REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**THIRD DIVISION**

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| **PAMPANGA III ELECTRIC COOPERATIVE, INC.,** *Petitioner,* | **CTA CASE NO. 10911** |
| | Present: |
| - versus - | **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE AND REGIONAL DIRECTOR JOSEPH M. CATAPIA, in his capacity as the REGIONAL DIRECTOR OF REVENUE REGION NO. 4, CITY OF SAN FERNANDO PAMPANGA OF THE BUREAU OF INTERNAL REVENUE,** *Respondent.* | Promulgated: DEC 01 2025 4:26 p.m. |

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## DECISION

***ANGELES, J.:***

Before the Court is a *Petition for Review*[1] filed by Pampanga III Electric Cooperative, Inc. (Petitioner) on July 8, 2022 praying that the Warrant of Distraint and/or Levy No. WDL-2022-RR4-AMS-000017 (Subject WDL), and the Income Tax (IT) Assessment No. 21BE1704165553 sought to be satisfied under the Subject WDL in the total amount of Eight Million Six Hundred Seventy-Six Thousand One Hundred Twenty and 25/100 Pesos (Php8,676,120.25), inclusive of surcharges, interests, and penalties for taxable year (TY) 2016, be cancelled, annulled, and set aside for being contrary to law.[2]

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[1] Docket, pp. 9 to 66.
[2] Prayer, *Petition for Review*, Docket, p. 58.

## THE PARTIES

Petitioner is a non-stock, non-profit electric cooperative duly organized by virtue of Presidential Decree (P.D.) No. 269, otherwise known as the National Electrification Administrative Decree, and with principal office at Quintos Bldg. Mc Arthur Hi-way, San Vicente, Apalit, Pampanga.[3] It is a duly registered taxpayer of the Bureau of Internal Revenue (BIR) under Tax Identification No. 000-800-840-000 under Revenue District Office (RDO) No. 21B-South Pampanga, which falls under Revenue Region No. 4.[4]

Respondent is the Commissioner (CIR) of the BIR, vested under pertinent laws with the authority to carry out the functions, powers, duties and responsibilities, including, among others, the power to decide disputed assessments, cancel and abate tax liabilities, and other matters, including directing to distrain and/or levy a taxpayer's properties pursuant to and in accordance with the Tax Code and other applicable tax laws. It may be served with summons, pleadings, copies of other orders and processes at the Litigation Division, Room 703 BIR National Office, Quezon City.[5]

Furthermore, Regional Director (RD) Jose M. Catapia, head of BIR Revenue Region No. 4, is likewise impleaded as a respondent in this case.[6]

## THE ANTECEDENTS (ADMINISTRATIVE LEVEL)

On April 16, 2017, petitioner filed with the BIR its Annual Income Tax Return (ITR) for TY ending December 31, 2016.[7]

The BIR, through RD Jethro M. Sabariaga, issued a *Letter of Authority* (LOA) dated April 12, 2018,[8] authorizing Revenue Officer Charlotte Lozano (RO Lozano)/Group Supervisor Rachael Liwanag (GS Liwanag), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the period from January 1, 2016 to December 31, 2016.

Sometime thereafter, a *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue*

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[3] Pars. 1-2, Admitted Facts and Stipulation of Facts, *Pre-Trial Order*, Docket, p. 487.
[4] Par. 3, Admitted Facts and Stipulation of Facts, *Pre-Trial Order*, Docket, p. 487.
[5] Par. 4, Admitted Facts and Stipulation of Facts, *Pre-Trial Order*, Docket, p. 487.
[6] Par. 2.3, *Petition for Review*, Docket, p. 11.
[7] Exhibit "P-24", Docket, p. 620 to 627.
[8] Exhibits "P-5" and "R-1", BIR Records, p. 1.

*Code*,[9] was purported to be executed by the parties, aims to extend the period to make an assessment and/or collection of taxes for TY 2016 which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by the provisions of the NIRC, but not later than December 31, 2020.

Consequently, on May 27, 2019, a *Notice of Informal Conference*[10] was issued to inform petitioner that deficiency IT, Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Withholding Tax on Compensation (WTC), inclusive of interests, surcharges, and compromise penalties taxes have been preliminarily found due against it. After much discussion, the revenue examiners reduced the deficiency assessments but retained the findings in the deficiency IT.[11]

Thereafter, a *Memorandum* dated June 28, 2019,[12] was submitted by RO Lozano and noted by GS Liwanag, recommending that a preliminary assessment notice be against petitioner.

Thus, on February 21, 2020, the BIR, through RD Edgar B. Tolentino, issued the *Preliminary Assessment Notice* (PAN),[13] informing petitioner that after investigation, there has been found due from the latter deficiency income tax in the amount of ₱7,821,039.14. On June 11, 2020, petitioner filed a Reply to the PAN in disagreement with the findings as contained therein. It emphasized that cooperatives registered with the National Electrification Administration (NEA) are exempt from income tax.[14]

A *Formal Letter of Demand* (FLD) was then issued on December 1, 2020,[15] reiterating the income tax assessment and surcharge against petitioner, with modification as to the amount of interest imposed. Undaunted, petitioner filed a *Protest*[16] in the form of a reinvestigation on January 16, 2021. In response thereto, the BIR, through a letter, acknowledged the same and informed petitioner that the docket of the case was referred to RDO No. 21B – South Pampanga for the reinvestigation of the case.[17]

[9] Exhibit "P-9", Docket, p. 544.
[10] Exhibits "P-10" and "R-4", BIR Records, p. 127 to 128.
[11] Par. 4.10, *Petition for Review*, Docket, p. 14.
[12] Exhibit "R-5", BIR Records, pp. 134 to 136.
[13] Exhibits "P-13", Docket pp. 563 to 566; and "R-6", BIR Records, pp. 209 to 212.
[14] Exhibit "P-14", Docket, p. 567.
[15] Exhibits "P-15" and "R-7", BIR Records, pp. 235 to 240.
[16] Exhibit "P-16", Docket, p. 573.
[17] Exhibit "P-17", Docket, p. 575.

On March 25, 2021, petitioner then submitted a *Supplemental Letter* in relation to its previous *Protest*, further highlighting the justifications for its exemption from income tax.[18]

Consequently, RO Lozano submitted a *Memorandum* dated April 14, 2021[19] to RD Tolentino, recommending that the protest of petitioner be denied for failure to present relevant documents in support of the same.

Eventually, RD Joseph M. Catapia (RD Catapia) issued a *Letter* dated July 21, 2021, in response to the *Protest* and *Supplemental Letter* submitted by petitioner. There, it refuted the latter's position that it is exempt from income tax.[20] On August 16, 2021, petitioner received the *Letter* dated July 21, 2021.[21] Thus, petitioner filed a *Request for Reconsideration* dated September 14, 2021 with the Office of the Commissioner.[22]

On September 1, 2021, a *Final Decision on Disputed Assessment* (FDDA)[23] was issued by RD Catapia, reiterating the findings on the deficiency income tax and administrative penalty for failure of petitioner to prove exemption from income tax.

Thereafter, on December 23, 2021, petitioner filed a *Letter* requesting for the status of its previous *Request for Reconsideration* with the Office of the Commissioner. This was received by the BIR on December 28, 2021. Petitioner likewise asserts that the FDDA it previously received on November 23, 2021 was without authority considering that the matter is already pending with the office of the CIR.[24]

On June 9, 2022, petitioner received the Subject WDL[25] seeking to collect deficiency IT in the total amount of Eight Million Six Hundred Seventy-Six Thousand One Hundred Twenty and 25/100 Pesos (Php8,676,120.25), inclusive of surcharges, interests, and penalties for TY 2016.

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[18] Exhibits "P-18", Docket, pp. 576 to 580.
[19] Exhibit "R-9", BIR Records, p. 253.
[20] Exhibits "P-19", BIR Records, pp. 264 to 268.
[21] Refer to Exhibit "P-37", Q&A No. 76, *Judicial Affidavit of Ms. Maria Elizabeth D. Urbano*, Docket, p. 20.
[22] Exhibit "P-20", Docket, pp. 581 to 595.
[23] Exhibit "P-20-2", Docket, pp. 611 to 612; Exhibit "R-10", BIR Records, pp. 269 to 270.
[24] Exhibit "P-21", BIR Records.
[25] Exhibit "P-1", Docket, p. 102.

## THE PROCEEDINGS BEFORE THE COURT

On July 8, 2021, the present *Petition for Review* was filed.[26]

Within the extended period granted by the Court,[27] respondent filed his *Answer* on October 14, 2022,[28] with the following special and affirmative defenses: (1) petitioner is not exempt from payment of income taxes; (2) respondent's right to assess and/or collect deficiency taxes has not yet prescribed; and that (3) petitioner is liable for deficiency income tax, and administrative penalty.

On November 8, 2022, the Court granted the respondent's *Motion to Defer the Transmittal of BIR Records* and allowed the same to be submitted five (5) days before the scheduled pre-trial conference.[29] Thus, on January 27, 2023, respondent filed its *Compliance* with regard to the transmittal of the BIR Records consisting of one (1) folder, with Three Hundred Twenty-Nine (329) pages.[30]

Considering that the parties opted not to have their case mediated before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA), a *No Agreement to Mediate* was executed on December 7, 2022.[31]

The Pre-Trial Conference was then set and held on March 2, 2023.[32] Prior thereto, *Respondent's Pre-Trial Brief* was submitted on February 3, 2023;[33] while petitioner's *Pre-Trial Brief* was filed on February 27, 2023.[34]

On March 22, 2023, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[35] In a Resolution dated April 18, 2023, the Court approved the same and the pre-trial was deemed terminated.[36] Thereafter, the Pre-Trial Order dated June 1, 2023 was issued.[37]

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[26] Docket, pp. 9 to 66.
[27] *Motion for Extension of Time to File Answer*, Docket, pp. 323 to 327; and Resolution dated October 3, 2022, Docket, p. 329.
[28] Docket, pp. 330 to 343.
[29] Resolution dated November 8, 2022, Docket, p. 357.
[30] Docket, p. 371.
[31] *No Agreement To Mediate* dated December 5, 2022, Docket, p. 358.
[32] Resolution dated December 16, 2022, Docket, p. 363; Minutes of the hearing held on March 2, 2023, Docket, pp. 422 to 424; and Order dated, March 2, 2023, Docket, pp. 428 to 430.
[33] Docket, pp. 389 to 394.
[34] Docket, pp. 397 to 421.
[35] Docket, pp. 439 to 453.
[36] Docket, p. 457.
[37] *Pre-Trial Order* dated June 1, 2023, Docket, pp. 481 to 494.

Trial ensued, and the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimony of its General Manager, Ms. Maria Elizabeth D. Urbano,[38] and Mr. Delio I. Samulde, CPA,[39] an accredited external auditor of the NEA.

On September 7, 2023, petitioner filed its *Formal Offer of Evidence*,[40] with respondent's *Comment (Re: Formal Offer of Evidence dated 07 September 2023)* filed on September 8, 2023.[41] In the Resolution dated January 11, 2024,[42] the Court admitted petitioner's offered exhibits, except for Exhibits "P-11", "P-12", and "P-39", the admissibility of which was denied for failure to present the originals for comparison.

For his part, respondent offered the testimony of RO Lozano.[43]

On January 19, 2024, respondent filed his *Formal Offer of Evidence*,[44] with petitioner's *Comment and/or Objection to (To the Respondent's Formal Offer of Evidence)* filed on February 7, 2024.[45] In the Resolution dated June 20, 2024,[46] the Court admitted respondent's offered exhibits.

Meanwhile, by virtue of a *Motion for Partial Reconsideration of the Resolution dated 11 January 2024*[47] filed on February 1, 2024, petitioner prayed that the Court reconsider its previous resolution in denying the admission of Exhibit "P-39". It contends that the original was presented for comparison and was marked in open court during the hearing held on August 8, 2023. On the other hand, respondent countered by way of *Comment and Opposition (Re: Motion for Partial Reconsideration dated 01 February 2024)*[48] filed on February 22, 2024. In the Resolution dated June 20, 2024,[49] the Court denied petitioner's *Motion for Partial Reconsideration* for lack of merit.

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[38] Exhibit "P-37", Docket, pp. 67 to 101; and Minutes of the hearing held on August 8, 2023, Docket, p. 495; and Order dated August 8, 2023, Docket, pp. 496 to 497.
[39] Exhibit "P-38", Docket, pp. 227 to 238; and Minutes of the hearing held on August 8, 2023, Docket, p. 495; and Order dated August 8, 2023, Docket, pp. 496 to 497.
[40] Docket, pp. 511 to 536.
[41] Docket, pp. 819 to 822.
[42] Docket, pp. 827 to 828.
[43] Exhibit "R-12", Docket, pp. 379 to 387; Minutes of the hearing held on January 18, 2024, Docket, p. 829; and Order dated January 18, 2024, Docket, pp. 830 to 830-A.
[44] Docket, pp. 832 to 837.
[45] Docket, pp. 850 to 866.
[46] Docket, pp. 875 to 880.
[47] Docket, pp. 840 to 848.
[48] Docket, pp. 868 to 871.
[49] Docket, pp. 875 to 880.

In relation thereto, the Court subsequently noted[50] the filing of a *Tender of Excluded Evidence*[51] by petitioner on July 26, 2024, praying that the excluded Exhibit "P-39" be maintained as part of the records of the case.

On July 10, 2024, respondent filed a *Manifestation*[52] stating that he is adopting the arguments raised in his *Answer* dated October 14, 2022. On the other hand, petitioner filed its *Memorandum*[53] on July 29, 2024.

In a Minute Resolution dated August 5, 2024, the case was submitted for decision.[54]

Pending this Court's decision, on August 7, 2024, petitioner filed a *Motion to Strike Out Manifestation dated 10 July 2024*[55] in view of the failure of the respondent to comply with the mandated contents required of a memorandum. It prayed that the previous *Manifestation* be expunged from the records. In a *Resolution*[56] dated October 9, 2024, the Court denied the *Motion to Strike.*

Lastly, on October 3, 2025, petitioner personally and electronically filed an *Urgent Verified Motion: a) to Suspend the Collection of Taxes; and b) to Recall/Lift the Warrant of Distraint and/or Levy.* It alleged that on September 18, 2025, respondent proceeded to issue another Warrant of Distraint and/or Levy No. WDL-2024-RR4-AMS-000-000118. Thus, petitioner prayed that the respondents be directed to desist from collecting or proceeding with any efforts to collect until the final decision of the case is rendered.

## THE ISSUE

As stipulated by the parties, the lone issue for this Court's resolution is:

> **Whether the TY 2016 WDL issued by the respondents and the TY2016 IT Assessment sought to be satisfied, in the total amount of Eight Million Six Hundred Seventy-Six Thousand One Hundred Twenty and 25/100 Pesos (₱8,676,120.25), inclusive of surcharge and interests, covering**

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[50] Minute Resolution dated August 5, 2024, Docket, p. 980.
[51] Docket, pp. 888 to 896.
[52] Docket, pp. 881 to 883.
[53] Docket, pp. 897 to 958.
[54] Minute Resolution dated August 5, 2024, Docket, p. 980.
[55] Docket, pp. 981 to 986.
[56] Docket, pp. 988 to 989.

**PELCO III's TY 2016 should be declared illegal and immediately cancelled.**[57]

***Petitioner's arguments:***

Petitioner argues that: (1) the Subject WDL issued by the respondents and the IT Assessment sought to be satisfied have no basis in law since by the very nature of its franchise, it is not liable for IT. Thus, the Subject WDL and the IT Assessment should be immediately cancelled; (2) the Subject WDL should be cancelled because there is no basis for its issuance since the TY2016 IT Assessment is not delinquent; and (3) assuming *arguendo* that it is subject to IT, respondents have no right to collect on a prescribed assessment. Furthermore, other assessed items are not supported by facts and law, and that it should not be held liable for any compromise penalties, interests, and surcharge.

***Respondent's counter-arguments:***

Respondents contend that: (1) petitioner is not exempt from payment of income taxes; (2) respondents' right to assess and/or collect deficiency taxes petitioner has not yet prescribed; and that (3) petitioner is liable for deficiency income tax, and administrative penalty.

## THE RULING OF THE COURT

The *Petition for Review* is meritorious.

