**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SPECIAL THIRD DIVISION**

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| **TRAVELLERS INTERNATIONAL HOTEL GROUP, INC.,** Petitioner, | **CTA CASE NO. 10445** |
| | Members: |
| - versus - | **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: SEP 18 2024 3:12 p.m. |

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# RESOLUTION

***FERRER-FLORES, J.:***

Before this Court is respondent's **Motion for Reconsideration (Re: Decision dated 18 April 2024)** (*Motion for Reconsideration*) filed on May 10, 2024, with petitioner's **Comment (Re: Respondent's Motion for Reconsideration dated May 9, 2024)** (*Comment*) filed on June 5, 2024.

On April 18, 2024, the Court promulgated a Decision cancelling respondent's deficiency tax assessment notices against petitioner for failing to indicate therein a definite due date for the payment of the alleged tax liabilities, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FLD and *Audit Result/Assessment Notices* attached thereto, all dated December 13, 2017, are hereby **CANCELLED and SET ASIDE**.
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> Furthermore, the FDDA dated October 23, 2020, including the *Audit Result/Assessment Notices* attached thereto, assessing petitioner for deficiency income tax, inclusive of interests, in the amount of

₱3,293,565,888.92 and compromise penalty in the amount of ₱50,000.00, for taxable year 2013, are hereby **REVERSED and SET ASIDE**.

**SO ORDERED.**

In his *Motion for Reconsideration*, respondent seeks the reversal of the above Decision based on two (2) grounds, *viz.*: that the Court erred in ruling that the assessment notices did not indicate a definite due date for the payment of the tax liabilities and penalties; and, that the Court's power of judicial review over respondent's decisions on disputed assessment is by nature exclusive and appellate.

As to the first ground, respondent asserts that the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[1] (*Fitness by Design* case), which was heavily relied on by the Court in arriving at its conclusion, is not applicable in the present case. Respondent claims that the doctrinal pronouncement laid down in the said case was misapplied by the Court considering that the wordings of the *ratio decidendi* therein was based on the Supreme Court decision of *Commissioner of Internal Revenue v. Dominador Menguito (Menguito* case),[2] which has a different issue. According to respondent, the issue in the *Menguito* case was limited to the taxpayer's receipt of the post-reporting and Preliminary Assessment Notice (PAN), and not on the Final Assessment Notice (FAN) and the existence of a demand for payment of taxes assessed within a specified period.

Respondent likewise insists that the Formal Letter of Demand (FLD)-FAN fixed the basic tax deficiency liabilities of petitioner, including the surcharge and interest, which were set until December 28, 2017. Citing Section 249 of the National Internal Revenue Code (NIRC) of 1997, as amended, on deficiency interest, respondent explains that the tax liabilities of petitioner were categorically stated and that the due date corresponds to the amount of interest due thereon, so that additional interest will have to be imposed if it pays the deficiency assessment beyond the said due date; in such case, the total amount due will definitely be adjusted.

As to the second ground, respondent submits that petitioner did not raise the issue of lack of a definite due date in the assessment notices in its protest to the FLD-FAN. He asserts that the said issue pertaining to the demand to pay is an undisputed issue which was only raised during appeal via the present petition, in spite of having every opportunity to question the validity of the assessment in the administrative level. Respondent postulates that to allow a litigant to assume a different posture when it comes before the Court and challenge the position it had previously accepted at the

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[1] G.R. No. 215957, November 09, 2016.
[2] G.R. No. 167560, September 17, 2008

administrative level would be to sanction a procedure whereby the court - which is supposed to review administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum.

On the other hand, in its *Comment*, petitioner points out that the arguments raised in respondent's *Motion for Reconsideration* are but bare reiterations of those already stated in his *Answer* filed on October 27, 2021,[3] and to discuss them anew would be mere superfluity. Petitioner further asserts that the Court has the authority to rule on matters relevant to the case even if the same have not yet been directly raised at the administrative level. Petitioner expounds that the jurisdiction of the Court extends to the present case since the validity of the FLD and assessment notices is an issue that is directly and inextricably tied to the issue on the validity of respondent's assessment which is in accordance with Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA). Lastly, petitioner submits that the Court correctly ruled that the FAN and FLD are void and were rightfully cancelled and set aside.

After due consideration, the Court finds respondent's *Motion for Reconsideration* bereft of merit.

***The ruling on respondent's failure to state the due date for payment in the FLD and FAN which rendered the assessment void still stands.***

Verily, in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.* (*Pascor* case),[4] the Supreme Court elucidated on the nature of an assessment in the sense that, "[a]n assessment contains not only a computation of tax liabilities, but also a **demand for payment within a prescribed period**. It also signals the time when penalties and interests begin to accrue against the taxpayer."

Relative thereto, **a final assessment notice provides for the amount of tax due with a demand for payment**. The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the NIRC nor the revenue regulations provide for a "specific definition or form of assessment." However, the NIRC of 1997, as amended, 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**

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[3] Docket – Vol. 1, pp. 289 to 300.
[4] G.R. No. 128315, June 29, 1999.

**prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**[5]

In the present case, the evidence on record shows that the FLD and Audit Result/Assessment Notices dated December 13, 2017,[6] do not state a due date for the payment of the assessed tax. It is apparent that the FLD failed to indicate specific due date and the attached assessment notice was also left blank and unaccomplished. Thus, considering that there is no definite period for the payment of the deficiency tax assessment to speak of, respondent's demand for payment is thereby negated.

Anent respondent's contention that the *Fitness by Design* case was misapplied by the Court as the ruling in the *Menguito* case involves a different issue, the Court is not convinced.

In the *Menguito* case, the Supreme Court discussed what a valid formal assessment is, *i.e.,* an assessment contains not only a computation of tax liabilities but also a **demand for payment within a prescribed period**. It is worth noting that a similar and earlier pronouncement was already made by the Supreme Court in the aforementioned *Pascor* case, which was likewise reiterated in the *Fitness by Design* case.

Perforce, Article 8 of the New Civil Code provides that judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines. Embodied in the said Article is the principle of *Stare decisis et non quieta movere*, which states that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[7] Otherwise stated, when the Supreme Court has laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same.[8]

This principle of adherence to precedents has not lost its luster and continues to guide the bench in keeping with the need to maintain stability in the law.[9] Accordingly, unless and until the Supreme Court modifies or reverses the doctrine laid down in *Menguito* and *Fitness by Design* cases, the said doctrine shall remain binding on all inferior courts including this Court and the same is beyond our power and authority to alter or modify.

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[5] *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.
[6] Exhibit "P-12", Docket – Vol. 2, pp. 690 to 697.
[7] *Carmela F. Lazatin, et al. vs. Hon. Aniano A. Desierto, et al.*, G.R. No. 147097, June 5, 2009.
[8] *Commissioner of Internal Revenue vs. The Insular Life Assurance Co. Ltd.*, G.R. No. 197192, June 4, 2014.
[9] *Rep. Reynaldo Umali vs. The Judicial Bar Council*, G.R. No. 228628, July 25, 2017.

Guided by the foregoing pronouncements, the Court emphasizes that an assessment must not only indicate the legal and factual bases of the assessment but must also categorically state a demand for payment of the computed tax liabilities with a specific period. Indicating a fixed and definite period within which a taxpayer must pay the tax deficiencies is necessary for the validity of an assessment. In the absence thereof, it negates the CIR's demand for payment making the FLD and FAN defective and therefore void. Consequently, no tax collection on such assessment can transpire since, as a rule, a void assessment bears no valid fruit.[10]

***The Court is authorized to rule on issue raised for the first time on appeal subject to certain conditions.***

Pursuant to Section 1, Rule 14 of the RRCTA,[11] this Court 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 provision reads as follows:

> SECTION 1. *Rendition of* judgment. – xxx
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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.

In the case of *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*,[12] the Supreme Court applied the aforequoted provision in this wise:

> As the CTA *En Banc* held, **the CTA Division was justified in ruling on the issue that respondent was denied due process even though it was not expressly raised by respondent in its petition for review**. Sec. 1, Rule 14 of the RRCTA provides that '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.' Herein, the issue of the validity of the assessment against respondent also necessarily requires the determination of the matter of the proper issuance of said assessment in accordance with the requirements of due process. In addition, there were sufficient allegations in respondent's petition for review on the dates of issuance by the BIR and receipt by respondent of the PAN and FLD/FAN, as well as documentary and testimonial evidence to

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[10] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et. seq.*, G.R. Nos. 215534 and 215557, April18, 2016.

[11] A.M. No. 05-11-07-CTA.

[12] G.R. No. 222476, May 5, 2021.

> establish the essential facts for resolution of the issue which were presented during the trial without any objection from petitioner. This could be deemed as petitioner's implied consent to try the issue, recognized under Sec. 5, Rule 10 of the Revised Rules of Court, which applies suppletorily to the RRCTA." *(Emphasis Supplied)*

In the same vein, the Supreme Court further recognized in the case of *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue,*[13] that this Court may consider arguments raised for the first time on appeal or on motion for reconsideration, to wit:

> At the outset, the Court shall delve into the propriety of the CTA *En Banc*'s action of entertaining petitioner's additional arguments, including the alleged violation of its right to due process when the BIR prematurely issued the FAN and FLD in this case, which were raised for the very first time on appeal, and only in its Supplemental Memorandum.
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> As correctly held by the CTA *En Banc*, in deciding a case, the tax 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.' However, this authority of passing upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues submitted during the pre-trial stage is not unbridled. As the CTA *En Banc* itself recognized, such issues 'should be dealt with, based not only on substantive law but in light of the relevant rules of evidence.'
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> Certainly, the thrust of proscribing a change of argument on appeal rests on upholding the basic tenets of equity and fair play. 'When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.'
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> This principle is also laid down in the Rules of Court which applies suppletorily to the Revised Rules of the CTA, *viz*:
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>> Section 15. Questions that may be raised on appeal. – Whether or not the appellant has filed a motion for new trial in the court below he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.
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> Hence, in other civil cases, this Court has allowed derogation from this principle only in exceptional cases and only if the factual bases of the new theory would not require presentation of further evidence:
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>> In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in

[13] G.R. No. 249153, September 12, 2022.

> order to enable it to properly meet the issue raised in the new theory.
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> For tax cases before the CTA, the Court pronounced in *Commissioner of Intemal Revenue v. Eastern Telecommunications Phils., Inc.* that 'the appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.'
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> Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that **the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand**.
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> From the foregoing, the Court so holds that **the CTA *En Banc,* or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: *one,* 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 *two,* 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**. *(Emphases supplied)*

Based above, the Court 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.

Herein, the parameter of both conditions concur. First, the issue on the invalidity of the FLD-FAN due to the absence of due date is inextricably linked to the parties' stipulated issue of *whether or not petitioner is liable to pay the deficiency income tax and compromise penalty inclusive of surcharge and interest for calendar year 2013* since respondent's right to collect must flow from a valid assessment – which is indispensable for an orderly and comprehensive disposition of the case. Secondly, the said issue may be resolved by an examination of the evidence on record and would not require the presentation of additional evidence. As such, although the validity of the assessment was raised by petitioner for the first time on appeal, it is a related issue that this Court deemed imperative to decide for the achievement of an orderly disposition of the case.

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse or modify the Decision promulgated on April 18, 2024.

**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated 18 April 2024)** is **DENIED** for lack of merit.

**SO ORDERED.**

**CORAZON G. FERRER-FLORES**
Associate Justice

WE CONCUR:

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice