compromise penalties in the amount of

15 Exhibit "P-19" series, id., pp. 507-530.
16 Exhibit "P-20", id., p. 531.
17 Exhibit "P-21", id., p. 532.
18 Dated 08 October 2019, Exhibit "P-22", id., p. 533.
19 Exhibit "P-23", id., pp. 534-535.

₱1,123,190.27. Frances E. Leonida (**Leonida**), then OIC-Chief of the Large Taxpayer Services (**LTS**), signed the said letter.

On 07 October 2020, respondents again issued another LOA with No. LOA-124-2020-00000170/eLA201700048817[20] (**third LOA**), this time authorizing ROs Lumba, Aurora Alberto (**Alberto**), Raymond Hernandez (**Hernandez**), Catherine Portillo (**Portillo**), Leo Aldrin Reyes (**Reyes**), Ofelia Yumang (**Yumang**) and GS Dalisay Umlas (**Umlas**) of ELTAD II, to conduct the investigation of petitioner's books for TY 2014.

On 11 June 2021, petitioner received the FDDA dated 10 June 2021[21], which declared that petitioner's Protest failed to comply with Section 3.1.4[22] of Revenue Regulations (**RR**) No. 18-13[23], thus, it was not given due course or consideration. Respondents then demanded for the payment of the alleged tax liabilities composed of IT and VAT in the amount of ₱27,666,395.21. Attached to the FDDA are the ANs[24] indicating that the due date of payment to be 31 October 2020. Then CIR Caesar R. Dulay (**CIR Dulay**) issued and signed the FDDA.

Later, on 25 June 2021, petitioner filed its reply to the FDDA[25] stating that: (*i*) it had no point person to whom it can submit its supporting documents to the Protest; (*ii*) upon receipt of the new LOAs, it informed the new BIR officers of its concerns and submitted to them the necessary documents to support its previous protest; and, (*iii*) it paid the tax liabilities of ₱1,123,190.27 (as reflected in the letter dated 05 December 2019). Moreover, petitioner answered the findings in the FDDA. The reply was filed before the Office of the CIR and ELTAD II.

On 11 March 2022, respondents issued WDL No. 124-2022-015[26] to collect the alleged IT and VAT liabilities of ₱27,666,395.21. Aggrieved with the issuance of the WDL, on 24 March 2022, petitioner transmitted

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20 Exhibit "P-24", id., p. 536.
21 Supra at note 6.
22 3.1.4 *Disputed Assessment.*
23 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
24 Exhibits "P-25-d" to "P-25-e", Division Docket, Volume I, pp. 541-542.
25 Exhibit "P-26", id., pp. 543-545.
26 Exhibit "P-27", id., p. 546.

its letter dated 21 March 2022[27], reiterating its previous request for reconsideration and re-computation of the deficiency assessments.

Disregarding petitioner's pleas, respondents issued WoGs No. 124-2022-2015[28] addressed to various banks, informing them that petitioner's accounts will be garnished to cover its payment of deficiency taxes. On 02 May 2022, petitioner received the said WoGs.

On 27 May 2022, petitioner filed before this Court the instant Petition for Review, together with the Motion to Suspend the Collection of Tax and to lift the Warrant of Distraint and/or Levy and Warrant of Garnishment (**Motion to Suspend**).[29] The case was raffled to the Second Division and was docketed as CTA Case No. 10868. The Court thereafter ordered respondents to file their answer to the petition[30], and comment to petitioner's Motion to Suspend.[31]

On 06 June 2015, respondents filed their Comment/Opposition[32] and averred that the deficiency assessments against petitioner had become due and demandable, and that petitioner was not to be entitled to a suspension of collection.

During the hearing on the Motion to Suspend, petitioner presented its witness, Michelle G. Alegria (**Alegria**), where she testified through her Judicial Affidavit[33] that: (1) she is petitioner's Accounting Manager; (2) petitioner duly filed its Annual Income Tax Return (**ITR**) for TY 2014 on 14 April 2015; (3) petitioner also timely filed its monthly and quarterly VAT returns for TY 2014 (with the fourth [4th] quarter VAT return being filed on 22 January 2015); (4) afterwards, petitioner received the first LOA for the examination of its books for TY 2014; (5) after receipt of the undated NIC, petitioner allegedly complied and cooperated with the BIR officers for the submission of the documents; (6) after three (3) years from the filing of the annual ITR and VAT returns, respondents issued the PAN dated 27 September 2018 and FLD

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27 Exhibit "P-28", id., p. 547.
28 Exhibits "P-29", "P-30", "P-31", "P-32" and "P-33" id., pp. 548-552.
29 Supra at note 1.
30 See Summons dated 30 May 2022, Division Docket, Volume I, p. 553.
31 See Resolution dated 07 June 2022, id., pp. 556-557.
32 See Comment/Opposition (on Petitioner's Motion to Suspend the Collection of Tax and to Lift Warrant of Distraint and/or Levy, and Warrants of Garnishment), id., pp. 558-571.
33 Exhibit "P-34", id., pp. 285-305.

dated 04 December 2018, both assessing petitioner with tax liabilities; (7) based on the FLD, petitioner declared that: (*i*) the amounts of deficiency assessments are not definite considering that they will be adjusted if paid beyond 31 December 2018; (*ii*) the ANs do not indicate the assessment numbers for the different kinds of taxes which petitioner was being assessed; (*iii*) the ANs for DST and compromise penalties reflect a different TIN; and, (*iv*) in addition to the supposed defects, the FLD is null and void because it was issued beyond the three (3)-year prescriptive period to assess; (**8**) petitioner filed its Protest to the FLD on 03 January 2019; (**9**) after petitioner received the second LOA, it filed a follow-up letter seeking an update on its Protest to the FLD; (**10**) petitioner paid the tax liabilities pertaining to the EWT, DST and miscellaneous penalties assessments after respondents declared that they will act on the Protest to the FLD only after payment of the said taxes; (**11**) after receipt of the third LOA, petitioner also received the FDDA demanding payment for the alleged IT and VAT deficiency assessments; (**12**) petitioner claimed that the FDDA is void since it was also issued beyond the three (3) year prescribed period to assess from the time of the filing of the Annual ITR and VAT returns, thus it filed a reply thereto; (**13**) after receipt of the WDL, petitioner filed a letter reiterating its protest to the deficiency assessments; and, (**14**) when petitioner received the WoGs, it filed this instant petition and sought the suspension of collection.

During cross-examination[34], Alegria claimed that she did not know that petitioner executed waivers to extend the period of assessment. When the Court inquired if petitioner will be able to submit its Audited Financial Statement[35] (**AFS**) and Annual ITR[36] for 2021, petitioner replied in the affirmative. Further, to expedite the proceedings, the parties stipulated on the existence and identification of the said documents provided the originals thereof were presented and compared. Thus, the Court set a commissioner's hearing and included that as an agenda.[37] Moreover, it directed petitioner to file its formal offer in support of the Motion to Suspend. Likewise, the Court set another hearing date when respondents manifested that they would present a rebuttal witness for the motion hearing.[38]

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34 TSN dated 20 July 2022, pp. 6-7.
35 Exhibit "P-36", Division Docket, Volume II, pp. 650-689.
36 Exhibit "P-35", id., pp. 639-649.
37 TSN dated 20 July 2022, pp. 12-13.
38 See Order dated 20 July 2022, Division Docket, Volume II, pp. 583-584.

On 29 July 2022, petitioner filed its Formal Offer of Evidence[39] (**FOE**) and offered Exhibits "**P-1**" to "**P-36**", inclusive of the sub-markings. Without respondents' comment[40], in a Resolution dated 05 September 2022[41], the Court admitted the offered exhibits and noted minimal discrepancies in the descriptions of the marked documents.

Thereafter, or on 28 September 2022, the Court continued with the hearing of the Motion to Suspend where respondents presented their witness, RO Aseo.

In her Judicial Affidavit[42], she testified that: (1) she was one of the BIR officers who conducted the audit of petitioner's books for TY 2014; (2) despite receipt of the first LOA and the notices[43], petitioner failed to submit all the documents indicated on the Checklist of Requirements; (3) petitioner executed the first and second waivers which extended the period of assessment until 31 December 2017 and 31 December 2018 respectively; (4) due to petitioner's non-appearance during the informal conference (despite being notified through the NIC), she issued a memorandum recommending for the issuance of the PAN[44]; (5) when petitioner failed to reply to the PAN, she again issued a memorandum recommending for the issuance of the FLD[45]; and, (6) after petitioner received the FLD, it merely filed a letter requesting for reconsideration or reinvestigation without refuting the findings in the FLD.

On cross-examination[46], RO Aseo, in response to the opposing counsel's questions, explained: (1) the first LOA was only served on petitioner on 08 March 2016, or beyond 30 days from the time it was issued on 03 February 2016; (2) however, even if the first LOA was not revalidated, it was still valid when it was served on petitioner; (3) RO Aseo did not personally see President Emata sign the waivers, nor had she seen the latter in person during the audit; (4) both memoranda were issued beyond 120 days from the issuance of the first LOA; (5) she prepared the Memoranda, PAN and FLD which were issued

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39 Filed through registered mail, id., pp. 618-629.
40 See Records Verification dated 18 August 2022, id., p. 696.
41 Id., pp. 806-808.
42 Exhibit "R-22", Judicial Affidavit of Revenue Officer Maritess M. Aseo, id., pp. 702-713.
43 See Exhibits "R-3" and "R-4", BIR Records, pp. 908-909.
44 See Exhibit "R-8", id., pp. 1172-1176.
45 See Exhibit "R-10", id., pp. 1244-1248.
46 TSN dated 28 September 2020, pp. 6-37.

to petitioner; (6) the amount of deficiency assessments in the FLD is higher than the PAN due to interest adjustments; (7) there is a discrepancy in the assessment numbers between the FLD served on petitioner and the one in the BIR Records; and, (8) in the ANs attached to the FLD served to petitioner, there is no assessment number and date of issue.

On re-direct examination[47], RO Aseo declared that the waivers were executed to extend the assessment period due to petitioner's failure to submit the documents for the audit. As for the Memoranda, PAN and FLD, she confirmed that while she prepared them, it was her supervisors who approved them. No re-cross examination was conducted.

On 12 October 2022, respondents filed the FOE[48], offering Exhibits "**R-1**" to "**R-13**", inclusive of the sub-markings. Petitioner belatedly filed its comment thereto on 06 January 2023.[49] In the Resolution dated 16 January 2023[50], the Court admitted petitioner's offered exhibits and noted minimal discrepancies in the descriptions of the marked documents. Afterwards, the Motion to Suspend was submitted for resolution.

Acting thereon, the Court granted petitioner's Motion to Suspend, and ordered for the posting of the appropriate bond.[51] Hence, petitioner submitted a surety bond in relation to the instant case.[52] However, in a Resolution dated 29 March 2023[53], the Court did not approve the said surety bond due to certain defects and ordered petitioner to post a compliant one. Thus, on 12 May 2023, petitioner submitted a surety bond which rectified the noted defects[54], which the Court subsequently approved.[55]

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47 Id., pp. 38-39.
48 Respondent's Formal Offer of Evidence, Division Docket, Volume II, pp. 842-848.
49 Filed *via* LBC, Manifestation with Motion to Admit Comment to the Respondent's Formal Offer of Evidence, id., pp. 872-874; Comment to the Respondent's Formal Offer of Evidence, id., pp. 876-879.
50 Id., pp. 883-885.
51 See Resolution dated 15 February 2023, id., pp. 894-900.
52 See Motion to Admit Surety Bond filed on 23 March 2023, id., pp. 930-968.
53 Id., pp. 974-975.
54 See Manifestation and Motion to Admit Surety Bond, id., pp. 995-1005.
55 See Resolution dated 19 May 2023, id., pp. 1007-1008.

Reverting to the main case, respondents filed their Answer[56] on 01 August 2022. There, they interposed the following special and affirmative defenses: (1) the Court of Tax Appeals (**CTA**) has no jurisdiction over the case since petitioner's right to appeal the deficiency assessments was already waived when it filed its judicial appeal within 30 days from the receipt of the WoGs and not from the receipt of the FDDA; (2) the right to assess petitioner's books had not yet prescribed because the latter executed two (2) valid waivers which extended the period of assessment; (3) the assessments made against petitioner are valid and binding; and, (4) the WDL and WoGs should not be cancelled.

Thereafter, the Pre-Trial Conference was set on 19 October 2022.[57] Petitioner filed its Pre-Trial Brief[58] on 10 October 2022, while respondents filed their Pre-Trial Brief[59] on 14 October 2022.

During the pre-trial conference, the parties were granted a period of thirty (30) days to file the Joint Stipulation of Facts and Issues[60] (**JSFI**). Accordingly, on 17 November 2022, they filed their JSFI.[61] In the Pre-Trial Order of 15 February 2023[62], the Court adopted the JSFI and set the hearing dates.

In the trial that ensued subsequently, petitioner recalled its lone witness, Alegria, and manifested that it will be adopting the same Judicial Affidavit in the motion hearing as her testimony in the main case. Moreover, with the approval on the additional questions (asked during the direct examination), Alegria declared that the first LOA was received after 34 days from the time it was issued on 03 February 2016, thus, it became null and void.[63]

On cross-examination[64], Alegria stated that the basis for the nullity of the first LOA is Revenue Audit Memorandum Order (**RAMO**)

56 Id., pp. 599-615.
57 Notice of Pre-Trial Conference dated 15 August 2022, id., pp. 692-693.
58 Id., pp. 819-833.
59 Id., pp. 850-855.
60 See Order dated 19 October 2022, id., pp. 858-859.
61 Id., pp. 861-868.
62 Id., pp. 887-892.
63 TSN dated 15 February 2023, pp. 6-8.
64 Id., pp. 8-13.

No. 01-00.[65] In addition, Alegria averred that the signatures appearing on the waivers are similar to that of President Ematas'. Further, she confirmed that the filing of the instant petition was reckoned from the WoGs' receipt. No re-direct examination was conducted.

