REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BIOENERGY 8 CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10260

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 16 2024
9:10 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Bioenergy 8 Corporation (**petitioner**) pursuant to Section 3(a)(1)[2], Rule 4[3] and Section 4(a)[4], Rule 8[5] of the Revised Rules of the Court of Tax Appeals

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[1] Filed on 20 February 2020, Division Docket, pp. 7-82, with annexes.

[2] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* — …
(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[.]

[3] JURISDICTION OF THE COURT.

[4] **SEC. 4.** *Where to appeal; mode of appeal.* —
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[5] PROCEDURE IN CIVIL CASES.

(**RRCTA**). It seeks the cancellation of the deficiency tax assessment of income tax (**IT**), value-added tax (**VAT**) and expanded withholding tax (**EWT**) for the taxable year (**TY**) 2012 as well as respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Final Decision on Disputed Assessment (**FDDA**) dated 20 April 2017.[6]

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office address at Km. 10, Sasa, Davao City.[7] As stated in its Amended Articles of Incorporation[8] (**AOI**), its primary purpose is to engage in, conduct and carry on the business of manufacturing of vegetable methyl ester additive and other biofuel products, including local and international marketing and trading of such and any and all kinds of petroleum products.

Respondent, on the other hand, is the duly appointed CIR, vested by law with authority to enforce and implement the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, as well as related statutes and its implementing rules and regulations (**IRR**). He or she holds office at the Bureau of Internal Revenue (**BIR**) National Office Building, BIR Road, Diliman, Quezon City.[9]

FACTS OF THE CASE

On 10 September 2013, petitioner received respondent's Letter of Authority (**LOA**) dated 05 September 2013[10] with Reference No. LOA-132-2013-000000378 (SN: eLA201000076259) issued by then Officer-in-Charge - Regional Director (**OIC-RD**) of Revenue Region (**RR**) No. 19-Davao City, Glen A. Geraldino. The LOA authorized Revenue Officer Abolhasan Balindong (**RO Balindong**) and Group Supervisor Saripoden Bantog (**GS Bantog**), to examine petitioner's books of

6 Exhibit "P-31"/"R-6", Division Docket, Volume I, pp. 347-349.
7 Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), id., p. 381.
8 Exhibit "P-1", id., p. 261.
9 Par. 2, Admitted Facts, JSFI, id., p. 381.
10 Exhibit "P-40", id., p. 329; Exhibit "R-1", BIR Records, p. 8.

accounts and other accounting records for all internal revenue taxes for the period 01 January 2012 to 31 December 2012.[11]

On 21 September 2015, petitioner received a Preliminary Assessment Notice (**PAN**) with Details of Discrepancies dated 09 September 2015[12], informing it of its alleged IT, VAT and EWT deficiencies amounting to ₱527,578,169.17, inclusive of interest and compromise penalties, broken down as follows:

Tax Type	Basic	Interest	Compromise Penalty	Total
IT	₱275,609,181.92	₱137,804,590.96	₱-	₱413,413,772.88
VAT	74,643,371.98	34,601,466.04	10,000.00	109,254,838.02
EWT	3,235,752.77	1,671,805.50	1,000.00	4,908,558.27
WTC[13]	-	-	1,000.00	1,000
Total	**₱353,488,306.67**	**₱174,077,862.50**	**₱12,000.00**	**₱527,578,169.17**

On 01 October 2015, petitioner filed with the BIR a Letter dated 30 September 2015[14] addressed to then Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**), requesting details of the alleged assessment.

On 18 November 2015, petitioner received a Formal Letter of Demand with Details of Discrepancies and Assessment Notices[15] (**FLD/FAN**), all dated 05 November 2015, demanding payment of the alleged IT, VAT and EWT deficiencies amounting to ₱527,578,169.17, inclusive of surcharge, interest and compromise penalty, for TY 2012.

On 18 December 2015, petitioner filed a Protest dated 15 December 2015[16] against the FLD/FAN, requesting for a reinvestigation and the submission of supporting documents.

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11 Par. 4, Admitted Facts, JSFI, id., p. 382.
12 Exhibit "P-25", id., pp. 333-334; Exhibit "R-3", BIR Records, pp. 124-125.
13 Withholding Tax on Compensation.
14 Exhibit "P-27", Division Docket, Volume I, pp. 335-336.
15 Exhibit "P-28", id., pp. 337-341; Exhibits "R-4" and "R-4-a" to "R-4-d", BIR Records, pp. 127-132.
16 Exhibit "P-29", id., pp. 342-345.

On 04 May 2016, petitioner received respondent's Letter dated 31 March 2016[17], granting the request for reinvestigation and attaching therewith a copy of the duly accepted Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC, thereby allowing the BIR to re-examine the subject deficiency tax assessment.

On 28 October 2016, petitioner received a Letter from the BIR[18], signed by Revenue District Officer Rodrigo L. Rivamonte (**RDO Rivamonte**), informing petitioner that its case has been re-assigned to Revenue Officer Cynthia O. Nedamo (**RO Nedamo**) under the supervision of Group Supervisor Ma. Afrecy L. Barbiran (**GS Barbiran**) for the conduct of a reinvestigation.

On 05 May 2017, petitioner received respondent's FDDA dated 20 April 2017[19], signed by then OIC-RD Nuzar N. Balatero (**OIC-RD Balatero**), with Assessment Notices (**ANs**), informing petitioner of the reinvestigation results. This reinvestigation led to a reduction in petitioner's alleged tax liabilities to ₱136,285,183.23.

On 05 June 2017, petitioner filed its Request for Reconsideration[20] of even date before the Office of the Commissioner (**OCIR**) and furnished a copy thereof to BIR RR No. 19-Davao City.

Thereafter, petitioner received a Letter dated 05 September 2017[21] from the BIR's Chief of Appellate Division, Atty. Hayle F. Bonilla (**Chief Bonilla**), informing petitioner that its Request for Reconsideration was referred to her division for resolution and necessary action.[22]

On 23 October 2018, petitioner received a Letter from the BIR[23], dated 19 October 2018 and signed by Revenue Officer Alfie Joy Q. Emuy (**RO Emuy**). The letter informed petitioner about the reassignment of the case to RO Emuy and requested that petitioner's

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17 Exhibit "R-5", BIR Records, pp. 686-687.
18 Exhibit "P-30", Division Docket, Volume I, p. 346.
19 Exhibit "P-31"/"R-6", supra at note 6.
20 Exhibit "P-32", Division Docket, Volume I, pp. 350-355.
21 Exhibit "P-33", id., p. 356.
22 Par. 19, Petitioner's Memorandum dated 21 December 2022, id., Volume II, p. 816.
23 Exhibit "P-34", id., Volume I, p. 357.

duly authorized representatives visit RD No. 132-East Davao City's office to discuss the arguments presented in the Request for Reinvestigation.

On 21 January 2020, petitioner received a Letter dated 27 December 2019[24] (**Denial Letter**), signed by then Regional Director Esmeralda M. Tabule (**RD Tabule**), denying petitioner's Request for Reconsideration[25] filed before the OCIR.

Aggrieved, on 14 February 2020, petitioner sent a Letter dated 14 February 2020[26] addressed to then Regional Director Joseph M. Catapia (**RD Catapia**), requesting clarification on the denial of its Request for Reconsideration (of the FDDA[27]). Petitioner noted therein that only the CIR may entertain an administrative appeal from the decision of his or her duly authorized representative.

PROCEEDINGS BEFORE THE COURT

On 20 February 2020, within thirty (30) days from receipt of the Denial Letter, petitioner filed the instant Petition for Review[28] before the Third Division[29], docketed as CTA Case No. 10260. On 28 February 2020, the Court issued Summons[30] to respondent directing him or her to submit an Answer within fifteen (15) days from service. Respondent received the said Summons on 03 March 2020.[31]

After being granted two (2) extensions of time by the Third Division[32], on 25 August 2020, respondent filed his or her Answer[33], citing therein the following special and affirmative defenses: (1) this Court has no jurisdiction over the instant petition for being

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24 Exhibit "P-35", id., p. 358; Exhibit "R-7", BIR Records, p. 802.
25 Exhibit "P-32", supra at note 20.
26 Exhibit "R-8", BIR Records, p. 81 (Note: The letter consists of three [3] pages, all marked p. 81).
27 Exhibit "P-31"/"R-6", supra at note 6.
28 Supra at note 1.
29 The Third Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, and Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, as Members.
30 Division Docket, Volume I, p. 85.
31 See Notification dated 12 March 2020, id., p. 86.
32 See Resolutions dated 19 June 2020 and 25 August 2020, id., pp. 93 and 100, respectively.
33 Id., pp. 106-136.

prematurely filed; (2) even assuming without conceding that this Court has jurisdiction over this case, the assessments were made pursuant to a valid LOA and the continuation of the audit by another RO not named therein does not invalidate the assessment; (3) petitioner failed to provide sufficient proof to establish that it is a Registered Producer of Biofuel and thus, entitled to incentives under Republic Act (**RA**) No. 9513, the "Renewable Energy Act of 2008"; and, (4) petitioner was sufficiently informed of the factual and legal bases of the assessment and the assessment process was dutifully observed.

On 02 September 2020, respondent requested that the Third Division defer the transmittal of the BIR Records until the submission of the judicial affidavits of his or her witnesses.[34] In a Resolution dated 08 September 2020[35], the Third Division granted this request, allowing respondent to certify and elevate the BIR Records within five (5) days from the filing of his or her witnesses' judicial affidavits. Accordingly, on 16 March 2021, respondent transmitted the complete BIR Records of the case consisting of one (1) folder, consecutively numbered as pages one (1) to 802.[36] The Court noted the same in a Minute Resolution dated 17 March 2021.[37]

On 16 September 2020, the Third Division set the case for a Pre-Trial Conference on 09 February 2021.[38] Petitioner filed its Pre-Trial Brief[39] on 04 February 2021, while respondent filed his or her Pre-Trial Brief[40] on 05 February 2021.

On 17 September 2020, petitioner filed a Reply[41] to respondent's Answer[42], arguing therein that (1) this Court has jurisdiction over the instant petition as the Denial Letter[43] should be treated as respondent's final decision on petitioner's Request for Reconsideration[44]; (2) the ROs who conducted the continuation of the

34 See Petitioner's Motion to Defer Transmittal of BIR Records, id., pp. 101-104.
35 Id., p. 139.
36 See Respondent's Compliance dated 16 March 2021, id., pp. 404-406.
37 Id., p. 408.
38 See Notice of Pre-Trial Conference dated 16 September 2020, id., pp. 140-141.
39 Id., pp. 226-234.
40 Id., pp. 366-370.
41 Id., pp. 145-161, with annexes.
42 Supra at note 33.
43 Exhibit "P-35"/"R-7", supra at note 24.
44 Exhibit "P-32", supra at note 20.

audit and reinvestigation had no authority to do so, thereby violating petitioner's right to due process and invalidating the assessment; (3) petitioner has provided sufficient proof to establish that it is a Registered Producer of Biofuel entitled to incentives under RA 9513; and, (4) respondent failed to sufficiently inform petitioner of the factual and legal bases of the assessment. The Third Division noted the same in its Resolution dated 06 October 2020.[45]

On 24 September 2020, respondent filed a "Motion to Strike Out Reply dated 16 September 2020"[46] (**Motion to Strike**), praying that petitioner's Reply[47] be stricken off from the records of the case for being a prohibited pleading under Section 10[48], Rule 6 of the 2019 Amendments to the 1997 Rules of Civil Procedure[49] (**Rules of Court, as amended**). Petitioner filed its Comment/Opposition[50] thereto on 06 October 2020.

In the Resolution dated 10 November 2020[51], the Third Division granted respondent's Motion to Strike and, thereby, removed petitioner's Reply from the case records. Petitioner filed a Motion for Reconsideration[52] (**MR**) thereto on 04 January 2021 (with petitioner's Comment/Opposition[53] filed on 25 January 2021); however, the Third Division nonetheless denied the same for lack of merit.[54]

Meanwhile, on 21 January 2024, petitioner filed a "Motion for Commissioning of Independent Certified Public Accountant [**ICPA**]"[55] (**Motion for Commissioning**), praying that Myra Celeste O. Dabalos (**Dabalos**) be appointed as the ICPA. The Third Division noted the

45 Id., pp. 165-166.
46 Id., pp. 167-169.
47 Supra at note 41.
48 SEC. 10. *Reply*. — All new matters alleged in the answer are deemed controverted. If the plaintiff wishes to interpose any claims arising out of the new matters so alleged, such claims shall be set forth in an amended or supplemental complaint. **However, the plaintiff may file a reply only if the defending party attaches an actionable document to his or her answer.** (Emphasis supplied)
49 A.M. No. 19-10-20-SC, 15 October 2019.
50 Division Docket, Volume I, pp. 171-175.
51 Id., pp. 181-186.
52 Id., pp. 187-192.
53 Id., pp. 215-219.
54 See Resolution dated 04 February 2021, id., pp. 239-242.
55 Id., pp. 197-212, with attached Judicial Affidavit of Myra Celeste O. Dabalos dated 20 January 2021 and its annexes.

same in its Resolution dated 28 January 2021[56] and therein set the ICPA's commissioning on 09 February 2021.

During the 09 February 2021 Pre-Trial Conference, the Third Division granted petitioner's Motion for Commissioning and appointed Dabalos as the ICPA.[57] The Court also gave both parties twenty (20) days, or until 01 March 2021, within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[58] On 26 February 2021, the parties submitted their JSFI.[59]

In the Resolution dated 03 March 2021[60], the Third Division admitted and approved the parties' JSFI[61] and, thereby, deemed terminated the pre-trial. The Court issued the corresponding Pre-Trial Order[62] on 17 June 2021, which is the same date set for the initial presentation of evidence for petitioner *via* videoconferencing.[63]

After being granted two (2) extensions of time by the Third Division[64], on 16 June 2021, petitioner filed ICPA Dabalos' Report dated 04 June 2021[65], which the Third Division noted in its Minute Resolution dated 17 June 2021.[66]

In the trial that ensued on 17 June 2021, petitioner presented its testimonial and documentary evidence. It offered the testimonies of its witnesses, namely: (1) Tanya T. Samillano (**Samillano**), petitioner's General Manager; and, (2) ICPA Dabalos.

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56 Id., pp. 224-225.
57 See Minutes of the Hearing and Order, all dated 09 February 2021, id., pp. 374 and 377-380, respectively.
58 Id.
59 Id., pp. 381-389.
60 Id., pp. 393-394.
61 Supra at note 59.
62 Division Docket, Volume II, pp. 515-524.
63 See Notice of Hearing *via* Video Conference dated 14 June 2021, id., Volume I, pp. 457-458.
64 See Resolutions dated 15 March 2021 and 07 June 2021, id., pp. 403 and 455-456, respectively.
65 Exhibit "P-41-A", id., Volumes I and II, pp. 460-500 and 501-509, respectively.
66 Division Docket, Volume II, p. 513.

On the witness stand, Samillano identified her Judicial Affidavit dated 03 February 2021[67], where she declared that:

(1) As petitioner's General Manager, she oversees the accountants' bookkeeping to ensure accurate transaction recording and document accuracy, supervises tax return preparation and filing, tax payments, and other tax-related matters, and manages the safekeeping of vital documents, including registrations, tax returns, financial statements, and other accountable records;

(2) Petitioner is primarily engaged in the business of manufacturing vegetable methyl ester additive and other biofuel products, duly registered as a Renewable Energy (**RE**) Developer of biomass resources entitled to the income tax holiday (**ITH**) incentive, and registered with the BIR as a VAT taxpayer with zero-rated registered activities;

(3) Petitioner has paid its IT, VAT and EWT liabilities for the TY 2012;

(4) On 10 September 2013, petitioner received the LOA[68] authorizing RO Balindong and GS Bantog of RD No. 132-East Davao City to examine petitioner's books of accounts covering TY 2012;

(5) Thereafter, petitioner submitted various documents to the BIR, as evidenced by the Transmittal Letters dated 24 September 2013[69] and 30 June 2014[70];

(6) On 21 September 2015, petitioner received a PAN[71], informing it of its alleged IT, VAT and EWT deficiencies amounting to ₱527,578,169.17;

(7) Petitioner filed with the BIR a Letter dated 30 September 2015[72], requesting details of the alleged assessment since the PAN consists only of two (2) pages;

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67 Exhibit "P-38", Judicial Affidavit of Tanya T. Samillano, id., Volume I, pp. 243-358, with exhibits.
68 Exhibit "P-40"/"R-1", supra at note 10.
69 Exhibit "P-24", Division Docket, Volume I, p. 331.
70 Exhibit "P-26", id., p. 332.
71 Exhibit "P-25"/"R-3", supra at note 12.
72 Exhibit "P-27", supra at note 14.

(8) On 18 November 2015, petitioner received an FLD/FAN[73], demanding payment of the alleged IT, VAT and EWT deficiencies amounting to ₱527,578,169.17;

(9) Petitioner then submitted a Protest[74] against the FLD/FAN with supporting documents, requesting the cancellation of the alleged tax deficiencies subject of the FLD/FAN;

(10) On 28 October 2016, petitioner received a Letter from the BIR[75], indicating that the case has been re-assigned to RO Nedamo under the supervision of Barbiran for the conduct of a reinvestigation;

(11) On 05 May 2017, petitioner received an FDDA[76], indicating the reinvestigation results;

(12) Thereafter, on 05 June 2017, petitioner filed its Request for Reconsideration[77] before the OCIR;

(13) Petitioner then received a Letter dated 05 September 2017[78] from Chief Bonilla of the BIR's Appellate Division, indicating that petitioner's Request for Reconsideration was referred to her division for resolution and necessary action;

(14) On 23 October 2018, petitioner received a Letter dated 19 October 2018[79], indicating that the case was again re-assigned to RO Emuy for the conduct of a reinvestigation;

(15) After more than a year, or on 21 January 2020, petitioner received the Denial Letter[80], indicating that its Request for Reconsideration before the OCIR is denied; and,

(16) Thus, 20 February 2020, petitioner filed the instant petition before this Court.[81]

On cross-examination, Samillano stated that petitioner is entitled to the ITH incentive as provided in its Certificate of Registration[82] issued by the Bureau of Investments (**BOI-COR**). She

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73 Exhibit "P-28"/"R-4" and "R-4-a" to "R-4-d", supra at note 15.
74 Exhibit "P-29", supra at note 16.
75 Exhibit "P-30", supra at note 18.
76 Exhibit "P-31"/"R-6", supra at note 6.
77 Exhibit "P-32", supra at note 20.
78 Exhibit "P-33", supra at note 21.
79 Exhibit "P-34", supra at note 23.
80 Exhibit "P-35"/"R-7", supra at note 24.
81 Supra at note 1.
82 Exhibits "P-3", Division Docket, Volume II, pp. 766-768.

mentioned that this certification was attached to petitioner's Annual Income Tax Return[83] (**ITR**) for TY 2012. She also confirmed that: (1) petitioner received an FDDA[84] signed by then OIC-RD Balatero; (2) petitioner subsequently filed before the OCIR a Request for Reconsideration[85], which was referred to the BIR's Appellate Division and later denied through a Denial Letter signed by then RD Tabule, and not by respondent; (3) the instant petition was filed based on this Denial Letter; and, (4) despite the pendency of its Request for Reconsideration before the OCIR, petitioner proceeded to file the instant petition before this Court.[86]

During re-direct examination, when asked why petitioner assumed the Denial Letter should be the basis for the instant petition, Samillano explained that even though it was issued only by then RD Tabule, petitioner's management regarded it as equivalent to a denial from respondent himself or herself. She also mentioned her inability to recall the exact date when petitioner received Chief Bonilla's Letter dated 05 September 2017.[87]

Respondent did not conduct any re-cross examination.[88]

Responding to the Court's clarificatory questions, Samillano confirmed that both the PAN[89] and the FLD/FAN[90] were prepared under the LOA[91], which authorized RO Balindong and GS Bantog to examine petitioner's books of accounts covering TY 2012. She also affirmed that it was only in October 2016, upon petitioner's request for reinvestigation, that they were informed of the case's reassignment.[92]

Before the 17 June 2021 hearing concluded, the Third Division set the continuation of the presentation of petitioner's evidence for the

83 Exhibits "P-5", id., pp. 275-281.
84 Exhibit "P-31"/"R-6", supra at note 6.
85 Exhibit "P-32", supra at note 20.
86 TSN dated 17 June 2021, pp. 7-11.
87 Id., pp. 11-12.
88 Id., p. 12.
89 Exhibit "P-25"/"R-3", supra at note 12.
90 Exhibit "P-28"/"R-4" and "R-4-a" to "R-4-d", supra at note 15.
91 Exhibit "P-40"/"R-1", supra at note 10.
92 TSN dated 17 June 2021, pp. 12-14.

testimony ICPA Dabalos on 12 August 2021 *via* videoconferencing.[93] However, the Court later reset the said videoconference hearing to 16 November 2021.[94]

During the 16 November 2021 videoconference hearing, ICPA Dabalos identified her Judicial Affidavit dated 25 June 2021[95], where she declared that:

(1) She was tasked to verify the accuracy of respondent's deficiency IT, VAT and EWT assessments against petitioner for TY 2012;

(2) She submitted a fifteen (15)-page ICPA Report[96], with attachments and one (1) USB containing soft copies of the ICPA Report and schedules and scanned copies of the exhibits;

(3) She found that the supposed deficiency tax assessments against petitioner in the aggregate amount of ₱136,285,183.23, inclusive of interest and compromise penalties, have no basis; and,

(4) She personally examined and verified all original documents, including various VAT invoices and official receipts (**OR**s) and petitioner's tax returns for TY 2012.

Respondent did not conduct any cross-examination.[97]

Upon the Court's further questioning about her response to Question No. 13[98] in her Judicial Affidavit (relating to the supporting documents she examined and the schedules included in her ICPA Report[99]), ICPA Dabalos admitted that the certified true copies of the Certifications from Chemalco Enterprise Singapore Pte., Ltd. (**Chemalco**) and Novalco Enterprise Singapore Pte., Ltd. (**Novalco**), along with the commercial invoices mentioned in her ICPA Report, were actually secured only after petitioner had filed the said report before this Court. She also noted that these commercial invoices,

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[93] See Minutes of the Hearing and Order, both dated 17 June 2021, Division Docket, Volume II, pp. 525 and 526-527, respectively.
[94] See Notice of Hearing *via* Video Conference dated 15 November 2021, id., pp. 633-634.
[95] Exhibit "P-39", Judicial Affidavit of Myra Celeste O. Dabalos, Division Docket, Volume II, pp. 528-626, with exhibits.
[96] Exhibit "P-41-A", supra at note 65.
[97] TSN dated 16 November 2021, p. 18.
[98] Exhibit "P-39", Judicial Affidavit of Myra Celeste O. Dabalos, supra at note 95, pp. 558-561.
[99] Exhibit "P-41-A", supra at note 65.

totalling ₱58,326,786.71, pertained to purchases previously disallowed as deductible expenses, either for being supported by mere photocopies or for lacking third-party confirmations. Believing she could no longer amend her report, she included these certifications and invoices in her Judicial Affidavit instead. To address this inconsistency, upon motion of petitioner's counsel and without objection from respondent's counsel, the Court allowed ICPA Dabalos to submit an Amended ICPA Report.[100]

Accordingly, on 01 December 2021, petitioner submitted ICPA Dabalos' Amended Report dated 25 November 2021[101], with one (1) USB[102], which the Third Division noted in its Minute Resolution dated 09 December 2021.[103]

On even date, after completing the presentation of its testimonial evidence, petitioner filed its "Formal Offer of Evidence with Motion to Re-Mark Some of Petitioner's Documentary Evidence"[104] (**FOE with Motion to Re-Mark**) consisting of Exhibits "P-1" to "P-110", inclusive of sub-markings. On 13 December 2021, respondent filed his or her Comment[105] thereto.

In the Resolution dated 15 March 2022[106], the Third Division granted petitioner's Motion to Remark and thus, set the case for a Commissioner's Hearing on 21 April 2022 for the requested remarking of the therein mentioned exhibits.[107]

Subsequently, in view of the reorganization of the Court's Second and Third Divisions[108], the present case was transferred to the Second Division.[109]

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100 TSN dated 16 November 2021, pp. 18-26; Minutes of the Hearing and Order, both dated 16 November 2021, Division Docket, Volume II, pp. 635 and 636-637, respectively.
101 Exhibit "P-41-C", Division Docket, Volume II, pp. 675-723.
102 Exhibit "P-41-D".
103 Division Docket, Volume II, p. 725.
104 Id., pp. 638-671.
105 Id., pp. 726-728.
106 Id., pp. 733-734.
107 Exhibit "P-37-1" is re-marked to Exhibit "P-36-1", while Exhibit "P-42" is re-marked to Exhibit "P-40".
108 See Order dated 30 June 2022, Division Docket, Volume II, p. 740.

In the Resolution dated 20 July 2022[110] (**FOE Resolution**), the Second Division admitted petitioner's exhibits *except* for:

(1) Exhibits "P-2" and "P-3"[111], for failure to submit the duly marked exhibits;

(2) Exhibits "P-108-1" to "P-108-2" and "P-108-4"[112], for failure of the exhibits formally offered to correspond with the documents actually marked by the ICPA;

(3) Exhibits "P-108-3" and "P-108-5"[113], for failure to submit the originals and to correspond with the documents actually marked by the ICPA;

(4) Exhibits "P-48-379" to "P-48-382", "P-48-426" to "P-48-428", "P-48-548" to "P-48-561", "P-49-914" to "P-49-924", "P-49-925" to "P-49-934", "P-49-1597" to "P-49-1602", "P-50-1" to "P-50-29", "P-50-80" to "P-50-83", "P-50-254" to "P-50-258", "P-50-286" to "P-50-290", "P-50-304" to "P-50-307", "P-50-406" to "P-50-412", "P-50-455" to "P-50-458", "P-50-463" to "P-50-466", "P-50-914" to "P-50-919", "P-51-1" to "P-51-86", "P-51-105" to "P-51-466", "P-53-1" to "P-53-16", "P-53-22" to "P-53-25", "P-53-30" to "P-53-34", "P-54-37" to "P-54-39", "P-54-44" to "P-54-46", "P-54-81" to "P-54-85", "P-54-98" to "P-54-105", "P-56-47" to "P-56-52", "P-56-111" to "P-56-135", "P-59-30" to "P-59-65", "P-59-94" to "P-59-112", "P-59-170" to "P-59-193", "P-59-237" to "P-59-257", "P-60-115" to "P-60-123", "P-60-178" to "P-60-201", "P-60-230" to "P-60-247", "P-61-8" to "P-61-18", "P-61-23" to "P-61-33", "P-61-38" to "P-61-46", "P-62-33" to "P-62-36", "P-64-17" to "P-64-40", "P-64-81" to "P-64-128", "P-64-154" to "P-64-234", "P-64-288" to "P-64-304", "P-64-330" to "P-64-349", "P-64-374" to "P-64-519", "P-64-532" to "P-64-669", "P-64-703" to "P-64-728", "P-64-759" to "P-64-796", "P-64-862" to "P-64-939", "P-64-974" to "P-64-1086", "P-64-1097" to "P-64-1120", "P-64-1154" to "P-64-1163", "P-64-1175" to "P-64-1229", "P-66-404" to "P-66-429", "P-68-53" to "P-68-54", "P-68-90" to "P-68-91",

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109 The Second Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

110 Division Docket, Volume II, pp. 742-746.

111

Exhibit No.	Description
"P-2"	Petitioner's Bureau of Internal Revenue Certificate of Registration (**BIR-COR**) with TIN 006-642-031-000 and with VAT zero-rated registered activities.
"P-3"	Petitioner's Board of Investments Certificate of Registration No. 2008-063 (**BOI-COR**) with two (2)-page Specific Terms and Conditions on Registration.

112 Described as Certified True Copies (**CTCs**) of Commercial Invoices issued by Chemalco Enterprise Singapore Pte., Ltd. (**Chemalco**).

113 Id.

"P-70-105" to "P-70-109", "P-76-1" to "P-76-7", "P-77-1" to "P-77-28", "P-77-33" to "P-77-46", "P-77-50" to "P-77-74", and "P-78-1" to "P-78-14"[114], for failure to present the originals for comparison; and,

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114

Exhibit No.	Description
"P-48-379" to "P-48-382", "P-48-426" to "P-48-428" and "P-48-548" to "P-48-561"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Manufacturing Overhead".
"P-49-914" to "P-49-924", "P-49-925" to "P-49-934" and "P-49-1597" to "P-49-1602"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Purchases".
"P-50-1" to "P-50-29", "P-50-80" to "P-50-83", "P-50-254" to "P-50-258", "P-50-286" to "P-50-290", "P-50-304" to "P-50-307", "P-50-406" to "P-50-412", "P-50-455" to "P-50-458", "P-50-463" to "P-50-466" and "P-50-914" to "P-50-919"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Freight".
"P-51-1" to "P-51-86" and "P-51-105" to "P-51-466"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Plant Supplies".
"P-53-1" to "P-53-16", "P-53-22" to "P-53-25" and "P-53-30" to "P-53-34"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Permits and Licenses".
"P-54-37" to "P-54-39", "P-54-44" to "P-54-46", "P-54-81" to "P-54-85" and "P-54-98" to "P-54-105"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Demurrage Charges".
"P-56-47" to "P-56-52" and "P-56-111" to "P-56-135"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Representation and Entertainment".
"P-59-30" to "P-59-65", "P-59-94" to "P-59-112", "P-59-170" to "P-59-193" and "P-59-237" to "P-59-257"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Repairs and Maintenance".
"P-60-115" to "P-60-123", "P-60-178" to "P-60-201" and "P-60-230" to "P-60-247"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Gas and Oil".
"P-61-8" to "P-61-18", "P-61-23" to "P-61-33" and "P-61-38" to "P-61-46"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Bank Charges".
"P-62-33" to "P-62-36"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Dues and Subscriptions".
"P-64-17" to "P-64-40", "P-64-81" to "P-64-128", "P-64-154" to "P-64-234", "P-64-288" to "P-64-304", "P-64-330" to "P-64-349", "P-64-374" to "P-64-519", "P-64-532" to "P-64-669", "P-64-703" to "P-64-728", "P-64-759" to "P-64-796", "P-64-862" to "P-64-939", "P-64-974" to "P-64-1086", "P-64-1097" to "P-64-1120", "P-64-1154" to "P-64-1163" and "P-64-1175" to "P-64-1229"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Transportation and Travel".
"P-66-404" to "P-66-429"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Communication Expense".
"P-68-53" to "P-68-54" and "P-68-90" to "P-68-91"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Staff Welfare".
"P-70-105" to "P-70-109"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Office Supplies".
"P-76-1" to "P-76-7"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Insurance".

(5) Exhibits "P-48-463", "P-50-843", "P-50-891", "P-50-924", "P-59-133", "P-59-364", "P-60-143", "P-60-155", "P-60-159", "P-60-165", "P-60-209" to "P-60-210", "P-60-263" to "P-60-264", "P-60-269", "P-61-90", "P-64-4", "P-64-152", "P-64-1151", "P-64-1249", "P-66-127", "P-66-137", "P-68-157" to "P-68-159", and "P-71-55"[115], for being completely blurred or unreadable.

Upon respondent's "Motion to Set the Hearing *via* Videoconferencing"[116] filed on 20 July 2022, the Second Division set the initial presentation of respondent's evidence, previously set on 01 August 2022[117], to 10 August 2022, through videoconferencing.[118]

During the 10 August 2022 videoconference hearing, respondent offered the testimonies of his or her witnesses, namely: (1) RO Balindong, who conducted the audit investigation of petitioner for TY 2012; and, (2) Revenue Officer Jessa S. Palarca (**RO Palarca**), who

"P-77-1" to "P-77-28", "P-77-33" to "P-77-46" and "P-77-50" to "P-77-74"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Miscellaneous Expense".
"P-78-1" to "P-78-14"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Donations and Contributions".

115

Exhibit No.	Description
"P-48-463"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Manufacturing Overhead".
"P-50-843", "P-50-891" and "P-50-924"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Freight".
"P-59-133" and "P-59-364"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Repairs and Maintenance".
"P-60-143", "P-60-155", "P-60-159", "P-60-165", "P-60-209" to "P-60-210", "P-60-263" to "P-60-264" and "P-60-269"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Gas and Oil".
"P-61-90"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Bank Charges".
"P-64-4", "P-64-152", "P-64-1151" and "P-64-1249"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Transportation and Travel".
"P-66-127" and "P-66-137"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Communication Expense".
"P-68-157" to "P-68-159"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Staff Welfare".
"P-71-55"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Light and Water".

116 Division Docket, Volume II, pp. 747-750.

117 See Resolution dated 23 February 2022, id., p. 731.

118 See Resolution dated 02 August 2022, id., p. 754.

reviewed the findings of the investigating ROs assigned to conduct a reinvestigation.[119]

RO Balindong testified, by way of his Judicial Affidavit dated 08 March 2021[120], where he declared that:

(1) He was assigned as RO at RD No. 132-East Davao City and conducted the audit and investigation of petitioner for TY 2012;

(2) His duties as an RO include the examination or investigation of all internal revenue tax cases and the performance of other duties and functions as may be as assigned by higher authorities from time to time;

(3) The LOA[121] was issued to him and GS Bantog for the examination of petitioner's accounting records for CY 2012;

(4) Since petitioner did not provide the necessary documents for conducting an audit, a subpoena *duces tecum* was issued, requiring it to submit relevant accounting records to determine any outstanding internal revenue tax liabilities;

(5) After requesting an extension of time to submit the necessary documents, petitioner complied by sending the required documents to the BIR in a subsequent letter;

(6) In a Memorandum with attached audit sheet and RO's Audit Report dated 10 June 2015[122], he recommended the issuance of a PAN;

(7) After the Assessment Division of RR No. 19 reviewed their findings and recommendation, a PAN[123] was issued and served to petitioner;

(8) As petitioner did not respond to the PAN, an FLD/FAN[124] was issued and served against it; and,

(9) Petitioner then filed a Protest[125] against the FLD/FAN and requested a reinvestigation, leading to the assignment of another RO to conduct of a reinvestigation and evaluate the protest.

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[119] See Minutes of the Hearing and Order, both dated 10 August 2022, id., pp. 755 and 756-757.
[120] Exhibit "R-10", Division Docket, Volume I, pp. 426-431.
[121] Exhibit "P-40"/"R-1", supra at note 10.
[122] Exhibit "R-2", BIR Records, pp. 121-122.
[123] Exhibit "P-25"/"R-3", supra at note 12.
[124] Exhibit "P-28"/"R-4" and "R-4-a" to "R-4-d", supra at note 15.

On cross-examination, RO Balindong confirmed that, as stated in his Judicial Affidavit, petitioner did not file a reply to the PAN. However, the Court noted that, from the BIR Records, the BIR had received a letter from petitioner dated 30 September 2015[126], acknowledging the PAN's receipt and requesting a breakdown of the amounts in the attached Details of Discrepancies.[127]

RO Balindong admitted his awareness that the findings in the PAN, FLD/FAN, and the Details of Discrepancies were exactly the same. Upon further questioning by petitioner's counsel, he stated that, as a mere examiner at the time, he is not in a position to answer whether a LOA accompanied the case's reassignment to another RO. Additionally, regarding the reduced amount in the deficiency tax assessment after reinvestigation, he noted that he was not privy to the results of the reinvestigation.[128]

Respondent did not conduct any redirect examination.[129]

RO Palarca followed and she identified her Judicial Affidavit dated 10 March 2021[130], where she stated that:

(1) She was assigned to review the findings of the investigating ROs assigned to conduct the reinvestigation;

(2) Petitioner was informed of the reinvestigation through a Letter dated 31 March 2016[131], granting its request for reinvestigation;

(3) Thereafter, the assigned RO assigned proceeded with the reinvestigation and, based on the records, found petitioner's Protest[132] against the FLD/FAN[133] to be unmeritorious, leading to the recommendation for the issuance of an FDDA;

(4) The case docket was then forwarded to her for review of the findings on the results of the reinvestigation;

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125 Exhibit "P-29", supra at note 16.
126 Exhibit "P-27", supra at note 14.
127 TSN dated 10 August 2022, pp. 5-7.
128 Id., pp. 7-8.
129 Id., p. 9.
130 Exhibit "R-11", Division Docket, Volume I, pp. 416-421.
131 Exhibit "R-5", supra at note 17.
132 Exhibit "P-29", supra at note 16.
133 Exhibit "P-28"/"R-4" and "R-4-a" to "R-4-d", supra at note 15.

(5) Concurring with the findings of the assigned RO as proper, she approved the recommendation for the issuance of the FDDA[134] issued in this case;

(6) Petitioner then filed a Request for Reconsideration[135] addressed to then BIR Commissioner Caesar B. Dulay (**Commissioner Dulay**), asking for reconsideration of the FDDA with attached invoices, receipts and summary of transactions;

(7) Subsequently, a Denial Letter[136] was issued to petitioner, categorically denying its Request for Reconsideration filed before the OCIR; and,

(8) Petitioner then sent to their office a Letter dated 14 February 2020[137], stressing that the Denial Letter should have been issued by the CIR.

On cross-examination, RO Palarca confirmed that her involvement in this case was limited to the reinvestigation stage, where she reviewed the results as presented in the investigating RO's audit report, which included the recommendation for the issuance of an FDDA. As to her statement in her Judicial Affidavit that petitioner's Protest against the FLD/FAN is unmeritorious, she clarified that reinvestigation nonetheless resulted in the reduction of the deficiency tax assessment from ₱527,578,169.17 (as indicated in the FLD/FAN) to ₱136,285,183.23 (as indicated in the FDDA).[138]

RO Palarca mentioned that the reassignment of the case to other ROs was pursuant to a Memorandum of Assignment (**MOA**) issued to the investigating RO and GS. She also admitted that no separate LOA was issued for the ROs conducting the reinvestigation. Furthermore, when asked why the Regional Office issued the Denial Letter despite petitioner's Request for Reconsideration being filed before the CIR, she explained that this was because the request was filed against the FDDA and the requested reconsideration should be based only on the documents already submitted. Additionally, the case docket was

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134 Exhibit "P-31"/"R-6", supra at note 6.
135 Exhibit "P-32", supra at note 20.
136 Exhibit "P-35"/"R-7", supra at note 24.
137 Exhibit "R-8", supra at note 26.
138 TSN dated 10 August 2022, pp. 12-14.

forwarded to the BIR's Appellate Division for resolution and necessary action.[139]

Respondent did not conduct any redirect examination.[140]

Responding to the Court's clarificatory questions, RO Palarca confirmed the existence of a MOA for the investigating RO, from RO Emuy to RO Nedamo, who conducted the reinvestigation. However, she noted that this specific MOA was not mentioned in her Judicial Affidavit.[141]

On 15 August 2022, petitioner filed a "[MR] with Submission [Re: Resolution dated 20 July 2022]"[142] (**MR on the FOE Resolution**), asking the Second Division to: (1) allow the recall of its witness so that the original copies of Exhibits "P-50-1" to "P-50-25", "P-53-1" to "P-53-11", "P-64-81" to "P-64-105", "P-48-463", "P-50-891", "P-50-924", "P-50-843", "P-59-133", "P-59-364", "P-66-127" and "P-66-137"[143], may be presented, identified and compared to the marked exhibits; and, (2) after due notice and hearing, reconsider the denial of Exhibits "P-2", "P-3", "P-108-1" to "P-108-2", "P-108-4", "P-108-3", "P-108-5", "P-50-1" to "P-50-25", "P-53-1" to "P-53-11", "P-64-81" to "P-64-105", "P-48-463", "P-50-891", "P-50-924", "P-50-843", "P-59-133", "P-59-364", "P-66-127" and "P-66-137"[144] and admit the same for the purposes stated in

139 Id., pp. 14-16.
140 Id., p. 16.
141 Id., pp. 16-18.
142 Division Docket, Volume II, pp. 758-776, with exhibits.
143

Exhibit No.	Description
"P-48-463"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Manufacturing Overhead".
"P-50-1" to "P-50-25", "P-50-891", "P-50-924" and "P-50-843"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Freight".
"P-53-1" to "P-53-11"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Permits and Licenses".
"P-59-133" and "P-59-364"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Repairs and Maintenance".
"P-66-127" and "P-66-137"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Communication Expense".

144

Exhibit No.	Description
"P-2"	Petitioner's Bureau of Internal Revenue Certificate of Registration (**BIR-COR**) with TIN 006-642-031-000 and with VAT zero-rated registered activities.

its FOE. Respondent failed to file a comment thereto despite due notice.[145]

On 25 August 2022, respondent filed his or her FOE[146] consisting of Exhibits "R-1" to "R-9", inclusive of sub-markings. On 13 September 2022, petitioner filed its Comment/Opposition[147] thereto.

In the Resolution dated 07 November 2022[148], the Second Division (1) granted petitioner's MR on the FOE Resolution[149], and thereby admitted Exhibits "P-2", "P-3", "P-48-463", "P-50-1" to "P-50-25", "P-50-843", "P-50-891", "P-50-924", "P-53-1" to "P-53-11", "P-59-133", "P-59-364", "P-64-81" to "P-64-105", "P-66-127", "P-66-137" and "P-108-1" to "P-108-5"[150]; and, (2) admitted all of respondent's exhibits. In the same Resolution, the Court likewise granted the parties a period of 30 days within which to file their respective memoranda.

Thereafter, on 22 December 2022, petitioner filed its Memorandum[151], while respondent filed on 19 December 2022 a Manifestation[152] stating that he or she is adopting the arguments raised

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"P-3"	Petitioner's Board of Investments Certificate of Registration No. 2008-063 (**BOI-COR**) with two (2)-page Specific Terms and Conditions on Registration.
"P-108-1" to "P-108-2", "P-108-4", "P-108-3", "P-108-5"	CTCs of Commercial Invoices issued by Chemalco.
"P-48-463"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Manufacturing Overhead".
"P-50-1" to "P-50-25", "P-50-891", "P-50-924" and "P-50-843"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Freight".
"P-53-1" to "P-53-11"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Permits and Licenses".
"P-59-133" and "P-59-364"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Repairs and Maintenance".
"P-64-81" to "P-64-105"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Transportation and Travel".
"P-66-127" and "P-66-137"	Included under "Check Vouchers, Accounts Payable Vouchers, Journal Vouchers, with supporting invoices, ORs and other documents for Communication Expense".

145 *Per* Records Verification dated 16 September 2022, Division Docket, Volume II, p. 796.
146 Id., pp. 777-782.
147 Id., pp. 786-792.
148 Id., pp. 800-803.
149 Supra at note 142.
150 Supra at note 144.
151 Division Docket, Volume II, pp. 813-855.
152 Id., pp. 809-811.

in his or her Answer[153] as his or her Memorandum. Accordingly, on 16 January 2023, the Second Division considered the case submitted for decision.[154]

ISSUES

As the parties so stipulated, the following issues were submitted for this Court's determination —

I.
WHETHER THIS COURT HAS JURISDICTION OVER THE INSTANT CASE;

II.
WHETHER THE ASSESSMENT NOTICES AND FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) HAVE VALID AND FACTUAL BASES;

III.
WHETHER PETITIONER BIOENERGY 8 CORPORATION IS LIABLE FOR DEFICIENCY INCOME TAX (IT), VALUE-ADDED TAX (VAT) AND EXPANDED WITHHOLDING TAX (EWT) FOR THE TAXABLE YEAR (TY) 2012,

IV.
WHETHER REVENUE OFFICER CYNTHIA O. NEDAMO (RO NEDAMO), GROUP SUPERVISOR MA. AFRECY L. BARBIRAN (GS BARBIRAN) AND REVENUE OFFICER ALFIE JOY Q. EMUY (RO EMUY) ARE AUTHORIZED TO CONDUCT A REINVESTIGATION UNDER A VALID LETTER OF AUTHORITY (LOA).

ARGUMENTS

Firstly, as to the issue on jurisdiction, petitioner claims that the instant petition was properly reckoned from its receipt of the Denial Letter[155] signed by then RD Tabule, denying its Request for Reconsideration[156] (of the FDDA[157]) even as the same was still pending resolution by the CIR.

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153 Supra at note 33.
154 See Resolution dated 16 January 2023, id., p. 860.
155 Exhibit "P-35"/"R-7", supra at note 24.
156 Exhibit "P-32", supra at note 20.

Citing the recent case of *Light Rail Transit Authority v. Bureau of Internal Revenue*[158] (**LRTA**), where the Supreme Court ruled that the RD's Letter denying therein petitioner's Request for Reinvestigation or administrative appeal should have been considered as the CIR's final decision appealable to the Court of Tax Appeals (**CTA**), petitioner submits that, since there was inaction on the part of respondent for more than two (2) years in respect of its Request for Reconsideration (of the FDDA), RD Tabule's Denial Letter[159] should similarly be treated as respondent's final decision appealable to this Court.

Further, citing the Supreme Court's ruling in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*[160] (**Oceanic**) that the determination on whether a BIR letter or correspondence is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer, petitioner asserts that RD Tabule's Denial Letter, which contains the statements "your request for reconsideration for the [FDDA] is hereby denied" and "we shall forward your case to the Collection Division for collection enforcement" should be construed as a clear and unequivocal denial of its pending Request for Reconsideration. On this basis, petitioner alleges that it was led to believe that RD Tabule's Denial Letter constitutes the final decision of respondent himself or herself.

Petitioner contends that even if the Denial Letter was erroneously issued, any resulting ambiguity should not be held against it, as a taxpayer should not be left uncertain and forced to speculate about which action constitutes the decision that is appealable to the CTA.

Secondly, petitioner submits that the FDDA and ANs issued by the BIR are void and have no valid and factual bases because the RO and GS who took over the examination of petitioner's books due to the re-assignment of the original RO and GS, were not validly authorized by a LOA.

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157 Exhibit "P-31"/"R-6", supra at note 6.
158 G.R. No. 231238, 20 June 2022.
159 Exhibit "P-35"/"R-7", supra at note 24.
160 G.R. No. 148380, 09 December 2005.

Citing the ruling in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[161] (**McDonald's**), petitioner argues that respondent's failure to issue a new LOA authorizing RO Nedamo to conduct an audit examination renders the assessment invalid. Additionally, petitioner contends that a new LOA is essential even during the reinvestigation stage which is part of the audit and examination process to determine the correct amount of tax due. There being no new LOA in this case, the FDDA with ANs in question should be struck down for being invalid and violative of petitioner's constitutional right to due process.

Thirdly, petitioner contends that assuming *arguendo* that the FDDA with ANs issued to it are valid, it is nevertheless not liable for deficiency IT, VAT and EWT for TY 2012. On this note, petitioner alleges that the BIR's findings of tax deficiencies failed to consider that it is a registered producer or manufacturer and distributor of vegetable methyl ester additive and other biofuel products entitled to fiscal incentives under RA 9513 such as, but not limited to, ITH, as well as VAT zero-rating on the sale of its products.

Petitioner also emphasizes that the Court-appointed ICPA determined the BIR's deficiency tax assessment in the aggregate amount of ₱136,285,183.23 to be unfounded. Additionally, petitioner highlights that both the PAN and the FAN lacked factual and legal basis for the assessment, leaving it unable to understand the nature of the alleged discrepancies. ICPA Dabalos also confirmed this lack of information from the BIR in her Amended ICPA Report[162], where she repeatedly noted the BIR's failure to provide a schedule identifying the transactions leading to the disallowances.

Essentially, petitioner claims that the subject assessment for deficiency IT, VAT and EWT should be cancelled for lack of factual and legal basis.

Respondent, on the other hand, reiterates the arguments in his or her Answer.[163] *Firstly,* as to the issue on jurisdiction, respondent

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[161] G.R. No. 242670, 10 May 2021.

[162] Exhibit "P-41-C", supra at note 101.

[163] Supra at note 33.

insists that the instant petition must be dismissed for being premature. Since the administrative appeal is still pending with the OCIR, petitioner should have waited for respondent's decision thereon before filing a judicial appeal before this Court.

Respondent argues that petitioner cannot rely on RD Tabule's Denial Letter to file this petition, considering that petitioner admits to receiving Chief Bonilla's Letter dated 05 September 2017[164] from the BIR's Appellate Division, which notes that its administrative appeal with the OCIR (*i.e.*, Request for Reconsideration[165]) is still pending resolution. Instead, what is appealable to this Court is the decision of respondent. Thus, by filing this petition, respondent submits that petitioner violates the doctrine of exhaustion of administrative remedies, as there is no decision yet from respondent on the said administrative appeal.

Secondly, even assuming without conceding that this Court has jurisdiction over this case, the assessments were made pursuant to a valid LOA and the continuation of the audit by another RO not named therein does not invalidate the assessment.

On this note, respondent contends that the requirement of a new LOA applies only to the conduct of audit and investigation. It is not necessary for purposes of evaluating a taxpayer's request for reinvestigation, as in this case. Citing the Court in Division's ruling in *Ithiel Corporation v. Commissioner of Internal Revenue*[166], respondent points out that the CIR's 'decision' on a disputed assessment differs from the 'assessment' itself. Drawing on this distinction, since the FLD/FAN was already issued (based on the findings and recommendation of the RO named in the LOA) at the time the case was reassigned to another RO for the conduct of a reinvestigation, the issuance of a MOA (as opposed to a new LOA), which specifies that the assignment of RO Nedamo is pursuant to the LOA earlier issued, should suffice.

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164 Exhibit "P-33", supra at note 21.
165 Exhibit "P-32", supra at note 20.
166 CTA Case No. 9591, 06 July 2020.

Thirdly, respondent maintains that petitioner failed to provide sufficient proof to establish that it is a Registered Producer of Biofuel and thus, entitled to fiscal incentives under RA 9513.

As to the ITH incentive, respondent points out that petitioner did not present or submit in evidence its Certificate of Registration issued by the Department of Energy (**DOE-COR**). Despite that the Specific Terms and Conditions on Registration attached to its BOI-COR[167] does indicate that petitioner is a 'Registered Producer of Biodiesel' entitled to the ITH incentive, respondent claims that this must nevertheless be disregarded because petitioner failed to submit a "Certificate of [ITH] Entitlement" as required under the BOI's "2007 Revised Rules and Regulations in the Availment of [ITH]".

With regard to the VAT zero-rating incentive, respondent notes that, besides the apparent absence of a DOE-COR, petitioner also failed to prove that its alleged fuel sales were strictly confined to biofuels. Considering that petitioner's fuel sales are not limited to biofuel, but also include "all kinds of petroleum products" (as stated in its Amended AOI[168]), which may include traditional fuels made from fossil fuels not eligible for VAT zero-rating, petitioner is required to provide evidence that its sales are exclusively derived from biofuel.

Lastly, respondent insists that petitioner was sufficiently informed of the factual and legal bases of the assessment. Contrary to petitioner's allegations, due process was accorded in every stage of the assessment process.

RULING OF THE COURT

Before delving into the merits of the case, We shall first resolve whether this Court has jurisdiction over the instant petition.

167 Exhibit "P-3", supra at note 82.
168 Supra at note 8.

THE COURT OF TAX APPEALS (CTA) HAS NO JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

Citing *LRTA*, petitioner argues that RD Tabule's Denial Letter[169] should be treated as respondent's final decision on its Request for Reconsideration[170] (of the FDDA[171]).

Respondent counters that since the assessment is the subject of an administrative appeal before the CIR, only the denial by respondent himself or herself is appealable to this Court and the decision of the RD cannot be ascribed to the CIR.

We find petitioner's contention bereft of merit.

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[172] Section 7(a)(1) of Republic Act (**RA**) No. 1125[173], as amended by RA 9282[174], provides:

> ...
> **Sec. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **<u>Decisions</u> of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal

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169 Exhibit "P-35"/"R-7", supra at note 24.
170 Exhibit "P-32", supra at note 20.
171 Exhibit "P-31"/"R-6", supra at note 6.
172 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.
173 AN ACT CREATING THE COURT OF TAX APPEALS.
174 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> Revenue or other laws administered by the Bureau of Internal Revenue[.][175]
>
> ...

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[176]

The law is clear on the period to appeal to this Court if a decision on the protest is denied in whole or in part by the CIR. Section 228 of the NIRC of 1997, as amended, in part, reads as follows:

> ...
>
> **Sec. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings[.] ...
>
> ...
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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 <u>receipt</u> of the said decision, or from the lapse of the one hundred eighty (180)-day period;**

175 Emphasis and underscoring supplied.

176 *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

> **otherwise, the decision shall become final, executory and demandable.**[177]
>
> ...

The aforequoted Section 228 is implemented by Revenue Regulations (**RR**) No. 12-99[178], as amended by RR No. 18-2013[179], issued on 28 November 2013. Relevant portions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides the taxpayer's options on disputed assessments, to wit:

> ...
>
> Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> Sec. 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation as follows:
>
> (i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> ...
>
> For request for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter protest, otherwise, the assessment shall become final. The term *"relevant supporting documents"* refer to those documents necessary to support the legal

[177] Italics in the original text, emphasis and underscoring supplied.

[178] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

and factual bases in disputing a tax assessment as determined by the taxpayer. ...

...

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may <u>either</u>: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or **<u>(ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision</u>.** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may <u>either</u>: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the

> final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.[180]
>
> ...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[181] (**PAGCOR**) and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[182], explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> ...
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> **1. If the protest is wholly or partially denied by the CIR *or* his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> ...

To avoid confusion, the Supreme Court in *PAGCOR* further summarized the rules in the following wise:

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180 Italics in the original text, emphasis and underscoring supplied.

181 G.R. No. 208731, 27 January 2016: Citation omitted, italics and underscoring in the original text and emphasis supplied.

182 Supra at note 172.

...

> To further clarify the three options: **A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA.** A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. **There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.**[183]

...

Based on the foregoing provisions and jurisprudence, in cases where a taxpayer's protest is denied by the CIR's duly authorized representative, a taxpayer is given **two (2) alternative remedies**, to either: *first*, appeal to the CTA within 30 days from the date of receipt of the representative's decision; or, *second*, elevate his protest through a request for reconsideration to the CIR, within the same 30-day period, otherwise referred to as an "administrative appeal" and **await the final decision of the CIR on the disputed assessments and appeal such final decision to the CTA within 30 days from receipt of a copy of such decision.**

As culled from the case records, petitioner filed its Protest[184] against the FLD/FAN[185] with then Regional Director Romulo L. Aguila, Jr. (**RD Aguila**) of RR No. 19-Davao City, as the CIR's duly authorized representative. OIC-RD Balatero later denied this Protest through the FDDA[186], which petitioner received on 05 May 2017. Subsequently, petitioner filed a timely administrative appeal with the OCIR on 05 June 2017.[187] In a Letter dated 05 September 2017[188], Chief Bonilla of the BIR's Appellate Division informed petitioner that its administrative appeal was still pending before respondent. It is thus evident that petitioner opted for the *second remedy*, *i.e.*, to await respondent's final decision and appeal the said decision before the CTA within 30 days from receipt thereof.

183 Supra at note 181; Emphasis supplied.
184 Exhibit "P-29", supra at note 16.
185 Exhibit "P-28"/"R-4" and "R-4-a" to "R-4-d", supra at note 15.
186 Exhibit "P-31"/"R-6", supra at note 6.
187 Petitioner's Request for Reconsideration (of the FDDA), Exhibit "P-32", supra at note 20.
188 Exhibit "P-33", supra at note 21.

In line with the rules and regulations set forth in RR No. 12-99[189], as amended by RR No. 18-2013[190], and the Supreme Court's ruling in *PAGCOR*, the only way for an assessment (subject of an administrative appeal with the CIR) to be reviewable and appealable to this Court is when the CIR, himself or herself, renders a decision. Regrettably, petitioner filed the instant appeal based on its receipt of the "decision" of **RD Tabule** (*i.e.*, Denial Letter)[191], which is not sanctioned under the prevailing rules.

We cannot subscribe to petitioner's invocation of the recent case of *LRTA* as the established doctrine there is that in cases where the CIR fails to act on administrative appeals of protest denials, the taxpayer may choose to await the CIR's decision on the appeal before filing a judicial appeal before the CTA. The judicial appeal can be filed notwithstanding the expiration of the 180-day period for the CIR to resolve protests of assessments. The High Court also declared in *LRTA* that any summary collection remedies under the NIRC of 1997, as amended — such as issuing a Warrant of Distraint and/or Levy (**WDL**) or a Final Notice Before Seizure (**FNBS**) — would be tentative and thus, cannot be construed as the CIR's final decision appealable to this Court, given the pendency of the administrative appeal before the CIR. This particular doctrine does not apply in the present case.

It is worth noting that, in *LRTA*, the Supreme Court's consideration of therein RD's decision (on the administrative appeal pending with the CIR) as appealable to this Court was not meant to create an exception to the general rule. Still, it is the CIR's decision on the administrative appeal that is appealable to this Court. Notably, as can be gleaned from the narration of facts in *LRTA*, it was undisputed that therein RD's decision (issued after various summary collection remedies such as the FNBS and the WDL) was sanctioned by the CIR, to wit:

> ...
>
> Based on the submissions to this Court, the Commissioner of Internal Revenue (the Commissioner), through the Regional Director of Revenue Region No. 8 (Regional Director), issued a Preliminary

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189 Supra at note 178.
190 Supra at note 179.
191 Exhibit "P-35"/"R-7", supra at note 24.

Assessment Notice to the Light Rail Transit dated December 8, 2008, for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and withholding of value-added tax for the year 2003, the total amount being ₱3,521,915.61. Light Rail Transit filed a protest to the Preliminary Assessment Notice.

On December 24, 2008, the Regional Director issued the Formal Assessment Notice, and the alleged deficiency taxes, inclusive of interests, amounted to ₱3,555,982.19. The Light Rail Transit likewise protested the Formal Assessment Notice on January 7, 2009.

On April 1, 2011, the Regional Director issued the Final Decision on Disputed Assessment, denying the Light Rail Transit's protest to the Formal Assessment Notice. The Light Rail Transit received a copy of the Final Decision on Disputed Assessment on April 26, 2011.

On May 6, 2011, the Light Rail Transit appealed the Commissioner's Final Decision on Disputed Assessment.

Pending resolution of the Light Rail Transit's appeal to the Commissioner, the Officer-in-Charge Revenue District Officer of Revenue Region No. 8, Revenue District Office No. 51 (Revenue District Officer) issued a **Preliminary Collection Letter** on September 20, 2011. There, the Revenue District Officer demanded payment of Light Rail Transit's alleged tax deficiencies totaling ₱9,279,619.86 within 10 days from receipt of the Collection Letter. The Light Rail Transit received a copy of the Preliminary Collection Letter two days later, or on September 22, 2011.

On September 30, 2011, the Light Rail Transit informed the Regional Director that it had filed an appeal with the Commissioner. Still, on November 23, 2011, the Revenue District Officer issued a **Final Notice Before Seizure**, giving the Light Rail Transit 10 days from receipt within which to settle its tax liabilities. In its February 3, 2012, Letter to the Revenue District Office, the Light Rail Transit reiterated that its appeal was still pending with the Commissioner and that "[it] shall act [on] the matter as soon as [it] receive[s] the Commissioner's decision on [its] appeal."

On March 5, 2012, the Revenue District Officer issued a **Warrant of Distraint and/or Levy**, which the Light Rail Transit received on May 17, 2012. This prompted the Light Rail Transit to seek reconsideration of the issuance of the Warrant of Distraint and/or Levy and their tax liability.

Through an April 4, 2013 Letter, the Revenue District Officer forwarded the docket of the case to a Revenue Officer with the instruction to pursue the reinvestigation of the Light Rail Transit's tax liabilities. The Light Rail Transit was then ordered to present all relevant documents within 60 days for proper re-evaluation of its case.

However, in a June 9, 2014 Letter, the Revenue District Officer dropped the reinvestigation of Light Rail Transit's case for failure to submit required documents. **The Revenue District Officer thus declared the findings in the Final Decision on Disputed Assessment final and appealable.** The Light Rail Transit received a copy of the June 9, 2014 Letter on June 17, 2014.

Then, in a June 30, 2014 Letter, the Regional Director, <u>acting on the May 6, 2011 appeal</u> of the Light Rail Transit to the Office of the Commissioner, <u>again declared the case final, executory, and demandable</u> for Light Rail Transit's failure to submit the required documents. The Light Rail Transit received a copy of the June 30, 2014 Letter on August 12, 2014.[192]

...

Here, it must be stressed that respondent, in his or her Answer[193], categorically disputed petitioner's contention that RD Tabule's decision constitutes respondent's final decision appealable before this Court. Furthermore, Chief Bonilla's Letter dated 05 September 2017[194] clearly informed petitioner that the Appellate Division of the BIR's National Office, and not any other office like the RD's Office, would resolve and act on its administrative appeal (*i.e.*, Request for Reconsideration)[195]. This protocol is consistent with Revenue Memorandum Circular (**RMC**) No. 15-20[196], which provides:

...

C.2 Filing of Administrative Protest with the Commissioner of Internal Revenue (CIR)

Only inactions or **adverse decisions of the** Assistant Commissioner/**Regional Director** or Authorized Higher Revenue Official **shall be filed with the Office of the CIR**. The said

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[192] Citations omitted, emphasis and underscoring supplied.
[193] Supra at note 33.
[194] Exhibit "P-33", supra at note 21.
[195] Exhibit "P-32", supra at note 20.
[196] *Prescribing the Manner on How Concerned Taxpayers Shall be Informed of the Procedures in Responding to the Issuance of Deficiency Tax Assessments.*

> **<u>administrative protest/appeal shall be evaluated and acted upon by the Appellate Division in the National Office</u>**.[197]
>
> ...

Additionally, in reply to petitioner's Letter dated 14 February 2020[198], asking for clarification on RD Tabule's "decision" (*i.e.*, Denial Letter)[199], then RD Catapia of the same RR No. 19-Davao City stated that "said case docket will be forwarded to the Tax Appellate Division to properly facilitate your request for reconsideration..." Besides, as aptly asserted by petitioner itself in the same letter-clarification, an RD has no authority under Revenue Administrative Order (**RAO**) No. 03-14[200], as amended by RAO No. 04-17[201], to approve or deny a request for reconsideration filed before the OCIR. This lack of authority also aligns with Section 3 of RR No. 12-99[202], as amended by RR No. 18-2013[203], which clearly provides that the CIR decides the administrative appeal from the decision of the CIR's duly authorized representative. It thus follows that, even if this Court were to consider that RD Tabule's "decision" (*i.e.*, Denial Letter) was meant to decide petitioner's request for reconsideration, the same is still void for being *ultra vires*.

This Court is not unaware that under Section 10[204] of the NIRC of 1997, as amended, an RD may perform such other functions "as may be delegated by the Commissioner". However, herein petitioner failed to provide any evidence of such delegation. The records of the case are devoid of such delegation. In fact, upon examining RD Tabule's Denial Letter, it is evident that there was no indication of respondent delegating authority to resolve petitioner's Request for Reconsideration[205] (of the FDDA[206]), to wit:

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197 Emphasis and underscoring supplied.
198 Exhibit "R-8", supra at note 26.
199 Exhibit "P-35"/"R-7", supra at note 24.
200 *Organization and Functions of the Regional Offices, Its Divisions & Sections and Revenue District Offices.*
201 *Amendment of Revenue Administrative Order (RAO) No. 3-2014 dated November 5, 2014 Defining the Functions of the Offices of the Regional Director and Assistant Regional Director.*
202 Supra at note 178.
203 Supra at note 179.
204 **SEC. 10.** *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...

(h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner.

...

205 Exhibit "P-32", supra at note 20.

> ...
>
> This refers to your internal revenue liabilities for taxable year 2012 under eLA201000076259 dated September 5, 2013 which amounted to ₱527,578,169.17, inclusive of legal increments.
>
> We regret to inform you that your request for reconsideration for the Final Decision on Disputed Assessment (FDDA) is hereby denied...
>
> ...
>
> **Meanwhile, the 30-day period to file an appeal to the Court of Tax Appeal had already lapsed.** Hence, we shall forward your case docket to the Collection Division for collection enforcement.[207]
>
> ...

In fact, RD Tabule's Denial Letter[208] appears to have treated the subject assessment as final and executory, which is contrary to the nature of a disputed assessment that should be reviewable and appealable before this Court. Accordingly, since the case records are bereft of proof of respondent's delegating authority in RD Tabule's favor, treating the latter's Denial Letter as the decision appealable to this Court would consequently limit the CIR's power to review the decisions of his or her subordinates once the same is pending before his or her office.

It is also noteworthy that petitioner did not raise any of the established exceptions[209] to the exhaustion of administrative remedies to warrant this Court's intervention.

Thus, from the foregoing, petitioner's premature judicial appeal has no leg to stand on. Tersely put, there is still no decision reviewable before this Court. If anything, petitioner's only recourse would be to await respondent's final decision on its administrative appeal. This is the case precisely because, as mentioned earlier, it opted for the *second remedy*, *i.e.*, await respondent's final decision and appeal the said decision before the CTA within 30 days from receipt thereof (instead of

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206 Exhibit "P-31"/"R-6", supra at note 6.
207 Emphasis supplied.
208 Exhibit "P-35"/"R-7", supra at note 24.
209 *Republic of the Philippines v. Michelle Soriano Gallo*, G.R. No. 207074, 17 January 2018.

the first remedy, *i.e.*, appeal to the CTA within 30 days from the date of receipt of RD Tabule's Denial Letter).

Basic is the rule that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint.[210] Thus, the limits of this Court's jurisdiction is unaffected by petitioner's erroneous interpretation of the law. In *Glynna Foronda-Crystal v. Aniana Lawas Son*[211], the Supreme Court aptly stated — "[i]**n law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution**." In thus losing our authority to review the subject deficiency assessment, this Court sees no relevant need to further tackle the parties' other issues as these will not change the outcome of the case.

WHEREFORE, the foregoing premises considered, the present Petition for Review filed by petitioner Bioenergy 8 Corporation on 20 February 2020 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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210 *Editha Padlan v. Elenita Dinglasan and Felicisimo Dinglasan*, G.R. No. 180321, 20 March 2013.
211 G.R. No. 221815, 29 November 2017.

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice