# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

## SECOND DIVISION

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| **PERMAFROST MARKETING INC., as represented by its President, WESLEY HOMER TEODORO,**<br>Petitioner, | **CTA CASE NO. 10410**<br><br>Members: |
| - versus - | **RINGPIS-LIBAN,** *Chairperson,*<br>**MODESTO-SAN PEDRO,** *and*<br>**FERRER-FLORES,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,**<br>Respondent. | Promulgated:<br>JUL 0 4 2025<br>4:11 p.m. |

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## DECISION

***FERRER-FLORES, J.*:**

The **Petition for Review** prays for the Court to declare void the assessment in the total amount of **₱11,130,507.13**, representing deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), and compromise penalty, inclusive of interest and surcharges, for taxable year (TY) 2011.[1]

### THE PARTIES

Petitioner **Permafrost Marketing Inc**. is a corporation duly organized and existing under the Philippine laws, with principal place of business at 313 Governor Pascual St., San Jose, Navotas City, as represented by its President, Mr. Wesley Homer Teodoro.[2]

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1 Statement of the Case, Pre-Trial Order dated January 6, 2023, Docket, p. 212.

2 Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 204.

Respondent is the duly appointed **Commissioner of Internal Revenue**, with principal office address at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City. He is vested with the power to decide tax cases, including disputed assessments, pursuant to Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended.[3]

## ANTECEDENTS (ADMINISTRATIVE LEVEL)

The BIR, through Regional Director (RD) Tomas C. Rosales of Revenue Region No. 5 – Caloocan City, issued the Letter of Authority (LOA) No. SN: eLA201100008851/LOA-026-2012-00000261 dated August 30, 2012,[4] authorizing Revenue Officer (RO) Angeline Neri and Group Supervisor (GS) Jerry Arce to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the period from January 1, 2011 to December 31, 2011.

On August 12, 2014, petitioner, through its President, Mr. Wesley Homer Teodoro, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code which extended respondent's period to assess and/or collect until December 31, 2015.[5]

On April 7, 2015, petitioner received the Preliminary Assessment Notice (PAN) dated March 27, 2015, with Details of Discrepancies, issued by the BIR, through RD Gerardo R. Florendo of Revenue Region No. 5 – Caloocan City,[6] finding due from petitioner deficiency income tax, VAT, EWT, WTC, inclusive of interests, and compromise penalties, for TY 2011, in the total amount of ₱10,840,683.02. On April 29, 2015, petitioner filed its *Reply* dated April 8, 2015 to the said PAN.[7]

Subsequently, the BIR, through RD Florendo, issued the Formal Letter of Demand and Assessment Notices (FLD/FAN) dated June 8, 2015,[8] assessing petitioner for the same deficiency taxes, inclusive of interests, and compromise penalties, in the aggregate amount of ₱11,130,507.13. The said FLD/FAN was received by petitioner on July 3, 2015.

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3 Par. 2, Joint Stipulation of Facts, JSFI, Docket, pp. 204 to 205.
4 Exhibits "P-3" and "R-2", BIR Records (Exhibit "R-1"), p. 436.
5 Exhibit "P-4", BIR Records (Exhibit R-13), p. 447.
6 Exhibits "P-5" and "R-3", BIR Records (Exhibit "R-1"), pp. 489 to 491.
7 BIR Records (Exhibit "R-1"), pp. 497 to 502.
8 Exhibits "P-7" and "R-4", "R-5", "R-6", "R-7", "R-8" and "R-9", BIR Records (Exhibit "R-1"), pp. 517 to 524.

On July 21, 2015, petitioner filed with the BIR its letter-protest dated July 10, 2015 against the FLD/FAN,[9] requesting reconsideration and cancellation of the assessed taxes.

In a letter dated June 15, 2016,[10] Revenue District Officer Virgilio R. Cembrano informed petitioner that the docket of the case has been referred to RO Rosanna Garza and GS Victor Te, pursuant to Memorandum of Assignment (MOA) No. 05-026-LOA-15-1002 dated September 4, 2015.[11]

Thereafter, OIC – RD Myrna S. Leonida of Revenue Region No. 5 – Caloocan City issued the undated Final Decision on Disputed Assessment (FDDA),[12] effectively denying petitioner's protest, referred to therein as a *"request for reinvestigation"*, for failure to submit the required documents in support of its protest and/or for not having introduced any evidence to overthrow the validity of the audit findings within 60 days from the date of filing of the protest letter, and stating that the deficiency tax assessments have become final by operation of law. Petitioner received the said FDDA on January 19, 2017.[13]

On January 31, 2017, petitioner filed with the Office of the RD for Revenue Region No. 5 – Caloocan City, and the Department of Finance (DOF) its letter dated January 25, 2017,[14] requesting reconsideration of the FDDA, pointing out that its protest to the FLD/FAN was a request for reconsideration, and that the FDDA is unresponsive.

RD Manuel V. Mapoy of Revenue Region No. 5 – Caloocan City, through his second Indorsement dated January 31, 2018,[15] then indorsed the tax docket of petitioner to the Chief, Appellate Division of the BIR, National Office Building, Diliman, Quezon City, for further appropriate action.

Respondent, thereafter, issued the Decision dated May 18, 2020,[16] denying petitioner's request for reconsideration of the FDDA, and affirming the assessment amounting to ₱11,130,507.13. Relative thereto, respondent issued the Memorandum of even date addressed to the Assistant Commissioner (ACIR), Collection Service of the BIR,[17] forwarding the entire docket bearing the protested tax case of petitioner, with the

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[9] Exhibit "P-8", BIR Records (Exhibit "R-1"), pp. 512 to 516.
[10] Exhibit "P-9", Docket, p. 263.
[11] BIR Records (Exhibit "R-1"), p, 532.
[12] Exhibits "P-10" and "R-11", BIR Records (Exhibit "R-1"), pp. 553 to 554.
[13] Exhibits "R-12" and "R-12-a", BIR Records (Exhibit "R-1"), attached at p. 553.
[14] BIR Records (Exhibit "R-1"), p. 564. (cf: Par. 21, *Petition for Review*, Docket, p. 14.)
[15] BIR Records (Exhibit "R-1"), p. 584.
[16] Exhibit "P-12", BIR Records (Exhibit "R-1"), pp. 603 to 607.
[17] BIR Records (Exhibit "R-1"), p. 608.

information that the assessment is affirmed, pursuant to the said Decision, and with the directive that if petitioner fails to pay the assessed deficiency taxes, collection thereof should be enforced by distraint and levy. In turn, OIC-ACIR Clavelina S. Nacar, through the first Indorsement dated May 19, 2020,[18] forwarded to the Office of the RD, Revenue Region No. 5 – Caloocan (Attention: The Chief, Collection Division), the said Memorandum of respondent and the entire docket of the protested case of petitioner, for appropriate action.

According to petitioner, it received the said Decision dated May 18, 2020 on July 9, 2020.[19]

On July 21, 2020, petitioner filed with respondent its Urgent Motion for Relief dated July 14, 2020 against his Decision dated May 18, 2020,[20] arguing that the said Decision is void, for being issued after the case has prescribed and for failure to address the issue in the Motion for Reconsideration; and that the same Decision has no force and effect because the FDDA itself is void.

Subsequently, RD Ma. Gracia B. Javier of Revenue Region No. 5 – Caloocan City issued a Demand Before Suit dated October 8, 2020 against petitioner,[21] informing the latter that prior to the institution of legal action, the BIR is giving it the last opportunity to settle the subject tax liabilities within 10 days from receipt thereof, otherwise, it will file a criminal action against petitioner. According to petitioner, it received the said Demand Before Suit on October 27, 2020.[22]

## PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on November 25, 2020.[23]

Respondent filed his *Motion to Admit (herein attached Answer to Petition for Review)* on July 2, 2021,[24] which was granted by the Court in its

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[18] BIR Records (Exhibit "R-1"), p. 610.
[19] Par. 22, *Petition for Review*, and Exhibit 'P-16" (Q/A No. 58), Docket, pp. 14, and 285, respectively.
[20] Exhibit "P-13", BIR Records (Exhibit "R-1"), pp. 645 to 648.
[21] Exhibit "P-2", Docket, pp. 241 to 242.
[22] Par. 26, *Petition for Review*, and Exhibit 'P-16" (Q/A Nos. 12 and 13), Docket, pp. 15 and 49, and 285, respectively.
[23] Docket, pp. 6 to 47 (and for the *Amended Verification and Certification Against Forum Shopping*, at pp. 126 to 127).
[24] Docket, pp. 143 to 144.

Resolution dated July 27, 2021,[25] thereby admitting as part of the records of this case the said *Answer to Petition for Review*.[26]

The Pre-Trial Conference was initially set on September 30, 2021,[27] but was reset to, and held on, October 6, 2022.[28] Prior thereto, *Petitioner's Pre-Trial Brief* was filed on July 6, 2022,[29] while *Respondent's Pre-Trial Brief* was submitted on October 3, 2022.[30]

On November 7, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[31] which was admitted and approved by the Court in its Resolution dated November 23, 2022,[32] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on January 6, 2023.[33]

Respondent transmitted the *BIR Records* of the present case on February 1, 2023, consisting of 661 pages in one folder.[34]

Trial then ensued, with the parties presenting their respective testimonial and documentary evidence.

Petitioner offered the testimony of Mr. Teodoro,[35] its President and Attorney-in-Fact.

On February 27, 2023, petitioner filed its *Formal Offer of Evidence with Manifestation and Re-marking of Exhibits*.[36] However, respondent failed to file his comment thereto.[37] In the Resolution dated May 12, 2023,[38] the Court admitted all of petitioner's offered exhibits.

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[25] Docket, p. 176.
[26] Docket, pp. 145 to 153.
[27] Resolution dated July 27, 2021, Docket, p. 176.
[28] Notice of Resetting dated July 7, 2022, Docket, p. 191; Minutes of hearing held on, and Order dated, October 6, 2022, Docket, pp. 199, and 202 to 203, respectively.
[29] Docket, pp. 179 to 190.
[30] Docket, pp. 193 to 197.
[31] Docket, pp. 204 to 208.
[32] Docket, p. 210.
[33] Docket, pp. 212 to 217.
[34] *Submission* dated February 1, 2023, Docket, pp. 221 to 224.
[35] Exhibit "P-16", Docket, pp. 280 to 307; Minutes of the hearing held on, and Order dated, February 8, 2023, Docket, pp. 226 and 230, respectively.
[36] Docket, pp. 232 to 239.
[37] Records Verification Report dated April 13, 2023 issued by this Court's Judicial Records Division, Docket, p. 311.
[38] Docket, pp. 318 to 319.

For his part, respondent offered the testimony of RO Jayvee Dela Cruz.[39]

On September 6, 2023, respondent filed his *Formal Offer of Evidence*,[40] to which petitioner filed its *Comment to Formal Offer of Evidence of the Respondent* on October 5, 2023.[41] In the Resolution dated March 20, 2024,[42] the Court admitted all of respondent's offered exhibits.

The *Memorandum [of Petitioner Permafrost Marketing Inc.]* was filed on May 17, 2024,[43] while the *Respondent's Memorandum (For Respondent CIR)* was submitted on May 22, 2024.[44]

The present case was considered submitted for decision on June 4, 2024.[45]

## THE STIPULATED ISSUES

As stipulated by the parties, the issues for this Court's resolution are as follows, viz:

I. Whether or not petitioner is liable for deficiency income tax, VAT, WTC, EWT and compromise penalty for TY 2011 in the aggregate amount of ₱11,130,507.13, inclusive of interest and surcharges; and,

II. Whether or not the assessments have already become final, executory and demandable.[46]

***Petitioner's arguments***

Petitioner argues that the period to collect has already prescribed; that the lack of LOA issued in favor of RO Garza and GS Te renders the assessment void; and, the FDDA itself is void for lack of legal and factual bases.

[39] Exhibit "R-14", Docket, pp. 154 to 158; Minutes of the hearing held on, and Order dated, August 31, 2023, Docket, pp. 320 to 321.
[40] Docket, pp. 322 to 324.
[41] Docket, pp. 327 to 330.
[42] Docket, pp. 344 to 345.
[43] Docket, pp. 349 to 363.
[44] Docket, pp. 368 to 376.
[45] Minute Resolution dated June 4, 2024, Docket, p. 379.
[46] Joint Statement of Issue to be Tried or Resolved, JSFI, Docket, p. 205.

***Respondent's counter-arguments***

Respondent contends that since petitioner availed of the wrong remedy, which did not toll the period to file his appeal before the proper forum, the tax assessment became due and demandable after the lapse of 30 days from denial of the protest. Respondent avers that petitioner filed its *Petition of Review* only on November 25, 2020, that is, after the lapse of almost three years from receipt of the FDDA on January 16, 2017; thus, the assessment has become final and executory. Respondent also claims that the *Petition for Review* should not be entertained, and the Court is divested of its jurisdiction to act thereon. Finally, respondent asserts that petitioner's tax assessment underwent the proper procedure as laid down by the NIRC of 1997, as amended, and petitioner was afforded due process and several opportunities to refute the assessment.

## THE COURT'S RULING

The present *Petition for Review* must be dismissed.

***The subject tax assessments have already attained finality; thus, the Court has no jurisdiction over the instant case.***

Respondent maintains that the assessments issued against the petitioner have become final, executory, and demandable, for his failure to file a request for reconsideration or an appeal against the FDDA within 30 days from receipt of the same before the Office of respondent or this Court. He insists that petitioner improperly filed its appeal before the Office of the RD and DOF instead of the Office of respondent; hence, the assessments issued against petitioner, as shown in the FDDA, have already become final, executory, and demandable.

We agree with respondent.

Section 228 of the NIRC of 1997, as amended, reads:

> Section 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:
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> xxx xxx xxx

> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> **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 added)*

Implementing the above-quoted provision, Section 3 of Revenue Regulations (RR) No. 12-99,[47] as amended by RR No. 18-2013,[48] provides, in part, as follows:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –*
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> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
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> 3.1.4 *Disputed Assessment.* — xxx
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> xxx xxx xxx
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> **If the <u>protest is denied</u>, in whole or in part, by the <u>Commissioner's duly authorized representative</u>, 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) <u>elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision</u>.** No request for reinvestigation shall be allowed in administrative appeal and only

47 SUBJECT: 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, September 6, 1999.

48 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

> issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
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> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
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> **If the protest or administrative appeal, 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, <u>the assessment shall become final, executory and demandable</u>.** 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. *(Emphases and underscoring added)*

Based on the foregoing provisions, if the protest is denied by the respondent's duly authorized representative, as in this case, the taxpayer may either: (i) appeal to this Court within 30 days from date of receipt of the FDDA; or, (ii) elevate his protest through a request for reconsideration to respondent within 30 days from date of receipt of the FDDA. Moreover, if the taxpayer decides to lodge an administrative appeal with the respondent, and the same is denied by the latter, in whole or in part, the taxpayer may appeal to this Court the respondent's decision, within 30 days from receipt thereof. Otherwise, the assessment shall become final, executory and demandable.

To recall, the FDDA[49] issued by OIC – RD Leonida was received by petitioner on January 19, 2017, as shown in the attached Registry Return Receipt.[50] Hence, petitioner had the option to either appeal to this Court or to the Office of respondent within 30 days from receipt of the said FDDA, or until February 18, 2017.

In this case, while petitioner filed its request for reconsideration of the FDDA through a letter dated January 25, 2017, within the prescribed 30-day period, or on January 31, 2017, the same was filed ***not*** with the Office of respondent, but with the Office of the RD for Revenue Region No. 5 – Caloocan City, and the DOF.[51] Clearly, petitioner filed its request for

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[49] Exhibits "P-10" and "R-11", BIR Records (Exhibit "R-1"), pp. 553 to 554.
[50] Exhibits "R-12" and "R-12-a", BIR Records (Exhibit "R-1"), attached at p. 553.
[51] BIR Records (Exhibit "R-1"), p. 564. (cf: Par. 21, *Petition for Review*, Docket, p. 14; *Memorandum [of Petitioner Permafrost Marketing Inc.,]*, Docket, pp. 351 to 352.)

reconsideration with the wrong office or offices. While petitioner's request for reconsideration eventually reached the Office of respondent, there is no indication that the same was made within the same 30-day period.

In any event, respondent issued the Decision dated May 18, 2020,[52] denying petitioner's request for reconsideration against the FDDA, and affirming the assessment amounting to ₱11,130,507.13.

Pursuant to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282 and Section 3(a), Rule 8 of the RRCTA, a party adversely affected by a decision of the CIR may file an appeal with the CTA within 30 days from receipt of the decision or ruling, *viz.*:

> 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 <u>within thirty (30) days</u> 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. (*Emphases and underscoring added*)
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> xxx xxx xxx
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> 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 <u>within thirty days</u> 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. (*Emphases and underscoring added*)

In the present case, petitioner received the said Decision on July 9, 2020;[53] however, instead of appealing the Decision to this Court, petitioner filed with respondent an Urgent Motion for Relief on July 21, 2020.[54] It was only on November 25, 2020 or 139 days from receipt of the Decision that

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52 Exhibit "P-12", BIR Records (Exhibit "R-1"), pp. 603 to 607.
53 Par. 22, *Petition for Review*, and Exhibit 'P-16" (Q/A No. 58), Docket, pp. 14, and 285, respectively.
54 Exhibit "P-13", BIR Records (Exhibit "R-1"), pp. 645 to 648.

the present *Petition for Review* was filed by petitioner,[55] assailing the subject tax assessments for allegedly being void.

Thus, when the present *Petition for Review* was filed with this Court, the 30-day period to appeal had already lapsed. As a result, the subject tax assessments had already become final, executory and demandable. Consequently, the Court has no jurisdiction to take cognizance of the instant case.

It bears emphasis that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[56] Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[57]

***The right of respondent to collect the alleged deficiency taxes has prescribed.***

Even if the Court has jurisdiction over the instant petition, the Court finds that respondent's right to collect the subject assessments had already prescribed.

Although not expressly raised as an issue, the Court 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.[58] In this instance, respondent initiated a collection remedy by issuing a Demand Before Suit, and the petitioner, in its *Petition*, challenged the same on the ground that respondent's right to collect had already prescribed.[59]

Section 203 of the NIRC of 1997, as amended, generally provides for a three-year prescriptive period within which the BIR may assess internal revenue taxes, counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later. With respect to the collection of taxes, the Supreme Court has held that in cases of

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[55] Docket, pp. 6 to 47 (and for the *Amended Verification and Certification Against Forum Shopping*, at pp. 126 to 127).

[56] *Commissioner of Internal Revenue vs. V.Y Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

[57] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G .R. No. 209830, June 17, 2015.

[58] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R No. 183408, July 12, 2017.

[59] *Issues*, Petition for Review dated November 24, 2020, Docket, p. 17; *Discussion*, Petition for Review dated November 24, 2020, Docket, pp. 18 to 26.

assessment issued within the three-year ordinary period, the respondent has another three years within which to collect taxes.[60]

As an exception, an assessment notice may be issued beyond the ordinary three-year prescriptive period, provided, any of the circumstances enumerated under Section 222 of the NIRC of 1997, as amended, are present.

Of particular relevance to the instant case is the exception found under Section 222 (b), in relation to Section 222 (d) of the NIRC of 1997, as amended, which governs the prescriptive period for the assessment and collection of taxes where the taxpayer and Commissioner have agreed in writing to extend the period for assessment beyond the ordinary three-year period to assess. The pertinent provisions are as follows:

> Section 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. *(Emphasis added)*
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> Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
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> x x x
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> (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.
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> x x x
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> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, **may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) – year period**. The period so agreed upon may be extended by subsequent written agreements made

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[60] *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division and QL Development Inc.*, G.R. No. 258947, March 29, 2022.

> before the expiration of the period previously agreed upon. *(Emphasis added)*

Applying the provisions of Sections 222 (b) and (d) of the NIRC of 1997, as amended, it is clear that where a valid waiver of the statute of limitations extending the period to assess is executed, and an assessment is issued within the extended period agreed upon, the BIR may proceed to enforce collection within the period to collect agreed upon in writing before the expiration of the five-year period. Moreover, the period to collect, as agreed upon, may be further extended by the execution of subsequent written agreements, provided that each extension is made prior to the lapse of the period to collect previously agreed upon.

In the case at bar, petitioner and respondent executed a valid Waiver of the Defense of Prescription dated August 12, 2014.[61] A careful examination of said Waiver reveals that the parties expressly agreed to extend the period for the **assessment and/or collection** of all internal revenue tax liabilities for TY 2011, up to and until **December 31, 2015**.[62]

Notably, the FLD/FAN dated June 8, 2015 was received by petitioner on July 3, 2015, well within the extended period agreed upon by the parties in the Waiver. There is no showing, however, that the respondent or the BIR has initiated any action for collection either by way of distraint, levy, or a court proceeding within the agreed period. Correspondingly, the right to collect the assessed taxes by respondent or the BIR has indeed prescribed.

To be sure, contrary to respondent's contention, the said five-year period for prescription was not suspended under Section 223 of the NIRC of 1997, as amended, which provides as follows:

> 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 <u>suspended</u>** for the period during which the Commissioner is prohibited from making the assessment or beginning the 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

[61] Docket, p. 53.
[62] Exhibit "P-4", BIR Records (Exhibit R-13), p. 447.

> discretion, and no property could be located; and when the taxpayer is out of the Philippines. *(Emphases and underscoring added)*

Based on the foregoing provision, the running of the statute of limitations for the collection of deficiency taxes shall be suspended, *inter alia*, when the taxpayer requests for a reinvestigation which is granted by respondent.

It bears emphasis that the running of the prescriptive period for collection of taxes can only be suspended by a request for reinvestigation, <u>not a request for reconsideration</u>. Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter can not.[63]

In this case, the BIR had mistakenly treated petitioner's protest as a request for reinvestigation. Clearly, the letter-protest dated July 10, 2015 against the FLD/FAN filed by petitioner on July 21, 2015 was a request for reconsideration.[64] This is apparent from the repeated mention in the same letter-protest of the word *"reconsidered"* and "*reconsideration*", to wit:

> We respectfully submit this protest to the above described Assessment Notice, and request that the taxes found to be due be **reconsidered** and cancelled.
>
> xxx xxx xxx
>
> Our **request for the <u>reconsideration</u>** and cancellation of the above described taxes are based on equity, and legal grounds, which we will discuss below.[65] *(Emphases and underscoring added)*

Thus, considering that petitioner's protest was a request for reconsideration and **not a request for reinvestigation**, it could not have suspended the three-year prescriptive period to collect the assessed taxes.

The law provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. While taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to

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63 *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.
64 Exhibit "P-8", BIR Records (Exhibit "R-1"), pp. 512 to 516.
65 *Id.*, at p. 516.

assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty whether he will be made liable for deficiency or delinquent taxes.[66]

**WHEREFORE**, premises considered, the present **Petition for Review** is **DISMISSED** for this Court's lack of jurisdiction.

**SO ORDERED.**

**CORAZON G. FERRER-FLORES**
Associate Justice

**WE CONCUR:**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

## ATTESTATION

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

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*
Chairperson

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66 *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018.

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
*Presiding Justice*