***The Court has jurisdiction over the present case; and the instant Petition for Review was timely filed.***

At the outset, the law governing the Court of Tax Appeals (CTA), Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282 (CTA Law), provides for the exclusive appellate jurisdiction of the CTA not only over decisions or inactions of the CIR in relation to disputed assessments or refunds, but as well as over *other matters* arising from the National Internal Revenue Code (NIRC) or other laws administered by the BIR, to wit:

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[57] Issue/s to be Tried or Resolved, *Pre-Trial Order*, Docket, p. 488; Stipulation of the Issue, *Joint Stipulation of Facts and Issues*, Docket, p. 440.

SECTION 7. Section 7 of the same Act is hereby amended to read as follows:

"SEC. 7. *Jurisdiction.* — The CTA shall exercise:

"(a) **Exclusive appellate jurisdiction** to review by appeal, as herein provided:

"(1) **Decisions** of the Commissioner of Internal Revenue in cases **involving disputed assessments, refunds** of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**[58] *(Emphasis supplied)*

The same is likewise provided in the Revised Rules of the Court of Tax Appeals (RRCTA),[59] *viz.*:

**RULE 4**
**Jurisdiction of the Court**

SECTION 1. Jurisdiction of the Court. — The Court shall exercise exclusive original jurisdiction over or appellate jurisdiction to **review by appeal the cases specified in Republic Act No. 1125, Section 7, as amended by Republic Act No. 9282, Section 7.** (n)

xxx xxx xxx

SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:

(a) Exclusive original 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**; *(Emphasis supplied)*

As may be gleaned from the foregoing, the scope of the CTA's power to review by appeal is not limited to decisions of the CIR over disputed assessments or refunds. In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[60] the Supreme Court stressed that Section 7 of the CTA Law likewise refers to the jurisdiction of the CTA

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[58] Expanding the Jurisdiction of the Court of Tax Appeals, Republic Act No. 9282, March 30, 2004.
[59] Revised Rules of the Court of Tax Appeals, A.M. No. 05-11-07-CTA, November 22, 2005.
[60] G.R. No. 162852, December 16, 2004.

over "other matters" in relation to the NIRC or other laws administered by the BIR.

In the case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*,[61] the Supreme Court had the occasion to pronounce that the CTA has jurisdiction over "other matters". This includes matters where the validity of a WDL is in dispute, or when the waivers relative to an assessment on which it is based is likewise being questioned, to wit:

> **Jurisdiction of the Court of Tax Appeals:**
>
> Section 7 of RA 9282 provides for the exclusive appellate jurisdiction of the CTA on matters arising under the NIRC or other law administered by the Bureau of Internal Revenue (BIR), to wit:
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> > Sec. 7. Jurisdiction. — The CTA shall exercise:
> >
> > a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > xxx xxx xxx
> >
> > 2. Inaction by 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 matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Emphasis supplied.)
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> > In *Philippine Journalists*, we ruled that the CTA's appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessments or refunds. Section 7 (a) (2) of RA 9282 also covers "other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." **Clearly, the CTA has jurisdiction to determine whether the WDL issued by the BIR is valid and rule on the validity of the five waivers of the statute of limitations** and La Flor's application for tax amnesty under RA 9480. *(Emphasis supplied)*

Likewise, in the recent case of *Commissioner of Internal Revenue v. Pacific Hub Corp.*,[62] the High Court enumerated some instances that are covered by the "other matters" jurisdiction of the CTA. These include cases which seek the cancellation and withdrawal of a warrant of distraint and/or levy, similar to the present case:

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[61] G.R. No. 202105, April 28, 2021.
[62] G.R. No. 252944, November 27, 2024.

> Indeed, a plain reading of the provision yields the inevitable conclusion that the **CTA has the power to review not only matters arising or incidental to tax assessments or refunds, but also to *any* case arising from the application of the provisions of the Tax Code or other tax laws that are administered by the BIR.** In fact, the Court has affirmed the CTA's **"other matters" jurisdiction over cases involving:** *(a)* the determination of whether the right of the CIR to collect the validly assessed tax has prescribed; *(b)* **cases seeking the cancellation and withdrawal of a warrant of distraint and/or levy**; *(c)* **cases seeking a determination of the validity of waivers of the statute of limitations** as well as the proper availment of tax amnesty; and *(d)* cases on the proper exercise of the CIR's power to compromise delinquent accounts and to grant an informer's reward. *(Emphasis, italics, and underscoring supplied)*

Thus, having settled that the Court has jurisdiction over the Subject WDL, We now proceed to determine the timeliness of the *Petition.*

As provided in Section 7 (a)(1) of the CTA Law, and RRCTA,[63] the CTA Division has exclusive appellate jurisdiction to review decisions of the CIR or other matters in relation to the NIRC, or other laws administered by the BIR. The party thus adversely affected by the same has a period of thirty (30) days within which to elevate the matter before the CTA Division.

In the instant case, respondent did not dispute the fact that on June 9, 2022, herein petitioner received the Subject WDL.[64] Thus, on July 8, 2022, or twenty-nine (29) days from the petitioner's receipt of the Subject WDL, the present appeal was filed before this Court to dispute the validity of the WDL on the ground of exemption, prescription, and violation of due process. Hence, the appeal was timely made.

We shall now address the merits of the case.

***The Subject WDL has no legal basis as the prescriptive period for the IT assessment has already lapsed.***

Among others, petitioner argues that the Subject WDL should be struck down for being a product of a void assessment. Hence, it contends that it is not liable for the assessed deficiency income taxes

[63] Revised Rules of the Court of Tax Appeals, A.M. No. 05-11-07-CTA, November 22, 2005.
[64] Exhibit "P-1", Docket, p. 102; Exhibits "P-2" and "P-2-1", Docket p. 538.

on the ground that it has already been barred by prescription – from the filing of its ITR for TY 2016 on April 16, 2017, herein respondent only had three (3) years therefrom or until April 16, 2020 to issue a FAN. Considering that the subject FLD[65] was only issued by respondent on December 1, 2020 and received by petitioner on December 28, 2020, the deficiency income tax assessments have already prescribed.

Petitioner likewise allege that although it was requested by the respondent to execute a waiver, the same failed to materialize as it was never duly agreed upon and accepted by the respondent.

On the other hand, respondent offered no specific countervailing evidence to refute the same. It merely argued in his *Answer* that the regular period of three (3) years is not applicable in this case since the discrepancy between the ITR filed and the assessment is more than thirty percent (30%). Such substantial underdeclaration is a *prima facie* evidence of fraud which calls for the application of the extraordinary period of ten (10) years.[66]

We rule in favor of petitioner.

As a general rule, the NIRC provides that a taxpayer should be assessed within three (3) years from the last day of filing a return or from the time of its actual filing – whichever comes later:

> Section 203. Period of Limitation Upon Assessment and Collection.
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> Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

The NIRC likewise provides that whenever a taxpayer and the CIR agreed to have the period of assessment extended, the same must be reduced into writing, accepted by both parties, and executed before the expiration of the original period, *viz.*:

> Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
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[65] Exhibits "P-15" and "R-7", BIR Records, pp. 235 to 240.
[66] Pars. 21 to 26, *Answer*, Docket, p. 10.

> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

On the other hand, Revenue Memorandum Order No. 20-90 (RMO 20-90),[67] laid down the pertinent guidelines with regard to the execution of waivers, and called for its strict compliance:

> Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the **following procedures should be followed**:
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> 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after _______ 19 ____" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
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> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> **Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.**
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> 3. The following revenue officials are authorized to sign the waiver.
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> xxx *(Emphasis supplied)*

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[67] Proper Execution of Waiver of Statute of Limitations Under the NIRC, Revenue Memorandum Order No. 20-90, April 4, 1990.

Moreover, in *Commissioner of Internal Revenue v. Kudos Metal Corporation,*[68] the Supreme Court pronounced that:

> Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
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> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after __________ 19 ____", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
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> 3. The waiver should be duly notarized.
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> 4. **The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated.** However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
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> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
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> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement. *(Emphasis supplied)*

In view of the foregoing, the Court finds that the period to assess petitioner was not validly extended as no waiver was validly executed when the respondent failed to manifest its acceptance thereto. It is well-settled that the execution of a waiver is not a unilateral act on the part of the taxpayer and the BIR cannot use the same to its advantage when it is the one at fault. In *Commissioner of Internal Revenue v. Stanley Works Sales (Phils.), Inc.*, the Supreme Court ruled that:[69]

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[68] G.R. No. 178087, May 5, 2010.
[69] G.R. No. 187589, December 3, 2014.

Thus, **the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver.** The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.

To emphasize, the **Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension.** A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally. *(Emphasis supplied)*

The pronouncement of the Supreme Court in the *Kudos* case is likewise relevant:

The prescriptive period on when to assess taxes benefits both the government and the taxpayer. **Exceptions extending the period to assess must, therefore, be strictly construed.**[70]

Considering that execution of waivers in relation to the prescriptive period of assessment of taxes involves to a certain extent, a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, it is necessary that it must be carefully and strictly construed.[71]

It is not novel that in a number of cases, the Supreme Court invalidated waivers which do not comply with the procedures laid down by rules and regulations. It even enumerated the many grounds, including the non-acceptance of the same by the respondents, to wit:

This Court had invalidated waivers which did not strictly comply with the provisions of RMO No. 20-90 and RDAO No. 05-01, such as, but not limited to: (a) failure to state the specific date within which the BIR may assess and collect revenue taxes; **(b) failure to sign by the CIR as mandated by law or by his duly authorized representative;** (c) failure to indicate the date of

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[70] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[71] Salient Features of SC Decision on Waiver of the Statute of Limitations Under the Tax Code, Revenue Memorandum Circular No. 06-05, February 2, 2005.

> acceptance to determine whether the waiver was validly accepted before the expiration of the original three-year period; (d) failure to furnish the taxpayer of a copy of the waiver; (e) failure to indicate on the original copies of the waivers the date of receipt by the taxpayer of their file copy; (f) execution of the waivers without the written authority of the taxpayer's representative to sign the waiver on their behalf; (g) absence of any proof that the taxpayer was furnished a copy of the waiver; (h) a waiver signed by the Assistant Commissioner-Large Taxpayers Service and not by the CIR; (i) failure to specify the kind and amount of tax due; and (j) a waiver which refers to a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case.[72] *(Emphasis supplied)*

A perusal of Exhibit "P-9" or the *Waiver of the Defense of Prescription under Statute of Limitations of the National Internal Revenue Code*, would apparently show that it is undated, unsigned, and unaccepted by the respondent. Hence, as a consequence of such failure to execute a valid waiver, the period to assess herein petitioner was not validly extended – the last day remained at April 16, 2020. Considering that the subject FLD[73] was only issued by respondent on December 1, 2020 and received by petitioner on December 28, 2020, the deficiency income tax assessments have already prescribed.

Nonetheless, even if the running of the statute of limitations was suspended due to the previous COVID-19 restrictions, We find that the assessment is still time-barred even with the new prescriptive periods brought about by Revenue Memorandum Circular No. 136-20, to wit:[74]

| | Original Prescriptive Date | New Prescriptive Date |
|---|---|---|
| Case 1 | March 15, 2020 | March 15, 2020 |
| Case 2 | March 16, 2020 | July 31, 2020 |
| Case 3 | April 15, 2020 | August 30, 2020 |
| Case 4 | June 15, 2020 | October 30, 2020 |
| Case 5 | July 15, 2020 | November 29, 2020 |
| Case 6 | April 15, 2021 | August 30, 2021 |

Again, even with the new prescriptive period of August 30, 2020, the FLD[75] was only issued by respondent on December 1, 2020 and received by petitioner on December 28, 2020. Hence, prescribed.

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[72] *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021.
[73] Exhibits "P-15" and "R-7", BIR Records, pp. 235 to 240.
[74] Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020, Revenue Memorandum Circular No. 136-20, December 7, 2020.
[75] Exhibits "P-15" and "R-7", BIR Records, pp. 235 to 240.

Furthermore, the contention of the respondent that the extraordinary period of ten (10) years should apply fails to convince. Considering that herein petitioner disputes the collection and assessment made by the respondent for having been made beyond the prescriptive period, the burden is shifted to the latter to prove otherwise.

Unfortunately, respondents failed to establish and present competent evidence that would support its argument. There is no specific evidence offered and admitted that will show that respondents had justified the applicability of extraordinary prescriptive period. Being an exception to the general rule, let it be noted that the BIR has to establish the applicability of the same. In *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*,[76] the Supreme Court held:

> In keeping with their duty to preserve due process in tax assessments, as enunciated in BF Goodrich, Fitness by Design, Samar Electric, Asalus, and Spouses Magaan, **the tax authorities bear the burden of establishing, with clear and convincing proof, the existence of grounds warranting the application of the 10-year period.**
>
> xxx xxx xxx
>
> **It must be stressed that while the law accords the tax authorities an extended period within which they may investigate the taxpayer and issue a corresponding tax assessment, the law does so by exception.** *(Emphasis supplied)*

Additionally, even assuming that the period to assess has been extended or that the extraordinary period applies, the Court finds that there is a violation of the petitioner's right to due process of law when the BIR did not take into consideration the merits of its protest to the PAN, when it issued the FLD which is identical to the PAN.

***The right of petitioner to due process of law was violated when the FLD failed to address the arguments of the petitioner in its Reply to the PAN.***

Administrative due process has been settled in the oft-cited case of *Ang Tibay v. Court of Industrial Relations*,[77] where it discussed the

[76] G.R. No. 247737, August 8, 2023.
[77] G.R. No. 46496, February 27, 1940.

requirement that not only a party must be given an opportunity to be heard and present his case, but the tribunal must likewise consider the same and decide in such a way that the parties may know of its basis.

In relation to tax cases, such concept is reinforced in the landmark case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon).*[78] The Supreme Court held that while it is true that the BIR is not obliged to favorably give credence to the taxpayer's explanations as regards the assessments, it must still state the reasons as to why the same lacks merit or could not be given consideration.

In the case at hand, upon scrutiny of the FLD[79] dated December 1, 2020, it appears to be a mere restatement of the basic deficiency tax assessments contained in the PAN[80] dated February 21, 2020, save for the imposition of interests. Furthermore, such FLD did not even acknowledge petitioner's Reply to the PAN.

More importantly, let it be emphasized that the filing of protests or replies cannot be for nothing. The BIR must consider the same and effectively communicate such findings to the taxpayer; and the failure to do so taints the proceedings with invalidity, as the Supreme Court held in *Avon*:

> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a **taxpayer to file a reply or otherwise to submit comments or arguments** with supporting documents **at each stage in the assessment process**. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and **taints the administrative proceedings with invalidity.**[81]

All told, considering that a waiver was not validly executed to extend the period to assess petitioner, and given that the latter was denied due process in the issuance of an identical FLD and PAN, We find the assessments contained in FLD as invalid. Therefore, the corresponding Subject WDL has no legal basis and the petitioner cannot be made liable to pay the deficiency taxes subject of this case for the CIR has no right to collect the same. In light of the foregoing, we no longer need to dwell on the issue of the income tax liability.

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[78] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[79] Exhibits "P-15" and "R-7", BIR Records, pp. 235 to 240.
[80] Exhibits "P-13", Docket pp. 563 to 566; and "R-6", BIR Records, pp. 209 to 212
[81] Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

**WHEREFORE**, premises considered, the *Petition for Review* is **GRANTED**.

The Warrant of Distraint and/or Levy No. WDL-2022-RR4-AMS-000017 (Subject WDL), and the Income Tax (IT) Assessment No. 21BE1704165553 which is sought to be satisfied under the Subject WDL in the total amount of Eight Million Six Hundred Seventy-Six Thousand One Hundred Twenty and 25/100 Pesos (Php8,676,120.25), inclusive of surcharges, interests, and penalties for taxable year (TY) 2016 is hereby **CANCELLED** and **SET ASIDE**.

Thus, the Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** enforcing the collection of deficiency assessments against herein petitioner as contained in the Subject WDL.

Accordingly, the *Urgent Verified Motion: a) to Suspend the Collection of Taxes; and b) to Recall/Lift the Warrant of Distraint and/or Levy* is rendered **MOOT.**

**SO ORDERED.**

**HENRY S. ANGELES**
Associate Justice

**WE CONCUR:**

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

Marian Ivy F. Reyes-Fajardo

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

## 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.

**CATHERINE T. MANAHAN**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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 Court's Division.

**MA. BELEN M. RINGPIS-LIBAN**
Acting Presiding Justice