CTA Form No. 8

21-000326-0056

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10592

JAPAN AIRPORT CONSULTANTS, INC. represented by JAPAN AIRPORT CONSULTANTS, INC. - PHILIPPINE REPRESENTATIVE OFFICE and its Project Manager TADASHI AOI,
Petitioner,

NOTICE OF DECISION

- versus -

COMMISSIONER OF INTERNAL REVENUE AND REGIONAL DIRECTOR MARIDUR V. ROSARIO,
Respondents.

To:

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

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ATTY. CARL FITRI A. HUSSIN
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GREETINGS:

You are hereby notified by these presents that on **May 23, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 24, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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SPECIAL FIRST DIVISION

JAPAN AIRPORT CONSULTANTS, INC. represented by JAPAN AIRPORT CONSULTANTS, INC. - PHILIPPINE REPRESENTATIVE OFFICE and its Project Manager TADASHI AOI, *Petitioner,*	**CTA Case No. 10592** Members: **DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE AND REGIONAL DIRECTOR MARIDUR V. ROSARIO, *Respondents.*	**Promulgated:** MAY 23 2024; 2:10PM

x- -x

DECISION

REYES-FAJARDO, J.:

Before the Court is a Petition for Review[1] filed by Japan Airport Consultants, Inc. (petitioner or JAC), through its Philippine Representative Office and Project Manager Tadashi Aoi, asserting that respondents Commissioner of Internal Revenue (CIR) and Regional Director (RO) did not act on its administrative protest to deficiency value added tax (VAT) and expanded withholding tax (EWT) assessments in the aggregate amount of ₱24,237,356.73, relative to taxable year (TY) 2017.

FACTS

JAC, a corporation organized and existing under the laws of Japan, was licensed by the Securities and Exchange Commission (SEC) under SEC Registration No. AF094-000096 dated November 29, 1994 to establish a Representative Office in the Philippines to undertake activities such as but not limited to information dissemination and

[1] Docket – Vol. 1, pp. 10 to 62.

promotion of the company's products as well as quality controls of projects.[2] Both petitioner and its Philippine Representative Office are registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification No. (TIN) 201-120-698 and 201-120-698-000, respectively.

Respondent CIR is the head of the BIR. It is authorized by law to carry out the functions, duties, and responsibilities of the said office, including, *inter alia,* the power to decide disputed assessments and abate tax liabilities, pursuant to the provisions of the Tax Code, as amended, with office address at BIR National Office, BIR Road, Diliman, Quezon City.[3]

The following antecedents leading to the present controversy are undisputed.

On March 25, 2013, the governments of the Republic of the Philippines (RP) and Japan entered into an **Exchange of Notes** for the purpose of extending a Japan International Cooperation Agency (JICA) Loan to RP, the proceeds of which will be used in the New Bohol Airport Construction and Sustainable Environment Protection Project (Bohol Airport Construction Project).[4] Pursuant to this, on March 27, 2013, JICA and RP executed Loan Agreement No. PH-P256 covering a loan amount not exceeding JPY10,782,000,000.[5] Paragraph 7 of said Loan Agreement provides for a tax assumption arrangement, *viz.*:

> 7 (1) The Government of the Republic of the Philippines shall, by itself or through its executing agency, assume:
>
> (a) all fiscal levies and taxes imposed in the Republic of the Philippines on JICA on and/or in connection with the Loan as well as interest accruing therefrom;
>
> (b) xxx;
>
> (c) all fiscal levies and taxes imposed in the Republic of the Philippines on the Japanese companies operating as suppliers, contractors and/or consultants with respect to the payment carried out for and the income accruing from the

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2 Exhibit "P-2", Docket - Vol. 2, pp. 829 to 830.

3 Par. 3(j), JSF, Docket - Vol. 2, p. 693.

4 Par. 3(a), JSF, Docket - Vol. 2, p. 692; Exhibits "P-5" and "P-5-a", Docket - Vol. II, pp. 839 to 854; Exhibit "R-10", BIR Records (Binder 4 of 5), pp. 1 to 16.

5 Exhibits "P-6" and "R-11", Docket - Vol. 3, pp. 1050 to 1086.

supply of the products and/or services required for the implementation of the Projects; and xxx

(2) In connection with such tax assumption, the Government of the Republic of the Philippines or its executing agency shall be responsible for the liquidation or settlement of such fiscal levies, duties and taxes and other similar charges.

Thereafter, the Department of Transportation and Communications (or DOTC, now the Department of Transportation or DOTr) and JAC Japan Head Office executed a Contract for Consultants' Services - Time Based dated May 5, 2014[6] relative to the Bohol Airport Construction Project (Project Contract). The loan agreement covered a period of 50.5 months[7] and included the following consultancy services: 1) Assistance in Bidding; 2) Construction Supervision; 3) Defect Liability Supervision; 4) Assistance in Environmental Management; and 5) Assistance in Reporting to JICA.[8]

Between 2014 to 2019, petitioner supplied the DOTr with individual professionals,[9] all Japanese nationals, to perform consultancy services as enumerated under the Project Contract.

Administrative Proceedings.

The Regional Director[10] of Revenue Region 8 - Makati City issued Letter of Authority (LOA) No. eLA201600032739 (LOA-050-2019-00000092)[11] dated February 8, 2019, which authorized BIR revenue agents[12] to examine petitioner's books of accounts and other accounting records for all internal revenue taxes relative to TY 2017. JAC received a copy of the LOA on March 5, 2019.[13]

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6 Par. 1, JSF, Docket - Vol. 2, p. 691; Exhibits "P-7" and "R-9", Docket - Vol. 2, pp. 893 to 952.

7 Item 4. Proposed Special Conditions of Contract, IV. Minutes of Contract Negotiation, attached to the Contract for Consultants' Services, Exhibits "P-7" and "R-9", Docket - Vol. 2, p. 898.

8 Item 1. Introduction and Item 4. Scope of the Consulting Services, Appendix A - Description of Services, attached to the Contract for Consultants' Services, Exhibits "P-7" and "R-9", Docket - Vol. 2, pp. 933 and 934 to 937.

9 Both "Key Experts" and "Non-Key Experts" as defined under Section 6, Annex I - II. General Conditions of Contract, Paragraphs 1.1(o) and (q). See Docket - Vol. 2, p. 910.

10 Glen A. Geraldino.

11 Although the parties stipulated under par. 3(b), JSF, Docket - Vol. 2, p. 692, that the LOA number is eLA20160032739 (LOA-0505-2019-0000092), the LOA number is actually numbered eLA201600032739 (LOA-050-2019-00000092), Refer to Exhibit "P-8", Docket - Vol. 2, p. 953 and Exhibit "R-1", BIR Records (Folder), p. 1.

12 Revenue Officer (RO) Jonalyn Dinolan and Group Supervisor Faisal Mamacotao of Revenue District No. 050 - South Makati.

13 Par. 3(b), JSF, Docket - Vol. 2, p. 692.

As a result of the audit investigation, the BIR[14] issued a **Notice of Informal Conference (NIC)** with attached Computation of All Internal Revenue Taxes for TY 2017 and Details of Discrepancies,[15] finding petitioner liable for deficiency VAT and EWT in the aggregate amount of ₱88,560,859.74, computed as follows:

	VAT	EWT	Total
Basic	₱52,002,262.55	₱22,600.11	
Surcharge	26,001,131.28	-	
Interest	10,480,236.80	4,629.00	
Compromise Penalty	50,000.00		
Total	₱88,533,630.63	₱27,229.11	₱88,560,859.74

Petitioner received a copy of the NIC on September 9, 2019. In response, petitioner wrote a *Letter*[16] dated November 5, 2019 addressed to the CIR, which the latter received on November 11, 2019.

On August 19, 2020, the CIR[17] issued a **Preliminary Assessment Notice** (PAN)[18] with attached Details of Discrepancies, finding petitioner liable for deficiency VAT and EWT in the aggregate amount of ₱94,753,843.26, computed as follows:

	VAT	EWT	Total
Basic	₱52,002,262.55	₱22,600.11	
Surcharge	26,001,131.28	-	
Interest	16,720,508.31	7,341.01	
Compromise Penalty	-		
Total	₱94,723,902.14	₱29,941.12	₱94,753,843.26

After receiving a copy of the PAN on August 24, 2020, petitioner filed its *Reply* thereto on September 7, 2020.[19]

[14] Through Claire B. Corpus, Revenue District Officer, Revenue District Office No. 50, Revenue Region No. 8 - Makati.

[15] Par. 3(c), JSF, Docket - Vol. 2, p. 692; Exhibits "P-9" to "P-9-b", Docket - Vol. 2, pp. 955 to 957; Exhibits "R-5" to "R-5-B", BIR Records (Folder), pp. 24 to 25 and 27.

[16] Exhibits "P-10" and "P-10-a", Docket - Vol. 2, pp. 959 to 963.

[17] Through respondent Maridur V. Rosario, Regional Director, Revenue Region No. 8A - Makati City.

[18] Par. 3(d), JSF, Docket - Vol. 2, p. 692; Exhibits "P-11" and "P-11-a", Docket - Vol. 2, pp. 964 to 968; Exhibits "R-8" and "R-8-A", BIR Records (Folder), pp. 61 to 62 and 57 to 59, respectively.

[19] Par. 3(e), JSF, Docket - Vol. 2, p. 692; Exhibit "P-12" and "P-12-a", Docket - Vol. 2, pp. 969 to 984; Exhibit "R-17", BIR Records (Folder), pp. 412-427.

The CIR considered petitioner's Reply. Correspondingly, when it issued the **Formal Letter of Demand and Assessment Notices** (FLD/FAN) with attached Details of Discrepancies[20] on November 20, 2020, it reduced the deficiency VAT assessment and found petitioner liable for the aggregate amount of ₱24,237,356.73, broken down as follows:

			Total
I. VALUE ADDED TAX			
Taxable receipts per VAT return			
Add: Adjustments/disallowances			
Undeclared receipts (Schedule 1)		₱109,109,115.48	
Taxable receipts as adjusted		₱109,109,115.48	
Output Tax Due		₱13,093,093.86	
Less: Allowable input tax per audit			
From current period	₱402,869.22		
Carried over from previous period	1,038,699.35		
Total	₱1,441,568.57		
Less: Adjustments/disallowances			
Excess input tax carried over to succeeding period	1,441,568.57	-	
VAT Due		₱13,093,093.86	
Add: Surcharge (50%)	₱6,546,546.93		
Interest 12% (01.26.18 to 12.21.20)	4,567,158.11	11,113,705.04	
TOTAL AMOUNT DUE			₱24,206,798.90
II. EXPANDED WITHHOLDING TAX			
Basic Tax Due		₱22,600.11	
Add: Interest 12% (01.16.18 to 12.21.20)		7,957.72	30,557.83
TOTAL AMOUNT DUE			**₱24,237,356.73**

The CIR's deficiency VAT assessment was based on a finding that petitioner failed to pay 12% output VAT on its supply of consultancy services to DOTr, pursuant to the Project Contract:

> Verification disclosed that you have not paid the output tax on your income from your contract with Department of Transportation and Communications (DOTC) amounting to ₱109,109,115.48. *Revenue Memorandum Circular No. 8-2017* states that *"xxx...all taxes associated with the project shall be assumed by the executing government agencies. Thus, this Circular is about clearly*

[20] Par. 3(f), JSF, Docket - Vol. 2, p. 692; Exhibits "P-3", "P-3-a", "P-4" and "P-4-a", Docket - Vol. 2, pp. 831 to 838; Exhibits "R-22", "R-22-A", "R-20" and "R-21", BIR Records (Folder), pp. 100 to 101, 96 to 99, 103, and 102, respectively.

> *acknowledging – and accordingly implementing – this obligation of the Philippine government under the Exchange of Notes. xxx*
>
> x x x
>
> Based on the regulation, the executing government [agency], in this case the DOTC, will pay the Value Added Tax (VAT) based on your billing then you will remit the same after deducting the input taxes from your purchases of goods and services. Furthermore, as stated in the contract for New Bohol Airport Construction and Sustainable Environment Protection Project, the Department already included in the Contract the provision for VAT payment which amounted to ₱63,843,000.00. Hence, you are assessed on VAT pursuant to *Section 108 of the NIRC*, as amended.
>
> x x x

Petitioner received a copy of the FLD/FAN on November 24, 2020.[21]

In the meantime, through a Letter dated December 3, 2020, petitioner requested DOTr, through Capt. Manuel Antonio L. Tamayo, Undersecretary, Aviation and Airports, DOTr, for the payment of VAT arising from consultancy services rendered for the period May 5, 2014 to May 31, 2019, which amounted to ₱50,497,880.02.[22]

On December 22, 2020, petitioner filed its *Administrative Protest Through Written Request for Reconsideration* relative to the FLD/FAN (Administrative Protest).[23]

Petitioner's administrative protest, along with the entire case docket, was forwarded to the Review and Evaluation Section - Assessment Division of Revenue Region No. 8A - Makati City (RES) for evaluation and appropriate action.[24]

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[21] Par. 3(f), JSF, Docket - Vol. 2, p. 692.

[22] Exhibits "P-14", "P-14-c" and "P-14-d", Docket - Vol. 2, pp. 989 to 991.

[23] Par. 3(g), JSF, Docket - Vol. 2, p. 692; Although the parties stipulated that petitioner's Administrative Protest Through Written Request for Reconsideration was dated December 21, 2021 and receipt thereof by respondents was on December 22, 2021, the documentary evidence shows that it is actually dated December 21, 2020 and received on December 22, 2020, Refer to Exhibits "P-18" and "P-18-a", Docket - Vol. 3, pp. 1090 to 1239; Exhibit "R-23", BIR Records (Folder), pp. 242-258.

[24] Par. 3(k), JSF, Docket - Vol. II, p. 693; Exhibit "P-19", Docket - Vol. II, p. 1030; Exhibit "R-24", BIR Records (Folder), p. 270.

On February 10, 2021, petitioner wrote a *letter* addressed to the RES, requesting that the subject assessment for deficiency VAT issued to JAC for taxable year 2017 be reconsidered, set aside and/or cancelled. It pointed out that DOTr already paid the required 12% VAT on the monthly remuneration paid to JAC, through JICA funds under the New Bohol Airport Project, for the period covering May 2014 to May 2019 in the total amount of ₱50,497,880.02,[25] as evidenced by the DOTr's Journal Entry Voucher (JEV) JEV No: RA15-08-01205 dated August 17, 2015, JEV No: RA15-12-01956 dated December 4, 2015, JEV No: RA20-12-02801 dated December 28, 2020, and Certificate of Final Tax Withheld At Source (BIR Form No. 2306) in the amount of ₱45,170,851.96.

On May 25, 2021, the CIR issued **BIR Ruling No. ITAD 020-021**,[26] in reply to petitioner's letter dated November 5, 2019,[27] stating, among others, that "xxx JAC is hereby advised to bill and collect from DOTr the VAT component of all purchases of goods and services related to the Project, and file the prescribed VAT return not later than the 20th day of the month following the receipt of DOTr's payment."

Asserting that the CIR failed to act on its administrative protest, JAC filed the present petition on July 19, 2021.

Proceedings before the Court.

Respondents filed an Answer (With Special and Affirmative Defenses)[28] on December 10, 2021. Later on, it also transmitted the original BIR Records of the present case on February 15, 2023.[29]

On account of its receipt of BIR Ruling No. ITAD 020-021, petitioner submitted a Supplement to the Petition for Review.[30] Respondent CIR opposed the admission thereof, but the Court resolved[31] to allow said supplemental pleading on April 6, 2022.

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[25] Exhibit "P-22", Docket - Vol. 2, pp. 1035 to 1036; Exhibit "R-25", BIR Records (Folder), pp. 271 to 272.
[26] Par. 3(h), JSF, Docket - Vol. 2, p. 692.
[27] Exhibit "P-29", Docket - Vol. 3, pp. 1258 to 1261.
[28] Docket - Vol. 1, pp. 311 to 343.
[29] Compliance dated December 20, 2021, Docket - Vol. I, pp. 309 to 310.
[30] Docket - Vol. 2, pp. 569 to 573, 574 to 581.
[31] Docket - Vol. 2, pp. 605 to 608.

In view of this, respondents filed an Answer With Special and Affirmative Defenses (to Petitioner's Supplement to the Petition for Review)[32] on April 18, 2022.

After the parties filed their respective Pre-Trial Briefs[33] on August 8, 2022, the Pre-Trial Conference was held on August 11, 2022. Pre-trial was terminated in view of the Resolution dated September 15, 2022,[34] where the Court approved the parties' Joint Stipulation of Facts and Issues (JSFI).[35] The Court issued the Pre-Trial Order on November 8, 2022.[36]

During trial, petitioner presented the following witnesses: (1) Tadashi Aoi,[37] petitioner's Officer and Project Manager for the New Bohol Airport Project; and (2) Natividad P. Sansolis,[38] Accountant IV, DOTr, who testified in open court pursuant to the *Subpoena Duces Tecum & Ad Testificandum* issued by the Court.

Petitioner made a formal offer of evidence on November 3, 2022.[39] After respondents filed its opposition to petitioner's formal offer, the Court resolved to admit all of petitioner's offered exhibits.[40]

For its part, respondents offered the testimony of Jonalyn P. Dinolan, Revenue Officer, BIR,[41] and filed its formal offer of evidence on February 15, 2023. The Court considered petitioner's objection[42] to respondents' formal offer and resolved[43] to admit all of respondents' offered exhibits, except for Exhibits "R-5-D" and "R-8-D," for not being found in the records.

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32 Docket - Vol. 2, pp. 596 to 600.
33 Docket - Vol. 2, pp. 675 to 683, 667 to 673.
34 Docket - Vol. 2, pp. 746 to 748.
35 Docket - Vol. 2, pp. 691 to 694.
36 Docket - Vol. 3, pp. 1263 to 1288.
37 Exhibits "P-30" and "P-31", Docket - Vol. 1, pp. 47 to 62 and Docket - Vol. 2, pp. 697 to 701, respectively; Minutes of hearing held on, and Order dated October 11, 2022, Docket - Vol. 2, pp. 766 to 767-B.
38 Minutes of hearing held on, and Order dated October 11, 2022, Docket - Vol. 2, pp. 766 to 767-B.
39 Docket - Vol. 2, pp. 782 to 807.
40 In a Resolution dated January 18, 2023, Docket - Vol. 3, pp. 1315 to 1317.
41 Exhibit "R-28", Docket - Vol. 2, pp. 541 to 561; Minutes of the hearing held on, and Order dated, January 31, 2023, Docket - Vol. 3, pp. 1318 to 1320 and (unpaginated), respectively.
42 Docket - Vol. 3, pp. 1340 to 1354.
43 In a Resolution dated April 5, 2023, Docket - Vol. 3, pp. 1358 to 1360.

The present case was submitted for decision on May 26, 2023,[44] after the parties filed their respective Memoranda.[45]

ARGUMENTS

Petitioner's Arguments

JAC refutes the assessment for deficiency VAT and EWT based on the following arguments: *First,* the assessment is violative of the provisions of the Exchange of Notes. *Second,* it is not required to file the prescribed VAT returns, as provided in Revenue Memorandum Circular (RMC) No. 8-2017. *Third,* it is not required to include 12% VAT in its billings, on account of the prohibition relative to Japanese contractors of OECF-Project (JICA Project in this Case) under RMC No. 45-2015. *Fourth,* the FLD/FAN was issued beyond the 15-day period set out in Section 3.1.1 of Revenue Regulation (RR) No. 18-2013 in relation to Par. 12, Title II of Revenue Memorandum Order (RMO) No. 26-2016. *Fifth,* the CIR's right to assess deficiency VAT relative to the first three quarters of TY 2017 has already prescribed. *Sixth,* petitioner cannot be held liable for the deficiency taxes assessed because the LOA, NIC, PAN, and FLD/FAN all bore the petitioner's Philippine Representative Office's TIN.

Respondents' Arguments

Respondents counter as follows: *First,* the Court has no jurisdiction over the subject matter; petitioner is estopped from invoking its right to appeal to this Court due to the inaction of respondent within the 180-day period fixed by law. *Second,* petitioner is required to file VAT returns, include VAT in its billings, and remit the VAT due on its sales of services. *Third,* the provisions of the Tax Code prevail over those in the Exchange of Notes. *Fourth,* RMC No. 8-2017 is the governing law for petitioner's transactions in 2017, therefore, the provisions of RMC No. 45-2015 is not applicable in this case.

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[44] Notice of Resolution dated May 26, 2023, Docket - Vol. 3, (unpaginated).
[45] Docket - Vol. 3, pp. 1361 to 1390, 1394 to 1425.

ISSUES

Based on the parties' stipulations[46] and submissions, We restate the issues as follows:

A. Was the present petition filed on time?

B. Are the assessments against petitioner correct, having regard to the tax assumption proviso in the Exchange of Notes (VAT) and rule on prescription (EWT)?

OUR RULING

The Petition for Review meritorious.

The present petition was filed on time. The Court has jurisdiction over the instant case.

The timeliness of the filing of a petition is essential for the Court to acquire jurisdiction over the same. Whether petitioner proceeded to the Court within the time allowed depends on the reglementary periods set out under the law.

The CIR has 180 days to resolve a protest, counted, as a general rule, from the time of filing thereof. If the CIR fails to act on the protest within this time, such inaction is appealable to this Court.[47] The party adversely affected by the CIR's inaction in cases involving disputed assessments is given 30 days from the expiration of the 180-day period to lodge an appeal before the CTA.

The reckoning point of the 180-day period depends upon the type of administrative protest filed by the taxpayer. In case of a *request for reconsideration*, the CIR has 180 days from the time of filing of the administrative protest to resolve the same. On the other hand, if the

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[46] The parties have stipulated the following issues for this Court's resolution, to wit: "I.Whether or not the Court of Tax Appeals has jurisdiction over the case; and x x x II. Whether or not petitioner is liable for deficiency Value-Added Tax (VAT) and Expanded Withholding Tax (WE) amounting to PHP24,206,798.90 and PHP30,557.83 respectively, inclusive of increments." See *Issues to be Resolved*, JSFI, Docket - Vol. 2, p. 693.

[47] Sections 7(a) and 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282.

taxpayer files a *request for reinvestigation*, it has 60 days from filing to submit *newly discovered or additional evidence* upon which the request had been based. In turn, the CIR has 180 days from the time of said submission to resolve the administrative protest.[48]

To be regarded as valid and effective, an administrative protest must be in such form and manner as prescribed by applicable regulations.[49] RR No. 18-13 requires the taxpayer to *state* in the protest, among others, *the nature thereof*, whether it seeks reconsideration or reinvestigation, *specifying newly discovered or additional evidence* it intends to submit in case of a reinvestigation.[50]

The relevant timeline in the present case is summarized below.

Particulars	**Date of Filing**
Request for Reconsideration	December 22, 2020
Submission of Additional Documents	February 10, 2021
Present Petition for Review	July 19, 2021

It is respondent's theory that petitioner's Request for *Reconsideration* was converted into a Request for *Reinvestigation* in view of its submission of additional documents on February 10, 2021. From said submission, the CIR had 180 days or until August 9, 2021, to act upon the protest. Thus, the filing of the instant petition was premature because it was done on July 19, 2021 or before the expiration of the CIR's allowable period to resolve.

We disagree with this contention.

Whether the taxpayer opted to request for a reconsideration or reinvestigation shall be determined by the express wording of the protest itself. The subsequent submission of additional documents cannot *ipso facto* operate to change the nature of the option exercised by the taxpayer for the following reasons: *First*, once the taxpayer has

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48 Section 3.1.4, RR No. 18-2013, SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

49 Section 228, National Internal Revenue Code of 1997, as amended (Tax Code).

50 Section 3.1.4, RR No. 18-2013, SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment; *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division*, G.R. No. 239464, May 10, 2021.

elected the manner by which it is protesting the assessment, resort to another type of protest is barred.[51] *Second,* the main difference between the two types of protest lies in the records or evidence to be examined by internal revenue officers, whether these are *existing records* or *newly discovered or additional evidence.*[52]

In the present case, petitioner's administrative protest filed on December 21, 2020 was denominated as a **request for reconsideration.** It did not specify therein any newly discovered or additional evidence it intended to present. Its submission of additional documents (*e.g.,* Journal Vouchers and BIR Form No. 2316) subsequent to the filing of its request for reconsideration did not convert its protest to a plea for reinvestigation; these documents cannot be regarded as newly discovered or additional evidence that would warrant the allowance of a fresh 180-day period (*i.e.,* counted from submission of additional documents, instead of from filing of protest) in favor of respondent. If petitioner regarded these documents as newly discovered within the context of a request for reinvestigation, it was required by regulation to declare them as such in the protest.

The CIR cannot override petitioner's intention to resort to a specific remedy, especially if it will only contradict the petitioner's express election on the face of the protest and when the option was exercised in accordance with the applicable regulations governing administrative protests. In a letter dated January 12, 2021, respondent Regional Director even recognized that petitioner's protest was filed in conformity with RR No. 18-2013.[53]

In these lights, counting from the time petitioner lodged its administrative protest on December 22, 2020, respondent had until June 20, 2021 to resolve the case. When the 180-day period expired without any action on the part of respondent, petitioner had 30 days therefrom or until July 21, 2021 to appeal such inaction to the CTA. Thus, its July 19, 2021 filing of the instant petition was timely.

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51 RMO No. 26-2016, SUBJECT: Policies and Guidelines in Handling Disputed Assessments.

52 *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.,* G.R. No. 167146, October 31, 2006, 536 PHIL 1131-1150.

53 Exhibit "P-19", Docket - Vol. 2, p. 1030; Exhibit "R-24", BIR Records (Folder), p. 270.

The subject assessments are incorrect. Petitioner is not liable for deficiency VAT and EWT and the additions to tax.

Deficiency VAT on consultants' remuneration.

Section 108[54] of the Tax Code imposes VAT on the sale or exchange of services for a fee, performed in the Philippines. In turn, under Section 105[55] of the Tax Code, the supplier of such services, having rendered these services in the course of trade or business, shall be liable for the VAT imposed and, thus, shall file the VAT return and pay the VAT due as required by the law[56] and regulations.[57] Further, the person so liable shall be required to register for VAT[58] and issue VAT official receipts for each supply of service.[59]

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54 SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. - (A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the gross receipts, derived from the sale or exchange of services, including the use or lease of properties x x x.

55 SEC. 105. Persons Liable. - Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code. xxx The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. xxx The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business.

56 SEC. 114. Return and Payment of Value-added Tax. (A) In General. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

57 See Section 4.114-1. of RR No. 16-05, Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

58 SEC. 236. Registration Requirements. —xxx (G) Persons Required to Register for Value-added Tax. — xxx (2) Every person who becomes liable to be registered under paragraph (1) of this Subsection shall register with the Revenue District Office which has jurisdiction over the head office or branch of that person, and shall pay the annual registration fee prescribed in Subsection (B) hereof. If he fails to register, he shall be liable to pay the tax under Title IV as if he were a VAT-registered person, but without the benefit of input tax credits for the period in which he was not properly registered.

59 SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —

(A) Invoicing Requirements. — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

In other words, **in general**, a supplier of services shall be liable for VAT, for which it is required to **pay** the VAT due, **file** the corresponding VAT return, and **issue** VAT official receipts relative to its vatable sales of services.

Pursuant to the Project Contract, petitioner supplied consultancy services to the DOTr during the period between 2014 to 2019. *As a general rule*, such supply of services, performed in the Philippines, is subject to VAT. However, petitioner's statutory liability for VAT was modified pursuant to the **tax assumption arrangement** in the Exchange of Notes between the governments of Japan and RP.

In the Exchange of Notes, the RP government expressly assumed "all fiscal levies and taxes imposed in the Republic of the Philippines" on the JICA Loan, as well as "*on the Japanese companies operating as suppliers, contractors and/or consultants with respect to the payment carried out for and the income accruing from the supply of the products and/or services required for the implementation of the Projects.*"

Stated differently, when the RP assumed the tax-related duties and responsibilities that were, in general, imposable upon the JICA Loan and participating Japanese Companies, petitioner effectively passed on its statutory liability for VAT to the RP and/or DOTr.

Tax assumption arrangements like that in the case at bar are not novel. In *Mitsubishi Corp. -Manila Branch v. Commissioner of Internal Revenue*,[60] the Supreme Court already explained that these arrangements allow the tax liability generally imposed on the statutory taxpayer to be **passed on** to a different person, such as the RP government or the implementing agency. This was a **concession** to Japanese suppliers, contractors, or consultants in consideration of the loan extended to RP, *viz.*:

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(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(B) Accounting Requirements. — Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

[60] G.R. No. 175772, [June 5, 2017], 810 PHIL 16-30.

To "assume" means "[t]o take on, become bound as another is bound, or put oneself in place of another as to an obligation or liability." This means that the obligation or liability remains, although the same is merely passed on to a different person. In this light, the concept of an assumption is therefore different from an exemption, the latter being the "[f]reedom from a duty, liability or other requirement" or "[a] privilege given to a judgment debtor by law, allowing the debtor to retain [a] certain property without liability." Thus, contrary to the CTA *En Banc*'s opinion, the constitutional provisions on tax exemptions would not apply.

As explicitly worded, the Philippine Government, through its executing agencies (*i.e.*, NPC in this case) particularly assumed "all fiscal levies or taxes imposed in the Republic of the Philippines on Japanese firms and nationals operating as suppliers, contractors or consultants on and/or in connection with any income that may accrue from the supply of products of Japan and services of Japanese nationals to be provided under the [OECF] Loan." **The Philippine Government's assumption of "all fiscal levies and taxes," which includes the subject taxes, is clearly a form of concession given to Japanese suppliers, contractors or consultants in consideration of the OECF Loan, which proceeds were used for the implementation of the Project.** As part of this, NPC entered into the June 21, 1991 Contract with Mitsubishi Corporation (*i.e.*, petitioner's head office in Japan) for the engineering, supply, construction, installation, testing, and commissioning of a steam generator, auxiliaries, and associated civil works for the Project, which foreign currency portion was funded by the OECF loans. Thus, in line with the tax assumption provision under the Exchange of Notes, Article VIII (B)(1) of the Contract states that NPC shall pay any and all forms of taxes that are directly imposable under the Contract:

xxx

This notwithstanding, petitioner included in its income tax due the amount of P44,288,712.00, representing income from the OECF-funded portion of the Project, and further remitted P8,324,100.00 as BPRT for branch profits remitted to its head office in Japan out of its income for the fiscal year that ended on March 31, 1998. These taxes clearly fall within the ambit of the tax assumption provision under the Exchange of Notes, which was further fleshed out in the Contract. Hence, **it is the Philippine Government, through the NPC, which should shoulder the payment of the same.** (Emphasis Supplied)

The Supreme Court recognized that the collection of taxes from entities otherwise enjoying the benefits of a tax assumption arrangement is **erroneous** and, thus, refundable:

> Therefore, considering that petitioner paid the subject taxes in the aggregate amount of P52,612,812.00, which it was not required to pay, the BIR erroneously collected such amount. Accordingly, petitioner is entitled to its refund.

In the present case, the tax authorities identified[61] sales amounting to ₱109,109,115.48, representing services supplied by petitioner to the DOTr during TY 2017. However, in view of the tax assumption arrangement under the Exchange of Notes, the DOTr shouldered the VAT arising from said sales of services. Thus, the assessment of 12%VAT thereon (₱13,093,093.86) against petitioner was incorrect. **It violates the concession established in its favor, and if sustained, would only amount to erroneous payment of tax.**

As the deficiency VAT assessment is incorrect, the *50% surcharge* and *interest* must likewise be cancelled. These additions to tax, as provided under Section 248(B) and 249 of the Tax Code, are computed on the basis of "the tax or of the deficiency tax"[62] and "any unpaid amount of tax,"[63] respectively. There being no deficiency VAT due from petitioner, there is no legal basis to impose these accessory penalties. At this point, it is no longer necessary to discuss the issue of prescription of the VAT assessment.

Deficiency EWT due to discrepancies noted by respondent.

In the FLD/FAN,[64] the CIR assessed petitioner for deficiency EWT as follows:

Basic Tax	₱22,600.11
Interest	7,957.72
Total Deficiency EWT	₱30,557.83

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[61] FLD/FAN, Docket - Vol. 2, p. 831.

[62] SEC. 248. Civil Penalties. —x x x (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be **fifty percent (50%)** ***of the tax or of the deficiency tax,*** in case any payment has been made on the basis of such return before the discovery of the falsity or fraud x x x

[63] SEC. 249. Interest. —(A) In General. — There shall be assessed and collected ***on any unpaid amount of tax,*** interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid x x x

[64] Exhibit "P-3", Docket - Vol. II, p. 831; Exhibit "R-22", BIR Records (Folder), p. 101.

The basic tax amounting to ₱22,600.11 resulted from respondent's comparison of income payments declared by petitioner in its Annual Information Return of Creditable Taxes Withheld (Expanded)/Income Payments Exempt from Withholding (BIR Form no. 1604E) and information on the same transactions obtained from third-party sources. Its findings were broken down as follows:

Supplier	Per TPI*	Per 1604 E	Discrepancy	EWT Rate	EWT Due
LFM Properties Corp.	₱1,200,807.50	₱1,199,447.33	₱1,360.17	5%	₱68.01
Fuji Xerox Phils. Inc.	161,071.29	1,597.50	159,473.79	2%	3,189.48
Phil. JAC Inc.	2,363,142.96	1,451,571.48	911,571.48	2%	18,231.43
Magallanes Mgt. Corp.	273,020.11	161,900.55	111,119.56	1%	1,111.20
Total	₱3,998,041.86	₱2,814,516.86	₱1,183,525.00		**₱22,600.11**

*Third-party information.

However, as pointed out by petitioner, the subject deficiency EWT assessment is barred by prescription.

The *general rule* under the Tax Code allows the CIR or his authorized representative a period of **three years** within which to issue a formal assessment.[65] By *exception*, the period of assessment may be extended to **10 years**[66] in case of falsity, fraud, or omission in/of filing a return.[67]

In the recent case of *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*,[68] the Supreme Court underscored that the CIR cannot rely on the 10-year period in an arbitrary manner. The extension must not transgress the taxpayer's due process rights; the CIR is duty-bound to state clearly in the assessment notice that the extraordinary period is being applied, as well as the bases of allegations of omission, falsity, or fraud, as the case may be.

In the subject FLD/FAN, the CIR gave notice of its intention to apply the 10-year period but **only in relation to the deficiency VAT assessment**, *viz.*:

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65 Section 203, Tax Code.
66 Section 222, Tax Code.
67 *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*, G.R. No. 247737, August 8, 2023.
68 G.R. No. 247737, August 8, 2023.

> IV. EXCEPTIONS AS TO PERIOD OF LIMITATION OF ASSESSMENT AND COLLECTION OF TAXES
>
> Running of the THREE (3) YEAR STATUTE OF LIMITATION as provided under Section 203 of the Tax Code is **not applicable with respect to your Value Added Tax liability** but rather the TEN (10) YEAR PRESCRIPTIVE PERIOD pursuant to Section 222(a) of the said Code which states that: "In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission..." (Emphasis Supplied)

In the absence of an express statement to that effect, the CIR cannot extend the assessment period with respect to petitioner's supposed deficiency EWT liability. The above-quoted portion shows that respondent had no intention of applying the 10-year period in assessing petitioner with deficiency EWT. **Thus, respondent cannot now extend the assessment period without violating petitioner's right to due process.**

Given the foregoing, the validity of the EWT assessment hinges upon whether the FLD/FAN was issued within the three-year assessment period, which shall be reckoned from the last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.[69] In relation thereto, Section 2.58(A)(2)(a) of RR No. 2-98,[70] as amended, sets the deadline for filing of withholding tax returns "within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year."

Thus, We determine the end of the **basic prescriptive period** in the present case as follows:

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[69] Section 203, Tax Code.

[70] SUBJECT: Implementing Republic Act No. 8424, April 17, 1998.

Month	Actual date of filing of the pertinent tax return	Reckoning date of the three-year prescriptive period	End of the three-year prescriptive period
January 2017	February 7, 2017[71]	February 10, 2017	February 10, 2020
February 2017	March 10, 2017[72]	March 10, 2017	March 10, 2020
March 2017	April 10, 2017[73]	April 10, 2017	April 10, 2020
April 2017	May 10, 2017[74]	May 10, 2017	May 10, 2020
May 2017	June 9, 2017[75]	June 10, 2017	June 10, 2020
June 2017	July 10, 2017[76]	July 10, 2017	July 10, 2020
July 2017	August 9, 2017[77]	August 10, 2017	**August 10, 2020**

The last day to assess petitioner relative to 2017 EWT was on **August 10, 2020**. Certainly, the CIR's right to assess with respect to deficiency EWT had already prescribed when petitioner received the FLD/FAN on **November 24, 2020.** [78]

Even if We ignore prescription, We still cannot sustain the EWT assessment.

First, respondent noted discrepancies when it matched petitioner's own declarations against data (e.g., sales, purchases, importations, etc.) submitted by third parties under the Reconciliation of Listing for Enforcement-Summary List of Sales and Purchases (RELIEF) System. **However, the sources of third-party information (e.g., Summary Lists of Sales of petitioner's suppliers) and the confirmation requests and/or certifications/sworn statements from said third parties *were not presented in evidence*.** The veracity of these third-party data cannot be verified.

Second, on December 21, 2020, **petitioner already paid[79] the deficiency EWT assessment** to the following extent:

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[71] Exhibit "P-16", Docket - Vol. II, p. 995.
[72] Exhibit "P-16-a", Docket - Vol. III, p. 1089.
[73] Exhibit "P-16-b", Docket - Vol. II, p. 1001.
[74] Exhibit "P-16-c", Docket - Vol. II, p. 1004.
[75] Exhibit "P-16-d", Docket - Vol. II, p. 1007.
[76] Exhibit "P-16-e", Docket - Vol. II, p. 1000.
[77] Exhibit "P-16-f", Docket - Vol. II, p. 1003.
[78] Par. 3(f), JSF, Docket – Vol. 2, p. 692.
[79] Exhibits "P-15" and "P-15-a", Docket – Vol. III, pp. 1087 to 1088.

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	FLD/FAN	Payment	Balance
Basic Tax	₱22,600.11	₱15,183.69	**₱7,416.42**
Interest	7,957.72	5,346.24	**2,611.48**
Total Deficiency EWT	₱30,557.83	₱20,529.93	**₱10,027.90**

Third, petitioner identified the remaining deficiency in basic EWT amounting to ₱7,416.42 as arising from income payments made to Phil. JAC, Inc. It appears, based on the discussion above, that any further assessment relating to these payments (e.g., the last of which was made on August 18, 2017) is **already barred by prescription**, *viz.*:

Exhibit	OR Date	OR #	Amount Net of VAT	WT Rate	EWT
"P-17"	February 20, 2017	1106	₱ 66,964.29	2%	₱ 1,339.29
"P-17-a"	March 15, 2017	1110	66,964.29	2%	1,339.29
"P-17-b"	April 19, 2017	1114	66,964.29	2%	1,339.29
"P-17-c"	May 23, 2017	1117	66,964.29	2%	1,339.29
"P-17-d"	July 29, 2017	1121	66,964.29	2%	1,339.29
"P-17-e"	July 24, 2017	1125	18,000.00	2%	360.00
"P-17-f"	**August 18, 2017**	1130	18,000.00	2%	360.00
	TOTAL		₱370,821.45		₱7,416.45

That the deficiency VAT and EWT assessments issued against petitioner for TY 2007 lack of factual and legal bases is sufficient reason to cancel the subject assessments.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **GRANTED.** Accordingly, the Formal Letter of Demand and Assessment Notices, all dated November 20, 2020, finding petitioner liable for deficiency VAT and EWT amounting to ₱24,206,798.90 and ₱30,557.83, respectively, inclusive of increments, for taxable year 2017, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

Roman G. Del Rosario

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

Roman G. Del Rosario

ROMAN G. DEL ROSARIO
Presiding Justice