After the Court discharged petitioner's witness and ordered the filing of the FOE and the comment thereto, respondents sought to recall RO Aseo as the lone witness for the main case. Her Judicial Affidavit during the hearing on the motion to suspend was adopted as her testimony. No further examination was held. The First Division deemed that there is no need to present the same witness and the parties can proceed to submit their respective memoranda.[66]

On 22 February 2023, petitioner filed its FOE[67] consisting of Exhibits "**P-1**" to "**P-34**", inclusive of sub-markings. Respondents filed their comment to the FOE on 27 February 2023.[68] In the Resolution dated 24 March 2023[69], the Second Division admitted all of petitioner's exhibits, and granted the parties 30 days to file their memoranda.

In compliance with the directive, respondents filed their Memorandum[70] on 04 May 2023 while petitioner filed its Memorandum[71] on 22 May 2023. After the case docket was transferred to the First Division[72], the case was submitted for decision.[73]

ISSUES

As the parties so stipulated[74], the issues for this Court's resolution are —

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65 *Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).*
66 See Order dated 15 February 2023, Division Docket, Volume II, pp. 902-903.
67 Id., pp. 908-918.
68 Id., pp. 920-922.
69 Id., pp. 971-972.
70 Id., pp. 977-993.
71 Id., pp. 1007-1037.
72 See Minute Resolution dated 29 May 2023, id., p. 1039.
73 See Minute Resolution dated 19 June 2023, id., p. 1040.
74 See Issues, Joint Stipulation of Facts and Issues (JSFI), id., p. 862.

I.
WHETHER THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT CASE;

II.
WHETHER RESPONDENTS' RIGHT TO ASSESS PETITIONER PENTAGON GAS CORPORATION FOR TAXABLE YEAR (TY) 2014 HAS ALREADY PRESCRIBED; AND,

III.
WHETHER PETITIONER PENTAGON GAS CORPORATION IS LIABLE TO PAY THE ALLEGED DEFICIENCY TAXES CONSISTING OF INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) INCLUDING THE PENALTIES THERETO IN THE AGGREGATE AMOUNT OF ₱27,666,395.21 ASSESSED FOR TAXABLE YEAR (TY) 2014.

ARGUMENTS

Petitioner maintains that this Court has jurisdiction to rule on the present petition. According to it, the instant petition was filed within 30 days from its receipt of the WoGs, hence it rightly falls under "other matters" in Section 7(1)[75] of Republic Act (**RA**) No. 1125.[76]

Petitioner also claims that respondents' right to assess had already prescribed. It submits that under Section 203[77] of the NIRC of 1997, as amended, respondents only had three (3) years from the filing of the return or from the last day prescribed by law to file the return (whichever comes later), to assess petitioner. The following are the dates of filing and/or the prescribed date to file *vis-à-vis* the last day to assess —

Nature of Tax	Return filed	Date of actual filing	Prescribed date to file	Last Day to assess
IT	Annual ITR	14 April 2015	15 April 2015	15 April 2018
	1st quarterly VAT return	16 April 2014	25 April 2014	25 April 2017

[75] SEC 7. *Jurisdiction.* — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue[.]

[76] AN ACT CREATING THE COURT OF TAX APPEALS.

[77] SEC. 203. *Period of Limitation Upon Assessment and Collection.* –

VAT	2nd quarterly VAT return	18 July 2014	25 July 2014	25 July 2017
	3rd quarterly VAT return	27 October 2014	25 October 2014	27 October 2017
	4th quarterly VAT return	22 January 2015	25 January 2015	25 January 2018

In reference to the above, petitioner thus avers that the NIC, PAN, FLD and FDDA that respondents issued to it were already barred by prescription.

Petitioner further points out that the waivers failed to conform with the strict requirements of Revenue Memorandum Order (**RMO**) No. 20-90[78]; particularly, they only showed that GS Lumagui signed them and as for the second waiver, there is no date of acceptance. Further, they are defective since RO Aseo could not even confirm that petitioner's President had duly executed them (although she signed as a witness therein).

As to the first LOA, petitioner maintains that it is void since it was not served to it within 30 days from the issue date of 03 February 2016. There is also no evidence that it was revalidated, pursuant to Revenue Memorandum Circular [**RMC**] No. 023-09[79]), before it was sent to it on 08 March 2016. Likewise, the FLD does not contain a definite amount of tax liabilities because it is still subject to modification in relation to the adjustment of interests.

Respondents, on the other hand, contend that this Court is bereft of jurisdiction over the case after petitioner purposely failed to file the petition despite its receipt of the FDDA.

Quoting Section 228[80] of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 18-13, respondents assert that the reckoning point of the 30-day period is from the FDDA's receipt, that is, on 11 June 2021. Petitioner then had until 11 July 2021 to file the petition. Considering that

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78 Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

79 Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division.

80 **SEC. 228.** *Protesting of Assessment.*

the assessments contained in the FDDA are uncontested, they accordingly became final and executory. In turn, these assessments became the basis for the issuance of the WDL and WoGs against petitioner.

Respondents also declare that their right to assess had not yet prescribed when the NIC, PAN, FLD and FDDA were issued. The two (2) waivers which petitioner executed (through President Emata), pursuant to Section 222[81] of the NIRC of 1997, as amended, are correct, valid and duly executed. As a result, those waivers duly and legally extended the periods of assessment until 31 December 2017 and 31 December 2018, respectively.

Finally, respondents claim that the FLD, FDDA and the ANs clearly indicate a categorical demand for payment and the definite amount of tax liabilities. They posit that although the interest continues to run, the basic tax deficiency is explicit and determined. Thus, the deficiency tax assessments against petitioner are valid and collectible.

RULING OF THE COURT

Before the Court proceeds to discuss the merits of the case, it deems propitious to first determine the timeliness of petitioner's judicial appeal as this is determinative of this Court's valid exercise of jurisdiction.

THE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

It bears stressing that the Court of Tax Appeals (**CTA**), being a special court, can take cognizance only of matters that are clearly within its jurisdiction. In relation to this, Section 7 of RA 1125, as amended by RA 9282[82], specifically provides:

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81 **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*

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

> ...
>
> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue** in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.][83]
>
> ...

The above provision is implemented by Section 3 (a)(1), Rule 4 of the RRCTA which states:

> ...
>
> 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:
>
> (1) **Decisions of the Commissioner of Internal Revenue** in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.][84]
>
> ...

Relative thereto, under Section 228 of the NIRC of 1997, as amended, if the CIR denies, in whole or in part, the protest or administrative appeal, the taxpayer adversely affected by the decision may appeal to the CTA within 30 days from the receipt of the adverse decision:

[83] Emphasis supplied and italics in the original text.
[84] Emphasis supplied and italics in the original text.

> ...
>
> **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 one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.**[85]
>
> ...

To implement the foregoing remedies afforded by the law, the BIR has promulgated RR No. 12-99[86], as amended by RR No. 18-13, which provides:

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

---

85 Emphasis supplied and italics in the original text.

86 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.

(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.

...

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.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.[87]

...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal*

[87] Emphasis supplied and italics in the original text.

Revenue, et al.[88] (**PAGCOR**), explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> 1. If the protest is wholly or partially denied by the CIR ***<u>or</u>*** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> ...

To avoid confusion, the Supreme Court in *PAGCOR* further summarized the rules as follows:

> ...
>
> To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. **A whole or partial denial by the CIR may be appealed to the CTA.** The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.[89]
>
> ...

---

88 G.R. No. 208731, 27 January 2016; Citation omitted, emphasis, italics and underscoring in the original.

89 Id.; Emphasis supplied.

The records show that on 11 June 2021[90], petitioner received the FDDA denying petitioner's Protest and declared the assessments final and demandable. Evident in the FDDA's content is that it was issued and signed by the CIR, or at that time, CIR Dulay himself. Resultantly, that is the CIR's final decision on petitioner's administrative protest.[91]

Pursuant to RR No. 12-99, as amended by RR No. 18-13, and following *PAGCOR*, the proper remedy for petitioner was to file a Petition for Review before the CTA within 30 days from receipt of the FDDA, or until **<u>11 July 2021</u>**. However, instead of appealing to this Court, petitioner opted to file a letter-reply to the FDDA before the Office of the CIR and ELTAD II on 25 June 2021.[92] The letter-reply reads –

> ...
>
> In line with the above issues, we would like to be fully free with the alleged deficiency taxes assessed in our operations, however, the total amount in the Final Decision on [Disputed] Assessment is beyond the financial capacity of our Company to pay and that there is a doubt on our part regarding the validity of the assessment made. We hope that we can finally resolve our tax case for the year 2014. We will highly appreciate the consideration and understanding that you will extend to us".[93]
>
> ...

Based on the foregoing, petitioner could be deemed to have filed an administrative appeal with the CIR through a Motion for Reconsideration (**MR**).

As provided clearly in Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-13, petitioner's resort to file an MR with the CIR did <u>*not*</u> toll the running of the 30-day prescriptive period to appeal before the CTA. In *Fishwealth Canning Corporation v. Commissioner of Internal Revenue*[94] (**Fishwealth**), the Supreme Court ruled:

90 See receiving date of Exhibit "R-19", supra at note 6.
91 Page 4 of the FDDA, BIR Records, p. 1333.
92 Supra at note 25.
93 Division Docket, Volume I, p. 545.
94 G.R. No. 179343, 21 January 2010; Emphasis supplied and underscoring in the original text.

> ...
>
> In the case at bar, petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA.
>
> **Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA.**
>
> ...

In *Fishwealth*, the taxpayer therein contested the CIR's assessment *via* a letter dated 23 September 2003. The CIR, in turn, issued an FDDA denying the taxpayer's protest which the latter received on 04 August 2005. Instead of elevating its case to the CTA, the taxpayer filed with the CIR a letter of reconsideration on 01 September 2005 which was denied with the issuance of a Preliminary Collection Letter (**PCL**) issued on 06 September 2005. On 20 October 2005, the taxpayer filed its Petition for Review with the CTA. However, the CTA's First Division dismissed the case for being filed out of time. The Supreme Court upheld the CTA First Division's action.

We find the factual *milieu* in *Fishwealth* strikingly similar to the instant case. In relying on the possibility that CIR Dulay might reconsider the previous decision, petitioner waived its remedy of judicial appeal before this Court and risked its chances for a favorable outcome from the CIR. Nonetheless, whether the same be due to inadvertence or purposely resorted to, We cannot overlook the fact that **almost two (2) years** have lapsed from petitioner's receipt of respondent CIR's final decision (or the FDDA) before it filed an appeal with this Court. Considering the amount of time that elapsed, this Court's lack of jurisdiction to entertain the original Petition for Review becomes indisputable.

In addition to the foregoing, this Court also finds petitioner's Protest void.

PETITIONER'S PROTEST TO THE FORMAL LETTER OF DEMAND (FLD) IS NOT VALID.

In the case of *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division, et al.*[95] (**CIR v. CTA**), the Supreme Court highlighted the importance of a valid protest, to wit:

> ...
>
> Petitioner argues that the [CTA] had no jurisdiction over respondent's Petition for Review because the assessment had attained finality before then.
>
> Section 228 of the National Internal Revenue Code states the procedure in protesting an assessment:
>
> ...
>
> Upon receipt of the audit results/assessment notices for Letter of Authority No. 116-2013-00000017, respondent, through Lee, replied with an April 29, 2015 letter which reads:
>
> > This is to submit copies of our protest to the Audit Result/Assessment Notices for Audit Result/Assessment Notices for Letter of Authority LOA-116-2013-00000017 for Citysuper[,] Incorporated TIN No.: 205-412-358 for the taxable year 2011.
> >
> > Please be informed that we are in the process of compiling the necessary documentation to support our protest to said assessments, and will be requiring additional time to accomplish this.
>
> Petitioner did not consider the April 29, 2015 letter as a valid protest, as it said in its July 13, 2015 response to respondent:
>
> > The requisite information and conditions prescribed under the provisions of Section 6 in relation to Section 228 of the Tax Code, as amended, as implemented by Revenue Regulations No. 18-2013, for filing a valid protest were not met, as enumerated hereunder, to wit:
> >
> > Your letter dated, April 29, 2015, failed to indicate/state the following:
> >
> > **a. Name and address of the taxpayer;**

95 G.R. No. 239464, 10 May 2021; Citations omitted, emphasis supplied and italics in the original text.

> **b. The nature of the protest, since the letter merely contained a statement that the subject taxpayer was in the process of compiling documents for eventual presentation to the bureau;**
> **c. The assessment number, date of receipt of assessment notice and formal letter of demand;**
> **d. The itemized statement of findings to which the taxpayer agrees and schedule of adjustments to which the taxpayer does not agree;**
> **e. A statement of the facts, applicable law, rules and regulations or jurisprudence in support of the protest.**
>
> Premised on the foregoing, a collection letter shall be issued against Citysuper, Inc., calling for payment of the aforesaid deficiency assessments on Income Tax, VAT, Withholding Tax on Compensation, EWT and DST for taxable year 2011.

In particular, Arriola, the revenue officer, said that the April 29, 2015 letter failed to state the protest's nature, the date of the assessment notice, and the applicable law, rules and regulations, or jurisprudence on which the protest was based. Thus, to petitioner, respondent's failure to properly protest the assessment meant that it had attained finality.

Section 3.1.14 of Revenue Regulations No. 18-2013, amending Revenue Regulations No. 12-99, states what constitutes a valid 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 the 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 (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 failed 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.

Nowhere in respondent's April 29, 2015 letter did it state the assessment notice's date and the applicable law, rules and regulations, or jurisprudence on which its protest was based. Attaching copies of the audit results/assessment notices is not stating the date of the assessment notice, any more than attaching copies of assailed judgments to a petition without stating them in the petition itself complies with the rule on statements of material dates.

While respondent's declaration that it was "in the process of compiling the necessary documentation to support [its] protest to said assessments" could imply that it was requesting a reinvestigation, its failure to explicitly state this means that petitioner had no way of knowing whether it should monitor the 60-day period stated in Revenue Regulations No. 18-2013.

Section 228 of the National Internal Revenue Code is clear. **The administrative protest must be filed not only within the stated period, but also "in such form and manner as may be prescribed**

> **by implementing rules and regulations." Respondent's April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.**
>
> ...

The *CIR v. CTA* case thus clearly provides the requirements for a valid protest to the FLD —

> *(i)* the nature of the 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,
>
> *(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.

Applying the foregoing in herein case, We note that petitioner's one-page Protest[96] reads —

> ...
> January 03, 2019
>
> Mr. Arnel SD. Gubala
> Deputy Commissioner
> Operations Group
> Bureau of Internal Revenue - LTS
> Diliman, Quezon City
>
> Dear Mr. Gubala:
>
> This [is] in connection with the Formal Letter of Demand dated December 04, 2018, with reference to the Letter of Authority No. AUDR05/005818/2016 SN: Ela201200042451 dated February 03, 2016. The letter specified the findings and results of the investigations made in our Company, to which it appears that we have allegedly incurred deficiency taxes in the year 2014.

---

96 Supra at note 16.

On this note, our Company would like to request for reconsideration or reinvestigation of our case in order to clarify the basis of the computed tax discrepancy and also to give us more time to present the necessary documents that you will require to justify the figures that were reflected on our financials.

The Company has been compliant with the Bureau's regulations. We hope that we can [resolve] the matters and issues regarding our tax case. Also, we are hoping that our request be considered and performed.

Thank you for your utmost understanding.

Yours truly,

(Sgd.)
RONNIE G. EMATA
President
Pentagon Gas Corporation

...

As it stands, petitioner did <u>not</u> indicate: (*i*) the date of receipt of the ANs and the FLD; (*ii*) the itemized statement of findings to which the taxpayer agrees and schedule of adjustments to which the taxpayer does not agree; and, (*iii*) a statement of the facts, applicable law, rules and regulations or jurisprudence in support of the protest, in its protest. In fact, due to petitioner's omission, respondents did not consider the foregoing as a valid protest. The FDDA[97] states —

...

FINAL DECISION ON DISPUTED ASSESSMENT

10 JUN 2021

PENTAGON GAS CORPORATION
TIN: 000-084-782-000
San Isido, City of San Fernando, Pampanga

Gentlemen:

Please be informed that after due consideration of your Protest Letter dated 03 January 2019 against our Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) dated 04 December 2018 bearing the results of the examination for All Internal Revenue Taxes

[97] Supra at note 6.

purposes covering the taxable year ending December 31, 2014, pursuant to Letter of Authority No. 124-2020-00000170 SN: eLA201700048817 dated 07 October 2020, there have been found due from you, deficiency Income tax and Value-Added Tax for the calendar year ending December 31, 2014, as shown and discussed hereunder.

During the evaluation of your protest against the subject FLD/FAN, we have noted that you have failed to comply with the requirements of a valid protest as enunciated in Section 3.1.4 of RR 18-2013, as follows:

1. **You did not clearly state whether you are requesting for a *reconsideration or reinvestigation*;**

2. **You failed to cite the applicable laws, rules and regulations, or jurisprudence on which your protest is based upon;**

3. **If your request is for a reinvestigation, you did not specify newly-discovered or additional evidence you intended to present;**

4. **If your request is for a reinvestigation, you failed to submit all relevant supporting documents within sixty (60) days from the date of filing of [your] protest.**

In view of the above, your protest cannot be given due course owing to the fact that it is void and without force and effect. Therefore, the facts and findings established during the investigation of your case are reiterated with adjustment, thus[.][98]

...

Succinctly, when a taxpayer files a petition for review before the CTA without validly contesting the assessment with the CIR, the appeal is premature, and the Court has no jurisdiction over it.[99]

Even if We are to assume that jurisdiction can be properly exercised (and have counted 30 days to file the judicial appeal from petitioner's receipt of the WoG), We remain unconvinced that the period to assess had already prescribed and the resulting assessments are null and void.

---

98 Emphasis supplied and italics in the original text.
99 *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division, et al.*, supra at note 95.

THE SUBJECT WAIVERS ARE COMPLIANT AND EXTENDED THE PERIODS OF ASSESSMENT.

Anchoring its claim under Section 203 of the NIRC of 1997, as amended, petitioner vehemently maintains that the IT and VAT deficiency assessments for TY 2014 had prescribed since three (3) years had already passed prior to its receipt of the NIC on 07 August 2018, the PAN on 07 November 2018, and the FLD on 04 December 2018.

We disagree.

Based on the allegations of its own Petition for Review, petitioner discredits the subject two (2) waivers *albeit* its President's due execution thereof, and its authorized representatives' receipt of the copies of the waivers after these were signed and accepted by GS Lumagui (on the CIR's behalf). Petitioner laments their supposed defects since no date of acceptance appears on the second waiver and only GS Lumagui signed both waivers.

