**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**THIRD DIVISION**

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| **ALTUS ANGELES, INC.,** Petitioner, | **CTA CASE NO. 9164** |
| | Members: |
| - versus - | **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: SEP 30 2020 10:24 a.m. |

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# AMENDED DECISION

***RINGPIS-LIBAN, J.:***

Submitted before this Court for resolution are the following:

1) petitioner's **Motion for Partial Reconsideration (of the Decision dated 8 October 2019)"**, filed on November 28, 2019, with respondent's **Comment/Opposition Re: Petitioner's Motion for Reconsideration,** filed on January 2, 2020;

2) respondent's **Motion for Reconsideration Re: Decision dated 08 October 2019**, filed on December 4, 2019, with petitioner's **Comment/Opposition (to Respondent's Motion for Reconsideration dated 2 December 2019)**, filed on January 23, 2020; and

3) petitioner's **Motion to Admit Supplemental Motion for Partial Reconsideration (of the Decision dated 8 October 2019)**, filed on February 3, 2020.

On October 8, 2019, a Decision was promulgated by this Court, upholding with modification the deficiency assessments against petitioner cancelling certain portions of the said assessments, the dispositive portion of which reads as follows:

**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for the fiscal year ending September 30, 2009 covering deficiency VAT, EWT, increments for late remittance of WE and compromise penalties are **CANCELLED** and **SET ASIDE**.

On the other hand, the deficiency income tax, WTC and DST assessments are **AFFIRMED but with MODIFICATION**. Accordingly, petitioner is ordered to pay respondent the amount of ₱1,213,034.03, ₱671,378.26 and ₱17,997.05, representing basic deficiency IT, EWT and DST, respectively, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as determined below:

| | IT | WTC | DST | TOTAL |
|---|---|---|---|---|
| **Basic** | ₱ 307,094.89 | ₱ 166,780.24 | ₱ 4,463.61 | ₱ 478,338.74 |
| **Surcharge (25%)** | 76,773.72 | 41,695.06 | 1,115.90 | 119,584.68 |
| **Deficiency Interest (20%) until September 3, 2015** | | | | |
| IT - 1/16/10 to 09/03/15 (₱307,094.89 x 20% x 2,057 days/365 days) | 346,133.80 | | | 346,133.80 |
| WTC - 10/14/09 to 09/03/15 (₱166,780.24 x 20% x 2,151 days/365 days) | | 196,572.22 | | 196,572.22 |
| DST - 10/06/09 to 09/03/15 (₱4,463.61 x 20% x 2,159 days/365 days) | | | 5,280.51 | 5,280.51 |
| ***Total Amount Due - September 3, 2015*** | **₱730,002.41** | **₱405,047.52** | **₱10,860.02** | **₱1,145,909.95** |
| **Deficiency Interest (20%) from September 4, 2015 to December 31, 2017** | | | | |
| IT - 09/04/15 to 12/31/17 (₱307,094.89 x 20% x 850 days/365 days) | 143,030.50 | | | 143,030.50 |
| WTC - 09/04/15 to 12/31/17 (₱166,780.24 x 20% x 850 days/365 days) | | 77,678.47 | | 77,678.47 |
| DST - 09/04/15 to 12/31/17 (₱4,463.61 x 20% x 850 days/365 days) | | | 2,078.94 | 2,078.94 |
| **Delinquency Interest (20%) from September 4, 2015 to December 31, 2017** | | | | |
| IT - 09/04/15 to 12/31/17 (₱730,002.41 x 20% x 850 days/365 days) | 340,001.12 | | | 340,001.12 |
| WTC - 09/04/15 to 12/31/17 (₱405,047.52 x 20% x 850 days/365 days) | | 188,652.27 | | 188,652.27 |
| DST - 09/04/15 to 12/31/17 (₱10,860.02 x 20% x 850 days/365 days) | | | 5,058.09 | 5,058.09 |
| **Total Amount Due as of December 31, 2017** | **₱1,213,034.03** | **₱671,378.26** | **₱17,997.05** | **₱1,902,409.34** |

In addition, petitioner is liable to pay delinquency interest at the rate of 12% computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

| | |
|---|---|
| IT | ₱ 730,002.41 |
| WTC | 405,047.52 |
| DST | 10,860.02 |

**SO ORDERED.**"

**Petitioner's Motion to Admit Supplemental Motion for Partial Reconsideration.**

This Court shall first address petitioner's Motion to Admit.

In the said Motion, petitioner claims that pending the resolution of its Motion for Partial Reconsideration filed on November 28, 2019, the First Division of the Court of Tax Appeals (CTA) rendered a decision in CTA Case No. 9530 entitled *Universal Robina Corporation v. Commissioner of Internal Revenue*, which happens to be filed by one of petitioner's affiliated companies.

As such, petitioner requests this Court for leave to admit the supplemental motion for reconsideration to bring an additional matter to the attention of the Court especially the cited case of *Commissioner of Internal Revenue vs. Fitness By Design*[1] *(hereinafter, "Fitness By Design case")* which was relied by the CTA First Division in rendering its Decision therein.

Accordingly, in the interest of substantive justice, petitioner's Motion to Admit is **GRANTED**. The attached Supplemental Motion for Partial Reconsideration is **NOTED** and hereby admitted and shall form part of the records of the case.

That having been settled this Court shall now proceed to determine the merits of the respective Motions for Reconsideration filed by the parties.

**Petitioner's Motion for Partial Reconsideration**

In its Motion, petitioner prays that the Decision promulgated on October 8, 2019 be reconsidered and a new one be rendered cancelling respondent's assessments against petitioner for deficiency income tax, value-added tax, expanded withholding tax, increments for late remittance of WE, compensation withholding tax, and documentary stamp tax for taxable year

[1] G.R. No. 215957, November 9, 2016.

2009, in the total amount of ₱5,352,161.05 due to the absence of a valid electronic Letter of Authority (eLA).

Petitioner argues that under Revenue Memorandum Order (RMO) Nos. 62-10[2] and 69-10[3], the retrieval and replacement of all manually-issued letters of authority covering tax returns for taxable year 2009 is mandatory. Petitioner continues that failure to comply therewith will render the authority of the revenue officer conducting the assessment void.

Lastly, petitioner also argues issues affecting the validity of an assessment can be raised for the first time before this Court even if not raised in the pleadings.

While in its Supplemental Motion for Partial Reconsideration, petitioner maintains that according to the *Fitness By Design case*, the Supreme Court held that a tax assessment that lacks a definite amount of tax liabilities for which the petitioner is allegedly accountable is considered void.

On the other hand, in his comment, respondent merely reiterated the arguments in his Motion for Reconsideration as his comment.

After due consideration, this Court finds merit in both petitioner's Motion for Partial Reconsideration and Supplemental Motion for Partial Reconsideration.

Verily, it is well-settled in this jurisdiction that a revenue officer must be authorized, through an LOA, in order that the said officer may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.[4]

In relation therein, after a second hard look at RMO No. 69-10, would readily show that all LOAs, whether issued manually or electronically, from March 1, 2010, covering cases for 2009 and other taxable years, are **mandated to retrieval, and replacement with the new eLOA form** (BIR Form No. 1966). The pertinent portions of the said RMO reads as follows:

"III. Policies and Guidelines N

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[2] "SUBJECT: Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures", dated June 28, 2010.

[3] "SUBJECT: Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment", dated August 11, 2020.

[4] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017; and, *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

x x x

6. **<u>All LAs[5], whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years</u>, as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, <u>shall be retrieved and replaced with the new *e*LA form</u> (BIR Form No. 1966).**

7. **All revenue officers ordered to conduct investigation/audit through manually issued LAs prior to July 1, 2010 should continue the conduct of audit/investigation, <u>subject to the retrieval and replacement of LAs as mandated under Item No. III 6 of this Order</u>.**" *(Emphases and underscoring ours)*

According to the said same administrative issuance, all revenue officers, who are ordered to conduct investigation/audit through manually issued LOAs prior to July 1, 2010, should continue the conduct of such audit/investigation. **However, it is likewise clear that such directive to continue the audit/investigation is <u>subject to the retrieval of the manually-issued LOA, and replacement of a new eLOA</u>.** In other words, the authority to continue the said audit/investigation shall be done only when such retrieval and replacement have been made.

In the present case, respondent issued the Letter of Authority (LOA) No. LOA-127-2010-0000006[6] on May 14, 2010. Considering that the said LOA was issued after March 1, 2010, but prior to July 1, 2010, respondent should have retrieved and replaced the said LOA by an eLOA. By failing to do so, the revenue officers named in the manually issued LOA, and any other BIR personnel who examined petitioner, were not authorized through an eLOA to proceed with the BIR's tax audit. Thus, not having the requisite eLOA to continue the examination of petitioner's records in the first place, the subject tax assessments issued by the BIR are inescapably void.

With regard to *Fitness By Design case*, the Supreme Court ruled therein that:

"**<u>[T]he Final Assessment Notice is not valid if it does not contain a definite due date for payment</u>** by the taxpayer.

x x x

**The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the

[5] That is, "Letters of Authority".
[6] Exhibit "R-1", BIR Records, p. 1.

National Internal Revenue Code nor the revenue regulations provided for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**

x x x

A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period.**'

The disputed Final Assessment Notice is not a valid assessment.

**First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.** Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.**

**Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished.**

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation."

Going back to the present case, petitioner claims the contents of the Formal Letter of Demand[7] (FLD) dated June 27, 2014 issued to it by respondent, similarly lacks the above requirements mandated by the *Fitness By Design* case, thus:

"FORMAL LETTER OF DEMAND

June 27, 2014

The President
ALTUS ANGELES INC.
Mezzanine Floor, Galleria Condominium Corp. Center
Edsa corner Ortigas Ave., Quezon City
Gentlemen:

Please be informed that after investigation there has been found due from you deficiency income tax, value-added tax, expanded and compensation withholding taxes, increment on late remittance of expanded withholding tax and documentary stamp

[7] Exhibit "R-6", BIR Records, pp. 631-635.

tax for the fiscal year ended September 30, 2009, as shown hereunder:

x x x

*Please note that the interest and the total amount due will have to be adjusted if paid beyond July 9, 2014*.

The Complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX A of this letter.

The 20% interest per annum has been imposed pursuant to the provision of Section 249(B) of the National Internal Revenue Code of 1997, as amended by RMO No. 19-2007.

The compromise penalty was imposed pursuant to Sections 250 and 255 of the Tax Code, with reference to RMO No. 1-90, as amended by RMO No. 19-2007.

In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through eFPS using BIR Payment Form (BIR Form 0605) within the time shown in the enclosed assessment notice. Afterwards, submit copy thereof to Large Taxpayers Regular Audit Division 1 located at Rm 216 National Office Building, BIR Road, Diliman, Quezon City or updating your records and cancellation of the herein FLD if warranted.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

x x x

DETAILS OF DISCREPANCIES

x x x

In case you disagree to the assessment, you or your duly authorized representative or your duly authorized BIR accredited Tax Agent may protest administratively against the aforesaid Formal Letter of Demand (FLD) within thirty (30) days from date of receipt thereof, and submit the same to the Large Taxpayers Service - Assistant Commissioner located at Rm 307 National Office Building, BIR Road, Diliman, Quezon City, stating the nature of the protest whether reconsideration or reinvestigation, specifying the newly discovered or additional evidence you intend to present, the date of assessment notice, and the applicable law, N

> rules and regulations or jurisprudence from which your protest is based pursuant to Revenue Regulations 18-2013, otherwise your protest shall be considered void and without force and effect. However, if you are amenable, whether in whole or in part, it is requested that you settle first the tax attributable to the undisputed issue and furnish this office a photocopy of the proof of payment thereof, otherwise a collection letter shall be issued calling for the payment of the said deficiency tax or attributable thereto, inclusive of the applicable surcharge and/or interest.
>
> Failure to file a valid protest or <u>pay the tax within the time prescribed</u>, the assessment shall become final, executory and demandable and therefore subject to delinquency penalties pursuant to R.R. No. 18-2013.
>
> Very truly yours,
>
> KIM S. JACINTO-HENARES
> Commissioner of Internal Revenue
>
> x x x." *(Underscoring supplied)*

Moreover, petitioner also avers that neither the Final Decision on the Disputed Assessment (FDDA)[8] nor the Assessment Notices below contained any due date, or as stated in the *Fitness By Design Case*, "remained unaccomplished", to wit:

1) Assessment Notice No. IT-116-LOA-0000006-09-14-984;[9]
2) Assessment Notice No. VT-116-LOA-0000006-09-14-985;[10]
3) Assessment Notice No. WE-116-LOA-0000006-09-14-986;[11]
4) Assessment Notice No. WE-116-LOA-0000006-09-14-987;[12]
5) Assessment Notice No. WC-116-LOA-0000006-09-14-988;[13]
6) Assessment Notice No. DS-116-LOA-0000006-09-14-989;[14]
7) Assessment Notice No. FT-116-LOA-0000006-09-14-253.[15]

Accordingly, after further scrutiny of the records of the case, the evidence readily reveals that the subject assessment notices lack the definite amount of tax liabilities due for which petitioner is accountable. While both the

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[8] Exhibit "R-9", BIR Records, pp. 795-803.
[9] Exhibit "R-7", BIR Records, p. 636.
[10] Exhibit "R-7", BIR Records, p. 635.
[11] Exhibit "R-7", BIR Records, p. 634.
[12] Exhibit "R-7", BIR Records, p. 633.
[13] Exhibit "R-7", BIR Records, p. 632.
[14] Exhibit "R-7", BIR Records, p. 631.
[15] BIR Records, p. 788.

FLD and FDDA state that the interest and total amount due will have to be **adjusted if paid beyond the specified date**. The attached Audit Result/Assessment Notices therein did not contain due dates for the payment of the assessed deficiency taxes, despite the reference in the FLD and FDDA that such due dates will be provided.

Thus, as decreed in the *Fitness By Design case*, the amounts specified in the assessment remains indefinite, considering that the same is subject to adjustment depending on the date when petitioner will make payment.

With respondent's substantial and procedural lapses, the subject tax assessments hardly fall under the jurisprudential definition of a tax assessment under the National Internal Revenue Code (NIRC), considering that it lacked *"a due tax liability that is there definitely set and fixed."* Hence, in view of the time-honored maxim, a void assessment bears no valid fruit,[16] the inevitable conclusion is that the deficiency tax assessments against petitioner for the taxable year 2009 is fatally infirm.

**Respondent's Motion for Reconsideration**

In his Motion, respondent primarily insists that the deficiency assessments issued against petitioner has sufficient factual and legal bases. Respondent also reiterates that assessments are presumed correct and made in good faith, thus he prays that the Decision be reversed and set aside.

On the other hand, in its comment, petitioner claims that respondent's Motion should be denied outright for being pro forma. Petitioner asserts that no new arguments were raised by respondent in his Motion, and in fact, the arguments therein are reiterations of the same arguments already raised in his Memorandum dated October 4, 2018.

After due consideration, respondent's Motion for Reconsideration is bereft of merit.

At the onset, and as correctly pointed out by the petitioner, the arguments raised in respondent's Motion are mere reiterations of the arguments raised in his Memorandum, which have already been discussed extensively in the assailed Decision.

In the case of *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*,[17] the Supreme Court denied a party's Motion

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[16] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

[17] G.R. No. 159938, January 22, 2007; citing *Guerra Enterprises Company, Inc. v. Court of First Instance of Lanao del Sur, et al.*, G.R. No. L-28310, April 17, 1970.

for Reconsideration for being mere reiteration of their previous arguments and for failing to raise matters substantially plausible or compellingly persuasive to warrant the reversal of the Decision being assailed, *viz.*:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

In view of the foregoing, this Court is constrained to deny respondent's Motion for Reconsideration.

**WHEREFORE**, petitioner's Motion for Partial Reconsideration (of the Decision dated 8 October 2019)" and Supplemental Motion for Partial Reconsideration are **GRANTED**, while respondent's Motion for Reconsideration Re: Decision dated 08 October 2019 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated October 8, 2019 is hereby amended to read as follows:

> "**WHEREFORE,** the instant Petition for Review is **GRANTED**. Accordingly, the assessments issued by respondent against petitioner for the fiscal year ending September 30, 2009 covering deficiency income tax, VAT, EWT, WTC, DST, increments for late remittance of WE and compromise penalties are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

**SO ORDERED.**

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**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**WE CONCUR:**

**ERLINDA P. UY**
Associate Justice

*(With Concurring and Dissenting Opinion)*
**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

## ATTESTATION

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

**ERLINDA P. UY**
*Associate Justice*
*Chairperson*

## CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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*

REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

*Third Division*

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| **ALTUS ANGELES, INC.,** *Petitioner,* | **CTA CASE NO. 9164** |
| *-versus-* | Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: SEP 30 2020 10:24 a.m. |

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## CONCURRING AND DISSENTING OPINION

***MODESTO-SAN PEDRO, J.:***

I concur with the *ponencia* in amending the Decision dated 8 October 2019, granting the Petition for Review, and cancelling and setting aside the assessment issued against petitioner for deficiency income tax, VAT, EWT, WTC, DST, increments for late remittance of WE, and compromise penalties due to the following grounds: (1) the lack of authority of the revenue officers who conducted the audit examination of petitioner; and (2) the lack of due date in the assessment rendering the tax liability indefinite.

However, I disagree with the conclusion reached in the *ponencia* that the statement found in the Formal Letter of Demand ("FLD") affected the validity of the assessment, specifically:

> **"Please note that the interest and the total amount due will have to be adjusted <u>if paid beyond</u> July 9, 2014."[1]**

In the *ponencia*, the Court ruled that the aforementioned statement rendered the amounts specified in the assessment indefinite considering that the same is subject to adjustment depending on the date when petitioner will make payment. It cited the case of ***Commissioner of Internal Revenue v. Fitness By Design, Inc.***, (hereinafter referred to as "Fitness By Design case")[2] as basis for its conclusion where the Supreme Court ruled, to wit:

[1] Underscoring supplied.
[2] G.R. No. 215957, 9 November 2016.

> The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there: definitely set and fixed." Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the **tax due is still subject to modification, depending on the date of payment.** Thus:
>
>> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex I of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, however, that the interest and the total amount due will have to be adjusted if paid prior or beyond April 15, 2004.**"[3]

However, a close reading of the statement written on the assessment in the Fitness By Design case proves that its import or meaning is not the same with the statement found in this case.

In the Fitness By Design case, there was no fixed amount due since the final tax liability was dependent on when the taxpayer would settle the assessment, regardless if paid before or after the due date.

In the instant case, the statement in the assessment merely serves as a reminder to the taxpayer that the interest will be adjusted and increased if the assessment will not be paid within the due date provided in the assessment.

Given the foregoing reasons, it is my opinion that the statement found in the assessment issued against the petitioner did not affect the validity of the assessment.

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

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[3] Emphasis and underscoring supplied.