REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

G&W ARCHITECTS, ENGINEERS AND PROJECT CONSULTANTS, CO.,
Respondent.

CTA EB NO. 1572
(CTA Case No. 8604)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
FEB 23 2018 4:03 p.m.

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated August 16, 2016 ("Assailed Decision") and Resolution[2] dated December 02, 2016 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), cancelling the assessments Petitioner issued against Respondent for deficiency income tax and value-added tax ("VAT") amounting to Php518,268,999.15 and Php181,317,267.09, respectively, for taxable year 2007.

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova and Amelia R. Cotangco-Manalastas concurring. Docket, pp. 1224-1256.

[2] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova concurring. Docket, pp. 1278-1285.

The Facts

The facts as found by the Second Division are as follows:

"[Respondent] is a partnership whose purpose is to engage in the general practice of Architecture and Construction and to purchase, own, hold, manage, lease, and operate any and all kinds of properties.

On the other hand, [Petitioner] is the Commissioner of the Bureau of Internal Revenue (BIR), vested by law with authority to decide, approve, and reverse assessments of internal revenue taxes. [He] holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Letter Notice (LN) No. 030-RLF-07-00017 dated July 16, 2009 was issued to petitioner by the Letter Notice Task Force (LNTF) of the BIR due to alleged discrepancies as disclosed by the computerized matching conducted by the BIR on information or data provided by third-party sources against [Respondent's] declarations per VAT Returns for taxable year ended December 31, 2007.

Subsequently, Letter of Authority (LOA) No. 00017191 dated May 11, 2010 was issued authorizing the conduct of an investigation or examination of [Respondent's] books of accounts and other accounting records and the corresponding pre-processed data under Tax Reconciliation System (TRS) for the period covering January 1, 2007 to December 31, 2007.

Thereafter, a Preliminary Assessment Notice (PAN) dated December 26, 2011 was issued against [Respondent].

[Petitioner] then issued the assailed Formal Assessment Notice (FAN) dated February 15, 2012, finding [Respondent] liable to pay deficiency income tax and deficiency VAT due to the discrepancy that resulted from the Reconciliation of Listing for Enforcement (RELIEF) and Third-Party Matching-SOC Data Program as declared in the tax returns.

[Respondent] filed its protest against the FAN on May 2, 2012 and submitted its supporting documents on June 29, 2012.

> Due to [Petitioner's] inaction on the protest, [Respondent] filed the [ ] Petition for Review before [the Court in Division] on January 25, 2013."[3]

The Ruling of the Second Division

On August 16, 2016, the Second Division promulgated the Assailed Decision granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency income tax and deficiency VAT assessments for taxable year 2007 issued against [Respondent] are hereby **CANCELLED**.
>
> **SO ORDERED.**"[4]

The Assailed Decision cancelled the deficiency income tax VAT assessments against Respondent for taxable year 2007 for failure by Petitioner to verify the amount of Respondent's alleged undeclared purchases which resulted from Petitioner's Reconciliation of Listing for Enforcement ("RELIEF") and Third-Party Matching-SOC Data Program. Thus, casting a doubt as to the reliability and correctness of the findings of deficiency taxes assessed by Petitioner. Moreover, since Petitioner was not able to clearly establish the falsity of Respondent's income tax and VAT returns for taxable year 2007, the three (3) year period within which to assess internal revenue taxes under Section 203 of the National Internal Revenue Code ("NIRC") of 1997 has already lapsed when the Formal Assessment Notice ("FAN") was issued.

Aggrieved, Petitioner filed a "Motion for Reconsideration"[5] on September 06, 2016, which the Second Division denied in the Assailed Resolution on December 02, 2016, thus:

> "**WHEREFORE**, premises considered, [Petitioner's] Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[6]

In denying Petitioner's Motion for Reconsideration, the Second Division ruled that Petitioner's assessment was based on unverified information and presumptions. Additionally, there was no admission on the part of Respondent that it is the one who made the alleged undeclared purchases. Lastly, Petitioner

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3 *Id.*, pp. 1224-1226.
4 *Id.*, p. 1255.
5 *Id.*, pp. 1257-1263.
6 *Id.*, p. 1285.

failed to present sufficient proof to show the existence of fraud, for which the ten (10) year prescriptive period applies.

On December 27, 2016, Petitioner filed a "Motion for Extension of Time to File Petition for Review"[7], which the Court granted in a Minute Resolution dated January 04, 2017.[8]

On January 12, 2017, Petitioner filed the present "Petition for Review"[9] *via* registered mail.

On March 02, 2017, the Court issued a Resolution[10] which ordered Respondent to comment on the Petition for Review. Consequently, on March 17, 2017, Respondent filed its "Comment (to the Petition for Review filed on 12 January 2017)".[11]

On March 30, 2017, the Court issued a Resolution[12] submitting the case for decision.

The Issues

Petitioner raises the following grounds in support of its petition:

1. Whether or not the Honorable Court [ ] in Division correctly ruled that the tax deficiency assessment is null and void because it was not based on actual facts and was issued beyond the [three (3)] year period to assess; and

2. Whether or not Respondent is liable for [Php518,268,999.15 and Php181,317,267.09], representing the deficiency income tax and [VAT] respectively for taxable year 2007.[13]

The Ruling of the Court

Petitioner maintains that the assessment was made in accordance with prevailing laws, rules and regulation. Petitioner claims that it was able to establish the discrepancy on actual purchases not reported by Respondent through the use of RELIEF. Thus, in the absence of proof of any irregularities in the

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7 Rollo, pp. 1-4. Record shows that petitioner received the assailed Resolution on December 13, 2016; Docket, p. 1277.
8 *Id.*, p. 5-A.
9 *Id.*, pp. 7-23.
10 *Id.*, pp. 134-135.
11 *Id.*, pp. 136-145.
12 *Id.*, pp. 147-148.
13 *Id.*, pp. 11.

performance of duties, an assessment duly made should not be disturbed. Accordingly, a substantial under-declaration of Respondent's purchases is equivalent to undeclared income which should be taxed. Moreover, with the falsity of Respondent's tax returns for taxable year 2007 (*i.e.,* substantial under-declaration in an amount exceeding thirty percent (30%)), the ten (10) year period of limitation for assessment applies.

Petitioner's arguments must perforce fail.

At the outset, we note that the arguments advanced by Petitioner are merely rehashed from his previous pleadings before the Court in Division. Each and every issue has been amply discussed and sufficiently determined and passed upon in the Assailed Decision and Assailed Resolution. Thus, the Court *En Banc* sees no compelling reason to modify much more deviate from the ruling of the Second Division.

Petitioner's assessment has no factual and legal basis

According to Petitioner, it was discovered through his investigation that Respondent has undeclared purchases from its suppliers amounting to Php332,961,715.85. This is precisely an assessment item for deficiency income tax and VAT, to wit:[14]

A. LOCAL PURCHASES (VAT & IT)

Per Summary List of Sales submitted by Petitioner's Suppliers	Php356,045,481.18
Adjustment per evaluation	Php23,083,765.33
Under-declaration of Local Purchases	**Php332,961,715.85**

Respondent however argues that the method employed by Petitioner in securing data from the RELIEF and Third-Party Matching-SOC Data Program (*i.e,* third-party information) which were compared with the figures appearing on its Summary List of Sales violates Revenue Memorandum Order ("RMO") No. 46-04, which requires Respondent to verify the allegations stemming from third-party information through externally sourced data.

We rule for the Respondent.

As found by the Second Division, Petitioner's witness admitted that the said undeclared purchases which allegedly resulted from third-party matching were all unverified:

[14] *Id.,* p. 18.

"In the cross-examination of [Petitioner's] witness, RO Chiu, during the hearing held on April 7, 2014, RO Chiu made the following statements:

'JUSTICE MANALASTAS:
Q: Mr. Witness, the question is, do you also verify the information given by the supplier because you are saying that you are matching the information by the taxpayer and the supplier, and if there are discrepancies, you'll have the taxpayer to explain, and the question is, do you also verify the information given by the supplier?

WITNESS:
A: Your Honor, we also wrote letters to the suppliers, like the Fort Bonifacio to present to us all the possible receipts but they failed to ... (*interrupted*)

Q: **Before you wrote to the taxpayers you verify first to the supplier**?
A: Yes, your Honors.

JUSTICE CASTANEDA:
Q: What was the reply of the supplier?

WITNESS:
A: The reply, your Honors, is that, that they are not in the position to give us some informations *[sic]* regarding those receipts.

JUSTICE MANALASTAS:
Q: **So no informations were given**?

WITNESS:
No, your Honors.

xxx xxx xxx

Q: Mr. witness, moving into your *Supplemental Judicial Affidavit*, so again, one of the fact that you've taken in consideration was the **unverified Computer Generated Data**?

A: Yes, ma'am.' (*Emphasis supplied*)" [15]

The assessment being based on unverified information, this Court could not just recklessly take it hook, line and sinker, absent any substantiation.

Petitioner likewise failed to show that he complied with the guidelines set forth in RMO No. 46-04, which requires the execution and presentation of sworn statements from third-party informants to attest to veracity of the schedules and data on which the assessment is based. There being no verification, the reliability of such information is questionable.

Moreover, while there is a presumption of correctness of assessment issued by [Petitioner], it is an elementary rule that being a mere presumption, the same cannot be made to rest on another presumption,[16] which is [Petitioner's] presumption that the under-declared purchases translated and would automatically result in profit, undeclared income or additional taxable sales which would in turn increase [Respondent's] income tax and VAT liability.

We agree when the Second Division held:

> "At this juncture, it must be pointed out that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be."[17]

Lastly, even granting that there was under-declaration of purchase on the part of Respondent, the same is of no consequence. As we have held in the case of *Commissioner of Internal Revenue v. Agrinurture, Inc.*,[18] **a finding of under-declaration of purchase <u>does</u> <u>not</u> <u>by</u> <u>itself</u> result in the imposition of income tax and VAT**.

Indeed, there are three (3) elements for the imposition of income tax. *First,* there must be gain or profit. *Second*, the gain or profit is realized or received, actually or constructively. *And third*, it is not exempted by law or treaty from income tax. Income tax is assessed on income received from any property, activity or service.[19] Such being the case, in the imposition or assessment of

[15] Docket, pp. 1243-1244.
[16] Collector of Internal Revenue v. Alberto D. Benipayo, G.R. No. L-13656, January 31, 1962.
[17] Docket, p. 1250.
[18] CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.
[19] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 108576, January 20, 1999.

income tax, it is not when there is an undeclared purchase, but only when there was an income, and such income was received or realized by the taxpayer.[20]

Furthermore, for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[21] Hence, even granting that there is an undeclared purchase, the same is not prohibited by law.

Similarly, no deficiency VAT assessment should arise from an undeclared purchase. Under Section 105 of the NIRC of 1997, VAT is imposed on the seller of the goods, to wit:

> "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 the Code."

Further, Section 106(A) of the NIRC of 1997 states that the VAT is assessed on the "gross selling price or gross value in money of the goods or properties sold" and is "to be paid by the seller or transferor." In this connection, the law defines "gross selling price" as:

> "...the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price."[22]

From the provisions above, what is critical to be shown in the imposition or assessment of VAT in the sale of goods or properties, is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, the VAT is imposed when one sells, not when one purchases.[23]

Thus, the Court *En Banc* is one with the Second Division when it ruled that Petitioner's assessment was not based on undeclared income actually

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[20] Commissioner of Internal Revenue v. Agrinurture, Inc., CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.

[21] Commissioner of Internal Revenue v. Phoenix Assurance Co. Ltd., G.R. No. L-19727, May 20, 1965.

[22] National Internal Revenue Code of 1997, Section 106(A)(1).

[23] Commissioner of Internal Revenue v. Agrinurture, Inc., CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.

received by Respondent. For the assessment made by Petitioner and the testimony of her witness would only show that Petitioner merely presumed that the alleged undeclared purchases are part of Respondent's cost which translated into profit or income.[24] Correspondingly, income tax should not be imposed on the supposed under-declared purchase of Respondent.

In the same vein, in simply relying on the fact that there is an alleged under-declaration of purchase, Petitioner's imposition or assessment of the subject VAT does not hold water and therefore, the subject deficiency income VAT assessment must perforce be cancelled.

Having failed to establish that Respondent's tax returns for 2007 were false or fraudulent, the three (3) year prescriptive period under Section 203 of the NIRC of 1997 applies

Finally, on the issue of the prescriptive period within which to assess Respondent's taxes, Petitioner claims that since Respondent has under-declared its purchases in an amount exceeding thirty percent (30%) of that declared per return, such substantial under-declaration rendered Respondent's tax return filed for taxable year 2007 as a false and fraudulent return under Section 248(B) of the NIRC of 1997. The same creates a *prima facie* evidence of a false or fraudulent return for which the ten (10) year prescriptive period under Section 222 of the NIRC of 1997 applies.

The Court *En Banc* is not persuaded.

As discussed above, Petitioner failed to establish that Respondent has undeclared purchases amounting to Php332,961,715.85. Consequently, Respondent's tax returns cannot be construed as false or fraudulent.

Thus, the Court *En Banc* agrees with the Second Division in disposing the issue in the following fashion:

> "**Considering the Court's finding that the falsity of [Respondent's] income tax and VAT returns for taxable year 2007 was not clearly established, the period within which to assess internal revenue taxes shall be governed by Section 203 of the NIRC of 1997**, as amended, to wit:

[24] Docket, p. 1249.

> 'SEC. 203. Period of Limitation Upon Assessment and Collection. - 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.'

It is clear from the foregoing that the three-year period to assess internal revenue taxes commences from the date of actual filing of the return; or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

The instant Petition for Review involves the assessment issued by [Petitioner] against [Respondent] for alleged deficiency income tax and deficiency VAT for taxable year 2007.

As regards [Respondent's] income tax, the return is required to be filed and the payment is to be made on or before the fifteenth (15th) day of April. The Annual Income Tax Return for taxable year 2007 was filed on April 11, 2008. Hence, counting from the last day required by law to file the return, [Petitioner] had until April 15, 2011 within which to assess [Respondent] for deficiency income tax for taxable year 2007. Clearly, **the deficiency income tax assessment issued by [Petitioner] in 2012 was <u>issued</u> <u>beyond</u> <u>the</u> <u>3-year</u> <u>period</u> <u>provided</u> <u>by</u> <u>law</u>**.

On the other hand, the law requires that the VAT Return must be filed quarterly within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer.

Records reveal that [Respondent] filed its Quarterly VAT Returns covering the four quarters of taxable year 2007 on April 24, 2007, on July 23, 2007, on October 25, 2007, and on January 22, 2008, respectively. Hence, [Petitioner] had until April 25, 2010, July 25, 2010, October 25, 2010, and January 25, 2011 within which to assess petitioner for deficiency VAT for the four quarters of taxable year 2007. **The FAN was issued on February 15, 2012. As a result, the assessment was issued beyond the 3-year prescriptive period provided by law**."[25]

WHEREFORE, finding no cogent reason to disturb the findings and conclusions reached by the Second Division in the Assailed Decision dated August 16, 2016 as well as in the Assailed Resolution dated December 02, 2016, the same are **AFFIRMED**. Accordingly, the Petition for Review filed with the Court *En Banc* on January 12, 2017 *via* registered mail is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

[25] Docket, pp. 1254-1255; *Emphasis and underscoring supplied.*

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
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

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- versus -

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RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

FEB 23 2018 4:03 p.m.

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) but ***solely*** on the ground that the Final Assessment Notice (FAN) is void for: ***one,* having been issued without a valid Letter of Authority (LOA)**; and ***two,* failure of the FAN and the Assessment Notices enclosed thereto to demand payment of the taxes due within a specific period**.

Lack of a valid LOA

Records show that LOA No. 2009 00017191[1] issued on **May 11, 2010** was received by respondent only on **June 11, 2010**, or thirty-one (31) days from its date of issue. No proof was presented to establish

[1] Exhibit R-3, BIR Records, p.280.

that said LOA was **revalidated** as required by Revenue Audit Memorandum Order (RAMO) No. 1-00, which mandates that an LOA must be served or presented to the taxpayer within thirty (30) days from its date of issue; otherwise, it becomes null and void.

Since the LOA has expired at the time it was presented to respondent, the assessment conducted by the Revenue Officers pursuant thereto was unauthorized. In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***,[2] the Supreme Court declared an assessment void for want of a valid LOA:

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID II IT-98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. **The assessment is void for being issued without valid authority**. Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 2008." (Boldfacing and underscoring supplied)

Dakay Construction and Development Corporation vs. Commissioner of Internal Revenue[3] further teaches that an LOA which has been served to the taxpayer beyond the prescribed thirty (30) day-period from its date of issue becomes null and void and the assessment issued pursuant thereto is likewise void.

Since the LOA has expired at the time it was presented to respondent, I am of the view that the audit conducted by the revenue officer pursuant thereto was unauthorized; hence, the FAN and Assessment Notices issued against respondent as a consequence of an unauthorized audit is void *ab initio*.

Lack of demand to pay the taxes due within a specific period

A perusal of the FAN[4] and the Assessment Notices[5] enclosed thereto issued against respondent reveals that both failed to demand payment of the taxes due within a specific period. While the FAN[6] specifically states that:

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[2] G.R. No. 183408, July 12, 2017.
[3] CTA EB No. 1294, September 20, 2017.
[4] Exhibit R-9, BIR Records, pp.417-419.
[5] Exhibit R-9, BIR Records, pp.415-416.
[6] Exhibit 13; Exhibit H.

> "Xxx, you are hereby requested to pay your aforesaid tax liability through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice. xxx"

the spaces for the due dates in the Assessment Notices were conspicuously left blank.

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[7] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "An assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx xxx xxx.
>
> xxx xxx
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> xxx xxx xxx. **Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.**
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. **It did not state a demand or a period for payment.** Xxxxxx." (Boldfacing and underscoring supplied)

The Supreme Court elucidated in ***Commissioner of Internal Revenue vs. Fitness By Design***[8] that a FAN without a definite due

[7] G.R. No. 128315, June 29, 1999.
[8] G.R. No. 215947, November 9, 2016.

date for payment is not valid because it negates the demand for payment, *viz.*:

> "**The disputed Final Assessment Notice is not a valid assessment**.
>
> xxx xxx xxx
>
> **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.
>
> 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."

To be considered as valid, the FANs must not only indicate the legal and factual bases of the assessments **but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period**. The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is an important pre-requisite to a valid assessment notice. In other words, an assessment notice cannot be considered valid absent a specific date or period within which the alleged tax liabilities must be settled or paid by the taxpayer.

In fine, the fatally infirmed FAN and the Assessment Notices which demand from respondent the payment of the deficiency income tax and value-added tax for the taxable year 2007, must perforce be cancelled and set aside.

All told, I vote to **DENY** the Petition for Review filed by the Commissioner of Internal Revenue. Accordingly, the FAN and the Assessment Notices assessing respondent for deficiency income tax and VAT amounting to P518,268,999.15 and P181,317,267.09, respectively for taxable year 2007, should be **CANCELLED** for being void.

ROMAN G. DEL ROSARIO
Presiding Justice