REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

RETIRO GOLDEN FOODS, INC., Petitioner,	**CTA CASE NO. 10519**
	Members:
- versus -	**RINGPIS-LIBAN**, *Chairperson,* **MODESTO-SAN PEDRO**, *and* **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 02 2025

x - x

DECISION

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

The Case

The Petition for Review prays that the Court render judgment ordering the cancellation and withdrawal of respondent's assessments against petitioner for alleged deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), and compromise penalties for taxable year ("TY") 2017, in the total amount of PhP175,748,493.78, inclusive of interest.[1]

The Parties

Petitioner Retiro Golden Foods, Inc. is a corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at 17/F, Citibank Center Building, 8741 Paseo Center, Makati City.[2]

---

1 Statement of the Case, Pre-Trial Order, Docket – Vol. 1, p. 348.
2 Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues ("JSFI"), Docket – Vol. 1, p. 317.

Respondent is the duly-appointed Commissioner of Internal Revenue ("CIR") vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the provisions of the *National Internal Revenue Code of 1997, as amended* (the "*Tax Code*"), and other laws, rules and regulations.[3]

The Facts

Petitioner received a copy of respondent's Letter of Authority ("LOA") No. LOA-125-2019-00000415, dated July 22, 2019, on July 25, 2019.[4]

Petitioner then received respondent's Preliminary Assessment Notice ("PAN"), dated December 21, 2020, on December 22, 2020,[5] assessing petitioner with deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), and compromise penalties, aggregating to ₱173,230,046.62, inclusive of interest.

Petitioner filed its Reply to the PAN on January 5, 2021.[6]

On January 18, 2021, petitioner received the respondent's Formal Letter of Demand ("FLD") dated January 14, 2021 with attached Details of Discrepancies and Assessment Notices,[7] reiterating the assessments in the PAN, except for the adjusted interest. The total amount thus assessed aggregated to ₱175,748,493.78, inclusive of interest, computed as follows:

Tax Type	Basic	Interest	Compromise	Total
Income tax	₱93,022,064.60	₱32,111,726.41	₱-	₱125,133,791.01
VAT	36,741,514.04	13,649,724.12	-	50,391,238.16
EWT	40,226.61	15,076.71	-	55,303.32
WTC	31,394.72	11,766.57	-	43,161.29
Miscellaneous charges	-	-	125,000.00	125,000.00
TOTAL	**₱129,835,199.97**	**₱45,788,293.81**	**₱125,000.00**	**₱175,748,493.78**

Petitioner filed an Administrative Protest against the FLD on February 17, 2021.[8]

[3] Par. 1, *id.* at p. 317.
[4] Par. 3, *id.*; Exhibit "P-3".
[5] Par. 4, *id.*; Exhibit "P-4".
[6] Exhibit "P-5".
[7] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 317; Exhibit "P-6".
[8] Exhibit "P-7".

On March 22, 2021, petitioner received the respondent's Letter dated March 22, 2021 in which respondent denied the petitioner's Administrative Protest against the FLD.[9]

Petitioner thus filed a Petition for Review ("Petition") before this Court on May 19, 2021,[10] praying for the cancellation and withdrawal of respondent's assessment against it for alleged deficiency income tax, VAT, EWT, WTC, and compromise penalties for TY 2017 in the total amount of ₱175,748,493.78, inclusive of interest. On the other hand, respondent's Answer was filed on October 25, 2021.[11]

The parties did not agree to mediate after being referred to the Philippine Mediation Center – Court of Tax Appeals.[12] The case proceeded to pre-trial and was eventually terminated with the issuance of the Pre-Trial Order on December 7, 2022.[13]

Trial thus ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner filed its Memorandum on December 11, 2023,[14] while respondent's Memorandum was submitted on December 21, 2023.[15] Thus, in a Minute Resolution dated January 3, 2024, the case was deemed submitted for decision.

Hence, this Decision.

The Issue

The parties stipulated on the following issue to be resolved in this case:

> "WHETHER OR NOT PETITIONER IS LIABLE FOR THE ASSESSED DEFICIENCY INCOME TAX, VAT, EWT, WTC, AND MISCELLANEOUS CHARGES FOR TY 2017 IN THE AMOUNT OF PHP125,133,791.01, PHP50,391,238.16, PHP55,302.32, PHP43,161.29, AND PHP125,000.00, RESPECTIVELY, PLUS 25% SURCHARGE AND DEFICIENCY INTEREST FOR LATE PAYMENT UNTIL FULLY PAID."[16]

---

[9] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 317; Exhibit "P-8".
[10] Docket – Vol. 1, pp. 6 to 44.
[11] *Id.* at pp. 251 to 262.
[12] *Id.* at pp. 281 to 282 and 284.
[13] *Id.* at pp. 348 to 354.
[14] Docket – Vol. 2, pp. 748 to 798.
[15] *Id.* at pp. 799 to 816.
[16] Issue, JSFI, Docket – Vol. 1, pp. 317 to 318.

Arguments of the Parties

Petitioner's Arguments:

Petitioner argues that the deficiency income tax, VAT, EWT, and WTC assessments for TY 2017 are null and void as the FLD does not constitute an imperative and unequivocal demand for the payment of deficiency taxes and it does not explain the reasons for the denial of petitioner's contentions stated in the PAN against the deficiency tax assessments. Petitioner further asserts that respondent erred in denying the Administrative Protest on the sole ground that it was unsigned, that his right to assess the alleged deficiency VAT, EWT, and WTC for TY 2017 had already prescribed, and that the deficiency tax assessments are devoid of legal and factual bases.

Respondent's Counter-arguments:

Respondent counter-argues that the petition must be denied since the FLD is valid as it indicates a definite demand for payment and that it provided sufficient explanation regarding the deficiency tax assessments.

The Ruling of the Court

The Petition is **PARTIALLY GRANTED.**

The FLD indicates a final demand for payment

Petitioner argues that the FLD is null and void as the FLD does not constitute an imperative and unequivocal demand for the payment of deficiency taxes in violation of *Section 228 of the Tax Code*, as implemented by *Revenue Regulations ("RR") No. 12-99, as amended.*

In addition, petitioner asserts that both the FLD and FDDA merely requested for payment, not demand such, thus negating the obligation to pay as it gives the taxpayer the option not to pay if it is not amenable to the assessment.

Petitioner invokes *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[17] ("*Fitness by Design*"), where it was ruled that an assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Thus, according to petitioner, y

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

a mere request to pay does not constitute an imperative demand for the payment of taxes.

On the other hand, respondent counters that the FLD indicates a demand for payment as the due date for payment of the assessed deficiency taxes is clearly indicated in the attached Assessment Notices. The FLD is also replete with reminders that delinquency penalties will apply should the deficiency taxes remain unpaid after the lapse of the period provided, absent a valid protest.

We find for respondent.

Fitness by Design defines a final assessment as 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 mere usage of the term "request" does not loosen the effect of a demand for payment. A demand is a demand, even when couched in a civil or polite tone. As set forth in *Fitness by Design*, the primary purpose of a demand is to signal the time when penalties and interest begin to accrue. This is why there must be a period prescribed for payment.

We find the FLD compliant with the concept of a demand for payment as elaborated in *Fitness by Design*. The assessment notices attached to the FLD clearly indicate a due date. Further, considering both the context in which it was issued and the laws and rules which serve as its legal bases, the FLD clearly demanded payment from petitioner. Contrary to petitioner's assertion, then, it was already obligated to pay the assessment; otherwise, penalties and interest would run against it from the due date indicated therein.

Petitioner filed a valid protest against the deficiency income tax, VAT, and compromise penalties, but not against the deficiency EWT and WTC

In the Letter dated March 22, 2021, respondent denied petitioner's Administrative Protest outright for being unsigned and deemed it as a failure to file a valid protest. As such, respondent deemed the alleged deficiency tax assessments against petitioner as final, executory, and demandable pursuant to *RR No. 18-13*.

Petitioner, on the other hand, counters that respondent has no basis to deny its protest on the mere ground of being unsigned.

We agree with petitioner.

Section 3.1.4 of RR No. 18-13 provides for the taxpayer to state the following in its protest, otherwise, the same shall be considered void and without force and effect:

(i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation,

(ii) date of the assessment notice, and

(iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based.

Notably, nothing in the foregoing states that the protest must be signed. Clearly, the signature of the taxpayer or its authorized representative is not a pre-requisite for the validity of its protest.

A perusal of the Administrative Protest filed by petitioner shows that it complies with the foregoing guidelines in filing a protest. Thus, despite being unsigned, it remains a valid protest in its form.

However, it is notable in the Administrative Protest that while petitioner provided the applicable law, rules, and regulations, or jurisprudence on which its protest was based, these were *only* against the deficiency income tax and VAT assessments, and compromise penalties. It is painfully silent as far as the deficiency EWT and WTC assessments are concerned.

Section 3.1.4 of RR No. 18-13 provides that *if there are several issues* involved in the FLD or Final Assessment Notice *but the taxpayer only disputes or protests against the validity of some* of the issues raised, *the assessment attributable to the* ***undisputed issue or issues shall become final, executory, and demandable***; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

Absent petitioner's particular protest against the deficiency EWT and WTC assessments, the same is deemed undisputed and thus already became final, executory and demandable. On this score, the Court, thus, upholds the deficiency EWT and WTC assessed against petitioner.

Failure to give due consideration to the arguments in petitioner's Reply is violative of its right to due process, thereby rendering the deficiency income tax and VAT assessments and compromise penalties void

In its Reply to the PAN, petitioner laid down its explanations and arguments against the assessment items comprising the deficiency income tax and VAT assessments and compromise penalties. Petitioner asserts that the arguments in the Reply to the PAN can be verified from the tax returns, accounting records and contracts that were submitted to and made available for examination during the audit. Despite these, petitioner laments that respondent completely disregarded these, in violation of its right to due process.

We find these contentions meritorious.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[18] ("*Avon*") the High Court ruled that it is true that [respondent] is not obliged to accept the taxpayer's explanations. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

A perusal of the PAN, FLD, and their respective Details of Discrepancies shows that these state identical computations of the deficiency tax assessments. Nowhere in the FLD can We find any explanation as to why respondent did not give consideration to petitioner's explanations and documents submitted in the Reply to PAN.

While it is true that in the FLD, there can be found a one-liner statement that petitioner "failed to attached documentary evidences to support your contentions", said statement is far from compliance with respondent's duty to give reason in rejecting petitioner's explanation and evidence submitted in the Reply. As an overly-general statement, it fails to give specific reasons for the rejection of petitioner's specific arguments.

[18] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Indeed, as ruled in *Avon*, [respondent's] inaction and omission to give due consideration to the arguments and evidence submitted before her by [the taxpayer] are deplorable transgressions of [the taxpayer's] right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the [respondent] can simply ignore the evidence without reason.

Respondent exercises an administrative adjudicatory power or quasi-judicial function in adjudicating the rights and liabilities of persons under the *Tax Code*, especially in terms of tax investigation. In carrying out these quasi-judicial functions, the Commissioner is required to "investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature." Tax investigations and assessments necessarily demand the observance of due process because they affect the proprietary rights of specific persons.[19]

Administrative due process demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.[20] Unfortunately, this was not complied with by respondent in this case. Merely stating that petitioner failed to introduce sufficient evidence does not suffice. Respondent did not even bother to communicate to petitioner which documents it would require to come up with a fair investigation or assessment of petitioner's explanations in its Reply. All this suggests was that respondent is fixated on a predetermined assessment and did not intend to consider the latter's explanation and evidence.

Consequently, respondent's total disregard of petitioner's explanations in the Reply to PAN is in violation of the latter's right to administrative due process and renders the resulting FLD null, void, and of no force and effect.

Considering that the deficiency tax assessments against petitioner is rendered void in its entirety, the Court deems it no longer necessary to further discuss the merits of the tax assessments and the issue on prescription.

FOR THESE REASONS, the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, the assessments for deficiency EWT and WTC for TY 2017 is **UPHELD**. Petitioner is hereby **ORDERED TO PAY** respondent the basic amount of **₱40,226.61** and **₱31,394.72**, plus surcharges and interest pursuant to *Section 248(A) and 249(A), (B), and (C) of the NIRC, as amended*, until the full payment thereof. y

---

[19] *Id.*
[20] *Id.*

On the other hand, the assessments for deficiency income tax, VAT, and compromise penalties in the aggregate amount of ₱175,650,029.17 for TY 2017 is hereby declared **NULL** and **VOID** and is thus **CANCELLED** and **SET ASIDE**. Further, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On leave)
CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion 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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice