REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PENTAGON GAS CORPORATION *Petitioner,*	**CTA *EB* NO. 3089** (CTA Case No. 10868)
	Present:
-versus-	**RINGPIS-LIBAN,** *PJ,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE and MANUEL V. MAPOY, in his capacity as OIC-Asst. Commissioner, Large Taxpayers Service, *Respondents.*	Promulgated: APR 20 2026 10:57 am

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed on February 17, 2025, seeking the reversal and setting aside of the Decision[2] ("Assailed Decision"), promulgated on July 19, 2024, and the Resolution[3] ("Assailed Resolution"), dated January 28, 2025, both issued by the Court's First Division ("Court in Division"); and praying for the issuance of new decision (1) cancelling, annulling and setting aside the income tax ("IT") and value-added tax ("VAT") assessments for the taxable year ("TY") 2014, in the total amount of Php27,666,395.21, sought to be satisfied by the subject Warrant of

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[1] Petition for Review, *Rollo*, pp. 1-34.
[2] Decision, dated July 19, 2024 ("Assailed Decision"), *id.* at 41-71.
[3] Resolution, dated January 28, 2025 (Assailed Resolution"), *id.* at 73-80.

Distraint and/or Levy ("WDL")[4] and Warrants of Garnishment ("WoGs")[5], and (2) cancelling, annulling and setting aside the aforementioned WDL and WoGs.[6]

The Parties

Petitioner Pentagon Gas Corporation ("petitioner" or "PGC") is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office located at Barangay San Isidro, San Fernando City, Pampanga. It is primarily engaged in the manufacturing and production of oxygen gas, acetylene gas and allied products, and in leasing, operating, and managing, for or on account of other persons or entities, plants, equipment, and machineries for the manufacturing and production of oxygen and acetylene gas.[7]

On the other hand, respondent Commissioner of Internal Revenue ("CIR" or "respondent") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who is granted with the power to decide disputed assessments, claims for refunds of internal revenue taxes erroneously paid, among others, or other matters arising under the *National Internal Revenue Code ("Tax Code") of 1997, as amended.* Petitioner also impleaded respondent Manuel V. Mapoy in his capacity as then Officer-in-Charge, Assistant Commissioner ("OIC-ACIR") of the Large Taxpayers Service ("LTS").[8]

The Facts

On February 3, 2016, respondents issued Letter of Authority ("LOA") No. AUDR05/005818.2016.eLA201200042451[9] (first LOA), authorizing Revenue Officers ("ROs") Maritess Aseo , Michelle Dela Cruz, Ranilo Sy, Josephine Gaerlan and Group Supervisor ("GS") Nicasio Lumagui, Jr. of the Excise Large Taxpayer Division II ("ELTAD II"), to examine petitioner's books of account for all internal revenue taxes for the TY2014.

In relation to the said LOA, petitioner's president, Ronnie G. Emata (President Emata), executed two Waivers of the Defense of Prescription under Statute of Limitations of the Tax Code:

4 Exhibit "P-27", Division Docket – Vol 1, p. 546.
5 Exhibits "P-29" to "P-33", *id.* at 548-552.
6 See Prayer, Petition for Review, *Rollo*, p. 34.
7 See Amended Articles of Incorporation, Exhibit "P-1", Division Docket – Vol. 1, p. 309-310.
8 See Par. 2, Parties of the Case, Assailed Decision, *Rollo*, p. 42.
9 Exhibit "P-16", Division Docket – Vol. 1 – p. 462; Exhibit "R-1", BIR Records, p. 903.

i. First Waiver – Executed on February 28, 2017, extending the period of assessment to December 31, 2017.[10] It was accepted by GS Lumagui on March 3, 2017, and a copy of the signed waiver was received by petitioner on March 21, 2017.

ii. Second Waiver – Executed on October 13, 2017, extending the period of assessment to December 31, 2018.[11] It was likewise accepted by GS Lumagui, albeit undated, and a copy of the signed waiver was received by petitioner on December 19, 2017.

BIR assessment notices were thereafter issued to petitioner:

Document	Date of Document	Date Received	Assessment Details
Notice of Informal Conference ("NIC")[12]		August 7, 2018	Deficiency IT, VAT, expanded withholding tax (EWT), documentary stamp tax (DST) and miscellaneous compromise penalties in the total amount of Php39,715,07l.62.
Preliminary Assessment Notice ("PAN")[13] with Details of Discrepancies	September 27, 2018	November 7, 2018	Deficiency IT, VAT, EWT, DST and compromise penalties in the total amount of Php40,255,206.71
Formal Letter of Demand ("FLD")[14] with attached Assessment Notices ("FAN") and Details of Discrepancies	December 4, 2018	December 20, 2018[15]	Deficiency IT, VAT, EWT, DST and compromise penalties in the total amount of Php40,820,537.21

In response to the FLD, petitioner filed its one-page protest[16] on January 3, 2019. It requested for reconsideration or reinvestigation to clarify the basis of the alleged tax deficiencies and sought additional time to submit necessary documents to justify the components of its financial statements.

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[10] Exhibit "R-5", BIR Records, p. 912.
[11] Exhibit "R-6", *id.* at 913.
[12] Exhibit "P-17", Division Docket – Vol. 1, pp. 463-482.
[13] Exhibit "P-18", *id.* at 483-506.
[14] Exhibit "P-19", *id.* at 507-530.
[15] As alleged in the original Petition for Review, *id.* at 10.
[16] Exhibit "P-20", *id.* at 531.

Meanwhile, respondents issued second and third LOAs, also for TY2014:

i. Second LOA – LOA No. LOA-124-2019-000000225/ eLA201600096940,[17] issued on June 13, 2019, authorizing ROs Jessie Lumba Jr, Fional Margarita Aytona, Ma. Socorro Concepcion, Ma. Cecilia Tan and GS Aurelio Agustin Zamora of ELTAD II to conduct the audit of petitioner's books for TY2014.

ii. Third LOA – LOA No. LOA-124-2020-000000170/ eLA201700048817,[18] issued on October 7, 2020, authorizing ROs Lumba, Aurora Alberto, Raymond Hernandez, Catherine Portilla, Leo Aldrin Reyes, Ofelia Yumang and GS Dalisay Umlas of ELTAD II to conduct investigation of petitioner's books for TY2014.

On June 11, 2021, petitioner received the Final Decision on Disputed Assessment ("FDDA"),[19] dated June 10, 2021, signed by then CIR Caesar R. Dulay, which declared that petitioner's one-page protest failed to comply with *Section 3.1.4 of Revenue Regulations ("RR") No. 18-2013*;[20] thus, it was not given due course or consideration. Petitioner was therefore demanded to pay the alleged IT and VAT liabilities in the amount of Php27,666,395.21.

Petitioner thereafter filed its reply to the FDDA[21] before the office of the CIR and ELTAD II, on June 25, 2021, stating, among others, that it had no point person to whom it could submit its supporting documents to the protest, and that it informed the BIR officers authorized by new LOAs of its concerns and submitted to them the necessary documents to support its previous protest.

On March 11, 2022, respondents issued WDL No. 124-2022-015[22] to collect the alleged IT and VAT liabilities of Php27,666,395.21. Petitioner, however, reiterated its previous request for reconsideration and re-computation of deficiency assessment through a letter dated March 21, 2022.[23]

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[17] Exhibit "P-21", *id.* at 532.
[18] Exhibit "P-24", *id.* at 536.
[19] Exhibit "R-19", BIR Records, pp. 1334-1336.
[20] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, dated November 28, 2013.
[21] Exhibit "P-26", Division Docket – Vol 1, p. 543-545.
[22] *Supra* note 4.
[23] Exhibit "P-28", Division Docket – Vol. 1, p. 547.

On May 2, 2022, petitioner received WoGs No. 124-2022-2015[24] issued by respondents, addressed to various banks, informing them that petitioner's accounts will be garnished to cover its payment of deficiency taxes.

Aggrieved, petitioner filed an appeal with the CTA on May 27, 2022.[25]

After a full-blown trial, the Court in Division rendered the Assailed Decision on July 19, 2024,[26] dismissing the case for lack of jurisdiction, the dispositive portion of which states:

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

In the Assailed Decision, the Court in Division found that almost two years have lapsed from petitioner's receipt of respondent CIR's final decision, or the FDDA, before it filed an appeal before the Court, resulting in a lack of jurisdiction to entertain the original Petition for Review.

The Court in Division also ruled that petitioner failed to file a valid protest due to the latter's failure to comply with the requirements of *RR No. 18-2013*. It was emphasized in the Assailed Decision that 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.

Finally, the Court in Division explained that assuming that jurisdiction can be properly exercised, it remains unconvinced that the period to assess had already prescribed since the subject waivers were found compliant with the relevant regulations and duly extended the periods to assess.

Undeterred, petitioner moved for reconsideration on August 13, 2024.[27] The motion, however, was denied by the Court in Division through the Assailed Resolution.[28]

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24 *Supra* note 5.
25 Division Docket – Vol. 1, pp. 6-37.
26 *Supra* note 2.
27 Motion for Reconsideration, dated August 12, 2024, Division Docket – Vol. 3, pp. 1102-1124.
28 *Supra* note 3.

This led to the filing of the current Petition for Review on February 17, 2025.[29] Respondents, on the other hand, filed his Comment/Opposition on June 23, 2025.[30]

In view thereof, the Court submitted the instant case for decision on July 30, 2025.[31]

The Issues

The issues raised by in the Petition for Review[32] are as follows:

I. WHETHER THE COURT IN DIVISION HAD JURISDICTION OVER THE ORIGINAL PETITIONER FOR REVIEW;

II. WHETHER THE ASSESSMENT CONDUCTED BY THE CIR WAS VOID; AND

III. WHETHER THE CIR'S RIGHT TO ASSESS PETITIONER FOR THE TAXABLE YEAR 2014 HAS ALREADY PRESCRIBED.

The Arguments

In its Petition for Review,[33] petitioner insists that the Court in Division erred in ruling lack of jurisdiction over the original petition. It emphasizes that the appeal was brought to the Court as "other matters" arising under the Tax Code which is well within the jurisdiction of the Court. It disagrees with the application of the case of *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue (Fishwealth case)*[34] as the petitioner therein did not allege "other matters" as the basis of the appeal before the court. According to petitioner, considering that the appeal was filed within 30 days from the receipt of the WoGs, the Court in Division properly acquired jurisdiction over the original petition.

PGC also argues that the LOA is void; thus, petitioner is not liable to pay deficiency taxes. It highlights that the first LOA was issued on February 3, 2016 but was only served to petitioner on March 8, 2016, or more than 30

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[29] *Supra* note 1.
[30] Comment/Opposition, dated June 20, 2025, *Rollo*, pp. 92-126.
[31] See Resolution, dated July 30, 2025, *id.* at 130.
[32] See Petition for Review, II. Issues, *id.* at 9.
[33] *Supra* note 1.
[34] G.R. No. 179343, January 21, 2010.

days after issuance, allegedly rendering the same void in the absence of a revalidation before the expiration of the 30-day period, pursuant to *Revenue Audit Memorandum Order ("RAMO") No. 1-2000.*[35]

Finally, PGC posits that respondent CIR's right to assess petitioner for TY2014 has already prescribed. It advances that since the first LOA is null and void, the waivers executed pursuant thereto are likewise void. Further, the second and third LOAs, according to petitioner, cannot be considered as revalidations of the first LOA as they were issued after the extended period provided in the waivers. Thus, for petitioner, the PAN, FAN, FLD and FDDA, as well as the WDL and WoGs issued by respondents are all null and void.

On the other hand, respondents, in their Comment[36] counter that the Court in Division lacked jurisdiction over the original petition. They insist that the period to appeal must be reckoned from petitioner's receipt of the FDDA, as discussed by the Court in Division in the Assailed Decision.

Respondents also echo the Court in Division's finding that due to petitioner's failure to file a valid protest against the assessments, they have become final, executory, and outside the scrutiny of the Court.

Further, respondents emphasize that the issue on the LOA and the lack of revalidation thereof is an undisputed issue which cannot be raised for the first time on appeal. They raise the primordial rule in remedial law that defenses and objections not pleaded are deemed waived.

Lastly, respondents argue that the CIR's right to assess petitioner did not prescribe. By the execution of the waivers, petitioner authorized to extend the period of investigation to December 31, 2018. Thus, according to respondents, the FLD/FAN issued within the extended period are valid.

The Ruling of the Court

The instant Petition for Review was timely filed before the Court En Banc

We shall first look into the timeliness of the filing of the Petition for Review before the Court *En Banc*.

[35] Updated Handbook on Audit Procedures and Techniques Volume 1 (Revision – Year 2000), dated March 17, 2000.
[36] *Supra* note 21.

Under *Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*,[37] a party adversely affected by a decision or resolution of a Division of the CTA on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a petition for review within 15 days from receipt of the assailed decision or resolution.

In this case, a copy of the Assailed Resolution was received by the petitioner on February 6, 2025. Counting 15 days therefrom, petitioner had until February 21, 2025 within which to file an appeal; thus, it was timely filed on February 17, 2025.

Meanwhile, as regards the merits of the case, the Court *En Banc* deems it proper to highlight at the outset that petitioner's arguments in the instant Petition for Review involve issues already thoroughly discussed by the Court in Division in the Assailed Decision and Assailed Resolution. On this ground alone, the Petition for Review should already be dismissed. Nevertheless, for full disposal of the case at hand, We shall tackle the contentions raised.

The Court in Division has partial jurisdiction over the original Petition for Review

In the instant appeal before the Court *En Banc*, petitioner highlights that the original Petition for Review was filed before the CTA based on "other matters" arising under the Tax Code. It insists that the WoGs and WDL issued by respondents are clearly collection efforts covered by "other matters" jurisdiction of the CTA.

However, a review of the original Petition for Review shows that petitioner prayed not just for the cancellation of the WDL and WoGs, but also the IT and VAT assessments sought to be satisfied by the same WDL and WoGs.

Accordingly, in order to ascertain whether the Court in Division can fully rule on the case based on what petitioner has prayed for, it becomes crucial to determine whether the Court in Division has jurisdiction, *first*, over the assessments, and *second*, over the WDL and WoGs. For such purpose, We must refer to *Section 7(1) of Republic Act ("RA") No. 1125* which provides for the jurisdiction of that the CTA as follows:

[37] A.M. No. 05-11-07-CTA, 22 November 2005.

> SEC. 7. Jurisdiction. — The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or ***other matters arising under the National Internal Revenue Code*** or other laws or part of law administered by the Bureau of Internal Revenue;
> (Emphasis and italics supplied)

i. Jurisdiction over the assessment

Based on the above provision, in order to acquire jurisdiction over an assessment, the same must first be disputed. The Supreme Court, in the case of *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*,[38] citing *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*,[39] explained that an assessment attains such character when the taxpayer seasonably contests its validity and seeks for the CIR's reconsideration, to wit:

> In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, the Court noted that as early as the case of *Commissioner of Internal Revenue v. Villa (Villa)*, it was already established that the word "decisions" which are within the exclusive appellate jurisdiction of the CTA in paragraph 1, Sec. 7 of R.A. No. 1125, has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessments. In noting that word "decisions" does not signify the assessment itself, the Court explained as follows:
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>> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by Section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. **Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment " that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment [.]**
>> (Emphasis in the original)

The relevant period for protesting assessments is provided under *Section 228 of the Tax Code*. It mandates that failure to file a protest within 30 days from receipt thereof; otherwise the assessment shall become final, to wit:

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[38] G.R. No. 223767, April 24, 2023.

[39] G.R. No. 171251, March 5, 2012.

> **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: Provided, however, That a preassessment notice shall not be required in the following cases:
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> . . .
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> ***Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment*** in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; ***otherwise, the assessment shall become final.***
>
> ***If the protest is denied in whole or in part***, or is not acted upon within one hundred eighty (180) days from submission of documents, ***the taxpayer adversely affected by the decision*** or inaction may appeal ***to the Court of Tax Appeals within thirty (30) days from receipt of the said decision***, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
> (Emphasis and italics supplied)

To implement the foregoing statutory remedy, *Section 3.1.4 of RR No. 12-99,*[40] as amended by *RR No. 18-13,*[41] prescribes that a taxpayer may dispute an assessment by filing an administrative protest, either through a request for reconsideration or reinvestigation, within 30 days from receipt of the FLD/FAN. The regulations further state that failure to file a valid protest against the FLD/FAN shall make the assessment final, executory, and demandable.

Moreover, the same provision prescribes the remedies of a taxpayer in case of denial or inaction of the Commissioner or his duly authorized representative on the taxpayer's protest. In the Assailed Decision, the Court in Division, citing the case of *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue, et al., (PAGCOR case)*[42] discussed the three options a taxpayer may appeal the denial of its administrative protest:

[40] Implementing the Provisions of the National Internal Revenue Code of 1997 Government 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, dated September 6, 1999.

[41] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, dated November 28, 2013.

[42] G.R. No. 208731, January 27, 2016.

1. If the protest is denied, in whole or in part, by the CIR or his authorized representative, the taxpayer may appeal to the CTA within 30 days from the receipt of such denial.
2. If the protest is denied, in whole or in part, by the CIR's authorized representative, the taxpayer may appeal to the CIR within 30 days from receipt of such denial.
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.

As aptly found by the Court in Division, the FDDA, received by petitioner on June 11, 2021 was signed by CIR Dulay; it is thus deemed the CIR's final decision on petitioner's administrative protest. Accordingly, following the *PAGCOR case*, the proper remedy for the PGC was to elevate an appeal to the CTA within 30 days from the receipt of the FDDA, or until July 11, 2021. This petitioner failed to do. Instead, petitioner filed a letter-reply to the FDDA before the office of the CIR.

We agree with the Court in Division that petitioner could be deemed to have filed a motion for reconsideration (MR) through such letter-reply. It must be emphasized, however, that under *Section 3.1.4 of RR No. 12-99*, as amended by *RR No. 18-13*, a MR of the CIR's denial of the protest or administrative appeal shall not toll the 30-day period to appeal.

Thus, for failure of petitioner file a timely appeal, the Court in Division did not acquire jurisdiction over the assessment. Such conclusion is consistent with the ruling of the Supreme Court in the *Fishwealth case*, as cited in the Assailed Decision. Note that while We agree with petitioner's observation that the *Fishwealth case* does not involve an appeal on "other matters" under the Tax Code, the Court *En Banc* finds that the pronouncements therein are still applicable to the case at hand up to the extent of determining jurisdiction over the assessment, as opposed to determining the jurisdiction over the CIR's collection efforts which will be tackled below.

ii. Jurisdiction over the WDL and WoGs

To recall, *Section 7(1) of RA No. 1125,* clearly vests jurisdiction to the CTA over "other matters" arising under the Tax Code. In the landmark case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue (Philippine Journalists case)*,[43] the Supreme Court explained how a WDL falls within such phrase, to wit:

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[43] G.R. No. 162852, December 16, 2004.

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. ***It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.***
> (Emphasis and italics supplied)

The Supreme Court has since upheld the same stance in the later cases of *Commissioner of Internal Revenue vs. Manila Medical Services, Inc.*,[44] and *La Flor Dela Isabel, Inc. vs. Commissioner of Internal Revenue.*[45]

Notably, the foregoing cases involve a WDL appealed to the CTA. There is, however, no reason not to apply the same ruling to WoGs which similarly manifest the BIR's collection efforts.

As held by the Supreme Court in *Commissioner of Internal Revenue vs. Court of Tax Appeals*,[46] the validity of the assessment is a separate and distinct issue from the determination of the propriety of the CIR's collection, specifically the alleged prescription thereof, to wit:

> . . . (T)he fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, ***the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assesed tax has prescribed.*** This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.
> (Emphasis and italics supplied)

Based on the foregoing, it is clear that the remedy of appeal to this Court is available to petitioner provided that is made within 30 days from the receipt of the pertinent contestable matter, pursuant to *Section 11 of RA No. 1125*, as amended by *RA No. 9282.*

Here, the WDL was received by petitioner on March 11, 2022,[47] while the WoGs were received on May 2, 2022.[48] A timely appeal was therefore filed on May 27, 2022 but only with respect to the WoGs. Meanwhile, the Court in Division did not acquire jurisdiction over the WDL as the 30-day period has already lapsed upon filing of the appeal.

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44 G.R. No. 255473, February 13, 2023.
45 G.R. No. 202105, April 28, 2021.
46 G.R. No. 258947, March 29, 2022.
47 *Supra* note 21.
48 *Supra* note 23.

	Date of Receipt	End of 30-day period to appeal	Date of filing appeal	Timely?
WDL	March 11, 2022	April 10, 2022	May 27, 2022	No
WoGs	May 2, 2022	June 1, 2022	May 27, 2022	Yes

In sum, the Court in Division partially erred in ruling that it lack jurisdiction over the original Petition for Review. While the Court in Division does not have jurisdiction over the assessments, which have become final and executory, as well as over the WDL, proper jurisdiction has been acquired over the WoGs for being appealed to the CTA as "other matters" arising from the Tax Code.

Nonetheless, in the interest of the right of litigants for speedy disposition of cases, the Court *En Banc* shall proceed to rule on the issues related to the WoGs instead of remanding the same to the Court in Division.

The WoGs were properly issued by the BIR, pursuant to a valid assessment which already attained finality.

The first LOA is valid, thus, the waivers executed pursuant thereto are likewise valid.

Petitioner contends that the WoGs must be declared invalid based on two contentions: (i) because the assessment is void due to the nullity of the LOA; and (ii) because the assessment is invalid for being issued after the CIR's right to assess petitioner for TY2014 has already prescribed.

These contentions, however, deserve no merit.

It strikes the Court *En Banc* that while petitioner invokes the "other matters" clause under the Tax Code, it does so in reference to decisions rendered by the BIR pursuant to an assessment which do not actually qualify as "other matters." The issues raised before the Court all go back to the validity of assessment, which it failed to dispute.

As discussed, the assessment had already become final and executory. Had petitioner duly disputed the assessment in the manner prescribed by *Section 228 of the Tax Code,* the decision or inaction thereon of the CIR would have been appealable to and thus within the jurisdiction of the Court. To assail the validity of the assessment through the guise of questioning the validity of the WoGs appears to be a circumvention of the unappealable character of an assessment that had attained finality.

Notably, no other defects (aside from those of the assessments) that should result to the invalidity of the WoGs were raised by petitioner. On this ground alone, the WoGs should be upheld and considered duly executed.

In any case, assuming that the Court *En Banc* can look into the validity of the assessments, petitioner's contentions still do not hold water.

Petitioner insists that the first LOA issued against it was null and void since it was not served within 30 days from issue date of February 3, 2016, pursuant to *RAMO No. 1-2000*. It further emphasizes that the respondents' witness, RO Maritess M. Aseo, testified during cross examination that the LOA was not revalidated prior to serving to petitioner on March 8, 2016, or four days after the lapse of 30 days from issuance.[49] To support its claim, petitioner cited the case of *Kokoloko Network Corporation vs. Commissioner of Internal Revenue*[50] where it was ruled that a LOA that is not revalidated and served to the taxpayer after the lapse of 30-day period from issuance, shall be deemed invalid and cannot be used as basis for audit examination.

The foregoing rule, however, is not absolute. As aptly cited by the Court in Division, the Supreme Court, in the case of *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*[51] held that a taxpayer's belated objection to an the alleged irregularity in the service of the LOA appears to be a mere afterthought to resist possible tax liability, to wit:

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

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[49] See Transcript of Stenographic Notes, September 28, 2022, pp. 8-16.
[50] CTA Case No. 9574, promulgated on September 24, 2019.
[51] G.R. No. 222133, November 4, 2020.

> ***decision before objecting to this irregularity could only be interpreted as a mere afterthought to resist possible tax liability.***
> (Emphasis and italics supplied)

A review of PGC's one-page protest and the original Petition for Review shows that petitioner failed to raise the alleged invalidity of the LOA in the earliest possible opportunity. The LOA issue only started to surface during the cross examination on respondents' witness RO Aseo, and was added in petitioner's contentions in its Memorandum, dated May 19, 2023.[52] Thus, petitioner clearly appears to have belatedly contested the validity of the LOA.

Allowing a litigant to assume a different posture when he or she comes before the court and challenge the position he or she had accepted at the administrative level would be to sanction a procedure whereby the court – which is supposed to review administrative determinations – would not review, but determine and decide for the first time, a question not raised at the administrative forum.[53]

Meanwhile, as regards the alleged prescription of BIR's right to assess petitioner for TY2014, it must be noted that this contention is ultimately rooted on the same alleged invalidity of the LOA (due to non-service within 30 days from issuance). According to petitioner, since the first LOA is invalid, the waivers executed pursuant thereto are likewise void. Further, petitioner highlights that the second and third LOAs were issued only on June 13, 2019 and October 7, 2020, respectively, which are clearly beyond the effectivity of the second waiver up to December 31, 2018.

We disagree. As discussed, the Court *En Banc* upholds the validity of the LOA for reasons already elucidated above. Thus, there is likewise no merit in petitioner's argument that the waivers should be invalidated due to being executed pursuant to a void LOA.

Moreover, the Court in Division already ruled at length on the validity of the waivers, in the Assailed Decision. Such finding of compliance and validity of the extended periods of assessment due to the execution of the waivers remain uncontested in the present Petition for Review; thus, must not be disturbed.

To recall, the FLD/FAN was issued on December 4, 2018 and received by petitioner on December 20, 2018. At such time, the second waiver executed by petitioner is still valid. Thus, the assessment was duly issued before the

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[52] Division Docket – Vol. 2, pp. 1023-1036.
[53] *Aguinaldo Industries Corporation (Fishing Nets Divisions) vs. Commissioner of Internal Revenue*, G.R. No. L-29790, February 25, 1982.

lapse of the extended period of prescription of the CIR's right to assess taxes for TY2014. For the same purpose of looking into the alleged prescription, We deem it unnecessary to check the issuance dates of the second and third LOAs since the assessment has already been issued pursuant to the first LOA and the waivers executed in relation thereto.

All told, while the Court *En Banc* disagrees with the Court in Division in dismissing and finding for the lack of jurisdiction over the entire Petition for Review, the merits of the instant Petition still fail to convince.

ACCORDINGLY, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision, dated July 19, 2024, and the Resolution, dated January 28, 2025, of the Court's First Division are **AFFIRMED**.

However, the dispositive portion of the Decision, dated July 19, 2024, is **MODIFIED** to read as follows:

> **WHEREFORE**, premises considered, the Petition for Review filed by petitioner Pentagon Gas Corporation on 27 May 2022 is hereby **PARTIALLY DISMISSED** for lack of jurisdiction, insofar as it prays for the nullification of subject assessment and Warrant of Distraint and/or Levy, and **PARTIALLY DENIED** for lack of merit, insofar as it prays for the nullification of the subject Warrant of Garnishment.
>
> **SO ORDERED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

With Separate Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PENTAGON GAS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and MANUEL V. MAPOY, in his capacity as OIC-Asst. Commissioner, Large Taxpayers Service,
Respondents.

CTA EB NO. 3089
(CTA Case No. 10868)

Present:

RINGPIS-LIBAN, *P.J.*,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
APR 20 2026 10:5

x - x

SEPARATE OPINION

BACORRO-VILLENA, J.:

The majority holds that the Court of Tax Appeals (**CTA**) has partial jurisdiction over the original Petition for Review. In so ruling, the *ponencia* of our esteemed colleague, Maria Rowena Modesto-San Pedro, declared that while the Court in Division did not have jurisdiction over the assessment and the Warrant of Distraint and/or Levy (**WDL**), it has proper jurisdiction over the Warrant of Garnishments (**WOGs**) which petitioner received on 02 May 2022. Counting thirty (**30**) days from the receipt thereof, petitioner had until 01 June 2022 to file the prior petition. Considering that the original Petition for Review was filed on 27 May 2022, the Court in Division has successfully acquired jurisdiction over the petition. Nonetheless, the *ponencia* stated that although petitioner invoked the CTA's jurisdiction under "other matters", the issues it raised were related to the validity of the assessment, which does not qualify as "other matters."

Respectfully, I forward a different opinion in the matter.

In the assailed Decision that the undersigned penned, it was ruled that the CTA lacks jurisdiction over the prior petition due to petitioner's failure to timely appeal the Final Decision on Disputed Assessment (**FDDA**) which, according to the contents thereof, is the Commissioner of Internal Revenue's (**CIR**'s) final decision on the subject assessment, as then CIR Ceasar R. Dulay is the signatory thereof.

Following Section 3.1.4 of Revenue Regulations (**RR**) No. 18-13,[1] the aggrieved taxpayer may file an appeal before the CTA within 30 days from the receipt of CIR's final decision, otherwise the assessment shall become final, executory and demandable. The same provision clarified that a motion for reconsideration of the CIR's final decision shall not toll the running of the 30-day period to appeal to the CTA.

As aptly observed, petitioner received the FDDA on 11 June 2021, thus it had until 11 July 2021 to file an appeal before the CTA. However, instead of filing a judicial appeal, on 25 June 2021, petitioner filed a letter-reply to the FDDA and sought for the cancellation of deficiency tax assessment. Evidently, petitioner did not file any appeal before the CTA. Thus, in the Division Decision, it reached the conclusion that this Court lacks jurisdiction over the case.

While I am aware that petitioner received both WDL and WOGs, a thorough examination of its Petition for Review reveals that it contested the **prescription of CIR's right to assess and the invalidity of the assessment *per se*. Glaringly, petitioner did not question CIR's right to collect the alleged deficiency taxes. Thus, in my humble opinion, it does not fall under the category of "other matters" which the CTA may take cognizance of.**

The legal bases are discussed below.

The concept of "other matters" appears to have initially emanated from the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[2] (**PJI**). There, the aggrieved taxpayer filed a Petition for Review with the CTA after receipt of the WDL. Notably, apart from the Preliminary Collection

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

[2] G.R. No. 162852, 16 December 2004.

Letter and Final Notice Before Seizure, **taxpayer therein did not receive an assessment notice which may be deemed as CIR's final decision**. Thus, the Supreme Court held that the CTA's appellate jurisdiction is not limited to cases which involves decisions of the CIR.

Subsequently, in *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[3] (**Hambrecht**), the Supreme Court upheld the CTA's jurisdiction under "other matters" considering that the issue raised relates to whether the Bureau of Internal Revenue's (**BIR**'s) right to collect the subject taxes had already prescribed. The relevant parts state –

> ...
>
> Thus, from the foregoing, **the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters " over which the CTA has appellate jurisdiction.**
>
> Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "**other matters** " arising under the NIRC or other laws administered by the BIR **as separate and independent of each other**. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.
>
> Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.
>
> To be sure, **the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.**[4]
>
> ...

[3] G.R. No. 169225, 17 November 2010.
[4] Citation omitted and emphasis supplied.

Subsequently, in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*[5] (**BPI**), the Supreme Court recognized the CTA's jurisdiction under "other matters" as BPI appealed the receipt of WDL to question the propriety of the tax collection measure that BIR implemented, and not the propriety of the assessment. The pertinent portions provide –

> ...
>
> *Second*, the aforementioned letter is irrelevant in ascertaining whether or not the tax court properly took cognizance of BPI's Second CTA Petition. **As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation**. To be sure, the issue for the CTA to resolve **was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.**
>
> The law expressly vests the CTA the authority to take cognizance of "other matters " arising from the 1977 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.[6]
>
> ...

Consequently, in *BPI*, the Supreme Court determined that BIR could no longer collect the alleged deficiency taxes since there existed a twenty (20)-year gap between the issuance or release of the assessment in 1991 and the enforcement of collection through distraint and/or levy in 2011, thus ruling that prescription had already set in.

Likewise, in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*,[7] the Supreme Court also affirmed the CTA's jurisdiction therein under "other matters" as QL Development, Inc. had claimed that CIR's right to collect the taxes had already prescribed. Reiterating *Hambrecht*,[8] the Supreme Court stressed that the issue of prescription of the CIR's right to collect taxes is covered by the term "other matters" over which the CTA has appellate jurisdiction.

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[5] G.R. No. 227049, 16 September 2020.
[6] Citations omitted, emphasis supplied and italics in the original text.
[7] G.R. No. 258947, 29 March 2022.
[8] Supra at note 3.

In *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*[9] (**Mannasoft Technology**), the Supreme Court had clarified that the CTA had acquired jurisdiction over the original petition for review since Mannasoft had filed its judicial appeal within 30 days from the receipt of the letter which denied its protest to the WDL and was deemed as CIR's final decision.

For clarity, when the said case was pending before the CTA *En Banc*, the latter ruled that CTA had no jurisdiction over the case as Mannasoft failed to appeal the WDL before the court within 30 days from receipt thereof, following *PJI*. Nonetheless, the Supreme Court said that the ruling in *PJI* was made before the passage of Republic Act (**RA**) No. 9282, thus resting on different circumstances. As explained in *Mannasoft Technology* –

> ...
>
> The Court is mindful of certain cases where it held that the issuance of the WDL constitutes constructive and final denial to the taxpayer's protest, which would trigger the running of the 30-day period to elevate the case to the CTA. This is the doctrine laid down in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue* (*PJI case*), which was cited by both the CTA Third Division and *En Banc*. However, as will be explained below, the ruling in the said case rests on different grounds.
>
> The *LRTA case* is particularly instructive:
>
> > *Commissioner of Internal Revenue v. Isabela Cultural Corporation* cannot be made basis to claim that the Final Notice Before Seizure is the final decision on the protest appealable to the Court of Tax Appeals. **When *Isabela* was promulgated in 2001, Section 7 of Republic Act No. 1125 had yet to be amended by Republic Act No. 9282 to add inactions of the Commissioner as appealable to the Court of Tax Appeals. Moreover, this Court had yet to promulgate *Rizal Commercial Banking Corporation* and *Lascona*, where it was clarified that taxpayers have the option to await the decision of the Commissioner in protests of disputed assessments before they file an appeal with the Court of Tax Appeals.** In other words, in *Isabela*, the taxpayer still had no choice of awaiting the decision of the Commissioner on its protest. This is why in *Isabela*, this Court considered the Final Notice Before Seizure as the Commissioner's decision on the protest. More so because it was the only response Isabela Cultural Corporation received from the Commissioner after it had filed its protest.

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9 G.R. No. 244202, 10 July 2023.

> Appositely, the *PJI* case was also promulgated prior to the passage of RA No. 9282, which recognized inactions of the respondent as appealable to the CTA. Thus, the CTA *En Banc* erred in relying on this particular jurisprudence to buttress its dismissal of petitioner's case.[10]
>
> ...

Instead of acquiring jurisdiction under "other matters", the Supreme Court declared that the Court in Division properly took cognizance of the case as Mannasoft had timely filed a judicial appeal pursuant to the procedures laid down in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[11] and *Light Rail Transit Authority v. Bureau of Internal Revenue.*[12]

From the foregoing jurisprudential pronouncements, it can be sufficiently concluded that CTA's jurisdiction under "other matters" under Section 7(a)(1)[13] of Republic Act (**RA**) No. 1125,[14] as amended by RA 9282[15] will come into play in cases wherein: (1) the taxpayer received a WDL or WOG without receiving a notice deemed as CIR's final decision on the disputed assessment; or (2) the taxpayer raises the issue of prescription of the CIR's right to collect the subject taxes.

Considering that the two (2) circumstances are not present in this case as petitioner had received an FDDA which it failed to appeal; and petitioner did not question CIR's right to collect the subject taxes, it is not proper for the CTA to exercise jurisdiction over the WOGs under "other matters".

All told, I vote to **DENY** the Petition for Review for lack of merit and maintain that the Court in Division lacks jurisdiction over the prior Petition for Review.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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10 Supra at note 9; Citations omitted, emphasis and italics in the original text.

11 G.R. No. 168498, 24 April 2007.

12 G.R. No. 231238, 20 June 2022.

13 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 or other laws administered by the Bureau of Internal Revenue[.]

14 AN ACT CREATING THE COURT OF TAX APPEALS.

15 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.