**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***FIRST DIVISION***

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| **8196 CONVENIENCE CORPORATION,** *Petitioner,* | **CTA Case No. 9818** |
| -*versus*- | Members: |
| | **DEL ROSARIO**, *P.J., Chairperson, and* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | **MANAHAN**, *JJ.* |
| | Promulgated: |
| | JUN 10 2021 2:31pm |

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# D E C I S I O N

***MANAHAN, J.:***

This is a *Petition for Review* filed by petitioner 8196 Convenience Corporation, on April 19, 2018, against respondent Commissioner of Internal Revenue, praying that *Assessment Notice* Nos. 33-09-IT-4378, 33-09-VT-4379 and 33-09-WE-4380, for alleged deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT), respectively, in the total amount of ₱7,562,572.67, including penalties thereon, for taxable year 2009, be cancelled and set aside.[1]

Petitioner is a domestic corporation organized and existing under the laws of the Philippines, with registered address at Maria Orosa St. near cor. T.M. Kalaw St., Ermita, Manila.[2]

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[1] Summary of the Case, Pre-Trial Order dated November 13, 2018, Docket – Vol. I, p. 184.

[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 135.

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith, with office address at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[3]

## FACTS

In 2010, petitioner received a Letter of Authority (LOA) No. 2007-00022984 which was issued by Regional Director Alfredo V. Misajon of Revenue Region (RR) No. 6, authorizing Revenue Officer (RO) Remigio N. Tiangco, Jr., under the supervision of Group Supervisor (GS) Marvin C. Sevilla, to examine the books and other accounting records of petitioner for all internal revenue taxes for the period covering January 1, 2009 to December 31, 2009.[4]

Sometime in September 2012, an Assignment Slip was issued to RO Mirabel R. Vidal for the review of the 2009 audit investigation of petitioner.[5] Subsequently, respondent issued a Notice of Informal Conference.[6] Thereafter, respondent issued a Preliminary Assessment Notice (PAN) dated December 26, 2012, with Details of Discrepancies, against petitioner for deficiency income tax, VAT, and EWT, in the aggregate amount of ₱6,131,193.9.[7]

On January 16, 2013, petitioner received a Formal Letter of Demand (FLD) and Assessment Notice Nos. 33-09-IT-4378, 33-09-VT-4379, and 33-09-WE-4380, all dated January 14, 2013, from the BIR RR No. 6 – Manila, for alleged deficiency income tax, VAT, and EWT,[8] detailed as follows:

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[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. I, pp. 135 to 136.
[4] Par. 3, Admitted Facts, JSFI, Docket – Vol. I, p. 136; Exhibit "P-2", refer to Docket – Vol. II, p. 499.
[5] Exhibit "R-1", Docket – Vol II, p. 712.
[6] Par. 4, Admitted Facts, JSFI, Docket – Vol. I, p. 136.
[7] Par. 4, Admitted Facts, JSFI, Docket – Vol. I, p. 136; Exhibits "R-19" and "R-19-A", Docket – Vol. II, pp. 713 to 715.
[8] Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 136; Par. 7, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, 12 and 89, respectively; Exhibit "P-4", refer to

I. Income tax (Assessment No. 33-09-IT-4378)

| | | | |
|---|---|---|---|
| Taxable Income Return | | | |
| Add: Adjustments | | | |
| | 50% Disallowances | ₱4,257,261.00 | |
| | Non-withholding | 373,938.00 | ₱4,631,199.60 |
| Total | | | ₱4,631,199.60 |
| | | | |
| Income tax due | | | ₱1,389,359.88 |
| Less: payments/credits | | | 19,066.65 |
| Deficiency income tax | | | ₱1,370,293.23 |
| Add: Surcharge (Sec. 248) | | | - |
| | Interest | | 799,327.67 |
| **Total tax due** | | | **₱2,169,620.90** |

II. VAT (Assessment No. 33-09-VT-4379)

| | |
|---|---|
| Sales subject to VAT | ₱21,872,315.00 |
| Output tax | ₱ 2,624,677.80 |
| Less: creditable input tax | - |
| VAT payable | ₱ 2,624,677.80 |
| Less: tax paid | 64,300.51 |
| Deficiency VAT | ₱ 2,560,377.29 |
| Add: Surcharge | - |
| Interest | ₱ 1,521,980.43 |
| **Total amount due** | **₱ 4,082,357.72** |

III. EWT (Assessment No. 33-09-WE-4380)

| | | | |
|---|---|---|---|
| Security Services | ₱316,510.00 | 2% | ₱ 6,330.20 |
| Professional Fee | 87,500.00 | 10% | 8,750.00 |
| EWT due | | | ₱ 15,080.20 |
| Less: Remittance | | | 601.44 |
| Deficiency EWT | | | ₱ 14,478.76 |
| Add: Surcharge | | | - |
| Interest | | | ₱ 8,687.26 |
| **Total amount due** | | | **₱ 23,166.02** |

Petitioner then filed with respondent, through RR No. 6 – Manila, its protest to the said FLD, on February 6, 2013.[9]

Docket – Vol. II, pp. 501 to 506; Exhibits "R-20", "R-21", "R-22", "R-23, and R-23-A", Docket – Vol. II, pp. 716 to 721.

[9] Par. 6, Admitted Facts, JSFI, Docket – Vol. I, p. 136; Exhibits "P-5" and "P-5-1", refer to Docket – Vol. II, pp. 507 to 514; Exhibit "R-24", Docket – Vol. II, pp. 722 to 729.

Relative thereto, in the letter dated March 6, 2013 of Officer-in-Charge (OIC)-Regional Director Simplicio A. Madulara,[10] petitioner was informed that the entire case docket of petitioner, together with its letters, were returned to Revenue District Office (RDO) No. 033-Ermita-Intramuros-Malate-Port Area Manila, for appropriate action.

In the letter dated May 21, 2013,[11] petitioner was informed that its request for reinvestigation was approved by the Regional Director; and was given a period of sixty (60) days from receipt thereof, to submit the required documents and accounting records, otherwise, petitioner shall be considered in default.

Subsequently, on October 7, 2013, petitioner received the letter/decision dated October 1, 2013, signed by Mr. Simplicio A. Madulara, OIC-Regional Director, stating that petitioner is liable to pay deficiency income tax, VAT, and EWT, for taxable year 2009, in the amount of ₱2,169,620.90, ₱4,082,357.72, and ₱23,166.02, respectively. The letter/decision contained a statement indicating that *"This serves as our Final Decision on Disputed Assessment"*.[12]

On October 25, 2013, petitioner filed a Motion for Reconsideration of the said letter/decision dated October 1, 2013, with the Office of the Commissioner, Kim S. Jacinto-Henares. A similar Motion for Reconsideration was filed with the Revenue Region No. 6 – Manila, on October 18, 2013.[13]

On March 21, 2018, a Decision (on the above-stated Motion for Reconsideration) signed by Commissioner of Internal Revenue (CIR) Caesar R. Dulay, was received by petitioner, affirming the assessment against the latter, for income tax, but with modifications on the assessed deficiency VAT and EWT.[14]

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[10] Refer to Exhibits "R-25" and "R-26", Docket – Vol. II, pp. 730 to 731.

[11] Exhibit "R-28", Docket – Vol. II, p. 733.

[12] Par. 7, Admitted Facts, JSFI, Docket – Vol. I, p. 136; Exhibit "P-6", refer to Docket – Vol. II, p. 538; Exhibits "R-30", Docket – Vol. II, p. 735.

[13] Par. 8, Admitted Facts, JSFI, Docket – Vol. I, p. 137; Exhibit "R-32", Docket – Vol. II, pp. 737 to 744; Exhibits "P-7" and "P-7-1", refer to Docket – Vol. II, pp. 539 to 553.

[14] Par. 9, Admitted Facts, JSFI, Docket – Vol. I, p. 137; Exhibit "P-8", BIR Records, pp. 447 to 457; Exhibit "R-35", Docket – Vol. II, pp. 748 to 758.

Petitioner filed the instant Petition for Review on April 19, 2018.[15] The petition was originally raffled to this Court's Second Division.

Respondent filed his Answer to the Petition for Review on June 28, 2018.[16]

The pre-trial conference was set and held on August 2, 2018.[17] Both petitioner's Pre-Trial Brief and Respondent's Pre-trial Brief were separately submitted on July 30, 2018.[18]

Respondent transmitted the BIR Records on July 30, 2018.[19]

On September 7, 2018, the parties presented their Joint Stipulation of Facts and Issues,[20] which was approved in the Order dated September 10, 2018.[21] The Pre-Trial Order dated November 13, 2018 was then subsequently issued.[22]

Upon motion of petitioner,[23] the Court commissioned Ms. Schwendi S. Fajardo as an Independent Certified Public Accountant (ICPA) for this case.[24]

This case was transferred to this Court's First Division Pursuant to the Order dated September 24, 2018.[25]

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimony of Mr.

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[15] Docket – Vol. I, pp. 10 to 25.
[16] Docket – Vol. I, pp. 89 to 96.
[17] *Notice of Pre-Trial Conference* dated July 3, 2018, Docket – Vol. I, pp. 97 to 98; Minutes of the hearing held on, and Order dated August 2, 2018, Docket – Vol. I, pp. 122 to 123.
[18] Docket – Vol. I, pp. 102 to 110, and 113 to 118, respectively.
[19] Docket – Vol. I, pp. 111 to 112.
[20] Docket – Vol. I, pp. 135 to 142.
[21] Docket – Vol. I, pp. 144 to 145; Refer also to the Minutes of the hearing held on September 10, 2018, Docket – Vol. I, p. 146.
[22] Docket – Vol. I, pp. 184 to 192.
[23] *Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals* filed on September 4, 2018, Docket – Vol. I, pp. 124 to 126.
[24] *Oath of Commission* dated September 10, 2018, Docket – Vol. I, pp. 134; Minutes of the hearing held on, and Order dated, September 10, 2018, Docket – Vol. I, pp. 143 to 146.
[25] Docket – Vol. I, p. 147.

Joseph Cedric V. Calica,[26] its authorized representative in all matters relating to the 2009 tax audit. Due to the failure of petitioner's counsel to file the Judicial Affidavit of the Court-commissioned ICPA, Ms. Schwendi S. Fajardo, her presentation, as such, was deemed waived.[27]

The Report of the ICPA was submitted on October 10, 2018.[28]

Petitioner filed its Formal Offer of Evidence on July 23, 2019.[29] Respondent filed his Comment/Opposition (To Petitioner's Formal Offer of Evidence) on August 7, 2019.[30]

In the Resolution dated October 22, 2019,[31] the Court admitted petitioner's Exhibits "P-2", "P-4", "P-5", "P-5-1", "P-6", "P-7", "P-7-1", "P-8", "P-16", and "P-16-a"; but denied Exhibits "P-3", "P-3-1", "P-9", "P-9-1", "P-9-2", "P-8", "P-8-1", "P-8-2", "P-8-3", "P-8-4", "P-8-5", "P-8-6", "P-8-7", "P-8-8", and "P-14", for failure to submit the duly marked exhibits.

Respondent likewise presented documentary and testimonial evidence. He proffered the testimonies of the following individuals, namely: (1) Atty. Maricel C. Casison-Dungca,[32] respondent's Action Attorney; and (2) Ms. Mirabel R. Vidal,[33] respondent's Revenue Officer-Reviewer.

On December 5, 2019, Respondent's Formal Offer of Evidence was filed.[34] Petitioner failed to file its comment thereon.[35]

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[26] Exhibit "P-16", Docket – Vol. I, pp. 213 to 222; Minutes of the hearing held on, and Order dated, June 4, 2019, Docket – Vol. I, pp. 372 to 375.
[27] Minutes of the hearing held on, and Order dated, July 9, 2019 Docket – Vol. I, pp. 486 to 488.
[28] Docket – Vol. I, pp. 151 to 155; Minute Resolution dated October 22, 2018, Docket – Vol. I, p. 174.
[29] Docket – Vol. I, pp. 493 to 498.
[30] Docket – Vol. II, pp. 679 to 680.
[31] Resolution dated October 22, 2019, Docket – Vol. II, pp. 695 to 697.
[32] Exhibit "R-36", Docket – Vol. I, pp. 412 to 415; Minutes of the hearing held on, and Order dated, September 24, 2019, Docket – Vol. II, pp. 684 to 688.
[33] Exhibit "R-37", Docket – Vol. I, pp. 441 to 447; Order dated November 19, 2019, Docket – Vol. II, pp. 699 to 700.
[34] Docket – Vol. II, pp. 705 to 711.
[35] Records Verification dated January 8, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 760.

In the Resolution dated February 11, 2020,[36] the Court admitted all of respondent's exhibits.

Respondent's Memorandum was filed on June 17, 2020,[37] while petitioner's Memorandum was submitted on June 29, 2020.[38]

On July 16, 2020, this case was submitted for decision.[39]

The following issues were stipulated by the parties for the Court's resolution, to wit:

> "1. Whether this Honorable Court has jurisdiction to entertain the instant Petition;
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> 2. Whether or not Assessment Nos. 33-09-IT-4378, 33-09-VT-4379 and 33-09-WE-4380, all dated January 14, 2013, for deficiency income tax, VAT and EWT, in the amounts of Php 2,169,620.90, Php 4,082,357.72, and P 23,166.02, respectively, have become final and demandable.
>
> 3. Whether Petitioner is liable for deficiency income tax, VAT and EWT for taxable year 2009." [40]

**Petitioner's arguments:**

Petitioner submits that the Petition for Review was timely filed in accordance with Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended and Section 3.1.5 of Revenue Regulations (RR) No. 12-99 where it is provided that a taxpayer may dispute a tax assessment by filing a protest within thirty (30) days from receipt thereof. If the protest is denied, such denial may be appealed to the Court of Tax Appeals (CTA), otherwise the assessment shall become final. Petitioner contends further that if the denial by the CIR's representative is elevated by the taxpayer within thirty (30) days from receipt of such denial, the decision of the CIR's representative shall not be considered final and executory. Applying these principles to the instant case, petitioner

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[36] Resolution dated February 11, 2020, Docket – Vol. II, pp. 767 to 768.
[37] Docket – Vol. II, pp. 769 to 781.
[38] Docket – Vol. II, pp. 784 to 805.
[39] Resolution dated July 16, 2020, Docket – Vol. II, p. 807.
[40] Statement of the Issues, JSFI, Docket – Vol. I, pp. 137 to 138.

narrates that the Final Decision on Disputed Assessment (FDDA) issued by Regional Director, Simplicio A. Madulara did not become final and executory because petitioner appealed the FDDA in the form of a motion for reconsideration with the CIR. The CIR, on his part issued a Final Decision on petitioner's motion for reconsideration which was the subject of an appeal with the CTA.

Petitioner emphasizes that it attempted to submit additional documents in support of its protest to substantiate the expenses it claimed as deductions. Petitioner, however avers that the revenue officers refused to accept the said documents and was constrained to file a motion for reconsideration with the CIR and therein attach the additional documents allegedly rejected by the revenue officers.

On the substantive merits of the questioned deficiency assessments, petitioner argues that it is not liable for deficiency income tax, VAT, and EWT and that in view of the submission of documents in relation to the tax investigation in question, respondent's reliance on the "best evidence obtainable rule" is not justified.

Petitioner clarifies that the portion of security services that was not subjected to withholding tax pertains to the salaries of security guards, thus, not subject to withholding tax. Petitioner also argues that respondent's right to assess VAT for the 1$^{st}$, 2$^{nd}$ and 3$^{rd}$ quarters of 2009 is already barred by prescription. Likewise, respondent's right to assess deficiency EWT for the months of January to September 2009 is also barred by prescription.

With regard to its creditable input VAT, petitioner asserts that this should not have been disallowed by respondent because these were duly supported by either the VAT invoices or official receipts.

Finally, petitioner maintains that it is not liable for the said deficiency taxes on the ground that the assessment is void for lack of authority of the revenue examiners to conduct the investigation of its books of accounts and other accounting records.

**Respondent's counter-arguments:**

Respondent counters that the Court has no jurisdiction over the Petition for Review filed by petitioner because the subject tax assessments have become final and demandable for its failure to submit the relevant supporting documents within sixty (60) days from the filing of the protest in accordance with Section 228 of the 1997 NIRC as amended.

Respondent also contravenes the contention of petitioner that his right to assess has already prescribed. Respondent maintains that the VAT returns filed by petitioner are considered false returns warranting the application of the ten (10) year prescriptive period under Section 222 of the 1997 NIRC, as amended. Likewise, the deficiency EWT assessment also falls within the ambit of Section 222 of the 1997 NIRC, as amended, which justifies the application of the extraordinary ten-year period to assess.

Respondent also defends his reliance on the "best evidence obtainable rule", as this is sanctioned under Sections 2.3, 2.4 (a) and (b) of Revenue Memorandum Circular (RMC) No 23-2000 which provide for the instances when an assessment may be based on the best evidence obtainable. The attendant circumstances relative to the submission of the documents requested from petitioner and the latter's alleged failure to produce said documents justified the application of the best evidence method in gathering data to support the issuance of the subject tax assessments.

## RULING OF THE COURT

We find merit in the instant Petition for Review.

We first proceed to rule on the timeliness of the filing of the Petition for Review.

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125,[41] as amended by RA No. 9282,[42] provides as follows:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:

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[41] AN ACT CREATING THE COURT OF TAX APPEALS.

[42] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis added)*

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue** xxx **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

xxx xxx xxx." (Emphasis supplied)

Applying the foregoing provisions to the instant case, petitioner had thirty (30) days from March 21, 2018[43], (the date when it received the Final Decision of the Commissioner of Internal Revenue, Caesar R. Dulay, on petitioner's request for reconsideration) or until April 20, 2018, within which to appeal said Decision. Considering that petitioner filed this *Petition for Review* on April 19, 2018, [44] the same was seasonably filed.

We now rule on the issue of this Court's jurisdiction over the Petition for Review.

Respondent contends that the Court has no jurisdiction over the Petition for Review because the assessment notices have become final and demandable for failure of the petitioner to submit all relevant supporting documents within sixty (60) days from filing of the protest.

We disagree with respondent's contention.

We quote Section 228 of the 1997 NIRC, as amended, thus:

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[43] Refer to Par. 9, Admitted Facts, JSFI, Docket – Vol. I, p. 137; Exhibit "P-8", BIR Records, pp. 447 to 457; Exhibit "R-35", Docket – Vol. II pp. 748 to 758.
[44] Docket – Vol. I, pp. 10 to 25.

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**" (Emphasis supplied)

Based on the foregoing provision, a taxpayer must submit all relevant supporting documents, within sixty (60) days from the date of filing of the protest to the assessment.