It is worthwhile to highlight that the subject waivers were executed on <u>28 February 2017</u> and <u>13 October 2017</u>, respectively. The applicable and *prevailing* BIR issuance on these dates is RMO No. 014-16.[100] RMO No. 014-16 states –

> ...
> III. Guidelines
> ...
>
> 6. It shall be the duty of the taxpayer to **submit its duly executed waiver to the Commissioner of Internal Revenue or official/s previously designated in existing issuances or the concerned revenue district officer or group supervisor as designated in the Letter of Authority/Memorandum of Assignment who shall then indicate acceptance by signing the same.** Such waiver shall be executed and duly accepted prior to the expiration of the period to assess or to collect. **The taxpayer shall have the duty to retain a copy of the accepted waiver.**

---

100 Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, as Amended.

7. Note that there shall only be **two (2) material dates that need to be present on the waiver**:

   a) **The date of execution of the waiver by the taxpayer or its authorized representative**; and

   b) **The expiry date of the period the taxpayer waives the statute of limitations.**[101]

...

Applying the foregoing, the subject waivers are indisputably compliant to the above RMO and, thus, are valid for the following reasons:

1. GS Lumagui, one of the BIR officers authorized to conduct an investigation on petitioner's books for TY 2014, and was expressly named in the first LOA of 03 February 2016, <u>signed</u> the waivers;

2. The waivers clearly contained the two (2) material dates required under RMO No. 014-16:

Waivers	**Date of Execution**	**Date of Expiry**
First waiver	28 February 2017	31 December 2017
Second waiver	13 October 2017	31 December 2018

3. Petitioner received the copies of the accepted waivers on the following dates:

Waivers	**Date of Petitioner's Receipt**	**Persons who received the copies of the accepted waivers**
First waiver	21 March 2017[102]	Lucelle Keith Trillana and Anna Sioc[o]n
Second waiver	19 December 2017[103]	Anna Leah Peligros

---

[101] Emphasis supplied.
[102] Supra at notes 9 and 10.
[103] Supra at notes 11 and 12.

While it may be gainsaid that there are judicial pronouncements[104] that invalidated waivers due to lack of date of acceptance, the subject waivers in these cases were executed from the years 2004 to 2011 (or prior to the effectivity of RMO No. 014-16). During these periods, the applicable issuances were RMO No. 20-90 and RDAO No. 05-01 which mandated the date of acceptance to be indicated (on the face of the waiver), and authorized certain revenue officials to sign and accept the waiver. Thus, expectedly, the Supreme Court (and even this Court) strictly followed the said guidelines to determine the validity of the waivers.

It is noted that, while RMO No. 014-16 no longer deems the date of acceptance material, the specific dispensation thereof as a material date in the execution of a waiver does not deviate from the requirements of the substantive law, *i.e.*, Section 222(b) of the NIRC of 1997, as amended, that reads –

> ...
>
> **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> ...
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> ...

The meeting of the minds of the parties herein inescapably is present in the subject waivers as both have assented and signed the same. They have thus agreed to extend (in writing) the periods of assessment.

---

[104] *Republic of the Philippines v. First Gas Power Corporation*, G.R. No. 214933, 15 February 2022; *Universal Weavers Corporation v. Commissioner of Internal Revenue*, G.R. No. 233990, 12 May 2021; *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*, G.R. No. 202105, 28 April 2021; *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, G.R. No. 220835, 26 July 2017; *Commissioner of Internal Revenue v. Next Mobile, Inc.*, G.R. No. 212825, 07 December 2015.

To also evidence that the parties had so agreed to extend the period of assessment *prior* to the expiration thereof (for the second waiver wherein petitioner questions the absence of a date of acceptance), the records will yield that petitioner's authorized representative was able to receive a copy of the signed second waiver (by GS Lumagui) on 19 December 2017.[105] Hence, it is safe to conclude that petitioner was informed of the BIR's acceptance of the second waiver *prior* to the expiration thereof on 31 December 2017. To reiterate for emphasis, petitioner and respondent had thus agreed to extend the period of assessment (until 31 December 2018) through a subsequent agreement (the second waiver) that was done before the expiration of the period previously agreed upon (both the date of execution [13 October 2017] and petitioner's receipt of the accepted waiver [19 December 2017] happened before 31 December 2017).

With the foregoing disquisitions, the subject waivers could not be deemed as invalid and henceforth effectively extended the period of assessment until 31 December 2018. Accordingly, the NIC, PAN, and FLD were all issued within the allowed period. Consequently, the resulting assessments appear to have attained finality due to petitioner's failure to file a valid Protest to the FAN and to timely appeal the CIR's final decision or the FDAA before this Court.

In *Glynna Foronda-Crystal v. Aniana Lawas Son*[106], the Supreme Court aptly stated - "**in law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution**". Without authority to review respondent CIR's *final* decision, We no longer find it necessary to further discuss the parties' other raised issues.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Pentagon Gas Corporation on 27 May 2022 is hereby **DISMISSED** for lack of jurisdiction.

---

105 Supra at notes 11 and 12.

106 G.R. No. 221815, 29 November 2017.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
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