REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2893** (CTA Case No. 10299)
	Present:
-versus-	**RINGPIS-LIBAN,** PJ **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and, **ANGELES,** *JJ.*
GRAND UNION SUPERMARKET, INC., *Respondent.*	Promulgated: MAR 12 2026 11:00 am

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DECISION

REYES-FAJARDO, *J.*:

This Petition for Review[1] dated April 11, 2024, filed by the Commissioner of Internal Revenue, impugns the Decision[2] dated October 25, 2023 and Resolution[3] dated February 23, 2024, handed down by the Court of Tax Appeals - Special Third Division (CTA in Division) in CTA Case No. 10299. The impugned Decision and Resolution invalidated the undated Final Decision on Disputed Assessment issued against Grand Union Supermarket, Inc. for Fiscal Year ending August 31, 2010 (FY 2010), in the total amount of ₱264,670,837.24.

1 *Rollo,* pp. 7-24.
2 *Id.* at pp. 31-47.
3 *Id.* at pp. 49-50.

The facts follow.

Petitioner is the duly appointed Commissioner of the BIR ("CIR"), the government agency tasked, among others, to collect all national internal revenue taxes. As the CIR, respondent has the power to decide disputed assessments and other matters arising under the *Tax Code* or other laws administered by the BIR. All court processes and pleadings must be served on respondent's counsels at the Litigation Division, Room 703, BIR Bldg., Diliman, Quezon City.

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at Amang Rodriguez Avenue, Barangay Dela Paz, Pasig City. It is registered with the Bureau of Internal Revenue ("BIR") as a taxpayer in accordance with *Section 236 of the National Internal Revenue Code of 1997, as amended ("Tax Code")*, with Taxpayer Identification Number 000-123-826. It owns and operates the supermarket chain known as "South Supermarket" in various locations nationwide.

On September 28, 2011, respondent received Letter of Authority (LOA) No. LOA-116-2011-00000108 dated September 23, 2011 authorizing Revenue Officers Gilquin Tolentino (**"RO Tolentino"**), Ruby Anne Oradia (**"RO Oradia"**), Amelia Molinos (**"RO Molinos"**), Aurelio Zamora (**"RO Zamora"**), Jan Andre Abellera (**"RO Abellera"**), and Johnro Galicia (**"RO Galicia"**) as headed by Group Supervisor Edgar Espiritu (**"GS Espiritu"**), to conduct the examination of all of respondent's internal revenue taxes for the period from September 1, 2009 to August 31, 2010.

On October 22, 2013, respondent executed a Waiver (**"First Waiver"**), waiving the defense of prescription under the statute of limitations and consenting to the assessment and/or collection of tax/taxes for the taxable year ending August 31, 2010 which may be found due after the investigation/reinvestigation/re-evaluation until June 30, 2014. The First Waiver was accepted by Alfredo V. Misajon, OIC-CIR, Large Taxpayers Service, on October 29, 2013.

On April 8, 2014, respondent executed another Waiver (**"Second Waiver"**), extending its waiver of the defense of prescription and consenting to the assessment and/or collection of the tax/taxes until December 31, 2014. The Second Waiver was accepted by Alfredo V. Misajon, OIC-CIR, Large Taxpayers Service on April 14, 2014.

Before the expiration of the Second Waiver, respondent executed another Waiver **("Third Waiver")**, extending its waiver of the defense of prescription, and consenting to the assessment and/or collection of the tax/taxes until June 30, 2015. The Third Waiver was accepted by Nestor S. Velroso, OIC-CIR, Large Taxpayers Service on October 21, 2014.

On March 9, 2015, ROs Abellera, Zamora, Galicia, Orada and Group Supervisor Gilquin B. Tolentino **("GS Tolentino")** submitted a Memorandum to Nestor S. Valeroso, OIC Assistant Commissioner, recommending that a Preliminary Assessment Notice ("PAN") be issued to respondent for deficiency income tax (IT), value-added tax ("VAT"), expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), improperly accumulated earnings tax ("IAET"), documentary stamp tax ("DST"), and corresponding surcharges, interest, and penalties, for FY 2010, in the total amount of ₱188,640,717.05.

On March 20, 2015, respondent received an undated Preliminary Assessment Notice (PAN) with attached Details of Discrepancies, containing the projected deficiency internal revenue tax assessments with corresponding surcharges, interest, and penalties for FY 2010, in the total amount of ₱188,640,717.05, the particulars of which are as follows:

Tax Type	Basic Tax	Additions to Tax		Compromise Penalty	Other Increments	Total
		Surcharge	Interest			
IT	₱33,204,139.84	-	₱30,165,733.62	₱50,000.00	-	**₱63,419,873.47**
VAT	9,627,300.76	-	9,173,630.70	50,000.00	-	**18,850,931.46**
EWT	10,445,008.98	-	10,038,655.21	50,000.00	-	**20,533,664.19**
WTC	4,534,043.68	-	4,357,650.75	25,000.00	-	**8,916,694.42**
IAET	35,187,882.20	₱8,796,970.55	26,781,352.53	50,000.00	-	**70,816,205.28**
DST	2,483,987.15	620,996.79	2,394,155.29	25,000.00	₱579,209.01	**6,103,348.23**
					TOTAL	**₱188,640,717.05**

On April 1, 2015, respondent filed its Reply to the PAN. In the meantime, on June 8, 2015, respondent executed another Waiver **("Fourth Waiver")**, extending its waiver of the defense of prescription and consenting to the assessment and/or collection of the tax/taxes until December 31, 2015. The Fourth Waiver was accepted by Nestor S. Velroso, OIC-CIR, Large Taxpayers Service on June 11, 2015.

On May 26, 2015, ROs Abellera, Zamora, Galicia, Orada, and GS Tolentino submitted a Memorandum to Nestor S. Valeroso, OIC Assistant Commissioner recommending that a Formal Letter of Demand ("FLD") be issued to respondent for deficiency IT, VAT, EWT, WTC, IAET, DST, and the corresponding surcharges, interest, and penalties, for FY 2010, in the total amount of ₱188,640,717.05.

On June 15, 2015, respondent received an undated Formal Letter of Demand with attached Details of Discrepancies and Assessment Notices (FLD/FAN), assessing it for deficiency IT, VAT, EWT, WTC, IAET, DST, and the corresponding surcharges, interest, and penalties, in the aggregate amount of ₱188,640,717.05. The deficiency assessment in the FLD/FAN merely reiterated the findings in the PAN.

On July 14, 2015, respondent filed its Protest to the FLD/FAN.

On June 2, 2020, respondent received an undated Final Decision on Disputed Assessment ("FDDA"), with attached Assessment Notices, reiterating the deficiency IT, VAT, EWT, WTC, IAET, and DST assessments, with adjusted computation on increments, in the total sum of ₱264,670,837.24, broken down as follows:

Tax Type	Basic Tax	Additions to Tax		Compromise Penalty	Other Increments	Total
		Surcharge	Interest			
IT	₱33,204,139.84	-	₱56,605,325.96	P50,000.00	-	**₱89,859,465.81**
VAT	9,627,300.76	-	16,839,599.72	50,000.00	-	**26,516,900.48**
EWT	10,445,008.98	-	18,355,744.00	50,000.00	-	**28,850,752.98**
WTC	4,534,043.68	-	7,967,991.72	25,000.00	-	**12,527,035.39**
IAET	35,187,882.20	₱8,796,970.55	54,800,547.28	50,000.00	-	**98,835,400.03**
DST	2,483,987.15	620,996.79	4,372,089.60	25,000.00	₱579,209.01	**8,081,282.55**
					TOTAL	**₱264,670,837.24**

On July 2, 2020, respondent filed a Petition for Review before the CTA in Division, docketed as CTA Case No. 10299.

By Decision[4] dated October 25, 2023, it was found that the corresponding due dates in the FAN for IT, VAT, EWT, WTC, IAET, and DST covering FY 2010 remained unaccomplished. With the lack thereof, the 2010 deficiency internal revenue tax assessments issued by petitioner against respondent is null, and produced no legal effect. Precisely, CTA Case No. 10299 was disposed as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review filed by Grand Union Supermarket, Inc. is hereby **GRANTED**. Accordingly, the undated Final Decision on Disputed Assessment issued by [petitioner] against [respondent] for the FY ending 31 August 2010 in the total amount of P264,670,837.24 are hereby declared **VOID AND CANCELLED**.
>
> **SO ORDERED.**

Petitioner moved,[5] but failed[6] to overturn the impugned Decision; hence, the present recourse.

Petitioner maintains that the issue regarding the lack of due dates in the assessment notices in the FLD/FAN was advanced by respondent only for the first time on appeal; thus, the CTA in Division is precluded from resolving the same.

Granting the CTA in Division may address the issue of lack of due dates on the assessment notices, petitioner nevertheless asserts that said deficiency was rectified because the assessment notices for the FDDA contain due dates, *i.e.*, June 15, 2020, for payment of taxes.

All in all, petitioner declares that respondent should be held accountable for the deficiency internal revenue tax assessments covering FY 2010.

On the other hand,[7] respondent ripostes that the CTA in Division may rule on the issue of lack of due dates in the assessment notices, under authority from Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA).

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4 *Supra* note 2.

5 Respondent (now petitioner)'s Motion for Reconsideration [re: Decision dated 25 October 2023]. Docket (CTA Case No. 10299), pp. 1219-1233.

6 *Supra* note 3.

7 Respondent's Comment/Opposition to Petition for Review dated 11 April 2024. *Rollo*, pp. 52-71.

Respondent, too, echoes the CTA in Division's conclusion that the deficiency internal revenue tax assessments issued against it for FY 2010 is void, for lack of due dates in the assessment notices.

RULING

We deny the Petition.

Section 6(A) of the 1997 National Internal Revenue Code, as amended, commands that the tax or deficiency tax so assessed shall be paid upon notice and demand from petitioner or his duly authorized representative.[8] In this regard, an assessment is described as a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[9] Before an internal revenue tax liability under a formal assessment may even be considered demandable, it should first contain due date for its payment. Jurisprudence exemplified the deleterious consequence of the BIR's failure to state said due date therein.

Specifically, in *Commissioner of Internal Revenue v. Fitness by Design, Inc. (FDI)*[10] and *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation (FGPC),*[11] the Supreme Court invalidated the respective internal revenue tax assessments, because of lack of due dates for their corresponding payment in their FAN, *inter alia.*

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8 SEC. 6. *Power of the Commissioner to Make and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

(A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

... (Boldfacing ours)

9 *Commissioner of Internal Revenue v. Megabucks Merchandising Corp.,* CTA EB No. 1974, February 12, 2020, citing *Adamson v. Court of Appeals,* G.R. No. 120935, May 21, 2009.

10 G.R. No. 215957, November 9, 2016.

11 G.R. No. 214933, February 15, 2022.

Here, the BIR's FAN for IT,[12] VAT,[13] EWT,[14] WTC,[15] IAET,[16] and DST,[17] all for FY 2010, do not have corresponding due dates for their payment. Following *FDI* and *FGPC,* the lack thereof would lead to the nullity of the internal revenue tax assessments for FY 2010 issued against respondent.

Petitioner maintains that the immediately preceding matter may not be addressed, because it was raised only for the first time on appeal before the CTA in Division.

We disagree.

Section 1, Rule 14, of the RRCTA, reads:

> **RULE 14**
> **JUDGMENT, ITS ENTRY AND EXECUTION**
>
> **SECTION 1.** *Rendition of judgment.* - ...
>
> 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 *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue (PSMI),*[18] the Supreme Court explained "... 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."

The two (2) conditions spelled out by *PSMI* were met.

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12 Exhibit "P-8-B." Docket (CTA Case No. 10299), p. 477.
13 Exhibit "P-8-C." *Id.* at p. 478.
14 Exhibit "P-8-D." *Id.* at p. 479.
15 Exhibit "P-8-E." *Id.* at p. 480.
16 Exhibit "P-8-F." *Id.* at p. 481.
17 Exhibit "P-8-G." *Id.* at p. 482.
18 G.R. No. 249153, September 12, 2022.

First. The primordial issue to be addressed by the CTA in Division is the propriety of petitioner's deficiency internal revenue tax assessments for FY 2010, issued against respondent.[19] Respondent's argument regarding the absence of due dates in the assessment notices is related to said issue, because it is one of the requirements for the validity of such tax assessment.

Second. The CTA in Division's resolution of respondent's argument on the lack of due dates in the assessment notices, was moored on facts based on existing record, *i.e.,* petitioner's[20] and respondent's[21] evidence.

Ergo, the CTA in Division correctly ruled on the matter of lack of due dates in the assessment notices, despite being put forward by respondent for the first time on appeal.

Petitioner nonetheless asserts that the lack of due dates in the FAN was cured, because the assessment notices on the FDDA contain due dates,[22] *i.e.,* June 15, 2020, for payment of taxes.

We differ.

In *Commissioner of Internal Revenue v. Telstar Manufacturing Corporation (TMC),* [23] the Supreme Court was confronted with the question of whether the infirmity found in the FLD/FAN could be remedied by fixing such infirmity in the FDDA. *TMC* answered—

> A subsequent demand contained in the Final Decision on Disputed Assessment does not cure the defective Formal Letter of Demand/Final Assessment Notice. The law, rules and regulations require the demand for payment of assessed tax to be made in the Formal Letter of Demand/Final Assessment Notice and not in the Final Decision on Disputed Assessment. **The Formal Letter of Demand/Final Assessment Notice and Final Decision on Disputed Assessment have divergent functions. The first one calls for the payment of the taxpayer's deficiency tax while the second one informs the taxpayer of respondent's final decision on**

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19 See Statement of Issue, Pre-Trial Order dated April 8, 2022. Docket (CTA Case No. 10299), p. 790.

20 Exhibits "R-12," "R-12-A," "R-12-B," "R-12-C," "R-12-D," and "R-12-E." BIR Records, pp. 562-567.

21 *Supra* notes 12 to 17.

22 Docket (CTA Case No. 10299), pp. 432-438.

23 G.R. Nos. 249239 and 250286, February 10, 2025. Boldfacing ours.

> **any protest filed. Surely, a subsequent demand contained in the Final Decision on Disputed Assessment does not cure the lack of any demand in the Formal Letter of Demand/Final Assessment Notice.**

TMC is straightforward in that the BIR's shortcoming in the FLD/FAN may not be eased by remedying said flaw in the FDDA, because the FLD/FAN and the FDDA have their own and different functions.

The FLD/FAN here is faulty because it lacks due dates for the corresponding payment of the taxes found therein. Following *TMC,* the subsequent statement of due dates in the assessment notices in the FDDA does not cure the defect found in the FLD/FAN.

ACCORDINGLY, the Petition for Review dated April 11, 2024, filed by the Commissioner of Internal Revenue in CTA EB No. 2893 is **DENIED,** for lack of merit. The Decision dated October 25, 2023 and Resolution dated February 23, 2024, handed down by the Court of Tax Appeals - Special Third Division in CTA Case No. 10299, are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice