REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1760 (CTA Case No. 8857)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO SAN-PEDRO, *JJ*.
NORTHERN TOBACCO REDRYING CO., INC., Respondent.	Promulgated: JAN 08 2020 3:26 p.m.

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RESOLUTION

Fabon-Victorino, J.:

On July 2, 2019, the Court *En Banc* rendered a Decision,[1] the decretal portion of which reads as follows:

> **WHEREFORE**, the Petition for Review January 19, 2018 filed by petitioner is hereby **DENIED**, for lack of merit.
>
> Consequently, the Decision dated July 25, 2017 and Resolution dated December 14, 2017 rendered by the Court in Division, are **AFFIRMED**.

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1 *Rollo,* pp. 110-126.

SO ORDERED.

In so ruling, the Court ratiocinated that the National Internal Revenue Code (NIRC),[2] as amended, along with jurisprudence[3] unequivocally decree that an assessment must contain a determinate sum of tax due as a condition *sine qua non* for its efficacy. Since the amount of taxes, as well as the increments specify in petitioner's Formal Letter of Demand (FLD) dated December 5, 2013 are subject to modification, contingent upon respondent's actual date of payment, it does not have a fixed amount of deficiency taxes due. That being the case, the subject FLD is a patent nullity, justifying its cancellation and withdrawal.

In moving[4] for the reversal of the impugned Decision, petitioner argues that:

I. The Court, in ruling that the Final Assessment Notice against respondent is void for allegedly not indicating a definite due date for the payment of tax liabilities; and

II. The Court erred in affirming the decision of the Court in Division, which granted a relief that was not prayed for by respondent, precisely there was transgression of his right to due process.

Petitioner claims, that contrary to the Court's ruling, the Final Letter of Demand (FLD) he issued against respondent is compliant with the basic requisites under Section 228 of the National Internal Revenue Code (NIRC), as amended. According to petitioner, the assessment is valid as long as it states the fact, the law, rules and regulations and jurisprudence upon which it is based. It remains valid irrespective of additional requirements

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2 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. - xxx

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

3 *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.

4 Petitioner's Motion for Reconsideration (Re: Decision dated 02 July 2019), *rollo*, pp. 129-141.

prescribed under a regulation, which cannot override a statute, such as the NIRC.

In any event, the FLD indicates the amount of tax liabilities that respondent must pay as well as the date when it should be settled contrary to the finding of the Court. But since respondent failed to pay the taxes due within the period granted, i.e., until November 30, 2013, the amount of taxes due, particularly the interest thereon, necessarily had to be adjusted until respondent's full payment of its tax liabilities.

Petitioner also insists that the Court *En Banc* is precluded from ruling on his alleged inability to fix the amount of taxes due in the assessment, as it was not specifically raised as an issue before the Court in Division.

Respondent, on the other hand, believes that petitioner's arguments are a replica of its position in his Petition for Review dated January 19, 2018.

Be that as it may, respondent argues that the manner by which the FLD is couched, *viz*. "Please note that the interest and the total amount due will have to be adjusted if paid beyond November 30, 2013," shows that the total amount of taxes due is still subject to modification depending on respondent's date of payment. In other words, not only is the amount to be paid indefinite but also the date when the amount is to be paid, thereby negating the required demand for payment.

Further, under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), the Court may rule on relevant matters not raised as an issue by the parties for the orderly disposition of the case.

The instant Motion has no leg to stand on.

Article 1158[5] of the Civil Code provides *inter alia* that *obligatio ex-lege* such as taxes are not presumed and may only be demandable upon firm compliance with the law that establishes them. The law referred to therein is Section 6(A) of the NIRC, as amended which reads 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. - xxx
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

The term "assessment" refers to the determination of amounts due from a person obligated to make payments.[6] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[7] It must contain not only a computation of tax liabilities, but also a clear demand for payment within a prescribed period,[8] the purpose of which is to determine the amount that a taxpayer is liable to pay.[9] Conversely, an assessment which neither has a due date nor a fixed and determinate amount of tax liability is *not* an assessment contemplated under the Tax Code and pertinent jurisprudence.

A reading of the FLD dated December 5, 2013 undeniably shows that it lacks the definite amount of tax liability and a date certain for its settlement. And the absence of such important details rendered the FLD of December 5, 2013 null and void.

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[5] **Article 1158.** Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book.

[6] See *SMI-ED Phil. Technology, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 175410, November 12, 2014.

[7] *Adamson vs. Court of Appeals,* G.R. No. 120935, May 21, 2009.

[8] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,* G.R. No. 128315, June 29, 1999.

[9] See *Tupaz vs. Hon. Ulep,* G.R. No. 127777, October 1, 1999.

As to the date November 30, 2013, which petitioner claims to be the due date of the subject tax obligation, the Court *En Banc* is one with the Court in Division in ruling, thus:

> "In the foregoing case, the Supreme court, in ruling that the FLD lacks the definite amount of tax liability, considered the statement shown in the FLD which states **"that the interest and total amount due will have to be adjusted if paid prior or beyond April 15, 2014," The Supreme Court held that the amount of tax due remains indefinite since it is still subject to modification depending on the date of payment.**
>
> The afore-cited case applies squarely to the present case wherein the subject FLD likewise states that **"the interest and total amount due will have to be adjusted if paid beyond November 30, 2013."**
>
> **Applying the ruling in aforequoted Supreme court case, the amount of tax liability in the present case remains indefinite.**
>
> **In addition to the foregoing defect in the FLD, We also note that the FLD failed to indicate a specific date or prescribed period within which to pay the tax liabilities.**
>
> **Accordingly, We find no justifiable reason to deviate from Our ruling that the subject tax assessments are void."**[10]
> (emphasis supplied)

As to the other assignment of error, the Court is not unaware of the principle that no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration. Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[11]

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10 Page 3, Resolution dated December 14, 2017.

11 *Mendoza, et al. vs. Bautista,* G.R. No. 143666, March 18, 2005.

Basic considerations of due process impel the adoption of this rule.[12] But an examination of the lone issue agreed upon by the parties during the Pre-Trial Conference and as indicated in their Joint Stipulation of Facts and Issues,[13] *viz*.

> Whether the (respondent) is liable to pay Income Tax, VAT, and DST assessment for taxable year 2009 in the amount of P258,471,513.34 inclusive of surcharges and interests.

suggests it gyrates around the alleged deficiency tax liability of respondent as assessed and as reflected in the FLD dated December 5, 2013. It is therefore indispensable to ascertain that the FLD is compliant with the rules, then and only then that the tax liability of respondent may be looked into. The lack of fixed and determinate sum of tax liabilities in the FLD of December 5, 2013 is a crucial part of the issue submitted by the parties themselves which the Court may determine since the resolution thereof is determinative of respondent's liability for deficiency taxes under the questioned assessment.

Finally, let it be reiterated that appellate court has an inherent authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case, as obtaining in the present appeal. By appealing the Decision, petitioner opens the whole case review by the Court *En Banc*.

WHEREFORE, petitioner's Motion for Reconsideration is **DENIED**. The impugned Decision of July 2, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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12 *Mercado, et al. vs. Spouses Espina,* G.R. No. 173987, February 25, 2013.
13 Docket (CTA Case No. 8857), p. 314.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice