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,
Respondent.

NOTICE OF RESOLUTION

To:

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

ATTY. AYESHA HANIA B. GUILING-MATANOG
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Bureau of Internal Revenue
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MR. MANUEL V. MAPOY
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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 **January 28, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 30, 2025.**

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

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Respondents.

CTA CASE NO. **10868**

Members:

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

Promulgated:
JAN 28 2025 10:15AM

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is petitioner Pentagon Gas Corporation's (**petitioner**'s) "Motion for Reconsideration"[1] (**MR**) filed on 13 August 2024, with respondents Commissioner of Internal Revenue (**respondent/CIR**) and Assistant Commissioner of Large Taxpayers Service Manuel V. Mapoy's (**Asst. Comm. Mapoy**'s) "Comment/ Opposition (To Motion for Reconsideration dated 12 August 2024)"[2] (**Comment**) filed on 16 September 2024.

In contesting the Decision of 19 July 2024[3] (**assailed Decision**) that dismissed its Petition for Review for lack of jurisdiction, petitioner relies heavily on this Court's disquisition in CTA Case No. 8985 entitled

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1 Division Docket, Volume II, pp. 1102-1123.
2 Id., pp. 1158-1183.
3 Id., pp. 1047-1077.

Huey Commercial, Inc. v. Commissioner of Internal Revenue.[4] According to petitioner, this Court has jurisdiction in this case under Section 7(1)[5] of Republic Act (**RA**) No. 1125[6] on "other matters" that it may take cognizance of. It reiterates its previous argument that its judicial appeal was filed within thirty (30) days from its receipt of the Warrants of Garnishment (**WoGs**).

Petitioner further claims that the Letter of Authority (**LOA**) that was issued against it was null and void since it was not served within 30 days from the issue date of 03 February 2016 (pursuant to Revenue Audit Memorandum Order [**RAMO**] No. 1-2000).[7] It also cited the Court of Tax Appeals (**CTA's**) decision in CTA Case No. 9574 entitled "*Kokoloko Network Corporation v. Commissioner of Internal Revenue*"[8], where this Court ruled that an LOA that is not served within 30 days from issue date is invalid. Petitioner adds that there is also no evidence that the subject LOA was revalidated (according to Revenue Memorandum Circular [**RMC**] No. 23-2009[9]) before it was sent to it on 08 March 2016.

Moreover, petitioner laments that, in contravention of RMC No. 82-2022[10], it took more than 240 days (from the issuance of the LOA) to complete the entire audit process. Based on the records, the Final Decision on Disputed Assessment (**FDDA**) was only issued 10 June 2021, or more than five (5) years from the issuance of the LOA on 03 February 2016. Thus, this is a clear violation of petitioner's procedural due process.

Meanwhile, respondents 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. According to respondents,

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4 Promulgated on 30 September 2021.

5 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[.]

6 AN ACT CREATING THE COURT OF TAX APPEALS.

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

8 Promulgated on 24 September 2019.

9 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.

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

under Section 228[11] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and Section 3.1.4 of Revenue Regulation (**RR**) No. 18-13[12], the reckoning point of the 30-day period is from the FDDA's receipt or on 11 June 2021. Petitioner then had until 11 July 2021 to file the petition. Considering that the assessments contained in the FDDA are uncontested, they became final and executory. In turn, these assessments became the basis for the issuance of the Warrant of Distraint and/or Levy (**WDL**) and WoGs against petitioner.

Respondents further declare that petitioner did not raise the issue of revalidation in its Protest to the Formal Letter of Demand (**FLD**) or when it received the Preliminary Assessment Notice (**PAN**). Being thus an undisputed issue, the Court could not make any ruling on it. Even assuming that it was timely raised, Revenue Memorandum Order (**RMO**) No. 44-2010[13] had already dispensed the revalidation of the LOA to pursue a valid assessment.

Lastly, respondents echoed the Court's ruling on petitioner's invalid protest which resulted in the assessments becoming final and executory. Hence, respondent is left without any recourse but to proceed with the collection of the subject assessments.

We resolve.

After due consideration of the parties' arguments, We do not find any cogent ground to reverse or modify the assailed Decision.

First, petitioner's belated invocation of the service of LOA is tantamount to its acquiescence to the conduct of tax investigation. In *AFP General Insurance Corporation v. Commissioner of Internal Revenue*[14], the Supreme Court ruled that the taxpayer's belated objection to an alleged irregularity in the service (of the LOA) is a mere afterthought to escape the tax liability. The pertinent part provides –

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[11] **SEC. 228.** *Protesting of Assessment.*

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

[13] Electronic Issuance of Letters of Authority.

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

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

Second, RMO No. 44-2010 already superseded RMC No. 23-2009 (which requires revalidation of LOAs) and states:

> ...
>
> 8. Beginning June 1, 2010, the rule on the need for revalidation of [LOAs] for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the [LOA] even if the prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.
>
> ...

To emphasize, the subject assessments are for the taxable period of 01 January 2014 to 31 December 2014, or taxable year (**TY**) 2014. Thus, RMO No. 44-2010 is the governing issuance regarding the need for revalidation.

Third, the assailed Decision have already discussed exhaustively the proper remedy which petitioner should have undertaken to timely appeal the CIR's decision, *i.e.*, the FDDA:

...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.* (**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 ***or*** 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.
>
> ...

The records show that on 11 June 2021, 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.

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 **11 July 2021**. 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. 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".
>
> ...

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 *not* toll the running of the 30-day prescriptive period to appeal before the CTA. In *Fishwealth Canning Corporation v. Commissioner of Internal Revenue* (**Fishwealth**), the Supreme Court ruled:

> ...
>
> 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.[15]
>
> ...

It is noted that, apart from the above, it is also apparent in petitioner's MR that it failed to address the validity of its protest and the waivers it executed. Thus, without any new or novel matter raised, We maintain Our ruling that We lack jurisdiction over this case.

WHEREFORE, premises considered, petitioner Pentagon Gas Corporation's "Motion for Reconsideration" filed on 13 August 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[15] Citations omitted, emphasis, italics and underscoring in the original text.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice