REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

MAX HEALTH & LIVING INTERNATIONAL, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9628

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
OCT 26 2021 1:06pm

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DECISION

MANAHAN, *J.:*

The *Petition for Review* prays for the following relief:

a. On the *Preliminary Collection Notice/Letter* (PCL) and *Final Notice Before Seizure* (FNBS), that the same be declared void for failure to provide sufficient details to afford the taxpayer the opportunity to intelligently answer the same;

b. On the assessments for deficiency income tax, expanded withholding tax (EWT), withholding tax on compensation (WTC), and improperly accumulated earnings tax (IAET), that the same be declared to have prescribed; and

c. Alternatively, to declare that:

i. The rent expense of ₱416, 855.00 is proper and allowed;

ii. The sales commission of ₱8,585,620.10 is proper and allowed;

iii. On the deficiency EWT, that the assessment be declared to be without legal and factual basis;

iv. On the deficiency of IAET, that the assessment be declared to be without legal and factual basis;

v. On the compromise penalty, that the assessment be declared to be without legal and factual basis; and

d. In any case, to declare the imposition of surcharges and interest since April 12, 2012 to be improper and without legal basis.[1]

THE PARTIES

Petitioner Max Health & Living International, Inc. is a corporation duly organized and existing under Philippine laws,[2] with principal place of business at 7th Floor Tower 1 Rockwell Business Center, Ortigas Avenue, Barangay Ugong, Pasig City.[3]

Respondent Commissioner of Internal Revenue is the duly appointed head of the Bureau of Internal Revenue (BIR), with principal office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

THE FACTS

On June 23, 2014, respondent, through Regional Director Alfredo V. Misajon of Revenue Region No. 7, Quezon City, issued the *Letter of Authority* (LOA) No. LOA-43B-2014-00000278, authorizing Revenue Officer (RO) Rosalia Mermal / Group Supervisor Alejandro San Juan of Revenue District No. 43B – West Pasig, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax, other taxes (miscellaneous

[1] Docket, CTA Case No. 9628, Summary of the Case, Pre-Trial Order dated March 23, 2014, pp. 123 to 124.
[2] *Id.*, Exhibits "P-1" to "P-3", pp. 447 to 462.
[3] *Id.*, Par. 3.1, *Petition*, vis-à-vis Par. 7, *Answer*, pp. 12 and 79, respectively.
[4] *Id.*, Par. I.a., *Joint Stipulation of Facts* (JSF), p. 113.

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tax) for the period from January 1, 2011 to December 31, 2011.[5]

During the investigation, petitioner executed three (3) *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue (Waivers).*[6]

The *Preliminary Assessment Notice* (PAN) dated December 8, 2016 was thereafter issued by the BIR,[7] informing petitioner that after investigation, there has been found due from the latter deficiency income tax, EWT, WTC, IAET, and compromise penalty, for taxable year 2011. Petitioner received the said PAN on December 9, 2016.[8]

On December 27, 2016, respondent then issued the *Formal Letter of Demand* (FLD),[9] with attached *Assessment Notices* (FAN),[10] assessing petitioner in the aggregate amount of ₱9,764,342.60, broken down as follows:

Tax Type	**Basic Tax**	**Interest**	**Surcharge**	**Compromise**	**Total**
Income tax	₱2,921,254.54	₱2,802,803.67			₱5,724,058.21
EWT	13,718.93	13,846.72			27,565.65
WTC	81,453.53	82,212.27			163,665.80
IAET	1,857,448.03	1,502,242.90	₱464,362.01		3,824,052.94
Compromise penalty				₱25,000.00	25,000.00
				TOTAL	**₱9,764,342.60**

Petitioner received the said FLD/FAN on December 28, 2016.[11]

On January 25, 2017, petitioner filed its protest letter against the said FLD/FAN with the BIR.[12]

Respondent then issued the PCL dated May 28, 2017.[13]

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[5] Docket, Par. 4.1, *Petition*, vis-à-vis Par. 4, *Answer*, pp. 12 and 78, respectively; BIR Records, Exhibit "R-2", p. 53.
[6] BIR Records, Exhibit "P-54", p. 178; Docket, Exhibits "P-7" and "P-9", pp. 493 to 494.
[7] Docket, Exhibits "P-11", "P-12", and "P-13", pp. 495 to 500; BIR Records, Exhibits "R-9" and "R-9-1", pp. 238 to 243; Docket, Par. I.b, JSF, p. 113.
[8] *Id.*, Exhibit "P-11", p. 496.
[9] *Id.*, Exhibits "P-14", "P-15", "P-16", pp. 501 to 506; BIR Records, Exhibits "R-11", "R-12", and "R-11-1", pp. 277 to 282; Docket, Par. I.b, JSF, p. 113
[10] *Id.*, Exhibits "P-17", "P-18", "P-19", "P-20" and "P-21", pp. 507 to 511; BIR Records, Exhibits "R-10", "R-10-1", "R-10-2", "R-10-3" and "R-10-4", pp. 283 to 287; Docket, Par. I.b, JSF, p. 113.
[11] BIR Records, Exhibits "R-11", "R-12", and "R-11-1", pp. 277 to 282; Docket, Par. I.b, JSF, p. 113
[12] Docket, Exhibit "P-22", pp. 512 to 516.

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On July 4, 2017, petitioner received respondent's FNBS dated May 25, 2017,[14] giving petitioner the last opportunity to settle its tax liabilities for taxable year 2011.

On July 10, 2017, petitioner filed the instant *Petition*.[15]

Respondent filed his *Answer* on September 18, 2017,[16] interposing the following defenses, to wit:

> "The assessment (sic) issued against Petitioner are correct. Petitioner was correctly assessed deficiency taxes amounting to P9,764,342.60 including surcharge and interest;
>
> In the Deficiency Income Tax, it was disclosed during verification that some of Petitioner's income payments per returns were not accounted/reflected in the audited Finance statement. The difference amounting to P9,002,475.10 was treated as unaccounted source of cash and considered as undeclared income pursuant to Section 32 of the National Internal Revenue Code (NIRC) of 1997, as amended;
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> Verification also disclosed that Petitioner failed to withhold the appropriate withholding tax due on its rent expense amounting to P137,189.30. Said amount was disallowed as an expense pursuant to Section 34 (K) of the NIRC of 1997, as amended;
>
> Likewise, it was disclosed during verification that a reconciliation of salaries, wages and other benefits accounted per ITR/AFS as against reported per alphalist of employees resulted to a discrepancy amounting to P373,126.55 which was not subjected to Withholding Tax on Compensation. Said amount was disallowed as a deduction from gross income for Income tax purposes pursuant to Section (34) of the NIRC of 1997, as amended;
>
> Verification disclosed that petitioner's Withholding Tax claimed per Income Tax return amounting to P6,275.40 were (sic) not supported by Withholding Tax Certificates. Said amount was disallowed pursuant to Section 2.58.3 of Revenue Regulations (RR) No. 2-98, as amended;
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> Finally, verification disclosed that claimed tax credits amounting to P61,142.00 have not been supported with appropriate documentary evidence and were disallowed and

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[13] BIR Records, Exhibit "R-16", p. 303; Docket, Par. I.b, JSF, p. 113.
[14] Docket, Exhibit "P-23", p. 517; BIR Records, Exhibit "R-17", p. 304; Docket, Par. I.b, JSF, p. 113.
[15] *Id.*, pp. 10 to 32.
[16] *Id.*, pp. 78 to 83.

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assessed pursuant to Revenue Regulations No. 4-2003, as amended;

With respect to deficiency Expanded Withholding Tax amounting to P13,718.93, verification disclosed that petitioner failed to withhold/remit the corresponding withholding tax on the salaries, wages and other benefits which were disallowed from the gross income. Thus petitioner is liable to pay the deficiency Withholding Tax on Compensation pursuant to Section 79 (A) of the NIRC of 1997, as amended, and Section 2.78 of RR No. 2-98, as amended;

As to the deficiency Improperly Accumulated Earnings Tax amounting to P81,453.53, verification disclosed that Petitioner's Financial Statement reflected a retained earnings more than the paid-up capital stock at the end of taxable year 2011. The difference was considered improperly accumulated earnings subject to 10% Improperly Accumulated Earnings Tax pursuant to Section 29 of the NIRC [of] 1997, as amended in relation to RR No. 01-2001 and Revenue Memorandum Circular (RMC) No. 35-2011;

SPECIAL AND AFFIRMATIVE DEFENSES

He reiterates and re-pleads the foregoing paragraphs of this Answer as part of his Special and Affirmative Defenses;

22. The Honorable Court has no jurisdiction on the Petition. The assessment has long become final, executory and demandable. Section 228 of the National Internal Revenue Code of 1997, as amended provides:

xxx xxx xxx

Likewise, Section 3.1.4 of Revenue Regulation No. 12-99, as amended by Revenue Regulation No. 18-2013 provides:

xxx xxx xxx

10. In the instant case, Petitioner failed to submit documents in support of its protest. Petitioner allegedly filed its protest of January 25, 2017, as such, it has 60 days from said date within which to submit all relevant supporting documents. However, Petitioner miserably failed to comply with the said compulsory requirement. Thus, Petitioner failed to file a valid and binding protest with the Respondent.

Thus, the subject assessments had long become Final, Demandable and Executory. The Honorable Court has no jurisdiction over the instant case."

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On December 4, 2017, respondent transmitted the *BIR Records* for this case, consisting of 330 pages.[17]

The Pre-Trial Conference was set and held on February 6, 2018.[18] The *Pre-Trial Brief* of petitioner was filed on February 1, 2018,[19] while *Respondent's Pre-Trial Brief* was submitted on February 2, 2018.[20]

On February 28, 2018, the parties submitted their *Joint Stipulation of Facts* (JSF).[21] Subsequently, the Pre-Trial Order dated March 23, 2018 was issued,[22] deeming, *inter alia*, the termination of the Pre-Trial Conference.

As trial ensued, petitioner presented its testimonial and documentary evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Josefino J. Sarmiento,[23] its Vice President; and (2) Ms. Janet B. Leyco,[24] petitioner's Accounting Supervisor.

On January 29, 2019, petitioner filed its *Formal Offer of Evidence*.[25] However, respondent failed to file his comment thereon.[26] In the Resolution dated April 29, 2019,[27] the Court admitted petitioner's exhibits, *except* for Exhibits "P-31", "P-33", "P-38", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", and "P-53", for failure to present the originals for comparison.

For his part, respondent also presented documentary and testimonial evidence. He offered the testimonies of the

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[17] Docket, Respondent's *Compliance* dated November 29, 2017, pp. 92 to 93.
[18] Docket, *Notice of Pre-Trial Conference* dated September 20, 2017, pp. 84 to 85; Docket, Minutes of the hearing held on, and Order dated, February 6, 2018, pp. 107 and 111, respectively.
[19] *Id.*, pp. 95 to 103.
[20] *Id.*, pp. 104 to 106.
[21] *Id.*, pp. 113 to 121.
[22] *Id.*, pp. 123 to 133.
[23] *Id.*, Exhibit "P-55", pp. 292 to 302; Docket, Minutes of the hearing held on, and Order dated, January 17, 2019, pp. 433 to 434.
[24] *Id.*, Exhibit "P-56", pp. 303 to 319; Docket, Minutes of the hearing held on, and Order dated, January 17, 2019, pp. 433 to 434.
[25] *Id.*, pp. 436 to 446.
[26] *Id.*, Records Verification dated March 1, 2019 issued by the Judicial Records Division of this Court, p. 1306.
[27] *Id.*, pp. 1314 to 1316.

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following ROs, namely: (1) Ms. Rosalia Y. Mermal;[28] and (2) Ms. Rhoda P. Laguting.[29]

On November 18, 2019, respondent filed his *Formal Offer of Evidence*.[30] However, petitioner failed to file its comment thereon.[31] In the Resolution dated June 30, 2020,[32] the Court admitted all of respondent's exhibits.

Petitioner filed its *Memorandum of Facts and Law (For the Petitioner)* on October 21, 2020.[33] Respondent, on the other hand, failed to file his memorandum.[34]

On November 4, 2020, this case was submitted for decision.[35]

THE ISSUE

As stipulated, the sole issue for the Court's resolution is as follows:

> "WHETHER OR NOT THE PETITIONER IS LIABLE TO PAY THE QUESTIONED DEFICIENCY INCOME TAX, EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION AND IMPROPERLY ACCUMULATED EARNINGS TAX."[36]

Petitioner's Arguments

Petitioner argues that the PCL and FNBS are void for failure to provide sufficient details to afford the taxpayer the opportunity to intelligently answer the same and that the assessments for deficiency income tax, EWT, WTC, and IAET, have already prescribed.

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[28] *Id.*, Exhibit "R-14", pp. 1323 to 1327; Docket, Order dated May 28, 2019, p. 1361.
[29] *Id.*, Exhibit "R-19", pp. 1365 to 1369; Docket, Minutes of the hearing held on, and Order dated, August 20, 2019, pp. 1375 to 1379.
[30] Docket, pp. 1394 to 1400.
[31] *Id.*, Records Verification dated December 19, 2019 issued by the Judicial Records Division of this Court, p. 1401.
[32] *Id.*, pp. 1406 to 1407.
[33] *Id.*, pp. 1450 to 1489.
[34] *Id.*, Records Verification dated October 9, 2019 issued by the Judicial Records Division of this Court, p. 1408.
[35] *Id.*, Resolution dated November 4, 2020, p. 1492.
[36] *Id.*, Par. II, JSF, p. 113.

Petitioner insists that respondent's findings or tax assessments had no legal and/or factual bases.

Respondent's Arguments

Respondent argues that the assessment issued against the petitioner is correct based on the verifications made during examination.

Respondent insists that this Court has no jurisdiction on the *Petition*, as the assessment has long become final, executory and demandable.

RULING OF THE COURT

The instant *Petition for Review* is meritorious.

For an orderly disposition of the instant case, this Court resolves to raise and rule on the following related issue, which is necessary before addressing the issue raised by the parties, to wit:

> **"Whether or not the subject tax assessments are valid."**

Legal basis and judicial precedents allowing the resolution of an issue raised by this Court, motu proprio.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) reads as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **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 added)*

Based on the foregoing provision, this Court is not bound by the issues specifically raised by the parties, but may also

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rule upon related issues necessary to achieve an orderly disposition of the case.[37] Such power of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[38] *viz.*:

> **"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA 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 text of the provision reads:
>
> > **SECTION 1.** ***Rendition of judgment.*** **– xxx**
> >
> > **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.**
>
> **The above section is clearly worded.** xxx." *(Emphases and underscoring added)*

Furthermore, in the very recent case of *Commissioner of Internal Revenue vs. Yumex Philippines Corporation,*[39] the Supreme Court, once again, sustained the authority of this Court to raise and resolve an issue not expressly propounded in a petition for review, *viz.*:

> "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 13 of the RRCTA provides that '[i]n 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. xxx." *(Emphasis added)*

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[37] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[38] G.R. No. 183408, July 12, 2017.
[39] G.R. No. 222476, May 5, 2021.

The resolution of this Court-initiated issue is crucial, since the argument of respondent that the deficiency tax assessments have already become final, executory, and demandable, should be premised on the validity of the assessments themselves.[40]

Thus, We see no legal obstacle to resolve the issue of whether the subject tax assessments are valid.

The absence of due dates in the FAN have rendered the subject tax assessments void.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*,[41] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "**An assessment contains not only a computation of tax liabilities, but also a demand for payment <u>within a prescribed period</u>.** It also signals the same time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx.
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> xxx an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment." *(Emphases added)*

Furthermore, in *Commissioner of Internal Revenue vs. Fitness by Design, Inc.* (the "*Fitness by Design* case"),[42] the Supreme Court again emphasized the importance of the issuance of a valid formal assessment, *i.e.*, that it must be a demand for payment of the taxes described, within a specific

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[40] *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.
[41] G.R. No. 128315, June 29, 1999.
[42] G.R. No. 215957, November 9, 2016.

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period, and that the amount of tax liability for which the taxpayer is accountable must be definite, *viz.*:

> "...**the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**
>
> xxx xxx xxx
>
> **The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provided for a "specific definition or form of an assessment." However, the National Internal Revenue Code 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 prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**
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> xxx xxx xxx
>
> A final assessment is 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 the 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 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 tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation 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)

> **<u>Second</u>, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. **The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**

>> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.

> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. **The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**

> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. **Tax collection should be premised on a valid assessment**, which would allow the taxpayer to present his or her case and produce evidence for substantiation." *(Emphases and underscoring added)*

Based on the foregoing doctrinal pronouncements, a tax assessment must not only contain a computation of tax liabilities, but must also include a demand for the settlement of a tax liability that is definite and fixed. The absence of the latter information renders the assessment invalid.

In *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*,[43] the Supreme Court applies again the doctrine laid down in the the *Fitness by Design* case, to wit:

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[43] G.R. No. 240729, August 24, 2020.

> "...even granting that the PAN and the FAN were properly and duly served upon and received by respondent, **the Court affirms the CTA *En Banc*'s ruling that the FAN and the assessment notices attached to it are still void for failure to demand payment of the taxes due within a specific period.**
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> As held in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*:
>
>> A final assessment is 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 the 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.'*** (Italics supplied.)
>
> In this case, the CTA *En Banc* observed that the last paragraph of the FAN indicates that the CIR would still issue a formal letter of demand and assessment notice should respondent fail to respond to the FAN within the 15-day period given to it to present in writing its side of the case. However, the CTA *En Banc* found nothing in the record that reveals that the CIR had issued a final demand containing a specific or definite period of payment following the expiration of the 15-day period given to respondent to respondent to the FAN. **Further, the CTA *En Banc* observed that the assessment notices attached to the FAN also did not prescribe a definite period for respondent to pay the alleged deficiency taxes.**
>
> Again, the matter of whether the subject assessments contained a definite period within which to pay the assessed taxes is a question of fact which this Court will not entertain in the present appeal under Rule 45. There being no showing of gross error or abuse on the part of the CTA *En Banc* in its findings of fact, **the Court accords respect to the latter's finding that the FAN dated July 20, 2010 and the assessment notices attached to it did not contain a definite period within which to pay the assessed taxes. As such, even assuming that the assessments were duly served on and received by respondent, <u>they are still void and without any legal consequence</u>.**" *(Emphases and underscoring added)*

In this case, in the FLD dated December 27, 2016 (Part II),[44] states, in part, the following:

[44] Docket, Exhibit "P-16", p. 506; BIR Records, Exhibit "R-11-1", p. 277.

> "If you are amenable, **please pay the above suggested compromise amount <u>within the time shown in the accompanying assessment notice</u>** using the eBIR Payment Form (0605), through the duly authorized agent bank in which your company is enrolled and where it pays its internal revenue taxes. xxx." *(Emphases and underscoring added)*

However, a perusal of the accompanying FAN[45] shows that the spaces for the due dates were respectively and conspicuously left blank, similar to the *Fitness by Design* case, to wit:

> "PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ______________ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, RR # 7, QUEZON CITY."

Considering that the said FAN did not specifically indicate the due dates when the subject deficiency taxes must be paid, no proper demand thereof within a specific period was validly made.

Thus, given that respondent failed to state the respective due dates for the payment of the subject tax assessments in the FAN, petitioner's obligation for such deficiency taxes may not be deemed to have legally accrued. Simply put, petitioner may not be adjudged to be held liable for deficiency taxes which in the first place are not legally demandable.

With the foregoing findings of the Court, the subject tax assessments hardly fall under the jurisprudential definition of a tax assessment under the National Internal Revenue Code, considering that the FLD/FAN "*does not contain a definite due date for payment by the taxpayer*", which information in a final assessment notice should supposedly be contained therein.

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[45] Docket, Exhibits "P-17", "P-18", "P-19", "P-20" and "P-21", pp. 507 to 511; BIR Records, Exhibits "R-10", "R-10-1", "R-10-2", "R-10-3" and "R-10-4", pp. 283 to 287.

Correspondingly, the inevitable conclusion is that the subject tax assessments are void, and thus, bear no valid fruit.[46] Such being the case, the said assessments could not have attained finality, and the issuance of the PCL dated May 28, 2017, and FNBS dated May 25, 2017, have no legal effect whatsoever.

In view of the finding that the subject tax assessments are invalid, it becomes unnecessary for this Court to address the issue and other matters raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent's deficiency assessments for income tax, EWT, WTC and IAET, in the aggregate amount of ₱9,764,342.60, inclusive of increments and compromise penalty, for taxable year 2011, and the *Preliminary Collection Letter* dated May 28, 2017, as well as the *Final Notice Before Seizure* dated May 25, 2017, all issued against petitioner, are declared **VOID**, and thus, are **CANCELLED** and **SET ASIDE.**

Respondent, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner arising from the FLD/FAN, PCL, and FNBS.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[46] *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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