Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

FITNESS BY DESIGN, INC.,
Respondent.

CTA EB No. 970
(CTA Case No. 7160)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ*.

Promulgated:

DEC 16 2014 3:18 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J*.:

This resolves petitioner's "Motion for Reconsideration" dated August 6, 2014 with respondent's "Comment/Opposition [on] Petitioner's Motion for Reconsideration" filed on November 3, 2014. In her motion, petitioner prays that the decision promulgated on July 14, 2014 be reconsidered and set aside. The dispositive portion of the questioned decision reads:

> **WHEREFORE**, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, both the Decision and Resolution in CTA Case No. 7160 dated July 10, 2012 and November 21, 2012 respectively are **AFFIRMED** *in toto*.

SO ORDERED.[1]

Petitioner raises the following grounds:

1. The FAN [Formal Assessment Notice] clearly specified due dates for payment; and

2. Even assuming that the FAN failed to state due dates for payment, the absence thereof is not a substantive requirement for its validity.

Petitioner insists that the FAN dated March 7, 2004 clarified the due date for payment of the subject tax assessments. The FAN satisfied the objective of a written notice and demand by the Bureau of Internal Revenue (BIR) of its tax liabilities on a date certain. She maintains that the due date is <u>until April 15, 2004</u>.

Conversely, respondent argues that the phraseology employed by the petitioner—"that the interest and the total amount due will have to be adjusted if paid *prior or beyond April 15, 2004*," collides with the due process requirement for a valid FAN. Jurisprudence dictates that the period to pay must be <u>fixed or certain</u>.

Respondent also stood ground that the actual amount of taxes cannot be determined with exactitude since adjustments may still be undertaken if paid *prior to* or *beyond* April 15, 2004. In other words, the total assessment remains uncertain since petitioner failed to justify the necessity of adjustment should its tax liabilities be paid *prior to* or *before* April 15, 2004. Finally, respondent concludes that only a valid assessment can attain finality and can be subjected to collection through the issuance of a warrant of distraint and/or levy.

Petitioner's argument is devoid of merit. This issue was laid to rest in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*,[2] where the Supreme Court categorically pronounced that "**an assessment contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to run against the taxpayer. To enable a taxpayer to determine his liabilities thereon, due process requires that it must be served on and received by the taxpayer**." The same *Pascor* ruling decrees that "[a]n assessment must be sent to and received by a taxpayer, and **must demand payment of the taxes described therein within a <u>specific period</u>**."

As discussed and passed upon in our Decision:

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[1] *Rollo*, pp. 203-204.
[2] G.R. No. 128315, June 29, 1999, 309 SCRA 402.

> 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. x x x
>
> 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.
>
> 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. <u>Respondent must therefore indicate in clear and unequivocal language whether his action on a disputed assessment constitutes his final determination when his or her right to appeal to the tax court accrues</u>. This is certainly absent in the subject assessment notices.

Petitioner further claims that the due date is not an indispensable requirement for its validity. What the law simply requires is that the assessment notice must indicate the facts, law, rules and regulations or jurisprudence on which the assessment is based. This dictum was enunciated in *Commissioner of Internal Revenue v. Hon. Raul M. Gonzalez, et al.,*[3] where the Supreme Court held for the validity of the assessment despite the absence of a control number. Petitioner even suggests that Section 228 of the NIRC, as amended, does not expressly invalidate the assessment if the due date for payment is absent.

[3] G.R. No. 177279, October 13, 2010, 633 SCRA 139.

Respondent countered that the *Gonzalez* ruling is inapplicable. While *Gonzalez* was brought about by the issue of whether or not the absence of a control number will invalidate the assessment, respondent nonetheless asserts that this is not an issue in this case. Respondent even argued that the *Gonzalez* ruling mandates the BIR to comply with all the requirements of due process for an assessment to be valid. This includes notice and opportunity to be informed of the issues confronting it and be heard thereafter.

Lack of control number cannot be equated from lack or defective due date. The latter is clearly founded on the principles of due process that is a prerequisite for a valid assessment.[4] *Apropos*, the significance of a precise due date in relation to due process is likewise threshed out in the decision, thus:

> 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:
>
> > We rule that the recommendation letter of the Commissioner cannot be considered a formal assessment. Even a cursory perusal of the said letter would reveal three key points:
> >
> > 1. It was not addressed to the taxpayers;
> > 2. **There was no demand made on the taxpayers to pay the tax liability <u>nor a period for payment set therein</u>.**
> > 3. The letter was never mailed or sent to the taxpayer by the Commissioner.
> >
> > 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. x x x
> >
> > x x x x
> >
> > However, <u>the enclosed Audit Result/Assessment Notices referred to in the subject FAN reveals that the due date are left blank or</u> 9z

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[4] *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 382.

> 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)

WHEREFORE, the instant Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice