REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MEDICAL CENTER TRADING CORPORATION, Petitioner,	**CTA CASE NO. 9412**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 2 2 2021 1:34 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is respondent's **Motion for Reconsideration (Re: Decision promulgated 23 September 2020)** filed through registered mail on October 16, 2020 and received by the Court on October 26, 2020, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration dated October 13, 2020)** filed on December 23, 2020.

On September 23, 2020, the Court promulgated a Decision cancelling respondent's deficiency income tax, value-added tax (VAT), withholding tax – expanded (EWT), withholding tax – compensation (WTC), and documentary stamp tax (DST) assessments issued against petitioner, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject assessments issued against petitioner under the FDDA for taxable year ended December 31, 2009 for deficiency income tax, VAT, EWT, WTC, and DST, inclusive of increments and compromise penalties in the aggregate amount of ₱347,498,651.37 are **CANCELLED and SET ASIDE**.
>
> **SO ORDERED.**"

In his Motion, respondent assails the above Decision by raising the following grounds as his arguments, *viz.*:

I. The Honorable Court erred in ruling that the assessments were issued beyond the period to assess.

II. The Honorable Court erred in ruling that the absence of an eLOA in the present case invalidates the subject tax assessments.

III. The Honorable Court erred in ruling that the assessments are void due to the alleged absence of definite tax liability and due date in the FLD and FAN.

With regard to his first ground, respondent argues that in the present case, no DST return was filed by petitioner for taxable year 2009. It was also found that there is a substantial difference from the reported amounts in the returns and the findings after audit as to the other types of tax assessments, which can be interpreted that petitioner's filed returns are false or fraudulent with the intent to evade payment of the proper taxes. As such, respondent maintains that his deficiency tax assessments against petitioner have not yet prescribed since they were issued pursuant to Section 222 of the National Internal Revenue Code (NIRC) of 1997, as amended, which gives him a period of ten (10) years after the discovery of the falsity, fraud or omission within which to assess petitioner.

Respondent further claims that assuming, *arguendo*, that the returns are not false or fraudulent, the Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code ("waivers" hereinafter for brevity), were faithfully executed by the parties thereby validly extending the period of assessment. Respondent likewise avers that it would be useless to indicate the amount due in the waiver since during the conduct of audit investigation, the result of the deficiency assessment would still be variable depending on the documents which will still be submitted by petitioner. He continues that even Revenue Memorandum Order (RMO) No. 20-90[1] and Revenue Memorandum Circular (RMC) No. 06-05[2], which the Court cited in the Decision do not compel revenue officers to include the exact amount of the tax due in the waivers. Nonetheless, respondent reiterates that considering four (4) waivers were executed in the present case, petitioner is estopped from questioning the validity of the said waivers in accordance with Article 1431 of the New Civil Code and the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. [Formerly Nextel Communications Phils., Inc.]*[3] *("Next Mobile case" hereafter.)*

[1] "SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code", dated April 4, 1990.
[2] "SUBJECT: Salient Features of Supreme Court Decision on Waiver of the Statute of Limitations under the Tax Code", dated February 2, 2005.
[3] G.R. No. 212825, December 07, 2015.

As to the second ground, respondent asserts that Section 13 of the NIRC of 1997, as amended, merely provides that the examination of by a revenue officer of a taxpayer's books of accounts must be performed **"pursuant to"** a Letter of Authority (LOA). He explains that in the present case a valid LOA was issued by then issued by then Commissioner of Internal Revenue (CIR) Joel L. Tan-Torres authorizing the examination of petitioner's books of accounts. Thus, respondent insists that the deficiency tax assessments were conducted in accordance with the NIRC and the absence of an electronic LOA (eLOA) does not invalidate the assessment.

Lastly, as regards the third ground, respondent claims that under Section 228 of the NIRC of 1997, as amended, the only mandatory requirements in order for that an assessment to be valid are (i) the taxpayer must be informed of the finding of respondent, (ii) the notice must be in writing, and (iii) such notice must contain the facts and law on which the assessment is made. As such, respondent assails the Court's reliance in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[4] *(Fitness by Design case hereafter),* arguing that by requiring that a definite tax liability and due date must be indicated in the Final Assessment Notice (FAN) is akin to a judicial legislation which is frowned upon.

On December 23, 2020, petitioner filed its Comment stating that the *Formal Letter of Demand* (FLD) and *Final Decision on Disputed Assessment* (FDDA) were issued by respondent beyond the prescriptive period allowed by law; that respondent's allegation of fraud was a mere afterthought; that the subject waivers did not validly extended the period to assess; that a wavier must specify the kind and amount of tax which is specifically required in its prescribed form; and that respondent's assessments were conducted without a valid eLOA in violation of RMO No. 69-10[5].

After consideration, the Court resolves to DENY respondent's Motion for reconsideration. The issues raised by petitioner were already comprehensively passed upon and resolved in the questioned Decision. However, we find the conclusions in the said Decision worthy of reiteration and emphasis in the following disquisitions.

Whether or not the assessments were issued beyond the period to assess

The Court reiterates its findings that the subject waivers are void.

In the assailed Decision, the Court ruled as follows:

[4] G.R. No. 215947, November 9, 2016.

[5] "SUBJECT: Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment", dated August 11, 2010.

"Based on the foregoing jurisprudential pronouncements, it is required, *inter alia*, that a *Waiver*, to be valid and would have the effect of extending the three-year prescriptive period to assess, **must indicate the nature and the amount of the tax due.** According to the High court, these details are material as there can be no true and valid agreement between the tax and respondent absent these information.

In this case, a cursory reading of the subject *Waivers* would reveal that they do not indicate the kind and exact amount of the taxes to be assessed or collected.[6] Thus, on the basis of the aforequoted jurisprudence, the said *Waivers* are invalid. Correspondingly, the same did not effectively extend the three-year prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity.

Finding the invalidity of the subject *Waivers*, this Court shall proceed to determine the pertinent three-year prescriptive period to assess the subject deficiency taxes under Section 203 of the NIRC of 1997.

To reiterate, under Section 203 of the NIRC of 1997, the three-year prescriptive period commences from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.

Such being the case, We shall primarily refer to the specific provisions of the law prescribing the period within which to file the pertinent tax returns vis-à-vis the date of filing of the said tax returns by petitioner, to adjudge the commencement and end of the three-year prescriptive period under Section 203 of the NIRC of 1997 for the instant case.

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Considering that petitioner received the subject FLD and FANs only on August 4, 2014,[7] the same were received beyond the respective three-year prescriptive period under Section 203 of the NIRC of 1997, insofar as the assessments for deficiency income tax, VAT, EWT, and WTC are concerned, and thus, said assessments are void.[8]

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[6] Exhibits "R-5", "R-6", "R-7", and "R-8", BIR Records, pp. 321, 324, 326, and 329, respectively.
[7] Exhibit "P-52", Docket – Vol. 2, pp. 641 to 654; Exhibits "R-12", and "R-13" to "R-13-d", BIR Records, pp. 503 to 516
[8] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

> As regards the deficiency DST assessment, since petitioner failed to prove its filing thereof for taxable year 2009, thus, the deficiency DST assessment issued within the ten (10)-year prescriptive period under Section 222 (a) of the NIRC of 1997 is valid.
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> However, even if the subject waivers may be held to have extended the period to assess petitioner, still the subject FLD and FANs, as well as the assailed FDDA are void."

Whether the absence of an eLOA in the present case invalidates the tax assessments

The Court likewise reiterates its ruling that the absence of eLOA in the present case invalidates the subject tax assessments.

