REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

ROBINSONS TRUE SERVE HARDWARE PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 2293
(CTA Case No. 9418)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:

MAR 01 2022 3:50 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue (CIR) assailing the Decision dated January 23, 2020 and Resolution dated June 15, 2020, which cancelled and set aside the assessments against Robinsons True Serve Hardware Philippines, Inc. (Robinsons True Serve) for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST) for taxable year 2010, in the aggregate amount of Php1,182,392,770.89.

FACTS

The CTA 2nd Division narrated the antecedents, as follows:

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Petitioner [herein respondent] Robinsons True Serve Hardware Philippines, Inc. is a corporation duly registered with the Securities and Exchange Commission (SEC), with SEC Company Registration No. CS200702416 and principal office located at 110 E. Rodriguez Jr. Avenue, Libis, Quezon City.

Respondent [herein petitioner] is the duly appointed Commissioner of Internal Revenue with office address at Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City. It is registered with the BIR under Certificate of Registration Number OCN 8RC0000059028, with TIN 006-643-830-000.

On July 6, 2012, petitioner received from respondent a copy of the *Letter of Authority* (LOA) No. LOA-116-2012-00000017 (eLA201100003095) dated July 3, 2012, authorizing the examination of petitioner's books of accounts for taxable year ended December 31, 2010.

Thereafter, on April 8, 2013, petitioner executed a *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* and respondent accepted the same on the same date.

On September 15, 2014, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) dated September 12, 2014 which assessed petitioner for deficiency income tax, VAT, EWT, fringe benefit tax (FBT), DST, and improperly accumulated earnings tax (IAET) in the aggregate amount of P1,053,817,287.46, inclusive of increments, for taxable year ended 31 December 2010. Petitioner disputed the said PAN through the letter dated September 30, 2014 which was received by respondent on the same date.

Subsequently, on October 10, 2014, petitioner received a copy of the *Formal Letter of Demand* (FLD) dated October 10, 2014 with *Audit Result/Assessment Notices* in the total amount of P1,064,562,827.18, inclusive of increments, representing alleged deficiency income tax, VAT, EWT, FBT, DST, and IAET for taxable year ended December 31, 2010. Petitioner then protested the FLD through the letter dated November 7, 2014 filed with the BIR on the same date. Petitioner subsequently filed with the BIR the letter dated January 6, 2015, submitting additional supporting documents and schedules to support petitioner's position.

On March 8, 2016, petitioner received a copy of the *Final Decision on Disputed Assessment* (FDDA) signed by Mr. Nestor S. Valeroso, Assistant Commissioner of the BIR Large Taxpayers Service, which assessed petitioner for deficiency income tax, VAT, EWT, and DST in the aggregate amount of P1,182,392,770.89.

> Consequently, petitioner filed a motion or request for reconsideration of the FDDA before the Office of respondent on April 7, 2016. However, respondent denied the said request in the letter dated June 30, 2016, a copy of which was received by petitioner on July 11, 2016.[1]

On August 10, 2016, Robinsons True Serve filed its Petition for Review with the Court of Tax Appeals (CTA) Division. After trial, the CTA 2nd Division rendered the assailed Decision dated January 23, 2020, which granted Robinsons True Serve's Petition for Review, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency income tax, VAT, EWT, and DST assessments issued against petitioner for taxable year ended December 31, 2010, in the aggregate amount of P1,182,392,770.89 are **CANCELLED and SET ASIDE**, for being void.
>
> **SO ORDERED**.[2]

The CIR's Motion for Reconsideration of the above Decision was denied in the Resolution[3] dated June 15, 2020.

The CTA 2nd Division found that the subject tax assessments lack the definite amount of tax liabilities for which Robinsons True Serve is accountable, because the FLD states that the interest will still "*be adjusted if paid beyond the date specified therein.*" As such, the amount of Robinsons True Serve's tax liabilities "remains indefinite, since the said tax assessments are still subject to modification or adjustment, depending on the date of payment." The CTA 2nd Division also ruled that the FDDA is void for failure to state the facts, the applicable law, rules and regulations, or jurisprudence on which said decision was based.

On August 24, 2020, the Court received the CIR's Petition for Review,[4] which was posted on July 30, 2020. Upon notice,[5] Robinsons True Serve filed its Comment (To Petitioner's Petition for Review)[6] on October 23, 2020.

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[1] EB Docket, Division Decision, pp. 27-29.
[2] EB Docket, Division Decision, p. 71.
[3] EB Docket, pp. 81-85.
[4] EB Docket, pp. 7-20.
[5] EB Docket, Resolution dated October 16, 2020, pp. 97-98.
[6] EB Docket, pp. 99-116.

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On November 5, 2020, Robinsons True Serve filed an *Urgent Motion to Lift Warrant of Distraint and/or Levy and For Suspension of Collection of Taxes.*[7] The said *Urgent Motion* was granted in the Resolution[8] dated March 1, 2021.

The case was also referred to mediation, however, on December 1, 2020, the parties decided not to have their case mediated.[9]

Thus, the case was deemed submitted for decision on March 1, 2021.[10]

ISSUES

The CIR states the following grounds for his Petition for Review:

I. With all due respect, the Honorable Court erred when it granted a relief that was not prayed for by respondent.

II. With all due respect, the Honorable Court erred in ruling that the FLD and FAN are void because they failed to demand payment thereof within a specific period.[11]

CIR's arguments

The CIR argues the validity of the FLD was never questioned by Robinsons True Serve; that he was neither heard nor given an opportunity to be heard on the issue; and, that he was denied procedural and substantive due process when the CTA 2nd Division ruled on said issue. The CIR also states that achieving an orderly disposition of the cases under the Revised Rules of the Court of Tax Appeals (RRCTA) is not synonymous with violating litigants' basic right to fair play and due process, or disregarding rules of procedure and rules on pre-trial.

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[7] EB Docket, p. 119-133.
[8] EB Docket, pp. 283-290.
[9] EB Docket, No Agreement to Mediate, p. 207.
[10] EB Docket, Resolution, pp. 283-290.
[11] EB Docket, Petition for Review, p. 9.

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The CIR also argues that the FLD has fixed and definitely set the deficiency tax liabilities being demanded from Robinsons True Serve. The CIR also states that it is rudimentary that interest adjusts depending on the date the amount due is paid.

Robinsons True Serve's arguments

Robinsons True Serve counter-argues that the CIR's Petition for Review should be denied outright for seeking a relief not related to the case. Robinsons True Serve points out that the CIR's prayer in his Petition for Review refers to a Decision dated January 14, 2020, and prays that the "petitioner" be ordered to pay the assessed deficiency improperly accumulated earnings tax (IAET) in the amount of P2,099,212,108.60. On the other hand, the instant case involves the CTA's Decision dated January 23, 2020, which cancelled the assessments for alleged deficiency income tax, VAT, EWT, and DST in the total amount of P1,182,392,770.89 for taxable year 2010.

Robinsons True Serve also argues that the CIR failed to question the CTA 2nd Division's findings that the subject tax assessments are void for violation of Robinsons True Serve's right to due process when the FDDA failed to state the facts and the law upon which it is based. It also argues that the CIR was not denied due process when the CTA 2nd Division ruled on the validity of the FLD and assessment notices. Finally, Robinsons True Serve reiterates that the subject tax assessments are void because it lacks a definite amount payable.

RULING OF THE COURT

The Petition for Review has merit.

The FLD/FAN and FDDA contained a definite liability and due date.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*,[12] (*Fitness By Design*) the assessments therein were found to lack a definite amount of tax liability since the same was

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

subject to adjustment depending on the date of the taxpayer's payment. The assessments therein also did not contain a specific due date, thereby negating the demand for payment.

In the instant case, the assessment notices attached to the FLD and FDDA contained due dates, which are November 14, 2014 and March 30, 2016, respectively. With those due dates, together with the computation of tax liability up to the said due dates, then there is a definite amount of tax liability. Thus, even with the statement that the interest shall still be adjusted if paid beyond the due date provided, there is no indefiniteness, since it is only the interest that shall be adjusted.

It is reiterated that the basic deficiency tax liability remains the same regardless of when the taxpayer chooses to pay the assessment. The interest, and only the interest, may be adjusted if the taxpayer pays before or after the due date. What is important is that there is a due date contained in the FLD/FDDA/assessment notice.

To invalidate the entire assessment on the basis of the indefiniteness not of the amount of tax liability but of the interest that may accrue (beyond the deadline of payment) will not be in accord with the doctrines laid down in *Fitness By Design.*[13]

Thus, the subject assessments are valid since they contain a definite due date and a definite tax liability.

The CIR Decision dated June 30, 2016 violated Robinsons True Serve's right to due process, nevertheless, the FDDA dated February 29, 2016 remains valid.

The assailed CTA 2nd Division Decision dated January 23, 2020 found that the CIR Decision dated June 30, 2016 violated Robinsons True Serve's right to due process because the said CIR Decision failed to state the facts, applicable law, rules and regulations, or jurisprudence on which it was based. This is in accordance with Section 3.1.5 of Revenue

[13] Justice Bacorro-Villena's Dissenting Opinion dated January 23, 2020, CTA Case No. 9418, *Robinsons True Serve Hardware Philippines, Inc. v. Commissioner of Internal Revenue.*

Regulations (RR) No. 12-99, as amended by RR No. 18-2013, which states:

> 3.1.5 ***Final Decision on a Disputed Assessment (FDDA).*** – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise the **decision** shall be void (see illustration in ANNEX "C" hereof), and (ii) that the same is his final decision. (*Emphasis and underscoring supplied*)

The CIR Decision dated June 30, 2016 indeed lacks the facts, applicable law, rules and regulations, or jurisprudence on which it is based, and is thus, void.

However, contrary to the findings of the CTA 2nd Division, the void CIR Decision does not render the entire assessment void. As discussed in *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation:*[14]

> ...Section 228 of the NIRC declares that an assessment is void if the taxpayer is not notified in writing of the facts and law on which it is made. Again, Section 3.1.4 of RR No. 12-99 requires that the FLD must state the facts and law on which it is based, otherwise, the FLD/FAN itself shall be void. Meanwhile Section 3.1.6 of RR No. 12-99 specifically requires that the decision of the CIR or his duly authorized representative on a disputed assessment shall state the facts, law and rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the FDDA.
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> xxx
>
> A void FDDA does not *ipso facto* render the assessment void
>
> xxx
>
> Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which

[14] G.R. Nos. 215534 and 215557, April 18, 2016.

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> it is based will make the **decision** void. It, however, does not extend to the nullification of the entire assessment. (*Emphasis and underscoring supplied*)

In the instant case, the CIR Decision failed to state the facts, law, rules and regulations or jurisprudence on which it is based. Applying the Section 228 of the NIRC, Sec. 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013, and the *Liquigaz* case, the CIR Decision is void.

On the other hand, the FDDA dated February 29, 2016 has its basis stated in the Details of Discrepancies.[15] The FLD/FAN dated October 10, 2014 likewise contains its basis as described in the Details of Discrepancies.[16]

Thus, it is only the CIR Decision which failed to state the facts, law, rules and regulations or jurisprudence on which it is based. Applying the *Liquigaz* case, it is only the CIR Decision which is rendered void.

Based on the foregoing, the instant case should be remanded to the CTA 2nd Division for a determination of the validity of the assessment items as contained in the FDDA dated February 29, 2016.

The CIR's counsels are reminded to be circumspect in the preparation of pleadings filed before the Court.

The Court notes Robinsons True Serve's argument that the CIR's prayer in his Petition for Review has no relation on the instant case.

The CIR prays that respondent be directed to pay IAET in the amount of P2,099,212,108.60. On the other hand, the instant case involves the CTA's Decision dated January 23, 2020, which cancelled the assessments for alleged deficiency income tax, VAT, EWT, and DST in the total amount of P1,182,392,770.89 for taxable year 2010.

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[15] Division Docket, Vol. III, pp. 1151-1158.
[16] BIR Records, Folder 1, Exhibits "R-6" and "R-7", pp. 1314-1322, and 1299-1304.

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The Court gives the CIR the benefit of the doubt that the said unrelated prayer is merely an oversight, since the body of the Petition for Review clearly intends to appeal the decision in CTA Case No. 9418. Nevertheless, the CIR's counsels are reminded to be more circumspect in the preparation of pleadings filed before the Court.

WHEREFORE, the Petition for Review is **GRANTED**. The Decision and Resolution of the Court's 2nd Division, dated January 23, 2020 and June 15, 2020, respectively, are **REVERSED and SET ASIDE**. Accordingly, let the case be **REMANDED** to the CTA 2nd Division for computation of Robinsons True Serve's deficiency tax liabilities for taxable year ended December 31, 2010.

Despite the foregoing, the CIR and his representatives, are still **ENJOINED** from collecting the subject deficiency taxes until final computation by the Court.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

<u>EN BANC</u>

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MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
MAR 01 2022
3:50 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* which grants the Petition for Review and orders the remand of the case to the Court in Division for the computation of respondent's deficiency tax liabilities for taxable year ended December 31, 2010.

Indeed, *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[1] was parenthetic in saying that a demand by government for the taxpayer to pay deficiency tax liabilities must specify the **definite amount sought to be collected**, failing which, the demand would be violative of the taxpayer's right to due process of law. Thus, in declaring as fatally infirm a final assessment notice for the payment of deficiency taxes, the Supreme Court, speaking through *Honorable Associate Justice Marvic M. V. F. Leonen* opined:

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

> "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:
>
>> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*** (Emphasis Supplied)
>
> xxx
>
> 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." *(Boldfacing supplied)*

Considering the rationale behind the doctrine in *Fitness by Design*, I noted that indeed -- the amount indicated in the final assessment notice therein is definite only if payment is made on the EXACT due date stated therein. While payment can be made BEFORE or AFTER the date indicated, the exact MANNER of COMPUTING the "adjustment" to come up with a final and definite amount in case payment is made before or after the due date was undisclosed.

Any ambiguity in the amount demanded from a taxpayer is fatal as it precludes him from knowing the exact amount to pay whenever an adjustment is made.

There would have been a semblance of certainty if the final assessment notice in *Fitness by Design* at the very least indicated how adjustment of the demanded amount would be made – particularly with respect to the purported <u>interest</u> that should have to be adjusted *vis-à-vis* the resulting total amount.

A perusal of the records of the present case reveals that the manner by which interest was computed in *Fitness By Design* and in the present case are not similar.

Unlike in *Fitness By Design*, in the present case, the Formal Letter of Demand dated October 10, 2014 issued against respondent <u>indicates the dates when interest commences to run</u>, *viz.*:

FINAL ASSESSMENT NOTICE ***FITNESS BY DESIGN***		**FORMAL LETTER OF DEMAND DATED MAY 19, 2014** **PRESENT CASE**	
Income Tax		**Income Tax**	
Tax Due (35%)		Basic Deficiency Income Tax Due	xxx
Add: Surcharge (50%)	xxx	Add: 50% Surcharge	xxx
Interest (20% per annum) until 4-15-04	xxx	**20% Interest (4.16.11 to 11.10.14)**	**xxx**
Deficiency Income Tax	xxx	Total Deficiency Income Tax Due	xxx
Value Added Tax		**Value Added Tax**	
Output Tax (10%)	xxx	Basic Deficiency VAT Due	xxx
Add: Surcharge (50%)	xxx	Add: 50% Surcharge	xxx
Interest (20% per annum) until 4-15-04	xxx	**20% Interest (1.26.11 to 11.10.14)**	**xxx**
Deficiency VAT	xxx	Total Deficiency Value Added Tax Due	xxx
		Expanded Withholding Tax	
		Basic Expanded Withholding Tax Due	xxx
		Add: 25% Surcharge	xxx
		20% Interest (1.16.11 to 11.10.14)	**xxx**
		Total Deficiency Expanded Withholding Tax Due	xxx
		Fringe Benefit Tax	
		Basic Deficiency Fringe Benefit Tax Due	xxx
		Add: 50% Surcharge	xxx
		20% Interest (1.16.11 to 11.10.14)	xxx
		Total Deficiency Fringe Benefit Tax Due	xxx
		Documentary Stamp Tax	
		Documentary Stamp Tax Due on Rentals	xxx
		Add: 50% Surcharge	xxx
		20% Interest (1.06.11 to 11.10.14)	xxx
		Total Deficiency Documentary Stamp Tax Due	xxx

As distinguished from *Fitness By Design*, the Formal Letter of Demand dated October 10, 2014, in the present case, states that the interest was computed up to November 10, 2014, and **categorically provides for the specific reckoning point or date when interest commences to run** for each type of tax assessment, namely, income tax, value-added tax, expanded, fringe benefit tax and documentary stamp tax.

Considering that the final assessment notice in the present case indicated how adjustment of the demanded amount would be made – particularly with respect to the purported interest that should have to be adjusted *vis-à-vis* the resulting total amount, I submit that the Formal Letter of Demand dated October 10, 2014, 2014 sent to respondent can be considered as one with indication of DEFINITE amount of liability; hence, the same is valid.

All told, I CONCUR in the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice