REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1983** *(CTA Case No. 8998)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
ALE MART CORPORATION, *Respondent.*	Promulgated: FEB 18 2021 4:10 pm

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.:

Before this Court *En Banc* is petitioner's Motion for Reconsideration Re: Decision dated 29 July 2020 ("Motion for Reconsideration"), filed by petitioner through registered mail on 1 September 2020,[1] with respondent's Comment (to the Petitioner's Motion for Reconsideration) ("Comment"), filed on 26 October 2020.[2]

In the Motion for Reconsideration,[3] petitioner alleges that:

1. The Honorable Court *En Banc* erred in ruling that the Final Assessment Notice ("FAN") issued against respondent is void for allegedly not containing a definite due date for payment of tax liabilities. For petitioner, the Formal Letter of Demand ("FLD") fixed and definitely set the deficiency tax liabilities of respondent. The basic deficiency tax as well as the surcharge and interest were

[1] Records, pp. 123-135.
[2] *Id.*, pp. 139-148.
[3] *Id.*, pp. 124-131.

fixed in the said FLD. The interest computed was up to 31 July 2014, and if respondent failed to pay on said date, the interest would have to be adjusted accordingly.

2. The Honorable Court in Division erred in granting a relief that was not prayed for by respondent. Petitioner's basic right to fair play and due process was violated. The issue on whether the FAN contains a definite due date for payment of tax liabilities was never raised by respondent in its Petition for Review, Pre-Trial Brief nor in any of the proceedings during trial.

In its Comment,[4] respondents counter-argued as follows:

1. The Honorable Court En Banc did not err in affirming the Court in Division in ruling that the FAN are void for not containing a definite due date for payment of the tax liabilities.

2. The Honorable Court En Banc did not err in affirming the Court in Division in granting a relief that was not prayed for by respondent, which, according to petitioner, violates its rights to fair play and due process.

We deny the Motion for Reconsideration. The arguments raised therein are carbon copies of those raised by petitioner in his Petition for Review filed before this Court En Banc ("Petition"). As such, these have already been sufficiently tackled in the Decision dated 29 July 2020. On this finding alone, this Motion for Reconsideration deserves scant consideration. But to remind petitioner why his Petition was denied in the first place, this Court En Banc shall discuss and scrutinize his arguments once more, albeit in a condensed form.

It is well-settled that this Court may rule upon issues not raised by the parties but necessary to achieve an orderly disposition of the case.

Petitioner insists that he was denied his right to due process when this Court ruled upon an issue not raised by the parties. We disagree.

[4] *Id.*, pp. 140-147.

Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals definitely provides that this "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." This was affirmed in ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***,[5] where the Supreme Court categorically declared that this Court can resolve an issue not raised by the parties. Consequently, it is well-settled that this Court, in deciding a case, is not limited by the issues raised or agreed upon by the parties in their respective pleadings. It may also consider other related matters to dispose of a case on the merits.

Moreover, we agree with respondent's argument that since the crux of the controversy in the present case is the validity of the subject deficiency tax assessments, the issue on whether the FAN/FLD contains a definite date of payment of deficiency tax liabilities is a related issue that should be resolved by this Court regardless if the same was particularly raised by the parties in their pleadings or during trial. The rationale for this is that the existence of a definite date of payment in an FLD/FAN complies with the "demand for payment" requirement in deficiency tax assessments. As such, the existence of such definite date of payment in an FLD/FAN is necessary for the validity of a deficiency tax assessment. Hence, this Court is duty bound to find if a definite date of payment is present in an FLD/FAN, a sub-issue requisite to the resolution of the main issue, which is the validity of a deficiency tax assessment.

In other words, the factual issue on the presence of a definite date of payment in an FLD/FAN is already subsumed under the general issue in the present case, *i.e.,* the validity of the deficiency tax assessments issued against respondent, such that there is no more need to specifically identify the same in the pleadings filed by the parties or to manifest the same during trial. On this note, petitioner cannot claim that he was denied due process since by agreeing in the Joint Stipulation of Facts and Issue that the main issue to be tried in the present case is whether respondent is liable for the subject deficiency tax assessments,[6] he impliedly agreed that other matters that would go into the validity of the deficiency tax assessments, which include the issue on whether the subject FLD/FAN contains a definite date for payment, would be considered by this Court.

---

[5] G.R. No. 183408, 12 July 2017.
[6] Filed on 20 July 2015.

<u>As We have aptly found, the FLD/FAN issued against respondent lacks a definite demand for payment. Hence, the deficiency tax assessments issued against respondent are void.</u>

Petitioner argues that the FLD/FAN issued against respondent was compliant with the requirements provided by law for issuing assessments.[7] Again, We find this argument erroneous.

As We have properly found in the Decision, dated 29 July 2020, the FLD, Details of Discrepancy, and Assessment Notice Nos. IT-116-LOA-00000093-10-14-1054, VT-116LOA-00000093-10-14-1055, WE-116-LOA-00000093-10-14-1056, and WC116-LOA-00000093-10-14-1057 issued against respondent have all failed to demand payment of the tax due within a specific period.

While the last paragraph of the FLD states that respondent must pay its deficiency tax liabilities, it does not, however, indicate the specific period when the payment should be made. Worse, the accompanying Assessment Notices did not also show specific dates for payment.[8] The FLD simply provided:[9]

> "[i]n 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."

This statement does not whatsoever provide a definite demand for payment of deficiency tax liabilities. This issue on the lack of a definite date for payment of the subject FLD/FAN has remained uncontroverted by petitioner, which implies admission on his part that the deficiency tax assessments issued to respondent are, indeed, without a definite demand for payment.

---

[7] *Citing* Section 228 of the Tax Code, *viz.:*
"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."
[8] See Amended Decision, Records, Vol. 1, p. 35.
[9] Joint Stipulation of Facts and Issues, par. 5, Court in Division's Docket, Vol. 4, p. 2158.

As provided in ***Commissioner of Internal Revenue v. Fitness By Design***,[10] an assessment without a specific period for payment creates no valid deficiency tax assessment as it negates a demand to pay taxes. As such, the deficiency tax assessments issued against respondent are null and void for lack of a definite date for payment. And without a valid tax assessment, tax collection cannot be pursued as a void deficiency tax assessment bears no fruit.[11]

WHEREFORE, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[10] G.R. No. 215947, 9 November 2016.
[11] Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc., G.R. No. 198677, 26 November 2014.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice