CTA Form No. 8

22-000081-0078

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10783

ZAMBALES DIVERSIFIED METALS CORPORATION,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. FELIX PAUL R. VELASCO III
ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **April 4, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

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

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

ZAMBALES DIVERSIFIED METALS CORPORATION, *Petitioner,*	**CTA Case No. 10783**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** APR 04 2025 11:25 am

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review (with Urgent Motion to Suspend the Collection of Tax and Dispense with Payment of Bond)[1] filed on February 23, 2022 by petitioner Zambales Diversified Metals Corporation. Petitioner prays for the cancellation and withdrawal of respondent Commissioner of Internal Revenue's (CIR) Final Decision on Disputed Assessment, issued to petitioner for its alleged deficiency income tax (IT), value-added tax (VAT), excise tax, expanded withholding tax (EWT), withholding tax on compensation (WTC), documentary stamp tax (DST), and administrative penalties, surcharges and interests for taxable year (TY) 2014, in the total amount of ₱1,862,746,515.18.[2]

THE PARTIES

Petitioner Zambales Diversified Metals Corporation is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) with office address at 3rd Floor DMCI Homes Corporate Center, 1321 Apolinario Street, Barangay Bangkal, Makati

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[1] CTA Docket Vol. I, pp. 7-71.
[2] Summary of the Case, Pre-Trial Order, CTA Docket Vol. III, p. 1455.

City.[3] It is registered with the Bureau of Internal Revenue (BIR) as shown in its Certificate of Registration No. 8RC0000615173 with Tax Identification No. (TIN) 006-861-813-00000.[4]

Respondent CIR, on the other hand, is the chief of the BIR, the government agency charged with authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all internal revenue taxes, fees and charges. He may be served with summons, notices, and other court processes through his counsel at Litigation Division, Room 703, BIR National Office Building, BIR Road [now Sen. Miriam P. Defensor-Santiago Avenue], Diliman, Quezon City.[5]

THE FACTS

On June 16, 2015, a Letter of Authority (LOA) No. LOA-121-2015-00000046 / SN: eLA201100087281 was issued by Nestor S. Valeroso, OIC Assistant Commissioner of the BIR Large Taxpayers Service (LTS), authorizing Revenue Officers (ROs) Alfred Manodon, Malik Dimakuta, Teodoro Matibag and Myrna Ramirez and Group Supervisor (GS) Monica Zamora to examine petitioner's books of accounts and other accounting records covering all internal revenue taxes for the period January 1, 2014 to December 31, 2014.[6] This was received by petitioner on June 26, 2015.[7]

Petitioner, through its President, Mr. Cesar F. Simbulan, Jr., executed three (3) Waivers of Statute of Limitations under the National Internal Revenue Code (NIRC) extending respondent's period to assess it, *viz.*:

Waiver	Date Executed	Extended Period Until	Date Accepted	BIR Official Who Accepted/ Position
First[8]	October 3, 2017	June 30, 2018	October 13, 2017	Teresita M. Angeles/ OIC-ACIR Large Taxpayer Service
Second[9]	April 17, 2018	December 31, 2018	April 19, 2018	Erlinda V. Victorino/ Chief Excise LT Audit Div. I

[3] Exhibits "P-1" and "P-2", CTA Docket Vol. II, pp. 1196-1197 and 1198-1230.
[4] Exhibit "P-3", CTA Docket Vol. II, pp. 1231-1232.
[5] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket Vol. III, p. 1373.
[6] Par. 2, Summary of Admitted Facts, JSFI, CTA Docket Vol. III, p. 1374; Exhibit "P-4", CTA Docket Vol. II, p. 799; Exhibit "R-1", BIR Records Folder 1, p. 267.
[7] Exhibit "P-4-1", CTA Docket Vol. II, p. 799.
[8] Exhibit "R-9", BIR Records Folder 1, p. 274.
[9] Exhibit "R-4", BIR Records Folder 1, p. 276.

Third[10]	August 22, 2018	June 30, 2019	August 29, 2018	Erlinda V. Victorino/ Chief Excise LT Audit Div. I

On August 16, 2018,[11] petitioner received a Notice of Informal Conference dated July 16, 2018[12] which included a schedule of petitioner's alleged deficiency taxes, penalties, and interests for TY 2014 in the total amount of ₱1,486,150,107.12 broken down as follows:

Kind of Tax	Amount (₱)
IT	963,347,306.02
VAT	458,452,593.93
Excise Tax	34,964,390.77
EWT	19,668,194.29
WTC	7,332,492.31
DST	2,130,129.80
Administrative Penalties	255,000.00
TOTAL	**₱1,486,150,107.12**

On June 7, 2019,[13] petitioner received an undated Preliminary Assessment Notice (PAN)[14] with Details of Discrepancies[15] assessing petitioner for alleged deficiency taxes, penalties, and interests for TY 2014 in the total amount of ₱1,754,391,756.61 broken down as follows:

Kind of Tax	Amount (₱)
IT	1,217,851,034.33
VAT	484,704,335.57
Excise Tax	36,625,618.26
EWT	5,042,392.79
WTC	7,681,907.26
DST	2,231,468.40
Administrative Penalties	255,000.00
TOTAL	**₱1,754,391,756.61**

On June 21, 2019,[16] petitioner filed a Reply to the PAN of even date.[17]

[10] Exhibit "R-5", BIR Records Folder 1, p. 279.
[11] Exhibit "P-5-1", CTA Docket Vol. II, p. 1233.
[12] Exhibit "P-5", CTA Docket Vol. II, pp. 1233-1246.
[13] Exhibit "P-6-1", CTA Docket Vol. II, p. 1247.
[14] Exhibit "P-6", CTA Docket Vol. II, pp. 1247-1250; Exhibit "R-6", BIR Records Folder 1, pp. 507-510.
[15] Exhibit "R-6-1", BIR Records Folder 1, pp. 503-506.
[16] Exhibit "P-7-2", CTA Docket Vol. II, p. 817.
[17] Exhibit "P-7", CTA Docket Vol. II, pp. 817-832.

On June 28, 2019, petitioner received an undated Formal Letter of Demand (FLD)[18] with Details of Discrepancies[19] and Assessment Notices,[20] all dated June 27, 2019, finding it liable for alleged deficiency taxes, penalties, and interests for TY 2014 in the total amount of ₱1,774,718,928.23 broken down as follows:

Kind of Tax	Amount (₱)
IT	1,232,076,604.18
VAT	490,222,686.29
Excise Tax	37,039,373.54
EWT	5,099,621.17
WTC	7,768,934.65
DST	2,256,708.40
Administrative Penalties	255,000.00
TOTAL	**₱1,774,718,928.23**

On July 26, 2019, petitioner filed a Protest Letter[21] of even date against the FLD and Assessment Notices. On September 24, 2019, petitioner filed Transmittal Letters[22] submitting relevant supporting documents to substantiate its claims, defenses, and arguments against the assessments.

On January 25, 2022,[23] petitioner received the Final Decision on Disputed Assessment (FDDA)[24] signed by CIR Caesar R. Dulay with Audit Results/Assessment Notices,[25] all dated January 24, 2022, assessing petitioner for alleged deficiency taxes, penalties, and interests for TY 2014 in the total amount of ₱1,862,746,515.18 broken down as follows:

Kind of Tax	Amount (₱)
IT	1,283,609,688.61
VAT	530,592,250.46
Excise Tax	42,411,296.40
EWT	628,015.09
WTC	2,680,856.89

[18] Exhibit "P-8", CTA Docket Vol. II, pp. 1251-1254; Exhibit "R-7", BIR Records Folder 1, pp. 579-582.
[19] Exhibit "R-7-1", BIR Records Folder 1, pp. 575-578.
[20] Exhibit "R-7-2", BIR Records Folder 1, pp. 568-574.
[21] Exhibit "P-9", CTA Docket Vol. II, pp. 837-858.
[22] Exhibits "P-10" and "P-11", CTA Docket Vol. III, pp. 1664-1665 and 1666-1677.
[23] Exhibit "P-12-1", CTA Docket Vol. I, p. 245.
[24] Exhibit "P-12", CTA Docket Vol. I, pp. 236-244; Exhibit "R-8", BIR Records Folder 1, pp. 870-878.
[25] Exhibits "P-13", "P-14", "P-15", "P-16", "P-17", "P-18, "P-19", CTA Docket Vol. II, pp. 868, 869, 870, 871, 872, 873, and 874; Exhibit "R-8-1", BIR Records Folder 1, pp. 863-869.

DST	2,584,407.73
Administrative Penalties	240,000.00
TOTAL	**₱1,862,746,515.18**

On February 23, 2022, petitioner filed the present Petition for Review (with Urgent Motion to Suspend the Collection of Tax and Dispense with Payment of Bond [Urgent Motion to Suspend])[26] assailing the aforesaid FDDA.

On March 14, 2022, respondent filed his Comment and Opposition (Re: Petitioner's Urgent Motion to Suspend Collection of Tax and Dispense with Payment of Bond).[27]

During the hearing on the Urgent Motion to Suspend, petitioner presented as witness, Ms. Emelinda Pilande,[28] its Assistant Vice President for Finance.

In relation to its Urgent Motion to Suspend, petitioner filed its Formal Offer of Evidence[29] and Supplemental Formal Offer of Evidence[30] on April 7, 2022 and June 13, 2022, respectively. These were resolved by the Court in the Resolution dated July 6, 2022,[31] which also directed the parties to file their respective memoranda on petitioner's Urgent Motion to Suspend within ten (10) days from notice.

Respondent's Memorandum (Re: Petitioner's Urgent Motion to Suspend Collection of Tax and Dispense with Payment of Bond) was filed on July 22, 2022.[32]

On July 29, 2022, petitioner filed its Motion to Admit Memorandum (with attached Memorandum dated July 29, 2022).[33] This motion was granted and petitioner's Memorandum (in support of Petitioner's Urgent Motion to Suspend the Collection of Tax and Dispense with Payment of Bond)[34] was admitted by the Court in the Order dated August 1, 2022.[35]

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[26] CTA Docket Vol. I, pp. 7-71.
[27] CTA Docket Vol. II, pp. 711-724.
[28] Exhibit "P-70", Judicial Affidavit of Emelinda Pilande, CTA Docket Vol. I, pp. 80-124; and, Minutes of Hearing and Order dated March 21, 2022, CTA Docket Vol. II, pp. 728-729.
[29] CTA Docket Vol. II, pp. 747-760.
[30] CTA Docket Vol. II, pp. 1188-1195.
[31] CTA Docket Vol. III, pp. 1260-1263.
[32] CTA Docket Vol. III, pp. 1294-1314.
[33] CTA Docket Vol. III, pp. 1322-1326.
[34] CTA Docket Vol. III, pp. 1327-1367.
[35] CTA Docket Vol. III, pp. 1370-1372.

In the Resolution dated October 12, 2022,[36] the Court granted petitioner's Urgent Motion to Suspend thereby suspending the collection of taxes by respondent, his representatives, agents, or other persons acting in his behalf, against petitioner, until further orders from the Court.

Meanwhile, on May 2, 2022, within the extended period,[37] respondent filed his Answer,[38] raising the following Special and Affirmative Defenses: *(i)* the issues on the authority of the ROs and non-revalidation of LOA were never raised by petitioner in the administrative level, thus petitioner can no longer raise said issues on the ground of laches; *(ii)* the conduct of the audit investigation and the resulting assessments are valid as the same were in accordance with law and rules; *(iii)* an LOA is not a requirement when the audit investigation is conducted by the Office of the CIR; *(iv)* assuming that an LOA is required, the examination of petitioner's books of account and other accounting records was conducted pursuant to a valid LOA; *(v)* the non-revalidation of the LOA does not invalidate the assessments; *(vi)* the issuance of the FLD is valid and in order; *(vii)* the assessments are correct, valid and lawful, and state the due date for payment; *(viii)* petitioner executed a valid waiver and thus, the period to assess was effectively extended; and, *(ix)* petitioner is liable to pay the deficiency taxes due.

Petitioner's Pre-Trial Brief[39] was filed on July 11, 2022, while respondent's Pre-Trial Brief[40] was filed on July 28, 2022. The Pre-Trial Conference was held on August 1, 2022.[41] During the Pre-Trial Conference, the Court referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation.

On September 27, 2022, the parties filed their Joint Stipulation of Facts and Issues[42] which the Court approved in the Resolution dated November 2, 2022 thereby terminating the Pre-Trial.[43]

On October 24, 2022, the Court received the No Agreement to Mediate dated October 19, 2022 stating that the parties decided not to have their case mediated by the PMC-CTA.[44]

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[36] CTA Docket Vol. III, pp. 1385-1397.
[37] Order dated March 30, 2022, CTA Docket Vol. II, p. 746.
[38] CTA Docket Vol. II, pp. 1114-1142.
[39] CTA Docket Vol. III, pp. 1264-1293.
[40] CTA Docket Vol. III, pp. 1316-1320.
[41] CTA Docket Vol. III, pp. 1368 and 1370-1372.
[42] CTA Docket Vol. III, pp. 1373-1383.
[43] CTA Docket Vol. III, p. 1444.
[44] CTA Docket Vol. III, p. 1398.

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Thereafter, the Court issued the Pre-Trial Order on December 9, 2022.[45]

Upon motion[46] of petitioner, the Court commissioned Ms. Katherine O. Constantino as Independent Certified Public Accountant (ICPA) on February 9, 2023.[47]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Emelinda Pilande,[48] petitioner's Assistant Vice President for Finance; and, Ms. Katherine O. Constantino,[49] the Court-commissioned ICPA.

On May 11, 2023, petitioner filed its Formal Offer of Evidence (with Omnibus Motion to Correct Description of Documentary Exhibits or to Recall Petitioner's Witness to Identify the Documentary Exhibits).[50] In the Resolution dated June 29, 2023,[51] the Court admitted most of petitioner's exhibits, but denied some: (i) for failure to present the originals for comparison;[52] (ii) for not being found in the records of the case;[53] (iii) for failure to present the originals for comparison;[54] (iv) for being completely blurred/ or unreadable;[55] and, (v) for failure to have the exhibit identified.[56]

Petitioner filed an Omnibus Motion for Reconsideration on July 26, 2023, moving for among others, the admission of its denied exhibits; reopening of the case and recall of its witness, Ms. Pilande, to testify on the presentation of secondary evidence; correction of the description of its documentary exhibits; and, setting of additional Commissioner's Hearing.[57]

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[45] CTA Docket Vol. III, pp. 1455-1465.
[46] CTA Docket Vol. III, pp. 1438-1442.
[47] CTA Docket Vol. III, pp. 1466-1469.
[48] Exhibit "P-70", Judicial Affidavit of Emelinda Pilande, CTA Docket Vol. I, pp. 80-124; and, Minutes of Hearing and Order dated March 21, 2022, CTA Docket Vol. II, pp. 728-729.
[49] Exhibit "P-80", Judicial Affidavit of Katherine O. Constantino, CTA Docket Vol III, pp. 1549-1585; and, Minutes of Hearing and Order dated April 26, 2023, CTA Docket Vol. III, pp. 1619-1620 and 1621-1622.
[50] CTA Docket Vol. III, pp. 1624-1663.
[51] CTA Docket Vol. III, pp. 1839-1856.
[52] CTA Docket Vol. III, pp. 1846-1850.
[53] CTA Docket Vol. III, pp. 1850-1851.
[54] CTA Docket Vol. III, pp. 1851-1852.
[55] CTA Docket Vol. III, p. 1852.
[56] CTA Docket Vol. III, p. 1852.
[57] CTA Docket Vol. III, pp. 1857-1884.

Meanwhile, respondent presented his lone witness, RO Monica L. Zamora[58] on August 17, 2023.

In the Resolution dated October 3, 2023,[59] the Court partially granted petitioner's Motion to Reopen the Case and to Recall the Witness; granted the Motion to Correct the Description of the Documentary Exhibits; denied the Motion to Set Additional Commissioner's Hearing for the Marking of Petitioner's Exhibits; and, held in abeyance the resolution of petitioner's Motion for Reconsideration.

After the presentation of petitioner's recalled witness, Ms. Pilande,[60] the Court, in the Resolution dated January 16, 2024,[61] partially granted petitioner's Omnibus Motion for Reconsideration and admitted most of the exhibits subject of the motion but still denied some of them. The Court also granted respondent a period of five (5) days from receipt thereof to file his Formal Offer of Evidence.

On January 26, 2024, respondent filed his Formal Offer of Evidence.[62] In the Resolution dated April 24, 2024,[63] the Court admitted all of respondent's offered evidence, except Exhibit "R-3", for failure to submit the original for comparison; and, gave the parties thirty (30) days from receipt thereof to file their respective memoranda.

Petitioner filed its Memorandum[64] on May 29, 2024, while respondent filed a Manifestation[65] on June 3, 2024, manifesting that he will adopt the arguments stated in his Answer in place of a Memorandum.

On June 18, 2024, petitioner filed a Motion to Admit (with Attached Supplemental Memorandum dated June 18, 2024).[66] This was granted by the Court in the Minute Resolution dated July 1, 2024,[67]

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[58] Exhibit "R-10", Judicial Affidavit of Chief Revenue Officer Monica L. Zamora, CTA Docket Vol. II, pp. 1148-1156, and Minutes of Hearing and Order dated August 17, 2023, CTA Docket Vol. IV, pp. 1918-1922.
[59] CTA Docket Vol. IV, pp. 1926-1932.
[60] Exhibit "P-72", Supplemental Judicial Affidavit of Emelinda Pilande, CTA Docket Vol. IV, pp. 1999-2018; and, Minutes of Hearing and Order dated November 28, 2023, CTA Docket Vol. IV, pp. 2071-2075.
[61] CTA Docket Vol. IV, pp. 2079-2095.
[62] CTA Docket Vol. IV, pp. 2096-2106.
[63] CTA Docket Vol. IV, pp. 2117-2118.
[64] CTA Docket Vol. IV, pp. 2119-2180.
[65] CTA Docket Vol. IV, pp. 2181-2183.
[66] CTA Docket Vol. IV, pp. 2185-2189.
[67] CTA Docket Vol. IV, p. 2200.

which also admitted petitioner's Supplemental Memorandum[68] and submitted the case for decision.

ISSUE

The parties stipulated on the following issue for the Court's resolution:[69]

> Whether petitioner is liable to pay the assessed deficiency IT, VAT, excise tax, EWT, WTC, DST, and administrative penalties, surcharges and interest, for TY 2014 in the aggregate amount of ₱1,862,746,515.18.

PARTIES' ARGUMENTS

Petitioner argues that:

(i) The assessments are void for lack of a valid LOA;

(ii) The assessments are void for failure to give reasons for the denial of petitioner's defenses and arguments;

(iii) The assessments are void for lack of a valid demand to pay;

(iv) The assessments are void for failure to state the facts and the law on which the assessments are based;

(v) The assessments are void due to prescription;

(vi) The first waiver dated October 3, 2017 is defective for failure to indicate the specific taxes involved and the amount of taxes to be assessed;

(vii) The waivers dated April 17, 2017 and August 22, 2018 did not extend the period to assess since prescription has already set in;

(viii) The assessments are void for failure of the respondent to comply with its General Audit Procedures and Documentation; and,

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[68] CTA Docket Vol. IV, pp. 2190-2199.
[69] Statement of the Issue, JSFI, CTA Docket Vol. III, p. 1374.

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(ix) Petitioner is not liable for the alleged deficiency IT, VAT, excise tax, EWT, WTC, and administrative penalties for TY 2014 in the total amount of ₱1,862,746,515.18, inclusive of interests, surcharge, and penalties.[70]

On the other hand, respondent counter-argues that:

(i) The issues on the authority of the ROs, and non-revalidation of LOA were never raised by petitioner in the administrative level, thus petitioner can no longer raise said issues on the ground of laches;

(ii) The conduct of the audit investigation and the resulting assessments are valid as the same were in accordance with law and rules;

(iii) An LOA is not a requirement when the audit investigation is conducted by the Office of the CIR;

(iv) Assuming that an LOA is required, the examination of petitioner's books of account and other accounting records was conducted pursuant to a valid LOA;

(v) The non-revalidation of the LOA does not invalidate the assessments;

(vi) The issuance of the FLD is valid and in order;

(vii) The assessments are correct, valid and lawful and indicate a due date for payment;

(viii) Petitioner executed a valid waiver and thus, the period to assess was effectively extended; and,

(ix) Petitioner is liable to pay the deficiency taxes due.[71]

THE COURT'S RULING

This Court finds the Petition for Review meritorious.

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[70] Memorandum, CTA Docket Vol. IV, pp. 2132-2177; Supplemental Memorandum, CTA Docket Vol. IV, pp. 2193-2196
[71] Answer, CTA Docket Vol. II, pp. 1115-1139

The Petition for Review was timely filed; hence, the Court has jurisdiction over the case

The Court shall first determine the timeliness of the filing of the present Petition for Review.

This Court is vested with authority to review respondent's FDDA pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282,[72] in relation to Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended.[73]

Under Section 228 of the NIRC of 1997, as amended, a taxpayer adversely affected by a decision of the CIR on the disputed assessment is given a remedy to appeal with the Court within thirty (30) days from receipt of the assailed decision, *viz.*:

> "SEC. 228. *Protesting of Assessment.* -xxx
>
> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Boldfacing supplied*)

On the other hand, under Section 11 of RA No. 1125,[74] as

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

[73] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

[74] Section 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 xxx may

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amended, in relation to Section 3(a), Rule 8 of the RRCTA,[75] a party adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA by way of a petition for review within thirty (30) days from receipt of the copy of such decision or ruling or within thirty (30) days from the expiration of the specific period of action.

Based on the foregoing, this Court has exclusive appellate jurisdiction to review on appeal decisions of respondent involving disputed assessments. The taxpayer adversely affected by respondent's decision may file an appeal with this Court within thirty (30) days from receipt of such decision.

Considering that petitioner received respondent's FDDA dated January 24, 2022[76] on January 25, 2022,[77] petitioner had thirty (30) days therefrom or until February 24, 2022 within which to file its appeal before the Court. The present Petition for Review was timely filed on February 23, 2022.[78] Thus, the Court acquired jurisdiction over the present case.

The Court has the power to rule on the issue anent the authority of the ROs who conducted the audit even though the same was not raised in the administrative level

Respondent argues that since petitioner never raised in the administrative level the issue on the authority of the ROs, it can no longer raise said issues on the ground of laches.

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file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for actions as referred to in Section 7(a)(2) herein. xxx

[75] Sec. 3. *Who may appeal; period to file petition.* –
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on 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 taxes.

[76] Exhibit "P-12", CTA Docket Vol. I, pp. 236-244; Exhibit "R-8", BIR Records Folder 1, pp. 870-878.

[77] Exhibit "P-12-1", CTA Docket Vol. II, p. 245.

[78] CTA Docket Vol. I, pp. 7-71.

Petitioner's failure to raise this issue is not fatal to its case.

Truth to tell, this Court can consider issues and arguments raised by the parties in the petition and answer, albeit the same were not raised before the administrative level. On this note, the pronouncement in *Commissioner of Internal Revenue vs. Geniographics Incorporated*[79] is instructive, *viz.*:

> "Anent the alleged error of the CTA in deciding an issue not raised before the administrative level, suffice it to state that respondent's **failure to raise the absence of a valid LOA at the earliest opportunity does not preclude the CTA from considering the same because said issue delves into the <u>intrinsic validity of the assessment itself</u>.** Besides, **the CTA, in deciding a case, may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**." *(Emphasis supplied)*

Without doubt, the Court has the power to rule on the issue anent the authority of the ROs who conducted the audit even though the same was not raised by petitioner at the administrative level.

The FLD was issued in violation of petitioner's right to due process; hence, the same is void ab initio

(i) The ROs who conducted the audit/ investigation of petitioner are not authorized by a valid LOA

Sections 6[80] and 13[81] of the NIRC of 1997, as amended, are clear and categorical in requiring a specific authority from the CIR or from

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[79] G.R. No. 264572, July 26, 2023.
[80] SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –

(A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
[81] SEC. 13. Authority of a Revenue Officer. – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend

his/her duly authorized representatives before an examination of a taxpayer may be made. An officer of the BIR cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[82] and in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[83] the Supreme Court held that the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any RO is indispensable to the validity of an assessment.

Moreover, RMO No. 43-90 is explicit in requiring the issuance of a new LOA when an audit is continued by an RO other than the officer named in a previous LOA, *viz.*:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> xxx xxx xxx
>
> 5. **<u>Any re-assignment/transfer of cases to another RO(s)</u>**, and revalidation of L/As which have already expired, **<u>shall require the issuance of a new L/A</u>, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." (*Boldfacing and underlining supplied*)

In *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[84] the Supreme Court held that the practice of reassigning or transferring ROs originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his[/her] duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his[/her] duly authorized representative to examine the taxpayer's books of accounts.

The LOA dated June 16, 2015 authorized ROs Manodon, Dimakuta, Matibag and Ramirez and GS Monica Zamora to examine

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the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.
[82] G.R. No. 178697, November 17, 2010.
[83] G.R. No. 222743, April 5, 2017.
[84] G.R. No. 242670, May 10, 2021.

petitioner's books of accounts and other accounting records covering all internal revenue taxes for TY 2014.

A perusal of the BIR Records shows that it was **RO Edalyn Naty T. Dayacap, together with GS Evangeline M. Casipe and GS/CAS Zamora** who conducted the audit/investigation to assess petitioner for deficiency taxes for TY 2014. The following documents show that RO Dayacap and GS Casipe conducted the audit/investigation and not those ROs named in the LOA dated June 16, 2015, *viz.*:

1. Revenue Officer's Audit Report on Income Tax;[85]
2. Revenue Officer's Audit Report on Value-Added Tax;[86]
3. Revenue Officer's Audit Report on Excise Tax;[87]
4. Revenue Officer's Audit Report Expanded Withholding Tax;[88]
5. Revenue Officer's Audit Report Compensation Withholding Tax;[89]
6. Revenue Officer's Audit Report on Documentary Stamp Tax;[90]
7. Revenue Officer's Audit Report on Miscellaneous Tax;[91]
8. Memorandum dated March 15, 2019 recommending the issuance of the PAN;[92]
9. Revenue Officer's Audit Report on Income Tax;[93]
10. Revenue Officer's Audit Report on Value-Added Tax;[94]
11. Revenue Officer's Audit Report on Excise Tax;[95]
12. Revenue Officer's Audit Report Expanded Withholding Tax;[96]
13. Revenue Officer's Audit Report Compensation Withholding Tax;[97]
14. Revenue Officer's Audit Report on Documentary Stamp Tax;[98]
15. Revenue Officer's Audit Report on Miscellaneous Tax;[99] and,

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[85] Exhibit "R-9", BIR Records Folder 1, p. 463.
[86] Exhibit "R-9", BIR Records Folder 1, p. 461.
[87] Exhibit "R-9", BIR Records Folder 1, p. 460.
[88] Exhibit "R-9", BIR Records Folder 1, p. 458.
[89] Exhibit "R-9", BIR Records Folder 1, p. 456.
[90] Exhibit "R-9", BIR Records Folder 1, p. 454.
[91] Exhibit "R-9", BIR Records Folder 1, p. 452.
[92] Exhibit "R-9", BIR Records Folder 1, pp. 465-478.
[93] Exhibit "R-9", BIR Records Folder 1, p. 528.
[94] Exhibit "R-9", BIR Records Folder 1, p. 526.
[95] Exhibit "R-9", BIR Records Folder 1, p. 524.
[96] Exhibit "R-9", BIR Records Folder 1, p. 522.
[97] Exhibit "R-9", BIR Records Folder 1, p. 520.
[98] Exhibit "R-9", BIR Records Folder 1, p. 518.
[99] Exhibit "R-9", BIR Records Folder 1, p. 516.

16. Memorandum dated June 24, 2019 recommending the issuance of the FLD and Assessment Notices.[100]

Moreover, an examination of the BIR Records reveals that no LOA was issued to authorize RO Dayacap and GS Casipe to conduct the audit/investigation of petitioner's tax liabilities for TY 2014. Thus, they were not authorized to conduct the audit/investigation of petitioner.

Anent respondent's argument that an LOA is not a requirement when the audit investigation is conducted by the Office of the CIR, the same is bereft of merit. This argument has already been settled by the Supreme Court in *Commissioner of Internal Revenue vs. Tridharma Marketing Corporation,*[101] *viz.*:

> "Anent the CIR's argument that an LOA is not necessary if it is the Commissioner of Internal Revenue himself/herself who signed the LN and conducted the examination, this deserves scant consideration.
>
> While it may have been the Commissioner himself who signed the LN, it was RO Bravo, and later on, RO Potot who conducted the audit and examination of Tridharma's records. **The signing of an LN by the Commissioner cannot be taken as outright proof that it was the CIR himself who conducted the examination or audit,** absent proof of the same." (Boldfacing supplied)

In the present case, there is nothing on record which shows that the audit/investigation was conducted by the CIR himself. It was conducted by RO Dayacap and GS Casipe who were not authorized by an LOA.

Since the conduct of the audit of petitioner was legally flawed, the assessments issued against it are inescapably void. Needless to say, a void assessment bears no fruit[102] and must be slain at sight.

(ii) The FLD is an exact replica of the PAN

Even assuming that RO Dayacap and GS Casipe were authorized to conduct the audit/investigation on petitioner, the assessments issued against petitioner are still void.

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[100] Exhibit "R-9", BIR Records Folder 1, pp. 530-546.
[101] G.R. No. 261787, October 4, 2023.
[102] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., and Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue[103] *(Avon)* stresses the significance of the CIR's duty to apprise the taxpayer of the legal and factual bases of the assessments issued against it, to consider the explanations or defenses raised by the taxpayer in connection with the assessments, and to communicate to the taxpayer the reason for the rejection of such explanations or defenses, lest the assessment be deemed **void**:

> "**The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; **otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void**. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. **Failure to do so would invalidate the Final Decision on Disputed Assessment.**
>
> xxx xxx xxx
>
> **On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment.** xxx
>
> xxx xxx xxx
>
> **The facts demonstrate that Avon was deprived of due process.** It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, **did not even comment or address the defenses and documents submitted by Avon**. **Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> **First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was**

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[103] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

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> **issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.**
>
> **Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.**
>
> xxx xxx xxx
>
> **It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**
>
> xxx xxx xxx
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.**
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.**" *(Boldfacing and underscoring supplied)*

A careful perusal of the PAN[104] and FLD[105] issued against petitioner disclosed that the FLD is a verbatim reproduction of the wordings of the PAN, just differing in the amount of the interests.

[104] Exhibit "P-6", CTA Docket Vol. II, pp. 1247-1250; Exhibit "R-6", BIR Records Folder 1, pp. 507-510.
[105] Exhibit "P-8", CTA Docket Vol. II, pp. 1251-1254; Exhibit "R-7", BIR Records Folder 1, pp. 579-582.

Likewise, the Details of Discrepancies[106] attached to the FLD is a verbatim reproduction of the Details of Discrepancies[107] attached to the PAN.

Truth to tell, the FLD neither referred to petitioner's Reply to the PAN[108] nor addressed the arguments therein. There is also nothing on record which would show that respondent informed petitioner of the reasons for respondent's apparent rejection of its arguments in the Reply to the PAN.

Consistent with *Avon*, respondent's omission to give due consideration to the arguments raised by petitioner in its Reply to the PAN and to communicate to petitioner his reasons for rejecting its arguments amounts to a deplorable transgression of petitioner's right to due process.

It is well settled that any assessment that failed to strictly comply with due process requirements are intrinsically void.

All told, the assessments issued against petitioner in the present case are void for: (1) having been issued *sans* a valid LOA on the part of the RO and GS who conducted petitioner's audit/investigation; and, (2) for respondent's omission to give due consideration to petitioner's arguments in its Reply to the PAN and to communicate to petitioner his reasons for rejecting its arguments - - an omission that effectively deprived petitioner of its right to due process of law.

In light of the foregoing, the Court need not belabor the other issues raised by the parties.

WHEREFORE, premises considered, the Petition for Review filed on February 23, 2022 by petitioner Zambales Diversified Metals Corporation is **GRANTED**. Accordingly, the undated Formal Letter of Demand with Details of Discrepancies and Assessment Notices, all dated June 27, 2019, and the Final Decision on Disputed Assessment with Audit Results/Assessment Notices, all dated January 24, 2022 assessing petitioner in the total amount of ₱1,862,746,515.18 representing the alleged deficiency income tax, value-added tax, excise tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, and administrative penalties,

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[106] Exhibit "R-7-1", BIR Records Folder 1, pp. 575-578.
[107] Exhibit "R-6-1", BIR Records Folder 1, pp. 503-506.
[108] Exhibit "P-7", CTA Docket Vol. II, pp. 817-832.

surcharges and interest for taxable year 2014, are **CANCELLED** and **SET ASIDE** for being void *ab initio*.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed alleged deficiency tax assessments subject of the undated Formal Letter of Demand with Details of Discrepancies and Assessment Notices, all dated June 27, 2019, and the Final Decision on Disputed Assessment with Audit Results/Assessment Notices, all dated January 24, 2022, assessing petitioner of deficiency income tax, value-added tax, excise tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, and administrative penalties, surcharges and interest in the aggregate amount of ₱1,862,746,515.18, for taxable year 2014. This decree of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice