REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

ARNEL CORTEZ MANALOTO, *Petitioner,*	**CTA CASE NO. 10551**
	Members:
-*versus*-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: ______ 1:12 pm

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RESOLUTION

MODESTO-SAN PEDRO, J.:

Before this Court is respondent's Motion for Reconsideration (Re: Decision dated 25 June 2024) ("Motion for Reconsideration"),[1] with petitioner's Comment/Opposition ("Comment").[2]

In the Motion for Reconsideration, respondent alleges that:

1. This Court has no jurisdiction over the present case considering that petitioner failed to file a valid Protest on the Final Letter of Demand ("FLD"), and as such, the present assessment has become final and executory.

2. This Court has no power to rule on matters which have not been raised by the parties on appeal.

3. There is a Preliminary Assessment Notice ("PAN") issued against petitioner. The FLD has a due date for payment.

4. Petitioner is liable for deficiency taxes assessed against him. Civil action is not deemed instituted with the criminal case for tax evasion.

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[1] Records, pp. 351-396.
[2] Records.

Contrarily, petitioner counter-argues the following in his Comment:

1. Proper evidentiary procedures should be observed. Considering that respondent failed to present and specifically mark in evidence the PAN, the Court properly disregarded the same.

2. There is no due date in the FLD.

3. The Protest petitioner filed validly refuted the FLD. Hence, the assessment did not become final and executory.

4. Presumption of correctness of assessment is inapplicable in the case at bar due to recycled arguments and allegation of fraud.

Following a studied review of the arguments, we **DENY** the Motion for Reconsideration for lack of merit.

The instant assessment has not become final and executory. Court has jurisdiction over the present case.

Jurisdiction by this Court over the instant case is conferred by *Section 7 (1) of Republic Act No. 1125, to wit:*

> ***SEC. 7. Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue; (Emphasis, Ours)

It must be emphasized that what is within the exclusive appellate jurisdiction of this Court as provided by the cited provision is a decision by the Commissioner of Internal Revenue ("CIR") involving a disputed assessment. Thus, to avail of the appellate jurisdiction of this Court, a taxpayer must first contest an assessment issued by the CIR. Such taxpayer cannot directly elevate an assessment before this Court. The taxpayer should first challenge the assessment in the administrative level. And the decision by the CIR over such challenge (whether it be an actual or deemed denial of the Protest) is the one appealable before this Court.

In the case at bar, we disagree with respondent's notion that petitioner failed to properly contest the FLD containing the deficiency income tax and value added tax ("VAT") assessments issued against it. Petitioner submitted a Letter, dated October 1, 2020,[3] contesting the deficiency income tax and VAT assessments issued against it using the following reasonings: a) the civil liability has already been extinguished in the dismissal of the criminal cases filed against petitioner; b) the present assessment was determined in violation of the guidelines of a proper audit as provided for under Revenue Memorandum Order No. 24-2008 and Revenue Audit Memorandum Order No. 1-2000. While the arguments raised by petitioner are not the typical substantive arguments which contradict one by one the figures contained in the assessment, it remains, however, that these legal arguments if found to be meritorious and supported by judicial pronouncements would result in the total nullification of the present income tax and VAT assessment. Thus, the Letter, dated October 1, 2020, is a valid Protest. In fact, in the Final Decision on Disputed Assessment, dated May 4, 2021 ("FDDA"),[4] respondent has already treated the Letter, dated October 1, 2020, as a form of Protest against the instant FLD when it stated: "[t]his resolves your Protest dated October 1, 2020 received by the Enforcement and Advocacy Service on October 2, 2020". As such, respondent is deemed estopped from later on claiming that petitioner failed to properly file a Protest against the FLD.

Petitioner received the FLD on September 17, 2020.[5] Pursuant to Sec. 228 of the National Internal Revenue Code of 1997, as amended ("NIRC"), a Protest can be filed "by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment". Thus, petitioner had until October 17, 2020 to file a Protest. And since petitioner filed his Letter, dated October 1, 2020, on October 2, 2020,[6] petitioner is deemed to have properly and timely filed a Protest on the FLD. Accordingly, the instant assessment has not yet become final and executory.

In response to such Protest, respondent issued the FDDA. The FDDA is the one being appealed by petitioner before this Court. In totality, the FDDA is a decision by respondent on a disputed assessment. Thus, it is a subject matter within the jurisdiction of this Court and it may validly try the same as long as the appeal has been timely made.

In the present case, it is unquestioned that petitioner received the FDDA on May 11, 2021. Under Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals ("CTA"), "[a] party adversely affected by a decision… of the Commissioner of Internal Revenue… may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision." Following this, petitioner had 30 days from receipt of the FDDA (*i.e.,* May 11, 2021), or until June 10, 2021, within which to file a judicial appeal before

[3] BIR Records, pp. 1052-1054.
[4] *Id.,* pp. 1097-1106.
[5] *Id.,* pp. 1048-1051.
[6] *Id.,* pp. 1052-1054.

this Court. As petitioner filed the instant Petition on June 8, 2021, this Court properly assumed jurisdiction over the present case.

The Court has undoubted authority to rule on issues not specifically raised by the parties.

Time and time again, it has been ruled that this Court has authority to rule on issues not specifically raised by the parties. Section 1, Rule 14 of the Revised Rules of the CTA 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, to wit:

> 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 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.
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> **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**.
> (Emphasis, Ours.)

The Supreme Court, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[7] affirmed the authority of this Court to rule on issues not raised by the parties. The High Court explained in the case of *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*[8] that the validity of the assessment requires the determination of the propriety of the issuance of the notices in accordance with the taxpayer's right to due process. This remains true even if the violation of such right was not raised in the taxpayer's pleadings since due process is a related issue necessary to achieve the orderly disposition of an assessment case.

[7] G.R. No. 183408, July 12, 2017.
[8] G.R. No. 222476, May 5, 2021.

Further guidance may also be gleaned from the High Court's pronouncement in the case of *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue.*[9] While this involves an issue raised for the first time on appeal or on motion for reconsideration, the conditions laid therein may be used as parameters on determining whether an issue may be touched upon by the Court despite the parties' failure to raise it. In said case, the Supreme Court ruled that the CTA may consider arguments raised for the first time on appeal or on motion for reconsideration, provided that (1) these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and (2) the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.

Whether there was proper issuance of the instant assessment subject of the present case or not is a sub-issue intricately related to the principal issue to be resolved by the Court, *i.e.,* whether petitioner is liable for deficiency taxes for taxable year ("TY") 2011, and is necessary to achieve an orderly and comprehensive disposition of the case. Also, the said issue may be resolved by an examination of the evidence on record and would not require the presentation of additional evidence. Thus, this Court properly tackled such issue despite not being specifically raised by the parties.

A PAN was issued against petitioner

Following a review of the records, this Court finds that a PAN was indeed issued against petitioner.[10] This was received by a certain Victoriano Manaloto (who was alleged to be the father of petitioner) on August 20, 2019. Considering that petitioner did not deny this fact on his Comment, it is deemed admitted.

Nonetheless, this does not change the ultimate finding by this Court that the instant assessment is void due to violation of due process against petitioner considering that the FLD failed to indicate a due date for payment.

The FLD failed to indicate the due date for payment; thus, the assessment is void.

Contrary to the allegations of respondent, the FLD failed to indicate a due date for payment. Section 3.1.3 of Revenue Regulation ("RR") No. 12-99, as amended by RR No. 18-2013, implementing Section 228 of the NIRC, prescribes that a taxpayer shall be issued with a FLD/Final Assessment Notice

9 G.R. No. 249153, September 12, 2022.
10 BIR Records, pp. 971-974.

("FAN") duly calling for payment of the alleged deficiency taxes, and stating the factual and legal bases of such assessments.

With the foregoing due process requirements, the Supreme Court, in the case of *Commissioner of Internal Revenue (CIR) v. Pascor Realty and Development Corp.*, pronounced that "(a)n assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period."[11]

Anchoring on such pronouncement, the Supreme Court opined in the case of *Commissioner of Internal Revenue vs. Fitness by Design Inc.*[12] ("*Fitness by Design*") that the Bureau of Internal Revenue ("BIR")'s demand for payment was rendered void when the FAN did not indicate a due date. The High Court discussed that the FAN issued to Fitness by Design, Inc. states that the taxpayer is requested to pay the deficiency internal revenue tax liabilities within the time shown in the enclosed assessment notice. However, the attached assessment therein remained unaccomplished.

In the case at bar, the FLD did not whatsoever provide for a definite final date for payment of the taxes assessed therein. More importantly, the said FLD did not have assessment notices attached thereto which could have likewise indicated a definite due date for the payment of the assessed deficiency income tax and VAT.[13] This Court even re-examined the documents pointed out by respondent in the BIR Records and attached by respondent as Annexes in the Motion for Reconsideration as allegedly containing a due date for payment. However, this exercise proved futile as nowhere from said documents can a definite due date for payment of the assessed deficiency taxes be found.

The nearest statement in the FLD wherein a date is involved is as follows: "[P]lease take note that interest and the total amount will have to be adjusted if paid beyond December 31, 2021." However, such statement does not contain a definite due date for payment but merely implies that a re-computation of interest will occur if payment is made beyond that.

Indeed, it mirrors what the Supreme Court precisely frowned upon in *Fitness by Design* which similarly contained the words "the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004."

Considering the foregoing, the Court hereby finds that the FLD indeed lacks a due date within which the payment of assessed taxes should be made; thus, it is void for violation of petitioner's due process.

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[11] G.R. No. 128315 June 29, 1999

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

[13] See BIR Records, pp. 1031-1051.

Applying the judicial pronouncements, above, nothing is left for this Court to do but to deny the Motion for Reconsideration.

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

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice