REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

EASTERN PETROLEUM CORPORATION, *Petitioner,*	**CTA CASE NO. 10342**
	Members:
-versus-	**RINGPIS-LIBAN,** *PJ & Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 10 2026

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DECISION

RINGPIS-LIBAN, *P.J.*:

THE CASE

The present *Petition for Review* prays for the following:

1. The instant *Petition for Review* be granted and be given due course; and

2. A temporary restraining order or writ of preliminary injunction be issued against respondent refraining him from collecting taxes and enforcing the *Final Decision on Disputed Assessment* (FDDA) dated June 29, 2020 pending the final resolution of the instant *Petition.*[1]

[1] Statement of the Case, Pre-Trial Order dated July 14, 2021, Docket – Vol. VII, p. 2856.

THE PARTIES

Petitioner Eastern Petroleum Corporation is a corporation organized under the laws of the Republic of the Philippines, with principal office at 7th Floor, Cityland Pasong Tamo Tower, 2210 Don Chino Roces Ave., Makati City.[2]

Its primary purpose is to "prospect, explore, dig and drill for, exploit, extract, produce, purchase or otherwise acquire, store, hold, transport, use, experiment with, market, distribute, exchange, sell and otherwise dispose of, import, export, and handle trade and generally deal in, refine treat, reduce, distill, manufacture and crack, any and all kinds of petroleum products, oil gas and other volatile substances, ozokerite, sulfur, clays, bituminous substances. carbon, carbon black, hydrocarbon substances, coal, ores, minerals and mineral substances of all grade, kinds, forms, descriptions and combinations, and in general subsoil products and subsurface deposits of every nature, description and the products which may be derived, produced, prepared, developed, compounded, made or manufactured therefrom and substances obtained by mixing any of the foregoing with other substances."[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) empowered to perform the duties of his office, among others, acting on disputed assessments as provided by law.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

The Bureau of Internal Revenue (BIR) issued the *Letter of Authority* (SN: eLA201200042330 / AUDR05 / 005824 / 2016) dated January 29, 2016,[5] authorizing Revenue Officers Lolita Sabado, Lilia Pascual, Melinda Rugayan and Romualdo Plocios, and Group Supervisor Samuel Reyes of Revenue District Office No. 124 – Excise LT Division II, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2014 to December 31, 2014.

On March 2, 2016, the BIR issued the *First Notice for the Presentation of Books of Accounts and Other Accounting Records.*[6] Then on November 13, 2018, the BIR issued a *Notice of Informal Conference.*[7]

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[2] Exhibit "P-1-B", Docket – Vol. III, at pp. 1403 and 1408.
[3] Exhibit "P-1", Docket – Vol. II, pp. 724 and 747; Docket, Vol. III, p. 1369.
[4] Par. 4(a), Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. VII, p. 2798.
[5] Exhibits "P-9" and "R-1", BIR Records – Folder 1 (Exhibit "R-16"), p. 1.
[6] Par. 17, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, p. 14 and Docket – Vol. IV, p. 1501, respectively; Exhibits "P-7" and "R-3", BIR Records – Folder 1 (Exhibit "R-16"), p. 7.

Subsequently, on July 17, 2019, the petitioner received the *Preliminary Assessment Notice* of even date.[8] In response, petitioner filed its letter dated September 2, 2019 on September 4, 2019.[9]

On October 24, 2019, petitioner received the *Formal Letter of Demand* (FLD), with attached *Assessment Notices* dated October 22, 2019.[10] Petitioner then filed its letter dated November 22, 2019 *(Reply to the Formal Letter of Demand dated 22 October 2019)* on even date.[11]

Thereafter, petitioner received the above-stated FDDA dated June 29, 2020 on July 21, 2020.[12]

PROCEEDINGS BEFORE THE COURT

On September 4, 2020, petitioner filed the present *Petition for Review with Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction.*[13]

Thereafter, on October 29, 2020, petitioner filed a *Supplemental Petition for Review*,[14] relative to its prayer for issuance of a TRO and/or preliminary injunction.

Petitioner's *Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction* was set for hearing,[15] and held on November 5, 2020.[16] Relative thereto, petitioner presented its witness, Ms. May G. Sorra, its General Manager, who testified on direct examination by way of Judicial Affidavit.[17]

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[7] Par. 20, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, p. 14 and Docket – Vol. IV, p. 1501, respectively; Exhibits "P-10" and "R-8", BIR Records – Folder 1 (Exhibit "R-16"), p. 764.

[8] Exhibit "P-11", Docket – Vol. I, pp. 90 to 118; Exhibit "R-11", BIR Records – Folder 1 (Exhibit "R-16"), p. 766 to 794.

[9] Exhibit "P-12", Docket – Vol. I, pp. 119 to 124.

[10] Exhibit "P-13", Docket – Vol. I, pp. 125 to 146; Exhibit "R-13", BIR Records – Folder 3 (Exhibit "R-16-b"), pp. 231 to 251.

[11] Exhibit "P-14", Docket – Vol. I, pp. 148 to 166.

[12] Exhibit "P-5", Docket – Vol. I, pp. 38 to 49; Exhibit "R-15-a", BIR Records – Folder 3 (Exhibit "R-16-b"), pp. 347 to 358.

[13] Docket – Vol. I, pp. 10 to 37 and 50 to 52 (for *Secretary's Certificate*).

[14] Docket – Vol. II, pp. 602 to 609.

[15] Notice of Hearing dated October 2, 2020, Docket – Vol. II, p. 566.

[16] Minutes of the hearing held on, and Order dated November 5, 2020, Docket – Vol. III, pp. 1314 and 1317 to 1318, respectively.

[17] Exhibit "P-27", Docket – Vol. II, pp. 703 to 722; Minutes of the hearing held on, and Order dated, November 5, 2020, Docket – Vol. I, pp. 1314 and 1317 to 1318, respectively.

On December 7, 2020, respondent posted his *Answer*,[18] interposing the following special and affirmative defenses, to wit: (1) the deficiency assessment issued against petitioner is correct; and (2) the assessment issued against petitioner is valid and lawful.

Thereafter, on December 14, 2020, respondent transmitted the *BIR Records* of this case, consisting of three (3) folders.[19]

On November 20, 2020, petitioner filed its *Formal Offer of Evidence with Motion*[20] that the previous provisional markings of its exhibits be cancelled and the attached exhibits be permanently marked. Respondent submitted his *Comment (On Petitioner's Formal Offer of Evidence)* on December 14, 2020.[21] In the Resolution dated February 2, 2021,[22] the Court granted petitioner's *Motion.*

Subsequently, in a *Resolution* dated March 18, 2021,[23] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-18" and "P-19", for failure to present originals for comparison. Thereafter, in a *Resolution* dated June 9, 2021,[24] the Court granted petitioner's *Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction*, suspending the collection of taxes subject to the depositing of a cash bond equal to the value of the assessment for deficiency taxes in the total amount of ₱849,141,865.85, or the posting of a surety bond equivalent to one and a half (1½) of the assessment in the amount of ₱1,273,712,798.78.

In the meantime, the Pre-Trial Conference was set and held on April 27, 2021.[25] Prior thereto, petitioner's *Pre-Trial Brief* was posted on April 22, 2021,[26] while respondent's *Compliance*,[27] with attached hard copy of the *Pre-Trial Brief*,[28] was submitted on May 24, 2021.

On May 27, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[29] which was admitted and approved by the Court in its Resolution dated June 22, 2021,[30] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 14, 2021 was then issued.[31]

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[18] Docket – Vol. IV, pp. 1501 to 1515.
[19] *Compliance* dated December 14, 2020, Docket – Vol. IV, pp. 1657 to 1659.
[20] Docket – Vol. III, pp. 1347 to 1366.
[21] Docket – Vol. IV, pp. 1661 to 1663.
[22] Docket – Vol. IV, pp. 1670 to 1671.
[23] Docket – Vol. IV, pp. 1685 to 1689.
[24] Docket – Vol. VII, pp. 2811 to 2820.
[25] Notice of Pre-Trial Conference dated December 16, 2020, Docket – Vol. IV, pp. 1665 to 1666; Minutes of the hearing held on, and Order dated, April 27, 2021, Docket – Vol. IV, pp. 1692 to 1695.
[26] Docket – Vol. VI, pp. 2256 to 2277.
[27] Docket – Vol. VI, pp. 2244 to 2246.
[28] Docket – Vol. VI, pp. 2248 to 2253.
[29] Docket – Vol. VII, pp. 2798 to 2801.
[30] Docket – Vol. VII, pp. 2834 to 2835.
[31] Docket – Vol. VII, pp. 2856 to 2865.

On June 21, 2021, petitioner filed a *Motion to Reduce Bond with Motion for Extension of Time to Post Bond.*[32]

Petitioner then filed a *Motion for Mediation* on July 12, 2021,[33] which the Court granted in its Resolution dated November 10, 2021.[34] Hence, the parties were ordered to immediately proceed and to personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on December 7, 2021. However, the PMC-CTA issued the *Mediator's Report* dated May 30, 2022,[35] stating that there was unsuccessful mediation between the parties.

On June 9, 2022, petitioner filed a *Motion to Suspend Proceedings*,[36] stating that during the mediation proceedings, petitioner manifested that it has submitted its formal letter-offer offering ₱14,800,000.00. However, respondent has yet to issue a reply to such offer.

In the Resolution dated June 24, 2022,[37] the Court noted the PMC-CTA's *Mediator's Report* and granted petitioner's *Motion to Suspend Proceedings.* The Court gave petitioner thirty (30) days from notice within which to file a progress report on the status of its administrative compromise settlement with the BIR. Additionally, the Court's resolution on petitioner's *Motion to Reduce Bond with Motion for Extension of Time to Post Bond* was held in abeyance.

On August 5, 2022, petitioner filed its *Compliance*[38] and manifested that it still has *not* received a response from respondent, which was noted by the Court in its *Resolution* dated August 18 2022.[39] Petitioner was ordered to file another progress report on the status of its administrative compromise settlement with the BIR five (5) days from September 1, 2022 to help the Court decide whether the proceedings shall continue to be suspended or not.

On September 7, 2022, petitioner again filed its *Compliance*[40] and manifested that it has yet to receive the response from respondent. This was noted by the Court in its *Resolution* dated September 19, 2022,[41] which ordered petitioner to file a progress report on the status of administrative compromise settlement with the BIR within sixty (60) days from receipt of the *Resolution.*

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[32] Docket – Vol. VII, pp. 2825 to 2829.
[33] Docket – Vol. VII, pp. 2847 to 2850.
[34] Docket – Vol. XI, pp. 4533 to 4534.
[35] Docket – Vol. XI, p. 4574.
[36] Docket – Vol. XI, pp. 4553 to 4558.
[37] Docket – Vol. XI, pp. 4583 to 4584.
[38] Docket – Vol. XI, pp. 4585 to 4589.
[39] Docket – Vol. XI, pp. 4593 to 4594.
[40] Docket – Vol. XI, pp. 4595 to 4597.
[41] Docket – Vol. XI, pp. 4599 to 4600.

On October 20, 2022, petitioner filed its *Compliance*,[42] manifesting that it has yet to receive the response from respondent.

In a *Resolution* dated March 13, 2023,[43] the Court noted that the Judicial Records Division issued *Records Verification* dated February 21, 2023,[44] stating that as of date, no progress report on the status of the compromise settlement with the BIR was filed by petitioner. In the interest of justice, the parties were given ten (10) days from notice within which to file a progress report on the status of its administrative compromise settlement with the BIR.

On April 17, 2023, petitioner filed its *Compliance*,[45] manifesting that it has yet to receive the response from respondent. Respondent failed to file a progress report.[46]

In a *Resolution* dated June 23, 2023,[47] the Court noted petitioner's *Compliance* filed on April 17, 2023. However, the Court observed that the proceedings have been suspended for a long time and that since the Court cannot wait indefinitely for the approval of petitioner's negotiation with the BIR, the trial proceedings in the present case shall continue. Moreover, the Court submitted petitioner's *Motion to Reduce Bond with Motion for Extension of Time to Post Bond* for resolution.

In the Resolution dated July 31, 2023,[48] the Court denied petitioner's *Motion to Reduce Bond with Motion for Extension of Time to Post Bond.*

Subsequently, on September 15, 2023, petitioner posted its *Verified Omnibus Motion 1. For Reconsideration (For the Resolution of the CTA Second Division dated 31 July 2023) 2. Manifestation to Defer the Schedule of Reception of Evidence*,[49] without a comment from respondent.[50] In a *Resolution* dated November 8, 2023,[51] the Court denied petitioner's *Verified Omnibus Motion* and ordered petitioner to post the required cash or surety bond within ten (10) days from notice.

In a *Resolution* dated January 12, 2024,[52] the Court noted that the Judicial Records Division issued the *Records Verification* dated December 12, 2023,[53]

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[42] Docket – Vol. XI, pp. 4601 to 4604.
[43] Docket – Vol. XI, pp. 4609 to 4611.
[44] Docket – Vol. XI, p. 4612.
[45] Docket – Vol. XI, pp. 4613 to 4616.
[46] Records Verification Report dated May 26, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. XI, p. 4626.
[47] Docket – Vol. XI, pp. 4628 to 4631.
[48] Docket – Vol. XI, pp. 4632 to 4636.
[49] Docket – Vol. XII, p. 4776 to 4792.
[50] Records Verification dated October 6, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. XII, p. 4905.
[51] Docket – Vol. XII, pp. 4910 to 4918.
[52] Docket – Vol. XII, pp. 4922 to 4923.

stating that petitioner failed to comply with the *Resolution* dated November 8, 2023 which required it to post the cash or surety bond. Hence, for petitioner's failure, the *Resolution* dated June 9, 2021, which granted petitioner's prayer for suspension of collection of tax, was set aside.

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. May G. Sorra,[54] petitioner's General Manager; (2) Mr. Mark Joshua Mabanag,[55] petitioner's Accounting Manager; and (3) Mr. Michael L. Aguirre,[56] the Court-commissioned Independent Certified Public Accountant (ICPA).[57]

The *Amended Report* of the ICPA was submitted through accredited courier on August 6, 2024.[58]

On September 12, 2024, petitioner filed its *Formal Offer of Evidence*,[59] to which respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)* on September 27, 2024.[60] In a *Resolution* dated November 13, 2024,[61] the Court admitted all of petitioner's offered exhibits.

Respondent presented the testimony of Revenue Officer (RO) Melinda M. Rugayan.[62]

On November 29, 2024, respondent filed a *Formal Offer of Evidence*,[63] with petitioner's *Comment (On the Respondent['s] Formal Offer of Evidence)* filed on December 4, 2024.[64] In a *Resolution* dated January 24, 2025,[65] the Court admitted all of respondent's offered exhibits.

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[53] Docket – Vol. XII, p. 4920.
[54] Exhibit "P-27", Docket – Vol. II, pp. 703 to 722; Minutes of the hearing held on, and Order dated, January 30, 2024, Docket – Vol. XII, pp. 4935 to 4936.
[55] Exhibit "P-29", Docket – Vol. VI, pp. 2282 to 2299; Minutes of the hearing held on, and Order dated, January 30, 2024, Docket – Vol. XII, pp. 4935 to 4936.
[56] Exhibit "P-33", Docket – Vol. XII, pp. 5010 to 5046, respectively; Minutes of the hearing held on, and Order dated, August 13, 2024, Docket – Vol. XII, pp. 5061 to 5062.
[57] *Oath of Commission* dated May 28, 2024, Docket – Vol. XII, p. 4983; Minutes of the hearing held on, and Order dated, May 28, 2024, Docket – Vol. XII, pp. 4984 to 4986.
[58] Exhibit "P-32" (not marked; on a separate folder labeled Submission and Transmittal of ICPA Report).
[59] Docket – Vol. XII, pp. 5064 to 5095.
[60] Docket – Vol. XII, pp. 5109 to 5111.
[61] Docket – Vol. XII, pp. 5124 to 5126.
[62] Exhibit "R-17", Docket – Vol. IV, pp. 1520 to 1527; Minutes of the hearing held on, and Order dated, November 14, 2024, Docket – Vol. XII, pp. 5127 to 5129.
[63] Docket – Vol. XII, pp. 5131 to 5139.
[64] Docket – Vol. XII, pp. 5143 to 5151.
[65] Docket – Vol. XII, pp. 5156 to 5157.

The *Memorandum (Of the Petitioner)* was filed on March 6, 2025,[66] while respondent submitted a *Manifestation* on March 10, 2025,[67] stating that in place of the *Memorandum* he will adopt the arguments stated in the *Answer*.

The case was considered submitted for decision on March 18, 2025.[68]

THE STIPULATED ISSUE

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

> "**MAIN ISSUE:**
>
> Whether or not Petitioner is liable for alleged deficiency income tax, value added tax, withholding tax, fringe benefit tax, documentary stamp tax (DST) Registration Fee, and penalties and interest, in the total amount Php 849, 141,865.85 for taxable year 2014.
>
> - **SUB-ISSUES:**
>
>   *i.* Whether or not Petitioner is required to submit application for effectively zero rating for sales that are by nature zero rated or exempt sales.
>
>   *ii.* Whether or not Petitioner's 2014 Value Added Tax can be assessed anew despite issuance of Tax Credit Certificate in its favor.
>
>   *iii.* Whether or not the 2014 Assessments issued against Petitioner are all valid."[69]

Petitioner's arguments:

Petitioner argues that the *Final Assessment Notice* (FAN) does *not* contain a definite due date for payment; that the assessment is *void* for being violative of the petitioner's right to due process; and that even assuming, without admitting, that the subject assessment is not violative of the petitioner's right to due process, the same still lacks factual and legal bases.

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66 Docket – Vol. XII, pp. 5159 to 5202.
67 Docket – Vol. XII, pp. 5206 to 5208.
68 Minute Resolution dated March 18, 2025, Docket – Vol. XII, p. 5211.
69 Issued to be resolved, JSFI, Docket – Vol. VII, p. 2799.

Respondent's counterarguments:

In his *Answer*, respondent contends that the deficiency assessment against petitioner is correct; and that the assessment issued against petitioner is valid and lawful.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

The FLD/FAN and FDDA are void for violation petitioner's right to due process.

Petitioner argues that the FAN does *not* contain a definite due date for payment and therefore, the assessment is void for being violative of the petitioner's right to due process. According to petitioner, it received the FLD/FAN on October 24, 2019. Moreover, petitioner stresses that pages 4 and 5 of the FLD stated the following:

"SUMMARY OF FINDINGS/DEFICIENCY TAXES

- *In summary your total deficiency taxes, inclusive of penalties, amounted to P827,930,161.96, to wit:*

Tax Type	*Basic Tax*	*Surcharge*	*Interest*	*Compromise Penalty*	*Total*
IT	*288,824,244.68*	*0.00*	*217,417,395.81*	*0.00*	*506,241,640.49*
VT	*167,553,246.85*	*0.00*	*133,473,375.49*	*0.00*	*301,026,622.34*
WE	*9,954,751.91*	*0.00*	*7,984,529.22*	*0.00*	*17,939,381.13*
WR	*567,977.41*	*141,994.35*	*455,564.57*	*0.00*	*1,165,536.33*
RF	*10,000.00*	*0.00*	*7,938.63*	*0.00*	*17,938.63*
DS	*618,277.00*	*154,569.25*	*499,296.79*	*0.00*	*1,272,143.04*
MC	*0.00*	*0.00*	*0.00*	*267,000.00*	*267,000.00*
Total	***467,528,497.85***	***296,563.60***	***359,838,100.50***	***267,000.00***	***827,930,161.96***

****Please note that the interests and the total amount due will have to be adjusted if paid beyond September 30, 2019.***

xxx xxx xxx

In view thereof, you are **requested to pay** *your aforesaid deficiency income tax, value-added tax, expanding withholding tax, fringe benefit tax, registration fee, documentary stamp tax and miscellaneous tax liabilities through the duly authorized agent bank in which you are enrolled* ***within the time shown in the enclosed assessment notice***."

In addition, petitioner notes that while according to the FLD, the due date is indicated in the "enclosed assessment notice", the FAN issued on October 22, 2019 indicated a due date of September 30, 2019. In this regard, petitioner argues that the due date indicated could *not* have fallen under the definition of "due date", which is understood to be some *future time*. Petitioner elaborates that by indicating a past date as a due date even before the issuance of the FLD/FAN, the petitioner was not really accorded a genuine opportunity to pay for the same nor to refute the assessment as the due date had already passed even before the petitioner received it.

Petitioner adds that it received the FLD/FAN on October 24, 2019, or two (2) days after they were issued on October 22, 2019. Hence, this is not a case where the due date merely lapsed prior to the receipt of the taxpayer of the assessment notice.

Petitioner further argues, that during the cross-examination of RO Rugayan, she openly admitted that the date September 30, 2019 is merely the basis of the computation of interest and thus, the FLD/FAN did not contain a definite and actual demand to pay.

Citing the cases of *Commercial of Internal Revenue vs. Fitness By Design, Inc.* (*Fitness By Design*),[70] and *Republic of the Philippines, represented by the Bureau of Internal Revenue vs. First Gas Power Corporation* (*First Gas Power*),[71] petitioner stresses that the FLD/FAN in the present case does not constitute a definite and actual demand to pay.

On the other hand, in his *Answer*, respondent argues that assessments are presumed correct and made in good faith, and that the taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Furthermore, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the respondent is wrong but that the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands.

We agree with petitioner.

An assessment "refers to the determination of amounts due from a person obligated to make payments."[72] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on

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[70] G.R. No. 215957, November 9, 2016.
[71] G.R. No. 214933, February 15, 2022.
[72] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.

the taxpayer for the settlement of a **due tax liability that is there definitely set and fixed**.[73]

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*,[74] 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 <u>within a prescribed period</u>.** It also signals the same 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
>
> 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% 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." *(Emphases and underscoring added)*

Related thereto, in the *Fitness By Design* case, the Supreme Court again emphasized the importance of the issuance of a valid formal assessment, *i.e.*, that it must be **a demand for payment of the taxes described, within a specific period, and that the amount of tax liability for which the taxpayer is accountable must be definite**, *viz.*:

> "...**the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**
>
> xxx xxx xxx
>
> **The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the 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 <u>includes a demand for payment within a period prescribed</u>. <u>Its main purpose is to determine the amount that a taxpayer is liable to pay</u>.**
>
> xxx xxx xxx
>
> 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

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[73] *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[74] G.R. No. 128315, June 29, 1999.

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 <u>within a specific period</u>**.'

The disputed Final Assessment Notice is not a valid assessment.

First, **<u>it lacks the definite amount of tax liability for which respondent is accountable</u>. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. <u>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</u>.' <u>Although the disputed notice provides for the computation of respondent's tax liability, the amount remains indefinite</u>. <u>It only provides that the tax due is still subject to modification, depending on the date of payment</u>.** 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.*** (Emphasis Supplied)

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 <u>remained unaccomplished</u>**.

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. <u>The notice, therefore, did not contain a definite and actual demand to pay</u>.**

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." *(Emphases and underscoring added)*

As pointed out by the petitioner, the Supreme Court reiterated the above-quoted ruling in the *First Gas Power* case, *viz*:

> "As regards the validity of **the FAN and the Formal Letter of Demand** for taxable year 2001, this Court also agrees with the ruling of the CTA that the same **were not valid because they failed to indicate a definite due date for payment.**
>
> In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, this Court held that a Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer xxx" *(Emphases added)*

In this case, the FLD dated October 22, 2019[75] and the FDDA dated June 29, 2020,[76] respectively provide in part, as follows:

> "Please take note that the interests will have to be adjusted if paid beyond September 30, 2019."
>
> "Please note that the interests and the total amount will have to be adjusted if paid beyond February 15, 2020."

The *Assessment Notices*, attached to the FLD, likewise indicated the due date as "September 30, 2019", while the date of issue as "10/22/2019".[77]

Significantly, both the FLD/FAN and the FDDA were issued only after the due dates stated therein had already lapsed. In other words, since the date stated in said FLD/FAN and the FDDA had already passed, the taxpayer was given *no prior* notice when to pay the assessed deficiency taxes.

The fundamental right to due process, as a limitation to governmental power, requires *prior* notice and hearing.[78]

A due date necessarily implies that payment is fixed at *a definite date that will inevitably arrive.* If a taxpayer only receives the demand for payment *past* the due date, then clearly the written demand does *not* give the taxpayer any time to consider the demand and prepare for payment when it falls due. The purpose

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[75] Exhibit "P-13", Docket – Vol. I, at p. 129; Exhibit "R-13", BIR Records – Folder 3 (Exhibit "R-16-b"), at p. 247.
[76] Exhibit "P-5", Docket – Vol. I, at p. 49; Exhibit "R-15", BIR Records – Folder 3 (Exhibit "R-16-b"), at p. 335; Exhibit "R-15-a", BIR Records – Folder 3 (Exhibit "R-16-b"), at p. 347.
[77] Exhibit "P-13", Docket – Vol. I, at pp. 138 to 144; Exhibit "R-13", BIR Records – Folder 3 (Exhibit "R-16-b"), at pp. 232 to 238.
[78] *Serrano v. National Labor Relations Commission*, G.R. No. 117040, January 27, 2000), Supreme Court *En Banc*.

of *prior* notice is negated. The taxpayer's right to due process is clearly breached.

As in *Fitness by Design*, although the subject FLD and the FDDA provided for the computation of petitioner's tax liabilities, the amounts thereof remain indefinite, considering that the respective taxes due are still subject to modification.

Correspondingly, the FLD dated October 22, 2019 and the FDDA dated June 29, 2020 hardly fall under the jurisprudential definition of a tax assessment under the NIRC, considering that they lack *"a due tax liability that is there definitely set and fixed."* They likewise do not purport to be a demand for payment of tax due, which they should be.

Furthermore, to stress, the prescribed periods stated therein for the payment of the alleged deficiency taxes had already lapsed when the FLD/FAN and the FDDA were issued, making it *impossible* for petitioner to comply with, hence, the due dates are deemed invalid, as if the due dates therein *"remained unaccomplished"*, thus, negating compliance with the requirement that the assessment must contain a demand for payment within a prescribed period. The subject tax assessments are void, and thus, bear no valid fruit.[79]

To be sure, as held in the *Fitness By Design* case, an assessment must demand payment of the taxes described therein within a *specific period.*

Considering that the subject FLD/FAN and the FDDA failed to properly indicate the due date when the subject deficiency taxes must be paid, no proper demand thereof within a specific period was validly made.

Again, given that respondent failed to provide the valid due dates for the payment of the subject deficiency taxes in the FLD/FAN and the FDDA, the subject tax assessments are a nullity, and thus, petitioner may not be held liable for the subject deficiency taxes.

Petitioner is not liable to pay the subject compromise penalties.

Since the subject tax assessments are void, petitioner cannot be held liable for the same, including the imposed compromise penalties in the total amount of ₱267,000.00. Nevertheless, it must be stressed that a compromise is,

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[79] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176 (2006) (G.R. Nos. 159694 and 163581, January 27, 2006).

by its nature, mutual.[80] It implies agreement. One party cannot impose it upon the other.[81] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[82] Considering that there is no indication that petitioner consented to the subject compromise penalties, the said total amount cannot likewise be sustained.

In view of the finding that the subject tax assessments are invalid, it becomes unnecessary to address the other arguments and matters raised by the parties.

ACCORDINGLY, the present *Petition for Review* is **GRANTED**.

Accordingly, the FLD and the attached *Assessment Notices*, all dated October 22, 2019, assessing petitioner for deficiency income tax, value-added tax (VAT), expanding withholding tax (EWT), fringe benefit tax (FBT), registration fee, documentary stamp tax (DST), and miscellaneous tax for taxable year 2014 are **CANCELLED** and **SET ASIDE**.

Furthermore, the FDDA dated June 29, 2020, assessing petitioner for deficiency income tax, VAT, EWT, FBT, registration fee, DST, and miscellaneous tax for taxable year 2014 in the total amount of **₱849,141,865.85**, inclusive of surcharges and interests, is **REVERSED** and **SET ASIDE**.

Further, respondent or any person acting on his behalf is **ENJOINED** and **PROHIBITED** from proceeding with the collection of taxes in the present case.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[80] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[81] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
[82] Refer to Part III.5, Revenue Memorandum Order No. 7-2015.

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice