REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2889
(CTA Case No. 9736)

Present:

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

Promulgated:
JAN 07 2026
4:00pm

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner OceanaGold (Philippines), Inc. (**petitioner**) on 03 April 2024[2], pursuant to Section 3(b)[3], Rule 8, in relation to Section

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[1] *Rollo*, pp. 37-85.

[2] The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a "Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 22 March 2024, id., p. 36.

[3] **SEC. 3.** *Who may appeal; period to file petition.*

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

2(a)(1)[4], Rule 4 of the Revised Rules of the Court of Tax Appeals[5] (**RRCTA**), assailing the Decision dated 10 August 2023[6] (**assailed Decision**) and Resolution dated 26 February 2024[7] (**assailed Resolution**) of the Special First Division[8] in Court of Tax Appeals (**CTA**) Case No. 9736, entitled *OceanaGold (Philippines), Inc. v. Commissioner of Internal Revenue*, which affirmed respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) deficiency excise tax (**ET**) assessment for calendar year (**CY**) ended 31 December 2013 amounting to ₱125,177,799.00, exclusive of surcharge and interest.

PARTIES OF THE CASE

Petitioner is a corporation organized and existing under the laws of the Philippines, with principal place of business at the 2nd Floor, Carlos J. Valdez (**CJV**) Building, 108 Aguirre St., Legaspi Village, 1229 Makati City.[9]

Respondent, on the other hand, is the duly appointed CIR empowered to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties and fines connected therewith, with office address at the Bureau of Internal Revenue (**BIR**) National Office Building, BIR Road, Diliman, Quezon City, where he or she may be served summons and other legal processes of the Court.[10]

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additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

4 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
...
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

5 A.M. No. 05-11-07-CTA.

6 *Rollo*, pp. 6-26.

7 Id., pp. 28-33.

8 Penned by Associate Justice Marian Ivy F. Reyes-Fajardo, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.

9 See Parties, Decision dated 10 August 2023, supra at note 6, p. 6.

10 Id., p. 7.

FACTS OF THE CASE

Petitioner received Letter of Authority (**LOA**) No. 121-2014-00000158 dated 24 November 2014, issued by Nestor S. Valeroso (**Valeroso**), officer-in-charge (**OIC**) Assistant Commissioner (**Asst. Comm.**) of the Large Taxpayers Service (**LTS**). The LOA authorized Revenue Officers (**ROs**) Thelma Pilar (**Pilar**), Rona Marcellano (**Marcellano**), and Dalisay Umlas (**Umlas**), under the supervision of Group Supervisor (**GS**) Herminia Cercado (**Cercado**), to examine petitioner's books and records for all internal revenue taxes, including documentary stamp tax, for CY 2013.[11]

Thereafter, on 13 December 2016, petitioner received an undated Preliminary Assessment Notice (**PAN**) accompanied by a Details of Discrepancies.[12] Petitioner promptly filed a reply thereto on 28 December 2016, disputing the proposed deficiencies in income tax, value-added tax (**VAT**), expanded withholding tax (**EWT**), fringe benefit tax (**FBT**), withholding tax on compensation (**WTC**), ET, documentary stamp tax (**DST**) and administrative penalties.[13]

By 01 February 2017, petitioner received a Formal Letter of Demand (**FLD**) with attached Details of Discrepancies, assessing deficiency taxes amounting to ₱816,484,285.75, inclusive of interest.[14] Petitioner reiterated its objections in its Protest to the FLD filed on 02 March 2017.[15]

Subsequently, on 20 November 2017, petitioner received the Final Decision on Disputed Assessment (**FDDA**)[16] dated 16 October 2017, reducing the assessment to ₱262,678,769.98[17], broken down as follows:

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[11] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume III, p. 1111; Exhibit "P-51", id., Volume IV, p. 1877.

[12] Exhibit "P-52", id., pp. 1879-1888.

[13] Exhibit "P-53", id., pp. 1889-1902.

[14] Par. 3, Stipulation of Facts, JSFI, id., Volume III, p. 1112; Exhibit "P-54", id., pp. 1903-1924.

[15] Exhibit "P-55", id., pp. 1925-1941.

[16] Exhibit "P-57", id., pp. 1945-1948.

[17] ₱0.51 rounding off difference.

Tax Type/Fee	Basic	Surcharge	Interest	Total
Income Tax	₱4,255,439.55	-	₱3,059,188.20	₱7,314,627.75
VAT	266,442.94	-	200,598.00	467,040.94[18]
EWT	32,647.99	-	27,030.75	59,678.74
FBT	1,434,660.73	-	1,087,983.81	2,522,644.54
ET	125,177,799.00	-	95,958,214.14	221,136,013.14
DST	15,482,279.00	₱3,870,569.75	11,825,916.12	31,178,764.87
Total				**₱262,678,769.98**

Finally, on 29 November 2017, petitioner settled all assessed deficiencies pursuant to the FDDA, except ET assessment, from which the present controversy now emanates.[19]

PROCEEDINGS BEFORE THE COURT IN DIVISION

On 19 December 2017, petitioner filed a Petition for Review[20], assailing the unpaid ET assessment and it was raffled initially to the Third Division. In its Petition for Review, petitioner averred that it was exempt from ET from the date of approval of its Partial Declaration of Mining Feasibility[21] (**PDMF**) (*i.e.*, 11 October 2005) up to the end of the recovery period (*i.e.*, 01 April 2018), which includes the subject period of CY 2013. According to petitioner, its exemption is pursuant to the Financial or Technical Assistance Agreement (**FTAA**)[22], Section 81 of Republic Act No. (**RA**) No. 7942[23], otherwise known as the "Philippine Mining Act of 1995", and Section 236 of Department of Environment and Natural Resources (**DENR**) Administrative Order (**DAO**) No. 95-23.[24] Additionally, petitioner argued that BIR Ruling No. 10-2007 supports its ET exemption.[25]

On 22 March 2018, respondent filed his or her Answer.[26] In his or her Answer, respondent counter-argued that the Petition for Review

18 Id.
19 Exhibit "P-58" to "P-62", Division Docket, Volume IV, pp. 1950-1964.
20 Id., Volume I, pp. 10-52.
21 Exhibits "P-7" and "P-8", id., Volume IV, pp. 1440-1443.
22 Exhibit "P-2", id., pp. 1356-1409.
23 AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION.
24 Implementing Rules and Regulations of Republic Act No. 7942, Otherwise Known as the "Philippine Mining Act of 1995".
25 Baniqued & Baniqued, BIR Ruling No. 10-2007, 04 May 2007.
26 Division Docket, Volume I, pp. 248-257.

collaterally attacked the validity of Revenue Memorandum Circular (**RMC**) No. 17-2013[27], for which the First Division is devoid of any jurisdiction.

In the Order dated 25 September 2018, the present case has been transferred to the First Division pursuant to Administrative Circular No. 02-2018 dated 18 September 2018.[28]

Following the submission of petitioner's Pre-Trial Brief[29] on 21 June 2018, and respondent's Pre-Trial Brief[30] on 20 May 2019, the Pre-Trial Conference was held on 25 July 2019.[31]

On 09 August 2019, both parties submitted a Joint Stipulation of Facts and Issues[32] (**JSFI**), which the First Division admitted and approved through a Resolution dated 11 September 2019[33], effectively terminating the Pre-Trial Conference. A Pre-Trial Order[34] was subsequently issued on 24 October 2019.

During the trial that thereafter ensued, petitioner presented three (3) witnesses who all testified *via* their respective judicial affidavits, namely: (1) Atty. Joan D. Adaci-Cattiling (**Atty. Cattiling**), its Senior Legal Counsel and Corporate Secretary; (2) Hesther Bahiwag (**Bahiwag**), its Financial Accounting Superintendent; and (3) Elaine E. De Guzman (**De Guzman**), the Court-commissioned Independent Certified Public Accountant (**ICPA**), whose ICPA Report was submitted 25 November 2019.[35]

On the witness stand, Atty. Cattiling declared essentially that: (1) the FTAA[36] was executed on 20 June 1994 between the Republic of the Philippines with Arimco Mining Corporation (**AMC**), which

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27 Clarifying the Taxes Due from Financial or Technical Assistance Agreement (FTAA) Contractors During "Recovery Periods".
28 Division Docket, Volume II, p. 970.
29 Id., pp. 820-845.
30 Id., pp. 987-991.
31 Minutes of the hearing held on, and Order dated, 25 July 2019, id., Volume III, pp. 1094-1096, and pp. 1098-1099, respectively.
32 Id., pp. 1111-1126.
33 Id., pp. 1198-1199.
34 Id., pp. 1254-1269.
35 Exhibit "P-71", USB; See id., p. 1277.
36 Exhibit "P-2", supra at note 22.

subsequently changed its name to Climax-Arimco Mining Corporation (**CAMC**), later assigned (with DENR approval) to Australasian Philippines Mining, Inc. (**APMI**), which became petitioner; (**2**) the FTAA has granted petitioner a period to recover the pre-operating expenses, property expenses and all taxes paid for a period of five (5) years from the date of commencement of commercial production or shorter, if there is actual recovery of pre-operating expenses prior to the end of the five (5)-year period; (**3**) petitioner submitted a PDMF[37] for the Didipio Gold/Copper Project; (**4**) the Mines and Geosciences Bureau (**MGB**) Technical Evaluation Committee approved it on 07 October 2005; (**5**) DENR approved the PDMF on 11 October 2005; (**6**) such approval constitutes petitioner's permit to operate the Didipio Project; (**7**) the mine development was halted due to escalating costs and uncertainty in the financial markets from December 2008 until December 2010; (**8**) roughly 800,000 metric tons (**MT**) were stockpiled by late 2012 during commissioning; (**9**) respondent issued a ruling confirming exemption from ET from PDMF approval until the end of the FTAA recovery period; (**10**) RMC No. 17-2013[38] the same ruling; and (**11**) RMC No. 17-2013 was not published and was issued without the MGB consultation that RMC No. 28-2012[39] required and without giving petitioner an opportunity to be heard.[40]

In her cross-examination, Atty. Cattiling clarified that: (1) the mineral products seized by the BIR included those covered by the ET assessment for CY 2013; and (2) the BIR ruling being referred to in her judicial affidavit, *i.e.*, BIR Ruling No. 10-2007[41], does not pertain solely to the mineral products seized in February 2012 and March 2013, but was the BIR's ruling on petitioner's exemption from ET.[42]

No redirect examination was conducted.[43]

Upon the completion of Atty. Cattiling's testimony, petitioner presented Bahiwag. She testified that: (1) petitioner is registered with

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37 Supra at note 21.
38 Supra at note 27.
39 Publishing the Full Text of the Implementing Guidelines of the Memorandum of Agreement Between the BIR and MGB.
40 See Judicial Affidavit of Atty. Joan D. Adaci-Cattiling dated 20 June 2018, Exhibit "P-65", Division Docket, Volume I, pp. 274-297.
41 Supra at note 25.
42 TSN dated 01 October 2019, pp. 10-11.
43 Id., p. 11.

the BIR; (2) on 13 December 2016, petitioner received an undated PAN; (3) on 01 February 2017, petitioner received an FLD; (4) on 20 November 2017, petitioner received the FDDA; and (5) petitioner paid all the deficiency tax assessments, except for ET assessment.[44]

During Bahiwag's cross-examination, she clarified that the recovery period is five (5) years from the commencement of commercial operation based on the FTAA petitioner executed with the government.[45]

With no further questions or redirect, the cross-examination was concluded.[46]

Lastly, ICPA De Guzman testified that: (1) petitioner has already paid all deficiency tax assessments save for ET; (2) petitioner has incurred US$310,519,081.00 as valid pre-operating expenses as of 31 March 2013; and (3) as of 31 December 2013, petitioner was still under the recovery period as neither five (5) years had elapsed from the commencement of commercial operations on 01 April 2013, nor had petitioner's actual net cash flows from mining operations exceeded valid pre-operating expenses incurred.[47]

On cross-examination, ICPA De Guzman clarified that: (1) the amount of US$310,519,081.00 in pre-operating expenses was based on petitioner's valid documents; (2) her team verified the original invoices and traced them to petitioner's general ledgers (GLs); (3) they reckoned the five (5)-year recovery period from the Letter dated 27 March 2013 advising the DENR Secretary that, on 2 February 2013, the Didipio Project milled 301,903 tons and achieved 15% production capacity[48]; and (4) she did not examine the feasibility study and related work program to ascertain the date of commercial operation stated therein.[49]

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44 See Judicial Affidavit of Hesther Bahiwag dated 20 June 2018, Exhibit "P-66", Division Docket, Volume II, pp. 851-857.
45 TSN dated 29 October 2019, pp. 8-11.
46 Id., p. 11.
47 See Judicial Affidavit of Elaine E. De Guzman dated 27 November 2019, Exhibit "P-68", Division Docket, Volume III, pp. 1282-1288.
48 Exhibit "P-27", id., Volume IV, pp. 1515-1516.
49 TSN dated 03 December 2019, pp. 8-11.

No redirect examination was conducted.[50]

On 27 December 2019, petitioner then filed its Formal Offer of Evidence[51] (**FOE**), to which respondent filed his or her "Comment/ Opposition (On Petitioner's [FOE])" on 16 January 2020.[52] In Resolutions dated 10 June 2020[53] and 12 January 2021[54], the First Division admitted petitioner's exhibits, except for: Exhibits "P-79-A", "P-394", "P-3015-A," "P-3080-A," "P-7557" to "P-7558," "P-8617," "P-15853," "P-22360", "P-23695", "P-2569" to "P-2576", "P-27240" to "P-27241", "P-27308" to "P-27311", "P-36322" to "P-36324", "P-36804" to "P-36805", "P-38035" to "P-38038", "P-48107" to "P-48109", "P-51601" to "P-51786", "P-51791" to "P-52235", "P-52238" to "P-52774", "P-52776" to "P-52781", "P-52783" to "P-52893", "P-52895" to "P-53349", "P-19365" to "P-19367", "P-19657" to "P-19659"[55], for not being found in the records.

Petitioner was then declared to have rested its case.

Respondent, for his or her part, presented RO Marcellano as his or her lone witness who testified *via* her judicial affidavit.

On the witness stand, RO Marcellano testified that: (1) she supervised and reviewed the audit of petitioner's books; (2) she recommended the issuance of PAN; (3) petitioner filed a reply to the PAN however, petitioner failed to submit sufficient documents to refute the assessments; (4) subsequently, an FLD was issued; (5) petitioner's request for reinvestigation was granted; and (6) they found some of petitioner's arguments meritorious resulting in a decrease of petitioner's deficiency taxes for CY 2013 as reflected in the FDDA.[56]

No cross-examination was conducted.[57]

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50 Id., p. 11.
51 Division Docket, Volume IV, pp. 1298-1344.
52 Id., pp. 1969-1972.
53 Id., pp. 1979-1984.
54 Id., pp. 2015-2021.
55 All described in the FOE as "Summary and photocopies of official receipts, sales invoices and other alternative documents such as billing statements, contracts."
56 See Judicial Affidavit of Rona Marcellano dated 20 May 2019, Exhibit "R-12", Division Docket, Volume II, pp. 993-1007.
57 TSN dated 22 March 2022, p. 7.

Respondent subsequently filed his or her FOE[58] on 31 March 2022, to which petitioner filed a "Comment (on Respondent's [FOE] dated March 31, 2022) on 08 April 2022.[59] The First Division, through its Resolution dated 06 June 2022[60], admitted all of respondent's exhibits.

Following the filing of respondent's and petitioner's respective Memoranda on 11 July 2022[61] and 29 July 2022[62], the First Division, through its Resolution dated 10 August 2022[63], submitted the present case for decision.

In the assailed Decision, the Special First Division denied petitioner's Petition for Review for lack of merit.[64] The pertinent portion thereof reads:

> ...
>
> **WHEREFORE**, the Petition for Review dated December 18, 2017, filed by Oceana[G]old (Philippines), Inc. is **DENIED** for lack of merit.
>
> Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWO HUNDRED SIXTY-TWO MILLION THREE HUNDRED EIGHTY-SIX THOUSAND FOUR HUNDRED SEVENTY-EIGHT PESOS AND SEVENTY-EIGHT CENTAVOS (₱262,386,478.78)**, inclusive of surcharge and deficiency and delinquency interests imposed under Sections 248(A) and 249(B) of the NIRC of 1997, as amended, computed as follows:

Basic Excise Tax Due	₱125,177,799.00
Add: 25% Surcharge	31,294,449.75
20% Deficiency Interest from January 1, 2014 to November 20, 2017 *[₱125,177,799.00 x 20% x 1,420/365 days]*	97,398,616.21
Total Amount Due as of November 20, 2017	**₱253,870,864.96**
Add: 20 % Deficiency Interest from November 21, 2017 to December 31, 2017 *[₱125,177,799.00 x 20% x 41/365 days]*	2,812,213.57
20% Delinquency Interest from November 21, 2017 to December 31, 2017 *[₱253,870,864.96 x 20% x 41/365 days]*	5,703,400.25
Total Amount Due as of December 31, 2017	**₱262,386,478.78**

58 Division Docket, Volume V, pp. 2041-2046.
59 Id., pp. 2048-2050.
60 Id., pp. 2054-2055.
61 Id., pp. 2056-2081.
62 Id., pp. 2083-2130.
63 Id., p. 2134.
64 Supra at note 6; citation omitted, emphasis and italics in the original text.

In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the ₱253,870,864.96 total amount due as of November 20, 2017, or an amount of P83,464.39 per day computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, this Court authorizes respondent to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property, and/ or to levy the real property, of petitioner, in sufficient quantity to satisfy the taxes herein ordered to be paid, and the increments thereto incident to delinquency.

SO ORDERED.

...

The Special First Division sustained the deficiency ET assessment, reasoning that: (1) DAO No. 12-2007[65] provides that the recovery period, or the period within which the government may not collect its share, including the ET, is a maximum period of five (5) years, counted from the date of commencement of commercial production (*first circumstance*), or the date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses *(second circumstance*), whichever comes first; (2) commercial production as defined under DAO No. 96-40[66] is reckoned from the date of commercial operation as declared by the Contractor or as stated in the feasibility study, whichever comes first; (3) MGB approved petitioner's PDMF on 11 October 2005, a date the Special First Division treated as marking the commencement of commercial operation for purposes of DAO No. 96-40, and counting five years therefrom placed the end of the recovery period at 11 October 2010 so that ET liability properly attached in 2013; and (4) even assuming reliance on the *second circumstance* under DAO No. 12-2007, the record is bereft of proof that the alleged recoverable pre-operating expenses were approved by the DENR Secretary (upon the MGB Director's recommendation) or validated by the government and/or its

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65 Revised Guidelines Establishing the Fiscal Regime of Financial or Technical Assistance Agreements (FTAA).

66 Revised Implementing Rules and Regulations of Republic Act No. 7942, Otherwise known as the "Philippine Mining Act of 1995."

designated representative and/or auditor so that no reliable comparison could be made between such expenses and petitioner's net cash flows, rendering the alleged date of recovery indeterminable.

On 01 September 2023, petitioner filed its MR[67] contending that: (1) the five (5)-year recovery period under its FTAA and DAO No. 96-40[68] may only be counted from the *Date of Commencement of Commercial Production*, which arises only upon actual production of sufficient quantity of minerals reaching 15% of the project's initial annual design capacity, a threshold it attained only on 26 February 2013 so that the proper recovery period runs from 01 April 2013 to 01 April 2018; (2) DAO Nos. 99-56[69] and 12-2007[70] are not implementing rules of RA 7942[71] but mere fiscal guidelines and pro-forma models for future FTAAs, which cannot retroactively amend its FTAA absent a letter of intent, negotiation, DENR recommendation and presidential approval, and thus the supposed requirement of prior DENR Secretary approval of pre-operating expenses does not bind petitioner; (3) assuming contrariwise that DAO No. 12-2007 applies, its purposes have in any event been fulfilled because DENR, through the 11 October 2005 MGB approval of the PDMF and related work programs, already had and exercised full opportunity to scrutinize and effectively approve the expenditures, while petitioner's pre-operating expenses have twice been examined and validated by independent CPAs, including a court-appointed ICPA; and (4) RMC No. 17-2013[72] is the very *lis mota* of the case since it is respondent's basis for the subject deficiency ET assessment, so its constitutional and procedural validity, must be resolved here, with the ultimate consequence that the deficiency ET for CY 2013 be struck down for want of factual and legal bases.

On 04 October 2023, respondent filed his or her "Comment/Opposition (Re: Petitioner's [MR] dated August 31, 2023)"[73], echoing the assailed Decision. Thereafter, the Special First Division

67 Division Docket, Volume V, pp. 2158-2189.
68 Supra at note 66.
69 Guidelines Establishing the Fiscal Regime of Financial or Technical Assistance Agreements.
70 Supra at note 65.
71 Supra at note 23.
72 Supra at note 27.
73 Division Docket, Volume V, pp. 2376-2387.

proceeded to promulgate its now assailed Resolution[74] of 26 February 2024, denying petitioner's MR. The pertinent portion thereof declares:

> ...
>
> **WHEREFORE**, premises considered:
>
> 1. Petitioner's Motion for Reconsideration [of Decision dated August 10, 2023] is **DENIED** for lack of merit[.]
>
> ...
>
> **SO ORDERED.**
>
> ...

In denying the MR, the Special First Division found that petitioner's contentions in its MR were mere reiterations of matters which had already been considered and passed upon in the assailed Decision.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unperturbed, petitioner elevated the instant case to the Court *En Banc*. Initially, it filed a "Motion for Extension of Time to File Petition for Review"[75] on 20 March 2024, following its receipt of a copy of the assailed Resolution on 05 March 2024.[76] On 03 April 2024 or within the extended period granted, petitioner filed the instant Petition for Review[77] seeking the reversal of the Special First Division's assailed Decision and Resolution.

On 02 May 2024, the Court *En Banc* directed respondent to file a Comment on the instant Petition for Review.[78] Respondent filed his or her "Comment (Re: Petitioner's Petition for Review dated 03 April 2024)"[79] on 17 May 2024. Thereafter, the Court *En Banc* r referred the case to the Philippine Mediation Center (**PMC**) – CTA, which proved

74 Supra at note 7; emphasis in the original text.
75 *Rollo*, pp. 1-4.
76 See Notice of Resolution, id., p. 27.
77 Id., pp. 37-80.
78 See *En Banc* Minute Resolution dated 02 May 2024, id., p. 153.
79 Id., pp. 154-165.

unsuccessful. Subsequently, the Court *En Banc* deemed the case submitted for decision.[80]

ISSUE

Stripped of collateral matters, the sole issue posed for resolution before the Court *En Banc* is —

> WHETHER PETITIONER OCEANAGOLD (PHILIPPINES), INC., A CONTRACTOR TO THE FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT EXECUTED ON 20 JUNE 1994 WITH THE GOVERNMENT WAS EXEMPT FROM EXCISE TAX ON ITS MINERAL PRODUCTS FOR CALENDAR YEAR 2013.[81]

ARGUMENTS

In the instant Petition for Review, petitioner maintains that: (1) it was exempt from paying ET for CY 2013 since the same was still within the five (5)-year recovery period; (2) the recovery period cannot be reckoned from 11 October 2005 because, under the FTAA and the non-impairment clauses of RA 7942[82] and DAO No. 96-40[83], the controlling definition of *Date of Commencement of Commercial Production* is the FTAA definition that requires actual production equal to 15% of initial annual design capacity, a threshold reached only on 26 February 2013, so that commercial production began on 01 April 2013 and the recovery period runs from 01 April 2013 to 01 April 2018; and (3) even if the definition of *Commercial Production* in DAO No. 96-40 is considered, it likewise requires "production of sufficient quantity of minerals to sustain economic viability" so that, properly harmonized with the FTAA, commercial production cannot be deemed to have commenced in 2005 when no mineral products were yet produced.

Petitioner further argues that: (4) DAO Nos. 99-56[84] and 12-2007[85] are not implementing rules of RA 7942 but fiscal guidelines

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80 See *En Banc* Minute Resolution dated 08 January 2025, id., p. 182.
81 See IV. Statement of the Issues, Petition for Review and V. Grounds and Summary of Arguments, supra at note 1, pp. 43-45.
82 Supra at note 23.
83 Supra at note 68.
84 Supra at note 69.

and pro-forma templates for future FTAAs, and their own provisions on the status of existing FTAAs, read together with Section 112[86] of RA 7942 and Section 272[87] of DAO No. 96-40[88], preserve the validity of pre-existing FTAAs and require contractors affirmatively to opt in if they wish to amend their fiscal regime, which petitioner never did, so the supposed requirement of prior DENR Secretary approval of pre-operating expenses does not bind its FTAA; and (5) in any event, even on the assumption that DAO No. 12-2007[89] applies, the purposes behind its approval and verification requirements have already been fulfilled because DENR, through the 11 October 2005 approval of the PDMF and associated work programs, has already examined and effectively approved the project expenses, petitioner's pre-operating expenses have twice been examined and validated by independent CPAs, including a court-appointed ICPA, and RMC No. 17-2013[90], being the very basis of the 2013 ET assessment, is the *lis mota* of the present case since its infirmity ultimately renders the assessment void for lack of legal basis.

Respondent counters that petitioner's recovery period indisputably began on 11 October 2005, the date the MGB approved petitioner's PDMF, because: (1) Section 7[91] of DAO No. 12-2007 mandates that the five (5)-year recovery period be counted either from the commencement of commercial production or from the point where net cash flows equal pre-operating expenses, whichever comes first; (2) DAO No. 96-40[92] defines *Commercial Production* as the production of sufficient quantity of minerals reckoned from the date of commercial operation as declared by the contractor or as stated in the feasibility study, whichever comes first, and petitioner's feasibility study and PDMF approval in 2005 already established viable reserves and a two million tons annual capacity; (3) the Special First Division correctly held that the 11 October 2005 MGB approval is the operative date of commercial production under DAO No. 96-40, making the recovery period end on 11 October 2010, well before CY 2013, thus validating the deficiency ET assessment; and (4) petitioner cannot

85 Supra at note 65.
86 SEC. 112. *Non-impairment of Existing Mining/Quarrying Rights.*
87 SEC. 272. *Non-Impairment of Existing Mining/Quarrying Rights.*
88 Supra at note 68.
89 Supra at note 65.
90 Supra at note 27.
91 Section 7. Recovery of Pre-Operating Expenses.
92 Supra at note 68.

insist on "actual" production or rely on the FTAA definition of *Commercial Production* because administrative issuances like DAO Nos. 96-40 and 12-2007 have the force of law and cannot be overridden by contractual clauses.

Respondent further argues that petitioner failed to show that the DENR Secretary ever approved its recoverable pre-operating expenses as MGB recommended or as verified by the government and/or its designated representative and/or auditor its authorized auditor, as required under Section 7(b) of DAO No. 12-2007. According to respondent, owing to this, it is impossible to determine the *second circumstance* governing the start of the recovery period and that petitioner's reliance on a court-appointed ICPA could not satisfy the mandated governmental approval and verification.

On the issue of RMC No. 17-2013, respondent maintains that the CTA lacks jurisdiction to rule on the validity or constitutionality of administrative issuances issued under the CIR's quasi-legislative power, since such questions fall within the authority of the Secretary of Finance and ultimately the regular courts, and citing jurisprudence that the CTA, being a court of special jurisdiction, cannot assume powers of judicial review reserved to courts of general jurisdiction. Finally, respondent submits that tax assessments enjoy a presumption of correctness which petitioner failed to overcome.

RULING OF THE COURT *EN BANC*

Before delving into the merits of the case, the Court *En Banc* shall first ascertain whether the instant Petition for Review was timely filed.

THE INSTANT PETITION FOR REVIEW WAS TIMELY FILED.

Section 18 of RA 1125[93], as amended by RA 9282[94], provides that a party adversely affected by a resolution of a Division of the CTA on

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93 AN ACT CREATING THE COURT OF TAX APPEALS.

94 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 OF

motion for reconsideration or new trial, may file a Petition for Review with the Court *En Banc*.

Section 3(b)[95], Rule 8 of the RRCTA states that the party affected should file the Petition for Review within fifteen (15) days from receipt of a copy of the questioned decision or resolution. This is without prejudice to the authority of the Court *En Banc* to grant an additional 15-day period[96] from the expiration of the original period, within which to file the Petition for Review.

Applying the foregoing, petitioner received the assailed Resolution on 05 March 2024.[97] Counting 15 days therefrom, petitioner had until 20 March 2024 to file the present Petition for Review before the Court *En Banc*. On 20 March 2024, petitioner filed a "Motion for Extension of Time to File Petition for Review"[98] which the Court eventually granted[99], pushing the deadline to file the petition to 04 April 2024.

The instant petition filed on 03 April 2024[100] has, therefore, been timely filed and the Court *En Banc* successfully acquired jurisdiction over the instant case.

We, thus, proceed to discuss petitioner's arguments in support of this instant petition.

PETITIONER IS EXEMPT FROM PAYING EXCISE TAXES PURSUANT TO REPUBLIC ACT (RA) NO. 7942.

Foremost, the Court *En Banc* holds in unequivocal terms that petitioner enjoyed exemption from ET pursuant to RA 7942.[101]

REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

95 Supra at note 3.
96 Id.
97 Supra at note 76.
98 Supra at note 75.
99 See *En Banc* Minute Resolution dated 22 March 2024, *rollo*, p. 36.
100 Supra at note 1.
101 Supra at note 23.

Section 81 of the RA 7942 provides:

...

SEC. 81. ***Government Share in Other Mineral Agreements.*** — ...

...

The Government share in financial or technical assistance agreement shall consist of, among other things, the contractor's corporate income tax, **excise tax**, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws.

The **collection of Government share** in financial or technical assistance agreement **shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses**, exploration, and development expenditures, inclusive.[102]

...

Moreover, the FTAA[103], executed on 20 June 1994 between petitioner and the government, provides the following:

...

SECTION XI
FISCAL REGIME

...

11.2 Recovery of Preoperating Expenses, Property Expenses and Taxes Paid During the Recovery Period. The CONTRACTOR shall have a period of up to **five (5) Contract Years, counted from the Date of Commencement of Commercial Production within which to recover its: (a) Preoperating Expenses; and (b) Property expenses incurred during the period in which Preoperating Expenses are recovered,** after which period only shall the right of the GOVERNMENT to share in the Net Revenue, as hereinafter defined, accrue.

However, if after the lapse of the period mentioned in the preceding paragraph, the CONTRACTOR has not yet fully recovered its Preoperating Expenses and Property expense incurred during the Period in which Pre-operating Expenses were incurred, it shall be

102 Emphasis and italics in the original text and supplied.
103 Exhibit "P-2", supra at note 22.

allowed to recover the same as a depreciation allowance deductible against the distributable Net Revenues over the period of the succeeding three Contract Years.

...

All taxes, duties, fees, costs, levies and imposts paid by the CONTRACTOR and which are detrimental to the CONTRACTOR's recovery of Preoperating Expenses and Property Expenses during the five (5) Contract Years contemplated in this Section shall be recoverable by the CONTRACTOR, whenever possible during the year(s) such expenditures were actually incurred. **Any amount not recovered shall be deducted from the GOVERNMENT's Share** as more specifically provided in Section 11.5 of this Agreement, unless legislation is required to allow the necessary deductions, in which case the deductions shall be made only after the appropriate legislation has been passed.

All the items recoverable by the CONTRACTOR under this Section 11.2, including the on-going Mineral Exploration costs incurred by the CONTRACTOR during the five-year recovery period, shall be recovered from Net Revenue, as the term 'Net Revenue' is defined under Section 11.4 of this Agreement.[104]

...

Relevantly, certain phrases in the FTAA, as used in the foregoing stipulations, mean as follows:

...

SECTION II
DEFINITIONS

...

2.10 "Commercial Production" means the production of sufficient quantity of minerals to sustain economic viability of Mining Operations as specified in the approved Work Program. Production of copper, gold and silver ore required to test and/or develop a processing system or supply a pilot plant used for such testing shall not be considered in the determination of Commercial Production.

...

2.12 "Contract Year" means a period of twelve (12) consecutive months counted from the Effective Date of this Agreement or from the anniversary of such Effective Date.

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104 Emphasis supplied and underscoring in the original text.

> 2.13 "<u>CONTRACTOR</u>" means Arimco Mining Corporation and **its assignee or assignees of any interest under this Agreement** provided such assignment of any such interest is accomplished pursuant to the provisions hereof.
>
> 2.14 "<u>Date of Commencement of Commercial Production</u>" shall mean the first day of the calendar quarter following the quarter in which production equals **fifteen percent (15%) of the project's initial annual design capacity as outlined in the Declaration of Mining Feasibility** as hereinafter defined.
>
> 2.15 "<u>Declaration of Mining Feasibility</u>" means a document proclaiming the presence of minerals in a specific site that are recoverable by socially acceptable, environmentally safe and economically sound methods, as required to be submitted by the CONTRACTOR under Section VII of this Agreement.[105]
>
> ...

In relation thereto, the DENR issued DAO No. 99-56[106] providing the guidelines of the Fiscal Regime portion of the FTAAs executed pursuant to RA 7942[107], to wit:

> ...
> SECTION 3. *Fiscal Regime of a Financial or Technical Assistance Agreement*
>
> The Financial or Technical Assistance Agreement which the Government and the FTAA Contractor **shall enter into shall have a Fiscal Regime embodying the following provisions:**
>
> ...
>
> d. *Payment of Government Taxes and Fees.* The Contractor shall promptly pay all the taxes and fees required by the Government in carrying out the activities covered in the FTAA and in such amount, venue, procedure and time as stipulated by the particular law and implementing rules and regulations governing such taxes and fees subject to all rights of objection or review as provided for in relevant laws, rules and regulations. **In case of non-collection as covered by Clause 3-g-1 of this Section, the Contractor <u>shall follow the prevailing procedures for availment of such non-collection in accordance with pertinent laws, rules and regulations</u>**. Where prevailing orders, rules and regulations do not fully recognize and implement the provisions covered by Clause 3-g-1 of this Section, the

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105 Emphasis supplied and underscoring in the original text.
106 Supra at note 69.
107 Supra at note 23.

Government shall exert its best efforts to ensure that all such orders, rules and regulations are revised or modified accordingly.

e. *Recovery of Pre-Operating Expenses.* Considering the high risk, high cost and long term nature of Mining Operations, the Contractor is given the opportunity to recover its Pre-Operating Expenses incurred during the pre-operating period, after which the Government shall receive its rightful share of the national patrimony. **The Recovery Period, which refers to the period allowed to the Contractor to recover its Pre-Operating Expenses as provided in the Mining Act and the IRR, shall be for a maximum of five (5) years or at a date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-operating Expenses, reckoned from the Date of Commencement of Commercial Production, whichever comes first.** The basis for determining the Recovery Period shall be the actual Net Cash Flows from Mining Operations and actual Pre-Operating Expenses converted into its US dollar equivalent at the time the expenditure was incurred.

"Net Cash Flow" means the Gross Output less Deductible Expenses, Pre-Operating Expenses, Ongoing Capital Expenditures and Working Capital charges.

f. *Recoverable Pre-Operating Expenses.* Pre-Operating Expenses for recovery which shall be approved by the Secretary upon recommendation of the Director shall consist of actual expenses and capital expenditures relating to the following:

1. Acquisition, maintenance and administration of any mining or exploration tenements or agreements covered by the FTAA;
2. Exploration, evaluation, feasibility and environmental studies, production, mining, milling, processing and rehabilitation;
3. Stockpiling, handling, transport services, utilities and marketing of minerals and mineral products;
4. Development within the Contract Area relating to the Mining Operations;
5. All Government taxes and fees;

...

The foregoing recoverable Pre-Operating Expenses shall be subject to verification of its actual expenditure by an independent audit recognized by the Government and chargeable against the Contractor.

g. *Government Share.*

1. *Basic Government Share.* The following taxes, fees and other such charges shall constitute the Basic Government Share:

a) **Excise tax on minerals;**
b) Contractor's income tax;
c) Customs duties and fees on imported capital equipment;
d) Value-added tax on the purchase of imported equipment, goods and services;
e) Withholding tax on interest payments on foreign loans;
f) Withholding tax on dividends to foreign stockholders;
g) Royalties due the Government on Mineral Reservations;
h) Documentary stamps taxes;
i) Capital gains tax;
j) Local business tax;
k) Real property tax;
l) Community tax;
m) Occupation fees;
n) All other local Government taxes, fees and imposts as of the effective date of the FTAA;
o) Special Allowance, as defined in the Mining Act; and
p) Royalty payments to any Indigenous People(s)/Indigenous Cultural Community(ies).

From the Effective Date, the foregoing taxes, fees and other such charges constituting the Basic Government Share, if applicable, shall be paid by the Contractor: *Provided,* **That above items (a) to (g) shall <u>not be collected</u> from the Contractor <u>upon the date of approval of the Mining Project Feasibility Study up to the end of the Recovery Period</u>**. Any taxes, fees, royalties, allowances or other imposts, which should not be collected by the Government, **but nevertheless paid by the Contractor and are not refunded** by **the Government before the end of the next taxable** year, **shall be included in the Government Share in the next taxable year**. Any Value-Added Tax refunded or credited shall not form part of Government Share.[108]

...

Additionally, in *La Bugal-B'laan Tribal Association, Inc. v. Victor O. Ramos, et al.*[109], the Supreme Court recognized that FTAA regimes may grant fiscal and non-fiscal incentives, including *temporary* non-payment of ET on mineral products, during the recovery period, to support the contractor's cash flow in the cost-recovery phase, to wit:

[108] Italics, emphasis in the original text and supplied, and underscoring supplied.
[109] G.R. No. 127882 (Resolution), 01 December 2004; Citation omitted and emphasis supplied.

> ...
>
> On the other hand, **the FTAA contractor is granted by the government certain fiscal and non-fiscal incentives [non-payment of excise tax on mineral products]** to help support the former's cash flow during the most critical phase (cost recovery) and to make the Philippines competitive with other mineral-producing countries. **After the contractor has recovered its initial investment, it will pay all the normal taxes and fees comprising the basic share of the government**, plus an additional share for the government based on the options and formulae set forth in DAO 99-56.
>
> ...

Undeniably, in accordance with the foregoing provisions, petitioner, as assignee[110] and now the contractor to the said FTAA, is entitled to *not* pay the ET on minerals, among others, from the date of approval of the Mining Project Feasibility Study up to the end of the recovery period (**which must not exceed five [5] years from the date of commencement of commercial production**).

The next pivotal query is whether petitioner has adduced clear and convincing evidence sufficient to overcome the presumption of correctness of the assessment by showing that, **for CY 2013, it remained within the FTAA recovery period and thus was exempt from ET on mineral products**.

We rule in the negative.

PETITIONER FAILED TO OVERCOME THE PRESUMPTION OF CORRECTNESS OF THE EXCISE TAX ASSESSMENT.

Incipiently, it bears noting that tax assessments by tax examiners are presumed correct and made in good faith.[111] All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie case* of

110 Exhibits "P-4" and "P-5", Division Docket, Volume IV, pp. 1420-1430.

111 *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, 03 May 2021.

liability on the part of the taxpayer is made.[112] If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. It is thus upon petitioner-taxpayer to prove that the assessment is wrong.[113]

Here, petitioner does not challenge the factual basis of the ET assessment, *e.g.*, quantities and value of mineral products, but instead relies solely on the alleged timing of the five (5)-year recovery period. It asserts that commencement of commercial production occurred on 01 April 2013 (the first day of the second calendar quarter following 26 February 2013, which was the day petitioner was able to mill 301,903 tons and achieve the 15% production capacity).[114] Thus, it avers that the recovery period is from **01 April 2013 to 31 March 2018**.

The governing rules do not support such a narrow construction.

Section 272 of DAO No. 96-40[115] states rather clearly:

...

CHAPTER XXX
Transitory and Miscellaneous Provisions

SEC. 272. *Non-Impairment of Existing Mining/Quarrying Rights.* — All valid and existing mining lease contracts, permits/licenses, leases pending renewal, Mineral Production Sharing Agreements, FTAA granted under Executive Order No. 279, at the date of the Act shall remain valid, shall not be impaired and shall be recognized by the Government: *Provided*, That the provisions of **Chapter XXI on Government share in Mineral Production Sharing Agreement and of Chapter XVI on incentives of the Act shall immediately govern and apply to a mining Lessee or Contractor** unless the mining Lessee or Contractor indicates its intention to the Secretary, in writing, not to avail of said provisions: *Provided, further*, That no renewal of mining lease contracts shall be granted after the expiration of its term: *Provided, finally*, That such leases, Production-Sharing Agreements,

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112 Id.
113 Id.
114 Exhibit "P-27", supra at note 48.
115 Supra at note 68.

FTAAs shall comply with the applicable provisions of these implementing rules and regulations.[116]

...

Chapter XXI of the same DAO provides:

...

CHAPTER XXI
Government Share in Mineral Agreements/FTAAs

...

SECTION 214. *Government Share in FTAA.* —The Government share in an FTAA shall consist of, among other things, the Contractor's corporate income tax, excise tax, Special Allowance, withholding tax due from the Contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign-owned corporation and all such other taxes, duties and fees as provided for in existing laws.

...

The collection of Government share shall commence after the FTAA Contractor has fully recovered its pre-operating, exploration and development expenses, inclusive. **The period of recovery which is reckoned from the date of commercial operation shall be for a period not exceeding five (5) years or until the date of actual recovery, whichever comes earlier.**[117]

...

The same DAO defines the term "Commercial Production" to be –

...

Section 5. Definitions of Terms

...

i. "Commercial Production" refers to the production of sufficient quantity of minerals to sustain economic viability of mining operations **reckoned from the date of commercial operation <u>as declared</u> by the Contractor or <u>as stated</u> in the feasibility study, *whichever comes first.*** [118]

...

[116] Emphasis supplied and italics in the original text.
[117] Emphasis supplied and italics in the original text.
[118] Emphasis, underscoring and italics supplied.

From the foregoing, the recovery period is five (5) years from the date of commercial operation or until actual recovery, **whichever comes earlier**. The date of commercial operation is reckoned from the date of commercial operation as declared by the contractor or as stated in the feasibility study, **whichever comes first**.

In the assailed Decision, the Special First Division reckoned the five (5)-year recovery period from 11 October 2005, the date of DENR approval of petitioner's PDMF[119], and thus concluded that the recovery period ended on 11 October 2010.

The Court *En Banc* does not sustain this view, yet petitioner likewise fails to show that the recovery period began **only in April 2013**.

Firstly, under the principle of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found with or with which it is associated.[120] This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter.[121] The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible.[122]

Thus, the foregoing should be understood **the date of commercial operation <u>as declared</u> by the contractor** and **the date of commercial operation <u>as stated</u> in the feasibility study**, whichever comes first.

---

119 Supra at note 21.
120 *Francisco I. Chavez v. Judicial and Bar Council, et al.*, G.R. No. 202242, 17 July 2012.
121 Id.
122 Id.

Secondly, Section 24 of RA 7942[123], expressly delineates 'declaration of mining project feasibility' from the 'start of commercial operation', *viz*:

> ...
>
> SEC. 24. *Declaration of Mining Project Feasibility.* – A holder of an exploration permit who determines the commercial viability of a project covering a mining area may, within the term of the permit, file with the Bureau a declaration of mining project feasibility accompanied by a work program for development. **The approval of the mining project feasibility and compliance with other requirements provided in this Act shall entitle the holder to an exclusive right to a mineral production sharing agreement or other mineral agreements or financial or technical assistance agreement.**[124]
>
> ...

Clearly, a declaration of mining feasibility only marks the end of the exploration phase and the commencement of the development and utilization phases and does not signify the beginning of commercial production.

Lastly, the timetable of activities of each phase of mining operations shows that feasibility study, including the declaration of mining project feasibility, precedes commercial production by several years, to wit:

> ...
>
> An FTAA shall have a term not exceeding twenty-five (25) years from the date of execution thereof, and renewable for another term not exceeding twenty-five (25) years under such terms and conditions as may be provided for by law and mutually agreed upon by the parties. The activities of each phase of mining operations must be completed within the following periods:
>
> a. Exploration — up to two (2) years from date of FTAA execution, extendible for another two (2) years subject to the following requirements:
>
> ...

---

123 Supra at note 23.
124 Emphasis supplied and italics in the original text.

b. Pre-feasibility study, if warranted — up to two (2) years from expiration of the exploration period;
c. **Feasibility study — up to two (2) years from the expiration of the exploration/pre-feasibility study period or from declaration of mining project feasibility**; and
d. Development, construction and utilization — remaining years of FTAA.[125]

...

Thus, the mere approval of the PDMF cannot, by itself, mark the commencement of commercial production. The approval of the PDMF marks only the point at which petitioner secured authority to proceed with development and utilization activities within the contract area. It does not establish that commercial operation, as defined by law and by the FTAA, has begun. Accordingly, the Special First Division erred in reckoning the start of commercial production from 11 October 2005.

Even so, petitioner still fails to carry its burden.

The law requires the date of commercial operation to be determined by **whichever is earlier between the contractor's declaration and the feasibility study**. Petitioner presented only the *first reckoning point*, that is, its own declaration, when it proffered as evidence its Letter dated 27 March 2013 advising the DENR Secretary that "on February 2, 2013, the Didipio Project was able to mill 301,903 [tons] and achieve the 15% production capacity."[126]

It supplied no evidence of the Work Program attached to its PDMF, which would have shown the feasibility study's stated date of commercial operation. Even ICPA De Guzman was not given an opportunity to review petitioner's DENR-approved feasibility study and its related Work Program.[127]

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125 Emphasis supplied.

126 Exhibit "P-27", supra at note 48.

127 TSN dated 03 December 2019, p. 11.
ATTY. DOMINGO
Q[:] So, you **consider the date of commercial operation only as based on the letter you mentioned and <u>did you ever examine the feasibility study of petitioner</u>**?
MS. DE GUZMAN
A[:] **Yes**, there was the letter submitted as well as there was cite of the declaration of mining feasibility, there was mentioned therein in the letter.

ATTY. DOMINGO
Q[:] **But you only based the date on the letter?**

Although petitioner claims that its own declaration should control, such view disregards the statutory directive that the reckoning point must be **whichever comes first**. That clause is one of the safeguards imposed on FTAA contractors to demonstrate that the State retains full control and supervision over the exploration, development, and utilization of natural resources in keeping with Section 2, Article XII of the 1987 Constitution.[128]

Fiscal incentives under an FTAA, such as the *temporary* non-collection of ET, cannot, therefore, hinge on the contractor's unilateral say-so. Once the earlier of the two legally accepted reckoning points occurs, the contractor's tax obligations, including ET, **must attach.**

MS. DE GUZMAN
A[:] **Yes**, we have based it on the letter provided by the petitioner as well as the supporting documents (interrupted). (Emphasis and underscoring supplied)

128
ARTICLE XII
National Economy and Patrimony

...

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

It is a settled rule in evidence that willful suppression of evidence gives rise to the presumption that, if produced, it would be adverse.[129] The Work Programs, which would have shown the feasibility study's stated date of commercial operations, were not presented. Their omission supports the inference that they would not support petitioner's postulation.

Here, petitioner demonstrated only the *first reckoning point* and failed to present the Work Program that would allow the Court *En Banc* to determine with reasonable certainty the *second reckoning point* and which between the two (2) reckoning points came first.

Even a perspicacious scrutiny of the records of the case leaves the outcome unchanged.

A closer scrutiny of the FTAA shows that:

...

SECTION VII
FEASIBILITY STUDY AND RELINQUISHMENT

> 7.1 Mining Feasibility. During the Exploration Period, the CONTRACTOR shall conduct feasibility studies for any part of the Exploration Contract Area as may be warranted. At anytime prior to six (6) months from the expiration of the Exploration Period, the CONTRACTOR, if it elects to transform the Exploration Contract Area into a Mining Area as provided in Section VIII of this Agreement, shall submit a **Declaration of Mining Feasibility with a Work Program and Budget for development for the next succeeding three (3) years indicating therein the Mining Area**. Areas not delineated as part of the Mining Area shall be relinquished pursuant to the following section.
>
> Failure of the CONTRACTOR to submit a Declaration of Mining Feasibility within the prescribed period shall be considered a waiver of the CONTRACTOR's right to transform the Exploration Contract Area into a Mining Area as provided in Section VIII of this Agreement.[130]

...

---

[129] Section 3(e), Rule 131 of the Rules on Evidence.

[130] Emphasis supplied, underscoring in the original text and supplied.

Anent thereto, Sections X and XX of the FTAA provide:

...

SECTION X
PRODUCTION PERIOD

10.1 Timetable. The CONTRACTOR shall submit to the Government, through the Secretary, copy furnished the Director of the Mines and Geosciences Bureau, **within thirty (30) days from the completion of the construction facilities a Work Program for a period of three (3) years**. The CONTRACTOR **shall commence Commercial Production according to the period(s) specified in the approved Work Program** and the CONTRACTOR shall advise the Government within fifteen (15) days therefrom that Commercial Production has commenced. Failure of the CONTRACTOR to commence Commercial Production within the period, except as may be excused by *Force Majeure* as stated in Section 20.4 hereof or other justifiable causes, shall be considered a substantial breach of this Agreement.

...

SECTION XX
OTHER PROVISIONS

...

20.4 Suspension of Obligations.

(a) Any failure or delay on the part of any party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.

(b) If Mineral Exploration and/or Mining Operations are delayed, curtailed or prevented by such Force Majeure causes, then the time for enjoying the rights and carrying out the obligations thereby affected, the term of this Agreement and all rights and obligations hereunder shall be extended for a period equal to the period thus involved.

(c) The party whose ability to perform its obligations is affected (i) **shall promptly give Notice to the other in writing of any such delay or failure in performance, the expected duration thereof, and its anticipated effect on the party expected to perform**, and (ii) shall use its best efforts to remedy such delay, except that neither party shall be under any obligation to settle a labor dispute.

(d) This Agreement and the performance of all the obligations of the CONTRACTOR under the same shall be deemed suspended if the prosecution of the CONTRACTOR'S

> obligations under this Agreement is prevented by delays in obtaining approvals of the GOVERNMENT, both national and local, including statutory authorities, to any matter or aspect of this Agreement in which such approvals are necessary, provided that the delays are not due to the fault of the CONTRACTOR.[131]

...

As the records bear, petitioner declared on 15 March 2005, the partial feasibility of the Didipio Project. In accordance with the FTAA, this declaration necessarily required petitioner to make a three (3)-year Work Program for 2006 to 2008, during which commercial operations should have commenced. By operation of law, **the five (5)-year recovery period would have elapsed at some point between 2011 and 2013**.

Tax exemption is a result of legislative grace. The one who claims an exemption from the burden of taxation must justify such claim by showing that the legislature intended to exempt it by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.[132]

Here, petitioner offered no DENR-approved feasibility study or Work Program establishing a commercial-operation date that would extend the recovery period into CY 2013, and even the ICPA did not review those documents. On these premises, petitioner has not substantiated any entitlement to ET exemption for CY 2013.

Accordingly, the Court *En Banc* finds it unnecessary to fix the actual date of full expense recovery. The clause "whichever comes earlier" forecloses reliance on a later recovery date once the start of commercial operation is legally established. As commercial operation would have commenced within the 2006–2008 Work Program, petitioner's 2013 unilateral declaration cannot extend the five (5)-year recovery period.

---

[131] Emphasis supplied, underscoring in the original text and supplied.

[132] *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, 21 July 2008.

For all these reasons, petitioner failed to prove that CY 2013 fell within the recovery period. The presumption of correctness of the assessment stands and the deficiency ET assessment for CY 2013 must be upheld.

ACCORDINGLY, in view of the foregoing, the instant Petition for Review filed by petitioner OceanaGold (Philippines), Inc. on 03 April 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
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