In *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, [45] the Supreme Court ruled as follows:

> "Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.
>
> **We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet.** Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
>
> **The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production**

[45] G.R. Nos. 172045-46, June 16, 2009.

**of documents that a taxpayer cannot submit.**" (emphasis supplied)

Thus, the term "relevant supporting documents" for purposes of the above-quoted Section 228 of the 1997 NIRC, as amended, refers to the documents necessary to support the legal basis in disputing a tax assessment, as determined by the concerned taxpayer and not by the BIR. The latter can only inform the former to submit additional documents, but the BIR cannot demand what type of supporting documents should be submitted. To rule otherwise would, in effect, place the taxpayer at the mercy of the BIR, which may require the production of documents which said taxpayer may not be able to submit.

In the instant case, petitioner attached supporting documents to its protest letter, *i.e.*, its 1st, 2nd, and 3rd *Quarterly VAT Returns* and Filing References for the EWT Returns (BIR form 1601E), all for taxable year 2009.[46] There is no indication, in the said protest letter, that petitioner intended to submit any other document relative thereto. As a corollary, the BIR cannot then demand what other type of documents should be submitted by petitioner. Hence, respondent's argument that the assessment notices had become final and demandable for failure of the petitioner to submit all relevant supporting documents within sixty (60) days from filing of protest, is bereft of merit, considering that records show that petitioner has already submitted the relevant documents to support its protest.

Respondent further claims that since petitioner filed two (2) separate motions for reconsideration to the letter/decision dated October 1, 2013, one with the Office of the Commissioner of Internal Revenue on October 25, 2013, and the other with the Office of the OIC-Regional Director, Revenue Region No. 6 Manila on October 18, 2013, petitioner has committed forum shopping.

We find respondent's arguments untenable.

Indeed, forum shopping is the institution of two (2) or more actions or proceedings grounded on the same cause upon the supposition that one or the other court would make

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[46] Exhibit "P-5", Docket – Vol. II, pp. 507 to 514; Exhibit "R-24", Docket – Vol. II, pp. 722 to 729.

a favorable disposition.[47] It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets.[48] However, it must be stressed that the rule on forum-shopping applies only to judicial cases or proceedings, and not to administrative cases.[49]

Correspondingly, the rule against forum shopping may *not* be applied to the two (2) motions for reconsideration filed by petitioner with the Office of the CIR and with the Office of the OIC-Regional Director, Revenue Region No. 6 - Manila,[50] since the said motions were merely filed at the administrative level.

On its part, petitioner asserts that the revenue officers who conducted the reinvestigation had no authority to do so.

Petitioner further points out that RO Remigio N. Tiangco, Jr., and GS Marvin C. Sevilla, were the persons authorized to conduct the examination of the internal revenue taxes of petitioner for the year 2009 pursuant to LOA No. 2007-00022984. However, no separate LOA was issued in favor of RO Mida Perez and GS Oscar P. Dera who were not clothed with a separate LOA. Petitioner argues that the absence of a new LOA in favor of ROs Mida Perez and Oscar Dera resulted to void assessments for deficiency income tax, VAT and EWT.

We agree with the petitioner.

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[51] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[52] An

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[47] *London vs. Baguio Country Club Corporation, et al.*, G.R. No. 145436, October 10, 2002.
[48] *Zamora vs. Quinan, Jr., et al.*, G.R. No. 216139, November 29, 2017.
[49] See *Laxina, Sr. vs. Office of the Ombudsman*, G.R. No. 153155, September 30, 2005.
[50] Refer to Par. 8, Admitted Facts, JSFI, Docket – Vol. I, p. 137; Exhibit "R-32", Docket – Vol. II, pp. 737 to 744; Exhibits "P-7" and "P-7-1", refer to Docket – Vol. II, pp. 539 to 553.
[51] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[52] *Commissioner of Internal Revenue vs. De La Salle University, Inc., etseq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

LOA addressed to a revenue officer is specifically required under the NIRC before an examination of taxpayer may be had.[53]

An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to respondent himself or his duly authorized representatives.[54] Sections 6(A) and 13 of the 1997 NIRC, as amended, provide as follows:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns 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: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." (Emphasis supplied)
>
> "SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (Emphasis supplied)

Based on the foregoing provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by respondent himself or his duly authorized

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[53] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[54] *Ibid.*

representatives, other tax agents may not validly conduct these kinds of examinations without prior authority.[55]

Thus, a grant of authority, through an LOA issued by the Revenue Regional Director, must be made assigning an RO, to perform tax assessment functions, in order that the latter may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* ("*Medicard* case"),[56] the Supreme Court emphasized the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. **It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax**. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
>> SEC. 6. *Power of the Commissioner to Make Assessments 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: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>>
>> *Xxx* (Emphasis and underlining ours)
>
> Based on the afore-quoted provision, it is clear that <u>**unless authorized by the CIR himself or by his duly authorized representative, through an LOA,**</u> **an examination of the taxpayer cannot ordinarily be**

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[55] *Ibid.*

[56] G.R. No. 222743, April 5, 2017.

**undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**.

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[57], the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)
>
> xxx xxx xxx

Contrary to the ruling of the CTA en banc, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination**.

xxx xxx xxx.

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**." (emphasis supplied)

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[57] 649 Phil. 519 (2010).

It must be ensured that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[58] Moreover, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by the taxpayer was examined.[59] The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.[60]

In this case, LOA No. 2007-00022984 authorized RO Remigio N. Tiangco, Jr. and GS Marvin C. Sevilla to examine the books and other accounting records of petitioner for all internal revenue taxes for the period covering January 1, 2009 to December 31, 2009.[61] While RO Tiangco, Jr. and GS Sevilla initially investigated petitioner, the reinvestigation of the latter was already conducted by RO Mida Perez and GS Oscar P. Dera,[62] with RO Mirabel R. Vidal as reviewer.[63] However, there is no indication that the latter were armed with an LOA to conduct such reinvestigation. If at all, based on the assailed Decision dated March 21, 2018,[64] it is only through *Memorandum of Assignment* No. RR06-033-PRO-0313-8371 dated March 21, 2013 that petitioner's case was reassigned to RO Perez and GS Dera. Let it be noted that the term "reinvestigation" connotes that it is the same case being given a fresh round of review. Thus, it should have been the same original set of ROs designated under the LOA which should have conducted it. By appointing new ROs for the reinvestigation, a new LOA should have been issued.

It is well-entrenched in jurisprudence that a Referral Memorandum or a Memorandum of Assignment (MOA) as in this case, vests no authority to the new set of revenue examiners to conduct the examination of the taxpayer's records. Rather, only an LOA validly issued by the Revenue Regional Director can do so as ruled in the CTA *En Banc* case entitled *Composite Materials, Inc. vs. CIR,*[65] and later affirmed

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[58] Refer to *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[59] *Ibid.*
[60] *Ibid.*
[61] Par. 3, Admitted Facts, JSFI, Docket – Vol. I, p. 136; Exhibit "P-2", refer to Docket – Vol. II, p. 499.
[62] Refer to Exhibit "R-29", Docket – Vol. II, p. 734.
[63] Refer to Exhibit "R-27", Docket – Vol. II, p. 732.
[64] Exhibit "R-35", Docket – Vol. II, pp. 748 to 758, at p. 751.
[65] CTA *EB* No. 1314, August 15, 2017.

by the Supreme Court in the case of *CIR vs. Composite Materials, Inc.*[66] to wit:

> "In the case at bar, it is undisputed that the person who conducted the examination of petitioner CMI's records Revenue Officer Mary Anne P. Cruz, is not among the revenue officers authorized in LOA No. 0008746 dated September 9, 2008. Evidently, Revenue Officer Mary Anne P. Cruz is not authorized under LOA No. 0008746 to examine petitioner CMI.
>
> xxx xxx xxx
>
> **The Referral Memorandum signed by the Revenue District Officer does not give authority to Revenue Officer Mary Anne P. Cruz to conduct examination of petitioner CMI's records. On the contrary, pursuant to Sections 10 and 13 of the NIRC of 1997, as amended, it is the Revenue Regional Director who may issue an LOA."** (emphasis supplied)

Described in basic terms, the said MOA cannot be equated with the LOA, as required by the same provisions of law and the *Medicard* case. Correspondingly, not having a valid authority to examine or reinvestigate petitioner, the subject tax assessments issued against the latter are inescapably void. Such being the case, the said tax assessments must perforce be cancelled and set aside following the principle that void assessments bear no valid fruit.[67] In the case of *CIR vs. Opulent Landowners Inc.,*[68] the Supreme Court reiterated the ruling that if the Revenue Officers are not authorized, in the absence of a new LOA in their favor, their resulting assessments are void.

Simply put, ROs Perez and Vidal, as well as GS Dera, were not authorized, through an LOA, to examine or reinvestigate petitioner. Not having a valid authority to do so, the subject deficiency tax assessments for taxable year 2009 against petitioner, sustained in the letter/decision dated October 1, 2013, and affirmed with modification in the

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[66] G. R. No 238352, September 12, 2018.

[67] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006; *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corp.*, G.R. No. 197945, July 9, 2018.

[68] G.R. Nos. 249883-84, January 27, 2020.

assailed decision of the CIR dated March 21, 2018, are inescapably void.[69]

**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FLD and Assessment Notice Nos. 33-09-IT-4378, 33-09-VT-4379, and 33-09-WE-4380, all dated January 14, 2013, issued against petitioner, are **CANCELLED** and **SET ASIDE**.

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

**I CONCUR:**

(See Concurring Opinion)
**ROMAN G. DEL ROSARIO**
Presiding Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the, 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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[69] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

## *FIRST DIVISION*

**8196 CONVENIENCE CORPORATION,**
*Petitioner,*

-*versus*-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE. NO. 9818**

Members:

**DEL ROSARIO**, *P.J., Chairperson,*
and **MANAHAN**, *JJ.*

Promulgated:
JUN 10 2021 2:31pm

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# CONCURRING OPINION

***DEL ROSARIO, P.J.:***

I concur in the cancellation of the disputed tax assessment ***solely*** on the ground that the assessment is void due to lack of definite amount of tax liability.

The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment of a definite amount of tax liability within a prescribed period.[1]

To be sure, ***Commissioner of Internal Revenue vs. Fitness by Design Inc.***[2] was parenthetic in saying that a demand by government for the taxpayer to pay deficiency tax liabilities must specify the **definite amount sought to be collected**, failing which, the demand would be violative of the taxpayer's right to due process of law. Thus, in declaring as fatally infirm a demand letter similarly worded

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[1] Commissioner of Internal Revenue vs. Dominador Menguito, G.R. No. 167560, September 17, 2008; Commissioner of Internal Revenue vs. Fitness by Design, Inc., G.R. No. 215957, November 9, 2016.
[2] G.R. No. 215957, November 9, 2016.

as that involved in the present case, the Supreme Court, speaking through *Honorable Associate Justice Marvic M. V. F. Leonen* opined:

> "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 **due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computations 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)*
>
> xxx
>
> The Court of Tax Appeals **did not err in cancelling the Final Assessment Notice** as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the 'alleged deficiency income tax, value-added tax and documentary stamp tax amounting to P10,647,529.69, inclusive of surcharges and interest' **for lack of due process**. Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect." *(Boldfacing supplied)*

Juxtaposed in parallel, the Formal Letter of Demand dated January 14, 2013[3] in the case at bar likewise reads:

> "**NOTE: Interest and total amount due shall be adjusted up to the actual date of payment.**
>
> SEE ATTACHED DETAILS OF DISCREPANCY – Annex A

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[3] BIR Records, pp. 203-205; Exhibits "P-4" and "R-23", CTA Docket, pp. 501-503 and 719-720.

> **You are therefore, requested to pay the said deficiency taxes not later than February 15, 2013** and furnish a photocopy of payment of the said deficiencies to the Assessment Division, 6th Flr. Tuazon Bldg., BIR, Solana St., Intramuros, Manila." *(Boldfacing supplied)*

There must be some wisdom behind the legal precept in *Fitness by Design*, more so as it was a unanimous decision promulgated by the Second Division of the Supreme Court.

Thus, after assessing the rationale behind the doctrine in *Fitness by Design*, I noted that indeed -- the amount indicated in the aforequoted Formal Letter of Demand is definite only if payment is made on the EXACT due date stated therein. While payment can be made BEFORE or AFTER the date indicated, the exact MANNER of COMPUTING the "adjustment" to come up with a final and definite amount in case payment is made before or after the due date was undisclosed.

Any ambiguity in the amount demanded from a taxpayer is fatal as it precludes the taxpayer from knowing the exact amount to pay whenever an adjustment is made.

Of course, there would have been a semblance of CERTAINTY if the Formal Letter of Demand dated January 14, 2013 at the very least indicated how adjustment of the demanded amount would be made.

The manner by which interest was computed in *Fitness By Design* and in the present case is very similar; BOTH do not indicate the date when interest commences to run, *viz.*:

| **Per Final Assessment Notice in *Fitness By Design*** | | **Per Formal Letter of Demand dated January 14, 2013 in the present case** | |
|---|---|---|---|
| **Income Tax** | | **Income Tax** | |
| Taxable Income per return | xxx | xxx | |
| Add: Unreported Sales | xxx | Deficiency Income Tax | xxx |
| Taxable Income per audit | xxx | Add: Surcharge (Sec. 248) | xxx |
| | | **Interest p.a. from ___ to** | |
| Tax Due (35%) | | **01/15/2013 (Sec. 249)** | xxx |
| Add: Surcharge (50%) | xxx | Compromise Penalty (Sec. 254 | |
| **Interest (20% per annum) until 4-15-04** | xxx | in relation to RMO 19-2007) | xxx |
| | | Total Amount Due & Collectible | xxx |
| Deficiency Income Tax | xxx | | |
| **Value Added Tax** | | **Value Added Tax** | |
| Unreported Sales | xxx | xxx | |
| Output Tax (10%) | xxx | Deficiency Value Added Tax | xxx |
| Add: Surcharge (50%) | xxx | Add: Surcharge (Sec. 248) | xxx |
| **Interest (20% per annum) until 4-15-04** | xxx | **Interest p.a. from ___ to** | |

| | |
|---|---|
| Deficiency VAT xxx | **01/15/2013 (Sec. 249)** xxx<br>Compromise Penalty (Sec. 254 in relation to RMO 19-2007) xxx<br>Total Amount Due & Collectible xxx |
| | **Expanded Withholding Tax**<br><br>xxx<br>Deficiency Expanded Withholding Tax xxx<br>Add: Surcharge (Sec. 248) xxx<br>**Interest p.a. from ___ to 01/15/2013 (Sec. 249)** xxx<br>Compromise Penalty (Sec. 254 in relation to RMO 19-2007) xxx<br>Total Amount Due & Collectible xxx |

It appears from the Formal Letter of Demand dated January 14, 2013 that the interest was computed up to January 15, 2013 **but does not categorically provide for the specific reckoning point or date when interest commences to run** for each type of tax assessment, namely, income tax, value-added tax, and expanded withholding tax.

**Considering the different deadlines prescribed by the National Internal Revenue Code (NIRC) of 1997, as amended, in the filing of returns and payment of aforesaid tax types, the dates for the reckoning of interest vary for each specific type of tax.** Thus, it was imperative for respondent to apprise petitioner in the Formal Letter of Demand anent the specific date within which interest shall begin to run for each tax type.

Since adjustment becomes necessary if payment is made by petitioner beyond February 15, 2013 or if payment is made before such date, the date as to when interest begins to run is crucial and of much significance in apprising petitioner on the proper computation of the interest.

Financial matters, moreso - computation of interest, involve technical and skill-based concepts that require proper guidance in their application in pragmatic terms. As *Fitness By Design* noted:

> "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 provide 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**." *(Boldfacing supplied)*

It was faulty and flawed for respondent to presume that petitioner would know the exact amount of what is sought to be collected after "adjustment" if no clear and specific formula is communicated to it. That the Formal Letter of Demand dated January 14, 2013 makes reference to Section 249 of the NIRC of 1997, as amended, does not cure the infirmity as the application of such provisions is, by itself, not easily comprehensible.

In the words of *Fitness by Design*: "An assessment does not only include a computation of tax liabilities; ... Its main purpose is to determine the amount that a taxpayer is liable to pay."

Verily, the Formal Letter of Demand dated January 14, 2013 sent to petitioner can hardly be considered as one with indication of DEFINITE amount of liability. *Fitness by Design* is unambiguous and precise. Thus, it is appropriate for respondent to revisit, review and modify the details of demand letters he sends out to taxpayers, consistent with the Supreme Court's pronouncement on the matter. This should not be too burdensome for respondent to do.

Unless and until modified by the Supreme Court *En Banc*, the doctrine laid down in *Fitness by Design* cannot be ignored irrespective of any contrary opinion on the matter. The teaching in *Carmelo F. Lazatin, et al. vs. Hon. Aniano A. Desierto as Ombudsman, et al.*[4] is intrsuctive:

> "Petitioners now assert that the Court's ruling on the constitutionality of the provisions of R.A. No. 6770 should be revisited and the principle of *stare decisis* set aside. Again, this contention deserves scant consideration.
>
> The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:
>
>> 'ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.'
>
> It was further explained in *Fermin v. People* as follows:
>
>> 'The doctrine of stare decisis enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a

[4] G.R. No. 147097, June 5, 2009

> judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.'

In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, the Court expounded on the importance of the foregoing doctrine, stating that:

> 'The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:
>
> > Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same**, even though the parties may be different. Xxx'"

To stress, it is the better practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same.[5]

By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is. Any pronouncements made by the Supreme Court in its judicial decisions become part of the law of the land. Adherence to the principle of *stare decisis et non quieta movere* is mandated for all lower courts which necessarily includes this Court. There is only one Supreme Court from whose decisions all other courts - including this court - should take its bearings.

In the absence of any strong, compelling reason that the doctrine of *stare decisis* should not be applied to the present case, I am of the

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[5] *Sherwin T. Gatchalian vs. Office of the Ombudsman, et al.,* G.R. No. 229288, August 1, 2018

view that by virtue of the doctrine laid in *Fitness By Design*, there is no other option but to hold that the Formal Letter of Demand dated January 14, 2013 is void for failure to contain a definite and fixed amount of tax liability.

All told, I vote to **GRANT** the Petition for Review. Accordingly, the Formal Letter of Demand and the Assessment Notice Nos. 33-09-IT-4378, 33-09-VT-4379, 33-09-WE-4380 all dated January 14, 2013 issued against petitioner should appropriately be **CANCELLED** and **SET ASIDE**.

**ROMAN G. DEL ROSARIO**
Presiding Justice