Revenue Memorandum Order (RMO) No. 69-10 is clear. The said RMO mandates that from March 1, 2010 onwards, all LOAs, whether issued manually or electronically, covering cases for 2009 and other taxable years, are **subject to retrieval and replacement with the new eLOA form** (BIR Form No. 1966). Consequently, a revenue officer's authority to continue the said audit/investigation shall be done only when such retrieval and replacement have been made.

In the present case, there is no showing that the present LOA, which was issued on May 14, 2010, has been retrieved and replaced by an eLOA. As such, the revenue officers named in the said LOA, and any other BIR personnel who examined petitioner, were not authorized through an eLOA to proceed with the tax audit. Thus, by not having the requisite eLOA to continue the examination of petitioner's records in the first place, the subject tax assessments issued by the BIR are inescapably void.

Whether the assessments are void due to absence of definite tax liability and due date in the FAN

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.,*[9] the Supreme Court 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 period, and that the amount of tax liability for which the taxpayer is accountable must be definite, as follows:

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[9] G.R. No. 215947, November 9, 2016.

> "...**the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**
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> xxx xxx xxx
>
> **The issuance of a <u>valid</u> 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."**

In the assailed Decision, the Court ruled as follows:

> "Based on the foregoing, 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.
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> In the present case, no date was indicated in the FLD[10]. It only contains the following statements:
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> 1. "Please take note that the interest will have to be adjusted if paid beyond the date specified therein."
>
> 2. "In view thereof, you are requested to pay your aforesaid deficiency tax liabilities using the BIR Payment Form (BIR Form 0605) through eFPS within the time shown in the enclosed assessment notice."
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> Moreover, while the FLD provides for the computation of petitioner's tax liability, the amount, however, remains indefinite as it states that the total amount of tax due *is still subject to adjustment.* In other words, the tax assessment is still subject to modification or adjustment, depending on petitioner's date of payment.
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> Similarly, a perusal of the enclosed FANs[11] shows that the spaces for the due dates were conspicuously left blank. Since the said FANs did not indicate the due date when the deficiency tax

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[10] Exhibit "P-52", Docket – Vol. 2, pp. 641 to 654; Exhibit "R-12", BIR Records, pp. 508 to 516.
[11] Exhibits "R-13" to "R-13-d", BIR Records, pp. 503 to 507.

must be paid, no proper demand thereof within a specific period was validly made.

Accordingly, given that respondent utterly failed to state the respective due dates for payment of deficiency taxes in the subject assessments, along with his failure to provide definite amount of taxes to be paid, petitioner's obligation for such deficiency taxes may not be deemed to have legally accrued. Simply put, petitioner may not be adjudged to account for deficiency taxes which in the first place are not legally demandable.

In the same vein, it is noteworthy that the assailed FDDA[12] similarly contains the following statements:

1. "Please take note that the interest will have to be adjusted if paid beyond the dated specified therein."

2. "It is requested that your aforesaid deficiency tax liabilities amounting to ₱328,276,071.26 inclusive of penalties incident to delinquency, be paid immediately upon receipt hereof using the BIR Payment Form (BIR Form 0605) through eFPS within the time shown in the enclosed assessment notice."

While the FDDA explicitly provided that the payment of deficiency taxes shall be made immediately upon receipt thereof, it also failed to provide the definite amount of tax liability which petitioner should correspondingly pay. Similarly, the attached FANs[13] in the FDDA do not also indicate any due date, which correspondingly negates respondent's demand for payment."

Hence, the subject assessments do not purport to be a demand for payment of tax due.

In view of the foregoing discussions, this Court finds no substantial matter or compelling reason was raised in the present Motion to justify the reversal or modification of the Decision assailed by petitioner.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated 23 September 2020) is **DENIED** for lack of merit.

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[12] Exhibit "P-56", Docket – Vol. 2, pp. 661 to 666; Exhibit "R-15", BIR Records, pp. 669 to 674.
[13] Exhibits "R-16" to "R-16-d".

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice