REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SATURN HOLDINGS, INC.,
Petitioner,

CTA Case No. 9085

Members:

- versus -

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 03 2017 3:51pm

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **Motion for Reconsideration (Re: Decision dated 18 August 2017)** filed on September 7, 2017, with petitioner's **Comment (to the Respondent's Motion for Reconsideration)** filed on October 2, 2017.

Records disclose that respondent received the assailed Decision on August 23, 2017. Respondent filed his Motion for Reconsideration on September 7, 2017, which is within the fifteen (15)-day reglementary period as provided under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).[1]

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[1] Section 1, Rule 15 of RRCTA –
Section 1. – Who may and when to file motion. – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

In his Motion, respondent prays that: (i) the assailed Decision be reversed and set aside; (ii) the Final Decision on Disputed Assessment (FDDA), Formal Letter of Demand (FLD) and Assessment Notice No. ELTAD-II-DS-09-0017 (FAN) be upheld; and, (iii) petitioner be ordered to pay 25% surcharge of ₱11,084,231.00, 20% deficiency interest from January 6, 2009 to December 29, 2011 of ₱26,432,094.96, delinquency interest from December 29, 2011 to November 30, 2014 of ₱21,934,202.63, and compromise penalty of ₱50,000.00.

Respondent invokes the following grounds in support of his Motion:

1) The FAN and FLD sufficiently informed petitioner of its deficiency tax liabilities and specifically demanded payment thereof; and,

2) Since petitioner failed to pay the Documentary Stamp Tax (DST) within the period prescribed by law, it is liable for surcharge, interest and compromise penalty.

Respondent argues that it is clear from the FLD that it is demanding payment of the assessed deficiency tax within thirty (30) days from receipt of such FLD and FAN; otherwise, petitioner may opt to protest the assessment within the same period. He also insists that the specific period for payment becomes immaterial considering that the deficiency surcharge, interests and penalty consists only of legal increments to the basic tax paid by petitioner. Respondent also avers that the FDDA, being respondent's final decision on petitioner's protest, demanded the payment of the deficiency surcharge, interests and penalty immediately upon receipt thereof. He further posits that the imposition of the deficiency surcharge, interests and penalty is supported by specific provisions of the National Internal Revenue Code of 1997, as amended, and pertinent Bureau of Internal Revenue issuances.

In its Comment, citing ***Commissioner of Internal Revenue vs. Fitness by Design***,[2] petitioner insists on the importance of stating the due date in the FAN as an assessment must not only indicate a computation of tax liabilities but must also include a demand for payment within a period prescribed. Petitioner also argues that since the FAN is void *ab initio* for failing to demand payment of the deficiency surcharge, interests and penalty within a specified period, it does not

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

bear any fruit. Hence, it cannot serve as a valid basis for respondent to collect the deficiency surcharge, interests and penalty.

THE COURT'S RULING

The Court notes that the arguments presented by respondents in the present Motion for Reconsideration have been duly considered and sufficiently addressed in the assailed Decision. Nonetheless, if only to reiterate and expound the ruling of this Court in the assailed Decision, the Court shall address respondent's arguments relative to the absence of a specific due date for payment in the FAN.

It is undisputed that the FLD and FAN failed to demand payment of the surcharge, interests and compromise penalty mentioned therein within a specific period. The FLD states that petitioner is requested to pay its aforesaid deficiency surcharge and interest within the time shown in the enclosed FAN but the due date in the enclosed FAN was conspicuously left blank.

As elucidated in the assailed Decision, the Supreme Court, in ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[3] emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period. The doctrine laid down in ***Pascor*** was applied by the Court of Tax Appeals (CTA) in ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.***[4], *viz.*:

> "In *Commissioner of Internal Revenue v. Pascor Realty and Development Corp.*, the Supreme Court categorically pronounced that **'An assessment contains not only a computation of tax liabilities, but <u>also a demand for payment within a prescribed period</u>**. It also signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor.'
>
> *Pascor* also provides that an assessment informs the taxpayer that he or she has tax liabilities. But not all documents

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

[4] CTA EB No. 970, July 14, 2014; penned by Associate Justice Juanito C. Castañeda, Jr. and concurred by Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla, Associate Justice Amelia R. Cotangco-Manalastas and Associate Justice Ma. Belen M. Ringpis-Liban; with Concurring Opinion by Presiding Justice Roman G. Del Rosario.

coming from the BIR containing a computation of the tax liability can be deemed assessments. To start with, an assessment must be sent to and received by a taxpayer, and **must demand payment of taxes described therein within a specific period**. In other words, Assessment is a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof. It fixes and determines the tax liability of a taxpayer.

In the case at bar, the Final Assessment Notice (FAN) contained computations of the following alleged deficiency taxes of petitioner for the year 1995:

xxx xxx xxx

Interestingly, the last paragraph of the FAN provides:

> 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 supplied)

As contained in Exhibits "C", "D", and "E", noteworthy is that in each of Audit Result/Assessment Notices (AR/AN) provided in the FAN, there is no indicia of any due dates. This, in effect, simply negates petitioner's demand for payment as held in *Pascor*. Thus, as what respondent suggests, such FAN indeed does not amount to a formal demand but a mere request for payment.

In other words, as shown in petitioner's FAN, the due date in the assessment notices were noticeably left blank. To be sure, the Court cannot subscribe on petitioner's argument that it already attained finality given that the petitioner still needs a reckoning date before such notice becomes final and executory. As such, this assessment notice cannot withstand the test of validity. Hence, the Court in Division correctly struck down the assessment as void:

> Clear as a day that a definite period or a date certain within which a taxpayer must pay the assessed tax liabilities is an important pre requisite to a valid formal assessment notice and subsequent tax collection, as reiterated by the High Court when it set aside a formal assessment notice that did not contain a definite period for payment of the tax assessed, viz.:
>
> xxx xxx xxx
>
> The date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest begin to accrue against the taxpayer as well as the measures or remedies which are still available upon the taxpayer under the rules. . . .

> xxx xxx xxx
>
> However, the enclosed Audit Result/Assessment Notices referred to in the subject FAN reveals that the due date are left blank or unaccomplished. Thus, the subject FAN cannot be deemed a valid formal assessment notice absent a *specific* date or period *within* which the alleged tax liabilities must be settled or *paid* by petitioner. (Emphasis and underlining supplied)

For lack of a definite and unequivocal demand for payment of a certain date and for want of due process, the assessment is perforce void. Moreover, **neither can this Court subscribe to the argument that the FAN that contains a statement that the interest and total amount due will be adjusted if paid prior or beyond April 15, 2004 be regarded as the actual due date**. On this score, we further sustain the findings of the Court in Division, thus:

> While it may be true that the second paragraph on the second page of the FAN contains a date, the same is hardly a definite and unequivocal demand for payment on a date certain. Firstly, the amount indicated therein is not fixed as it is still subject to adjustments depending on when the actual payment of the tax liabilities is made. The uncertainty in the amount due and the date of payment is a far cry from the basic requirement, viz., a definite demand to immediately pay the assessed tax liabilities within a time certain . . . .
>
> Secondly, **the date of April 15, 2004 is obviously not the deadline for payment of the alleged tax liabilities as the FAN itself refers to the enclosed assessment notices for the due date. But as earlier pointed out the said documents bear no date or the boxes for the due date were left blank and unaccomplished**.
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> Thirdly, **the subject FAN did not make a clear and categorical demand for payment of the alleged tax liabilities for it contains merely a request for payment**.
>
> In sum, the FAN failed to comply with the requirements of a valid assessment notice and create confusion on the part of the taxpayer. In one case, the Supreme Court admonished respondent for using vague language in an assessment notice. It was held that words must be carefully chosen to avoid any confusion that could adversely affect the rights and interest of the taxpayer. Respondent must therefore indicate in a clear and unequivocal language whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. This is certainly absent in the subject assessment notices. (Underlining supplied)" (Additional boldfacing supplied)

In ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.,***[5] the Supreme Court affirmed the foregoing pronouncement of the CTA in this wise:

> "Second, **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 substantative 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." (Boldfacing supplied)

Indubitably, the requirement is for the FAN to contain a definite and actual demand to pay. Absent thereof shall render the FAN void. In the present case, the fact that the FDDA states that the deficiency surcharge, interests and compromise penalty should be paid immediately upon petitioner's receipt thereof is immaterial since the intrinsically void FAN, which is the subject of the FDDA, cannot bear any fruit.

To reiterate, the fatally infirmed FAN and consequently, the FLD and FDDA which demand the payment of deficiency surcharge, interests and compromise penalty, in the total amount of

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

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₱59,500,528.59, as assessed in the void FAN, must be cancelled and set aside.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated 18 August 2017)** filed on September 7, 2017 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice