REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

GRAND UNION SUPERMARKET INC., *Petitioner,*	**CTA CASE NO. 10299**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 25 2023 3:37 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review,[1] filed by petitioner Grand Union Supermarket, Inc. against respondent Commissioner of Internal Revenue ("CIR"), seeking the cancellation of the Final Decision on Disputed Assessment issued by respondent for the fiscal year ("FY") ending 31 August 2010 in the total amount of ₱264,670,837.24.[2]

The Parties

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at Amang Rodriguez Avenue, Barangay Dela Paz, Pasig City.[3] It is registered with the Bureau of Internal Revenue ("BIR") as a taxpayer in accordance with ***Section 236 of the National Internal Revenue Code of 1997, as amended*** ("***Tax Code***"), with Taxpayer Identification Number 000-123-

[1] *See* Petition for Review, Records Vol. 1, pp. 6-340, with annexes.
[2] Pre-Trial Order, Records Vol. 2, pp. 787-796.
[3] Pre-Trial Order, *id.*, pp. 787-796.

826.[4] It owns and operates the supermarket chain known as "South Supermarket" in various locations nationwide.[5]

Meanwhile, respondent is the duly appointed Commissioner of the BIR ("CIR"), the government agency tasked, among others, to collect all national internal revenue taxes.[6] As the CIR, respondent has the power to decide disputed assessments and other matters arising under the ***Tax Code*** or other laws administered by the BIR.[7] All court processes and pleadings must be served on respondent's counsels at the Litigation Division, Room 703, BIR Bldg., Diliman, Quezon City.[8]

The Facts

On 28 September 2011, petitioner received Letter of Authority (LOA) No. LOA-116-2011-00000108 dated 23 September 2011 authorizing Revenue Officers Gilquin Tolentino ("**RO Tolentino**"), Ruby Anne Oradia ("**RO Oradia**"), Amelia Molinos ("**RO Molinos**"), Aurelio Zamora ("**RO Zamora**"), Jan Andre Abellera ("**RO Abellera**"), and Johnro Galicia ("**RO Galicia**") as headed by Group Supervisor Edgar Espiritu ("**GS Espiritu**"), to conduct the examination of all of petitioner's internal revenue taxes for the period from 1 September 2009 to 31 August 2010.[9]

On 22 October 2013, petitioner executed a Waiver ("**First Waiver**") waiving the defense of prescription under the statute of limitations and consenting to the assessment and/or collection of tax/taxes for the taxable year ending 31 August 2010 which may be found due after the investigation/reinvestigation/re-evaluation until 30 June 2014.[10] The First Waiver was accepted by Alfredo V. Misajon, OIC-CIR, Large Taxpayers Service, on 29 October 2013.[11]

On 8 April 2014, petitioner executed another Waiver ("**Second Waiver**") extending its waiver of the defense of prescription and consenting to the assessment and/or collection of the tax/taxes until 31 December 2014.[12] The Second Waiver was accepted by Alfredo V. Misajon, OIC-CIR, Large Taxpayers Service on 14 April 2014.[13]

[4] Pre-Trial Order, *id.*, pp. 787-796.
[5] Pre-Trial Order, *id.*, pp. 787-796.
[6] Pre-Trial Order, *id.*, pp. 787-796.
[7] Pre-Trial Order, *id.*, pp. 787-796.
[8] Pre-Trial Order, *id.*, pp. 787-796.
[9] Pre-Trial Order, *id.*, pp. 787-796, Exhibit "R-1", BIR Records, p. 1; Exhibit "P-2", Records Vol. 2, p. 448.
[10] Exhibit "P-3", *id.*, pp. 449-450.
[11] Exhibit "P-3", *id.*, pp. 449-450.
[12] Exhibit "P-4", *id.*, pp. 451.
[13] Exhibit "P-4", *id.*, pp. 451.

Before the expiration of the Second Waiver, petitioner executed another Waiver ("**Third Waiver**") extending its waiver of the defense of prescription and consenting to the assessment and/or collection of the tax/taxes until 30 June 2015.[14] The Third Waiver was accepted by Nestor S. Velroso, OIC-CIR, Large Taxpayers Service, on 21 October 2014.[15]

On 9 March 2015, Revenue Officers ROs Abellera, Zamora, Galicia, Orada and Group Supervisor Gilquin B. Tolentino ("**GS Tolentino**") submitted a Memorandum[16] to Nestor S. Valeroso, OIC Assistant Commissioner, recommending that a Preliminary Assessment Notice ("PAN") be issued to petitioner for deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), improperly accumulated earnings tax ("IAET"), documentary stamp tax ("DST"), and the corresponding surcharges, interest, and penalties, for the fiscal year ending 31 August 2010 in the total amount of ₱188,640,717.05.

On 20 March 2015, petitioner received an undated PAN[17] with attached Details of Discrepancies assessing it for deficiency taxes with corresponding surcharges, interest and penalties in the total amount of ₱188,640,717.05.[18] The details of the deficiency assessment as stated in the PAN are summarized below:

Tax Type	Basic Tax	Additions to Tax		Compromise Penalty	Other Increments	Total
		Surcharge	Interest			
Income Tax	₱ 33,204,139.84	-	₱ 30,165,733.62[19]	₱ 50,000.00	-	**₱ 63,419,873.47**
VAT	9,627,300.76	-	9,173,630.70[20]	50,000.00	-	**18,850,931.46**
EWT	10,445,008.98	-	10,038,655.21[21]	50,000.00	-	**20,533,664.19**
WTC	4,534,043.68	-	4,357,650.75[22]	25,000.00	-	**8,916,694.42**
IAET	35,187,882.20	₱ 8,796,970.55	26,781,352.53[23]	50,000.00	-	**70,816,205.28**
DST	2,483,987.15	620,996.79	2,394,155.29[24]	25,000.00	₱ 579,209.01[25]	**6,103,348.23**
					TOTAL	**₱ 188,640,717.05**

On 1 April 2015, petitioner filed its Reply to the PAN.[26]

[14] Exhibit "P-5", *id.*, pp. 452.
[15] Exhibit "P-5", *id.*, pp. 452.
[16] Exhibit "R-8", BIR Records, pp. 500-517.
[17] Exhibit "P-2", Records Vol. 2, p. 448; Exhibit "R-9", BIR Records, pp. 530-535; Exhibit "P-7", Records Vol. 2, pp. 454-468.
[18] Pre-Trial Order, *id.*, pp. 787-796.
[19] Computed from 16 December 2010 to 30 June 2015
[20] Computed from 26 September 2010 to 30 June 2015
[21] Computed from 11 September 2010 to 30 June 2015
[22] Computed from 11 September 2010 to 30 June 2015
[23] Computed from 11 September 2011 to 30 June 2015
[24] Computed from 6 September 2010 to 30 June 2015
[25] Increments on Late Payment of DST on Purchase of Land
[26] *See* par. 14 Petition for Review, p. 9; *see also* Exhibit "P-8", Vol. 2, p. 469; Exhibit "R-15", BIR Records, pp. 536-544.

In the meantime, on 8 June 2015, petitioner executed another Waiver ("**Fourth Waiver**") extending its waiver of the defense of prescription and consenting to the assessment and/or collection of the tax/taxes until 31 December 2015.[27] The Third Waiver was accepted by Nestor S. Velroso, OIC-CIR, Large Taxpayers Service, on 11 June 2015.[28]

On 26 May 2015, Revenue Officers ROs Abellera, Zamora, Galicia, Orada and Group Supervisor Gilquin B. Tolentino ("**GS Tolentino**") submitted a Memorandum[29] to Nestor S. Valeroso, OIC Assistant Commissioner recommending that a Formal Letter of Demand ("FLD") be issued to petitioner for deficiency income tax, VAT, EWT, WTC, IAET, DST, and the corresponding surcharges, interest, and penalties, for the fiscal year ending 31 August 2010 in the total amount of ₱188,640,717.05.

Thereafter, on 15 June 2015, petitioner received an undated FLD with attached Details of Discrepancies[30] and Assessment Notices[31] pertaining to the BIR's assessment against it for deficiency income tax, VAT, EWT, WTC, IAET, DST, and the corresponding surcharges, interest, and penalties, in the aggregate amount of ₱188,640,717.05. The deficiency assessment in the FLD/Assessment Notices merely reiterated the deficiency assessment in the PAN. Petitioner filed its Protest to the FLD on 14 July 2015.[32]

On 2 June 2020, petitioner received an undated Final Decision on Disputed Assessment ("FDDA"), with attached Assessment Notices, reiterating the income tax, VAT, EWT, WTC, IAET, and DST deficiency assessment with adjusted computation on increments. Per the FDDA, petitioner was assessed deficiency assessment in the aggregate amount of ₱264,670,837.24 with the following details:[33]

Tax Type	Basic Tax	Additions to Tax		Compromise Penalty	Other Increments	Total
		Surcharge	Interest			
Income Tax	₱ 33,204,139.84	-	₱ 56,605,325.96	₱ 50,000.00	-	**₱ 89,859,465.81**
VAT	9,627,300.76	-	16,839,599.72[34]	50,000.00	-	**26,516,900.48**
EWT	10,445,008.98	-	18,355,744.00[35]	50,000.00	-	**28,850,752.98**
WTC	4,534,043.68	-	7,967,991.72[36]	25,000.00	-	**12,527,035.39**
IAET	35,187,882.20	₱ 8,796,970.55	54,800,547.28[37]	50,000.00	-	**98,835,400.03**

[27] Exhibit "P-6", Records Vol. 2, pp. 453.
[28] Exhibit "P-5", *id.*, pp. 452.
[29] Exhibit "R-10", BIR Records, pp. 500-559.
[30] Exhibits "P-8" and "P-8-A", Records Vol. 2, pp. 469-476; Exhibit "R-11", BIR Records, pp. 568-574.
[31] Exhibits "P-8-B", "P-8-C", "P-8-D", "P-8-E", "P-8-F", and "P-8-G", Records Vol. 2, pp. 477-482; Exhibits "R-12", "R-12-A", "R-12-B", "R-12-C", "R-12-D", and "R-12-E", BIR Records, pp. 562-567.
[32] Exhibit "R-15", BIR Records, pp. 579-587; Exhibit "P-9", \Records Vol. 2, pp. 490-498.
[33] Exhibits "P-1", "P-1-A", and "P-1-B", \Records Vol. 2, pp. 425-447. Exhibit "R-14", BIR Records, pp. 617-630.
[34] Computed from 26 September 2010 to 15 June 2020
[35] Computed from 11 September 2010 to 15 June 2020
[36] Computed from 11 September 2010 to 15 June 2020
[37] Computed from 11 September 2011 to 15 June 2020

DST	2,483,987.15	620,996.79	4,372,089.60[38]	25,000.00	₱ 579,209.01[39]	**8,081,282.55**
					TOTAL	**₱ 264,670,837.24**

Aggrieved, petitioner filed the instant Petition for Review. After service of Summons,[40] respondent filed his Answer[41] praying for the denial of the Petition for Review for lack of merit and claiming that:

(1) petitioner should not be allowed to raise new issues for the first time on appeal;
(2) the ten-year period for assessment under ***Section 222 of the Tax Code*** is applicable in the present case;
(3) respondent's period to assess was validly extended in view of the execution of the waivers;
(4) the assessment indicated the definite tax liability of petitioner and the failure to indicate due date does not render the assessment void;
(5) the LOA is valid even if the audit was not concluded within 120 days from petitioner's receipt of the LOA;
(6) petitioner was sufficiently informed of the factual and legal bases of the assessment and the assessment process was dutifully observed; and
(7) petitioner is liable for deficiency income tax, VAT, EWT, WTC, IAET, and DST as well as the compromise penalty.

Both petitioner[42] and respondent[43] filed their respective Pre-Trial Briefs on 30 July 2021. Thereafter, the Court conducted a Pre-Trial Conference on 10 February 2022.[44] On 11 March 2022, the parties filed their Joint Stipulation of Facts and Issues.[45] On 8 April 2022, the Court issued a Pre-Trial Order.[46]

Meanwhile, on 29 March 2022, petitioner filed a Motion to Commission an Independent Certified Public Accountant ("ICPA").[47] Petitioner's Motion to Commission an ICPA was granted during the hearing on 28 April 2022.[48] The ICPA took his Oath of Commission in open court during the said hearing.[49]

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[38] Computed from 6 September 2010 to 15 June 2020
[39] Increments on Late Payment of DST on Purchase of Land
[40] Records Vol. 1, pp. 341-342.
[41] *Id.*, pp. 343-367.
[42] Records Vol. 2, pp. 383-397.
[43] *Id.*, pp. 731-738.
[44] *Id.*, pp. 751-754.
[45] *Id.*, pp. 769-775.
[46] *Id.*, pp. 788-796.
[47] *Id.*, pp. 797-811.
[48] *Id.*, pp. 815-816.
[49] *Id.*, p. 814

Petitioner then proceeded to present its evidence in support of its Petition via the following witnesses:

(i) Mr. Niño Geyn España, its Accountant, who testified and identified his Judicial Affidavit[50] during the hearing on 17 May 2022;[51] and

(ii) Mr. Eric J. Magcale, the court-appointed ICPA, who testified and identified his Judicial Affidavit[52] during the hearing on 28 July 2022.[53]

On 10 August 2022, petitioner formally offered its documentary evidence.[54] Respondent filed his Comment thereto on 5 September 2022.[55] In a Resolution,[56] dated 27 September 2022, the Court admitted all of petitioner's formally offered evidence except for Exhibit "P-16" supposedly pertaining to petitioner's Alphalist of Employees,[57] for failure to mark the same and Exhibit "P-36" pertaining to Waiver No. 3, executed on 10 October 2024,[58] for failure to locate the same in the records of the case.

Upon the conclusion of petitioner's presentation of evidence, respondent proceeded to adduce evidence in support of his defense. During trial, respondent presented his sole witness, Revenue Officer Jan Andre Abellere, who testified on direct examination by way of his Judicial Affidavit dated 30 July 2021[59] and identified the same during the hearing on 25 October 2022.[60] On 10 November 2022, respondent formally offered his documentary evidence.[61] Petitioner filed its Comment thereto on 22 November 2022.[62] The Court admitted all of respondent's formally offered evidence in a Resolution dated 27 January 2023.[63]

In the same Resolution, the Court ordered the parties to file their respective Memoranda within thirty (30) days from notice.[64] In compliance with the Court's order, respondent filed a Manifestation[65] on 9 March 2023 to state that he is adopting the arguments raised in his Answer dated 6 October 2020 as his Memorandum. Meanwhile, petitioner filed its Memorandum on 16 March 2023.[66] With the filing of petitioner's Memorandum and

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[50] Exhibits "P-26" and "P-26-A", *id.*, pp. 398-424.
[51] *Id.*, p. 817
[52] Exhibits "P-27" and "P-27-A", Records Vol. 3, pp. 833-855.
[53] *Id.*, p. 961.
[54] *Id.*, pp. 962-999.
[55] *Id.*, pp. 1081-1084.
[56] *Id.*, pp. 1087-1088
[57] Formal Offer of Evidence, *id.*, p. 978.
[58] Formal Offer of Evidence, *id.*, p. 983.
[59] Exhibits "R-16" and "R-16-1", Records Vol. 2, pp. 739-746.
[60] Records Vol. 3, p. 1109.
[61] *Id.*, pp. 1119-1120.
[62] *Id.*, pp. 1122-1127.
[63] *Id.*, p. 1132.
[64] *Ibid.*
[65] *Id.*, pp. 1135-1138.
[66] *Id.*, pp. 1140-1196.

respondent's Manifestation, the Court issued a Minute Resolution on 30 March 2023[67] submitting the case for decision.

Hence, this Decision.

The Issue[68]

The sole issue submitted for resolution is:

> Whether or not petitioner is liable for deficiency income tax, VAT, EWT, WTC, DST, IAET, and compromise penalty for the taxable year 2010 in the aggregate amount of ₱264,670,837.24.

Arguments of the Parties

Petitioner's Arguments[69]

Petitioner presents the following arguments in support of its claim:

First, the right of respondent to assess deficiency IT, VAT, EWT, WTC, IAET, and DST for the fiscal year ending 31 August 2010 is barred by prescription pursuant to ***Section 203 of the Tax Code***. Particularly, respondent's right to assess alleged deficiency VAT for the first quarter of FY 2010 had prescribed on 25 December 2012 even before the execution of the first waiver on 22 October. The same applies to the alleged deficiency EWT and WTC for FY 2010. Petitioner adds that all the waivers were defective because they were all accepted by Officers-in-Charge, in direct violation of ***BIR Revenue Delegation Authority Order ("RDAO") No. 05-01*** which requires for waivers to be received by the ACIR of Large Taxpayer Service.

Second, the FLD and FDDA were issued in violation of petitioner's right to due process. According to petitioner, respondent did not give his reasons for rejecting the defenses and evidence it presented. Petitioner points out that the PAN issued on 20 March 2015 is completely identical to the FLD including the computation as to the interest. Petitioner adds that the FLD and FDDA did not contain a definite date demand for payment on a certain date.

Third, the LOA which serves as the basis of authority of respondent to issue the FDDA, is void because the ROs failed to conclude the tax examination within 120 days from receipt of the LOA.

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67 *Id.*
68 Pre-Trial Order, *id.*, pp. 1175-1187.
69 *See* Memorandum for Petitioner, *id.*, pp. 1140-1196.

Fourth, on the substantive matters, petitioner maintains that it is not liable for deficiency income tax, VAT, EWT, WTC, IAET, and DST. Petitioner further claims that it is not liable for surcharges, interest, and compromise penalties.

Respondent's Arguments[70]

Meanwhile, respondent counterargues that petitioner cannot raise for the first time on appeal the issues not raised at the administrative level, particularly, the issues on validity of the waivers, of the audit, and, consequently, of the assessment. Respondent stresses that these are undisputed issues which cannot be raised for the first time on appeal.

Anent the issue on prescription, respondent claims that the ten-year period to assess under ***Section 222 of the Tax Code*** is applicable in view of petitioner's filing of a false return. Even assuming that the three-year prescriptive period is applicable, the waivers validly extended the period to assess.

On the issue on validity of the assessment, respondent further insists that the assessment in the FLD and FDDA indicated a definite tax liability. He asserts that failure to indicate a due date does not render the assessment void.

With respect to the validity of the audit and, consequently, validity of the assessment, respondent maintains that failure to conclude the audit within the 120-day period does not affect the validity of the LOA and of the assessment. Respondent cited instances where the Court *En Banc* ruled that failure to revalidate the LOA would not affect its validity and the assessment stemming from it.

Respondent further argues that petitioner was accorded due process in every stage of the assessment process. He also maintains that petitioner was sufficiently informed of the factual and legal bases of the assessment considering that it was able to intelligently protest the assessments.

On the substantive aspect, respondent stands by his assessment of petitioner's alleged deficiency income tax, VAT, EWT, WTC, IAET, and DST, as well as imposition of compromise penalty.

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[70] Answer, Records Vol. 1, pp. 343-367.

Finally, respondent claims that tax assessments are entitled to the presumption of correctness and good faith absent proof of any irregularities. He asserts that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment.

The Ruling of the Court

The instant Petition for Review is meritorious.

The court can rule on issues not raised at the administrative level.

Respondent contends that petitioner cannot attack the validity of the assessment for the first time on appeal.

Respondent's contention is erroneous.

Cases filed before the CTA are litigated *de novo*, and party-litigants must prove every minute aspect of their case.[71] As such, petitioner is not barred from assailing the validity of the assessment and introducing evidence to prove its claim. The Court may consider and evaluate anew evidence submitted before it and make its own factual determination of the case.

In fact, ***Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*** provides that the CTA is not limited by issues raised by the parties but may also rule upon related issues necessary to achieve the orderly disposition of the case.[72] ***Section 1, Rule 14 of the RRCTA*** pertinently provides:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. Rendition of judgment. – The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *En Banc* or in Division, as the case may be, for its

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[71] Commissioner of Internal Revenue v. Philippine Bank of Commerce, G.R. No. 211348, 23 February 2022; Edison (Bataan) Cogeneration Corp. v. Commissioner of Internal Revenue, G.R. Nos. 201665 & 201668, 30 August, 2017 *citing* Commissioner of Internal Revenue v. United Salvage Towage (Phils.), Inc., G.R. No. 197515, 2 July 2014.

[72] Metro Rail Transit Corporation v. Commissioner of Internal Revenue, CTA Case No. 9016, 4 December 2019; Makati Agro Trading, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9735, 10 June 2020; and Jinzai Experts, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9473, 18 February 2020.

> deliberation. If a majority of the justices of the Court *En Banc* or in Division agree on the draft decision, the ponente shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *En Banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the *rollo*.
>
> **In deciding the case, the Court <u>may not limit itself</u> to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**"
> (Emphasis and underscoring supplied.)

The Supreme Court, in ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***,[73] affirmed the authority of this Court to rule on issues not raised by the parties in this wise:

> "On **whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the **CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**. The text of the provision reads:
>
> > SECTION 1. Rendition of judgment. — x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA **even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter."
> (Citations omitted; Emphasis supplied)

Based on the foregoing, respondent's contention that the Court may not rule on defenses not raised at the administrative level has no merit. This Court is not barred from resolving the issue on the alleged invalidity of assessment even if this was not raised by petitioner at the administrative level. The resolution of issue of whether petitioner is liable for alleged deficiency taxes necessarily involves the determination of the validity of the assessment.

[73] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. G.R. No. 183408, 12 July 2017.

The undated FLD and FDDA render the assessment void.

Settled is the rule that an assessment issued in violation of the right of the taxpayer to due process are null and void and bears no valid fruit.[74] ***Section 228 of the Tax Code*** expressly provides that the taxpayer should be informed of the law and facts on which the assessment is made:

> "SECTION 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided, however, That a preassessment notice shall not be required in the following cases:
>
> ...
>
> The **taxpayers shall be informed in writing of the law and the facts on which the assessment is made**; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. ..."
> (Emphasis supplied.)

As provided above and pursuant to the provision on due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void.[75] The issuance of a valid formal assessment is a substantive prerequisite to tax collection,[76] for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.[77] To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.[78]

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[74] Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, 8 December 2010.
[75] Commissioner of Internal Revenue v. Reyes, G.R. No. 159694, 27 January 2006.
[76] Commissioner of Internal Revenue v. Menguito, G.R. No. 167560, 17 September 2008 *citing* Commissioner of Internal Revenue v. Reyes, G.R. No. 159694, 27 January 2006.
[77] *Ibid.*
[78] Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, 8 December 2010.

Thus, in ***Commissioner of Internal Revenue v. Fitness By Design, Inc.***[79] the Supreme Court categorically declared that a tax assessment must not only contain a computation of tax liabilities but must also include a demand upon the taxpayer for the settlement of a tax liability, *viz:*

> "The **issuance of a valid formal assessment is a substantive prerequisite for collection of taxes**. Neither the National Internal Revenue Code nor the revenue regulations provide 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.
>
> ...
>
> 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 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 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:
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> ...
>
> 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.

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

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.**

The Court of Tax Appeals did not err in cancelling the Final Assessment Notice as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the "alleged deficiency income tax, value-added tax and documentary stamp tax amounting to P10,647,529.69, inclusive of surcharges and interest" for lack of due process. Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect."
(Citations omitted; emphasis supplied.)

Consistent thereto, ***Revenue Regulations ("Rev. Regs.") 12-99***, as issued by respondent, expressly provides that the FLD and Assessment Notices should contain a demand for payment otherwise the assessment shall be void:

"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

> 3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency is tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based x x x. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> ...
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes** shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, **otherwise, the formal letter of demand and assessment notice shall be void** x x x. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (Emphasis supplied.)

In the present case, a perusal of the FLD with attached Details of Discrepancies[80] and the attached Assessment Notices,[81] as admitted in evidence, shows that these did not contain a definite due date. The FLD with attached Details of Discrepancies failed to demand payment at a specific due date as it merely states:[82]

> "Please take note that the interest will have to be adjusted if paid beyond the date specified therein.
>
> The complete details covering the aforementioned discrepancies established during the investigation of the case are shown in the accompanying ANNEX-A of this letter.
>
> The twenty-five (25%) surcharge has been imposed pursuant to the provisions of Section Section 248 (A) (1) of the National Internal Revenue Code, as amended by R.A. No. 8424 in view of the failure to file and pay the taxes required under the provisions of this Code or rules and regulations on the date prescribed.

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[80] Exhibits "P-8" and "P-8-A", Records Vol. 2, pp. 469-476; Exhibit "R-11", BIR Records, pp. 568-574.
[81] Exhibits "P-8-B", "P-8-C", "P-8-D", "P-8-E", "P-8-F", and "P-8-G" Records Vol. 2, pp. 477-482; Exhibits "R-12", "R-12-A", "R-12-B", "R-12-C", "R-12-D", and "R-12-E", BIR Records, pp. 562-567.
[82] Exhibits "P-8" and "P-8-A", Records Vol. 2, pp. 469-476; Exhibit "R-11", BIR Records, pp. 568-574.

> The twenty percent (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay the tax within the time prescribed by law for its payment.
>
> The compromise penalties have been imposed pursuant to Sec. 255 of the same Tax Code and RMO 19-2007 due to your failure to pay the tax within *(sic)* the time prescribed by law for its payment.
>
> In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through the Electronic Filing and Payment System (EFPS). Afterwards, submit a copy thereof to Regular Large Taxpayers Audit Division I located at Rm 216 National Office Building, BIR Road, Diliman, Quezon City for updating of your records.
>
> We hope that you will give this matter your preferential action."

Nothing therein would indicate that respondent is demanding payment at a definite due date. Further perusal of the Assessment Notices for income tax, VAT, EWT, WTC, IAET, and DST shows that the due dates are left blank.[83]

Meanwhile, an examination of the FDDA with attached Assessment Notices[84] shows that it also lacks a demand for payment at a definite due date. Particularly, similar to the FLD, FDDA simply contains the following:[85]

> "Please take note that the interest will have to be adjusted if paid beyond the date specified therein.
>
> The complete details covering the aforementioned discrepancies established during the investigation f the case are shown in the accompanying ANNEX-A of this letter.
>
> The twenty-five (25%) surcharge has been imposed pursuant to the provisions of Section Section 248 (A) of the National Internal Revenue Code, as amended by R.A. No. 8424 in view of the failure to file and pay the taxes required under the provisions of this Code or rules and regulations on the date prescribed.
>
> The twenty percent (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code and 12% per annum effective January 1, 2018 pursuant to Section 75 of RA No. 10963 (Train Law) due to your failure to pay the tax within the time prescribed by law for its payment.

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83 Exhibits "P-8-B", "P-8-C", "P-8-D", "P-8-E", "P-8-F", and "P-8-G" Records Vol. 2, pp. 477-482; Exhibits "R-12", "R-12-A", "R-12-B", "R-12-C", "R-12-D", and "R-12-E", BIR Records, pp. 562-567.

84 Exhibits "P-1", "P-1-A", and "P-1-B", Records Vol. 2, pp. 425-447. Exhibit "R-14", BIR Records, pp. 617-630.

85 "P-1-B", Records Vol. 2, p. 427.

> The Compromise Penalties were imposed pursuant to Section 255 of the same Tax Code and RMO 15-2015 for failure to pay the tax within the time prescribed by law for its payment.
>
> Failure to file an appeal or request for reconsideration or pay the tax within the time prescribed will render the assessment final, executory and demandable and therefore subject to penalties pursuant to Revenue Regulations No. 18-2013.
>
> We hope that you will give this matter your preferential action."

Further examination of the attached Assessment Notices would show that the portion where due dates should be indicated are left blank.[86]

These undeniably show that respondent failed to demand payment within a prescribed period for the alleged deficiency taxes rendering the assessment void.

In view of the utter invalidity of the assessments, it is unnecessary to discuss the other matters raised in the present case.

WHEREFORE, premises considered, the instant Petition for Review filed by Grand Union Supermarket Inc. is hereby **GRANTED.** Accordingly, the undated Final Decision on Disputed Assessment issued by respondent against petitioner for the FY ending 31 August 2010 in the total amount of ₱264,670,837.24 are hereby declared **VOID AND CANCELLED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[86] Exhibits "P-1", "P-1-A", and "P-1-B", *id.*, pp. 425-447. Exhibit "R-14", BIR Records, pp. 617-630.

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice