REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ROBINSONS TRUE SERVE HARDWARE PHILIPPINES INC.,	**CTA CASE NO. 9418** For: Assessment
Petitioner,	Members:
-versus-	CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 2 3 2020 1:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 4, 2019 is a *Petition for Review* filed by petitioner Robinsons True Serve Hardware Philippines, Inc. against respondent Commissioner of Internal Revenue on August 10, 2016, praying for the cancellation of the alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST) assessments against petitioner for taxable year (TY) ended December 31, 2010 in the aggregate amount of ₱1,182,392,770.89.[1]

Petitioner Robinsons True Serve Hardware Philippines, Inc. is a corporation duly registered with the Securities and Exchange Commission (SEC), with SEC Company Registration No. CS200702416 and principal office located at 110 E. Rodriguez Jr. Avenue, Libis, Quezon City.[2]

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[1] Par. I, Pre-Trial Order dated July 31, 2017, Docket – Vol. II, p. 933.
[2] Exhibit "P-1", Docket – Vol. III, pp. 1054 to 1062.

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Respondent is the duly appointed Commissioner of Internal Revenue with office address at Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City.[3] It is registered with the BIR under Certificate of Registration Number OCN 8RC0000059028, with TIN 006-643-830-000.[4]

On July 6, 2012, petitioner received from respondent a copy of the *Letter of Authority* (LOA) No. LOA-116-2012-00000017 (eLA201100003095) dated July 3, 2012,[5] authorizing the examination of petitioner's books of accounts for taxable year ended December 31, 2010.[6]

Thereafter, on April 8, 2013, petitioner executed a *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* and respondent accepted the same on the same date.[7]

On September 15, 2014, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) dated September 12, 2014[8] which assessed petitioner for deficiency income tax, VAT, EWT, fringe benefit tax (FBT), DST, and improperly accumulated earnings tax (IAET) in the aggregate amount of ₱1,053,817,287.46, inclusive of increments, for taxable year ended 31 December 2010.[9] Petitioner disputed the said PAN through the letter dated September 30, 2014 which was received by respondent on the same date.[10]

Subsequently, on October 10, 2014, petitioner received a copy of the *Formal Letter of Demand* (FLD) dated October 10, 2014 with *Audit Result/Assessment Notices* in the total amount of ₱1,064,562,827.18, inclusive of increments,[11] representing alleged deficiency income tax, VAT, EWT, FBT, DST, and IAET for taxable year ended December 31, 2010.[12] Petitioner then protested the FLD

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[3] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 369.
[4] Exhibit "P-?", Docket – Vol. III, p. 1064.
[5] Exhibit "R-1", BIR Records – Folder 1, p. 659.
[6] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 369.
[7] Exhibit "P-3", Docket – Vol. III, p. 1065; Exhibit "R-2", BIR Records – Folder 1, p. 679-B.
[8] Exhibit "P-4", Docket – Vol. III, pp. 1066 to 1084; Exhibit "R-4", BIR Records – Folder 1, pp. 915 to 933.
[9] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 369.
[10] Exhibit "P-5", Docket – Vol. III, pp. 1085 to 1102.
[11] Exhibit "P-6", Docket – Vol. III, pp. 1105 to 1107; Exhibits "R-6" and "R-7", BIR Records – Folder 1, pp. 1314 to 1322, and 1299 to 1304.
[12] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 370.

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through the letter dated November 7, 2014 filed with the BIR on the same date.[13] Petitioner subsequently filed with the BIR the letter dated January 6, 2015, submitting additional supporting documents and schedules to support petitioner's position.[14]

On March 8, 2016, petitioner received a copy of the *Final Decision on Disputed Assessment* (FDDA) signed by Mr. Nestor S. Valeroso, Assistant Commissioner of the BIR Large Taxpayers Service, which assessed petitioner for deficiency income tax, VAT, EWT, and DST in the aggregate amount of ₱1,182,392,770.89[15].[16]

Consequently, petitioner filed a motion or request for reconsideration of the said FDDA before the Office of respondent on April 7, 2016.[17] However, respondent denied the said request in the letter dated June 30, 2016, a copy of which was received by petitioner on July 11, 2016.[18]

Petitioner filed the instant *Petition for Review* on August 10, 2016.[19] The instant case was initially raffled to this Court's First Division.

In the *Answer* filed on November 28, 2016,[20] respondent interposed the following special and affirmative defenses, to wit:

> "4. Respondent repleads and adopts the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
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> ***PETITIONER MUST SHOW THAT IT FILED THE INSTANT PETITION WITHIN THE PRESCRIPTIVE PERIOD.***
>
> 5. Petitioner must prove that it filed the instant case with the Honorable Court within thirty (30) days from receipt

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[13] Exhibit "P-7", Docket – Vol. III, pp. 1108 to 1137.
[14] Exhibit "P-8", Docket – Vol. III, pp. 1140 to 1146.
[15] The total amount indicated in the FDDA is ₱1,182,392,770.88.
[16] Exhibit "P-9", Docket – Vol. III, pp. 1148 to 1162; Exhibits "R-9", "R-9-A", and "R-10", BIR Records – Folder 2, pp. 1775 to 1830; Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 370.
[17] Exhibit "P-10", Docket – Vol. III, pp. 1163 to 1191.
[18] Exhibit "P-11", Docket – Vol. III, p. 1192; Exhibit "R-11", BIR Records – Folder 3, p. 1066.
[19] Docket – Vol. I, pp. 10 to 42.
[20] Docket – Vol. I, pp. 250 to 275.

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of the final decision of respondent as prescribed by Section 228 of the Tax Code.

6. Section 228 of the Tax Code explicitly directs the taxpayer to file its Petition for Review with the CTA within the mandatory period of thirty (30) days from receipt of the decision of respondent, to wit:

> 'SEC. 228. Protesting of Assessment. – xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; **otherwise the decision shall become final, executory and demandable**.' (Emphasis Supplied)

7. Petitioner alleged that on 7 April 2016, it filed a request for reconsideration of the FDDA (Final Decision on Disputed Assessment) pursuant to Section 3.1.4 of Revenue Regulations No. 12-99, and that on 11 July 2016, it received the letter dated 30 June 2016 which denied the request for reconsideration.

8. However, it is the heavy burden of petitioner to prove that it indeed received the letter dated 30 June 2016 only on 11 July 2016.

9. 'The basic rule is that he who alleges must prove his case.' (*FRANCISCO LIM vs. EQUITABLE PCI BANK, G.R. No. 183918, January 15, 2014.*) Thus, petitioner has the burden of proving its allegations.

10. A taxpayer's right to contest assessments, particularly the right to appeal to the Honorable Court of Tax Appeals (CTA), may be waived or lost.

11. It is respectfully submitted that petitioner must satisfactorily prove that it filed the instant appeal with the Honorable Court within the period prescribed by law. It is a well-entrenched rule that, **failure of the petitioner to appeal to the Court of Tax Appeals in due time made the assessments in question, final, executory and demandable.**

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12. Likewise, in *La Flor Dela Isabela, Inc. vs. CIR, CTA EB No. 672 (CTA Case No. 7709)* the Honorable Court En Banc held as follows:

> 'To reiterate, the failure of a taxpayer to file a petition for review with the Court of Tax appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding the said taxpayer from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.** Indeed, any objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes.' (Emphasis supplied)

RESPONDENT ISSUED THE ASSESSMENT AND SERVED IT TO PETITIONER WITHIN THE PERIOD PRESCRIBED BY LAW.

A. Respondent's right to assess petitioner for taxable year 2010 did not prescribe as the ordinary three (3) year period within which to make the assessment finds no application to the instant case.

13. Petitioner contends that the assessment was issued beyond the prescriptive period provided by law.

14. Respondent respectfully disagrees. Petitioner failed to consider that the applicable prescriptive period to assess in this case is ten (10) years from discovery of false or fraudulent return and/or willful neglect to file return.

15. Section 222 (a) of the Tax Code specifically provides:

> 'Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.

> (a) In the case of a **false or fraudulent return** with intent to evade tax or of **failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within 10 years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.' (Emphases ours)

16. In the instant case, preliminary review disclosed that petitioner failed to declare its correct Taxable Income subject to Income Tax. Perusal of the Final Decision on Disputed Assessment (FDDA) revealed that petitioner only declared in its Income Tax return the amount of P17,352,276.00. However, result of the audit investigation revealed that the taxable income per audit should have been P1,134,515,078.50. This results to a substantial underdeclaration of around 98% of the supposed taxable income of petitioner.

17. In addition, perusal of the same FDDA revealed that petitioner declared the amount of P693,565,034.80 as taxable sales in its VAT returns. However, after audit, the correct amount of sales should have been P1,815,950,330.72. This means, there was underdeclaration of sales in the amount of P1,122,385,295.92 or around 61%.

18. The foregoing only concludes that petitioner committed substantial underdeclaration of its taxable income and sales, therefore, clearly falls under false or fraudulent return.

19. Section 248 (B) of the Tax Code provides:

> '**SEC. 248. – Civil Penalties. –**
> xxx xxx
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case of a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That a **substantial underdeclaration of taxable**

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> **sales, receipts or income**, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, **shall constitute prima facie evidence of a false or fraudulent return**: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.' (Emphases supplied)

20. The Honorable Supreme Court in the case of *Aznar vs. CTA*, had the occasion to define false or fraudulent return in this wise:

> 'That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies **deviation from the truth, whether intentional or not**, the second implies intentional or deceitful entry with intent to evade the taxes due.' (Emphasis ours)

21. Since the correct sales of petition did not appear in its VAT returns and the correct taxable income in its Income Tax return, there can only be one inevitable conclusion – that there was a **substantial under-declaration** in its VAT and Income Tax returns which renders the ten (10) year prescriptive period to assess applicable.

22. To reiterate, a **false return implies deviation from the truth, whether intentional or not.** Although the *Aznar* case distinguishes what constitute 'false returns' referring to mistake, carelessness or ignorance, from that of 'fraudulent returns' referring to intent to evade taxes, the same case does not make a distinction as regards the prescriptive period of 10 years. Indeed, in the same case of *Aznar*, the Supreme Court ruled in favor of the Commissioner of Internal Revenue (CIR) for an extension of 10 year to assess the taxpayer, thus:

> 'The ordinary period of prescription of 5 years (now 3 years) within which to assess tax liabilities under Sec. 331 of the National Internal Revenue

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> code should be applicable to normal circumstances, **but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of 10 years** provided for in Section 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and **should be the one enforced**.
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent CTA that Section 332 (a) (now Sec. 222) of the NIRC should apply and that the period of 10 years within which to assess petitioner's tax liability **had not expired** at the time said assessment was made. (Emphases ours)

23. It is clear from the statutory provision in Section 222 of the Tax Code that in the three different case of (1) false return, (2) fraudulent return with intent to evade tax, or (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may begin without assessment, at any time **within 10 years** after the discovery of the (1) falsity, (2) fraud, (3) omission. The discrepancy in petitioner's returns manifests an evident substantial underdeclaration which eloquently demonstrates the falsity or fraudulence of the VAT and Income Tax returns with an intent to evade the payment of tax. Respondent, could therefore, rightfully invoke Section 222 because his right to assess has not yet prescribed.

24. Moreover, the Final Decision on Disputed Assessment (FDDA) specifically states that:

> **Imposition of 50% Surcharge and Prescriptive on Income and Value Added Tax**
>
> The bookkeeping methods adopted by True Value particulary on the transactions/items that it recorded as Purchase Discount rather than Other Income, resulted to falsity of the returns it filed. This is all more proved by the fact that said transactions originally book as credits to Purchase Discounts were eventually reversed/debited at

> year-end, while yet still, No Other Taxable Income were declared/recognized in its financial statements and tax returns for said gondola rentals, advertising charge and etc. True value has deliberately mispresented the true and correct result of its business operations for taxable year 2010, thereby justifying imposition of the 50% surcharge on income and Value-Added tax pursuant to Section 248(B) of the NIRC.
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> Likewise, in relation to the falsity of income and value added tax returns filed as previously discussed, the ten-year period of prescription under 222(a) of the NIRC applies, which states that: 'In the case of <u>false or fraudulent return</u>' with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after discovery of the falsity, fraud or omission...'
>
> Likewise, since True Value failed to file the documentary stamp tax returns and pay the tax due on its Lease Contacts, 50% Surcharge under Section 248(B) of the NIRC is imposed. Moreover, the 10-year prescriptive period under Section 222(a) of the NIRC applies, which states that: 'In the case of a false or fraudulent return with intent to evade tax or of <u>failure to file a return</u>, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission...'

25. In view of petitioner's willful filing of false or fraudulent returns and neglect to file documentary stamp tax returns, as expounded in the FDDA, fifty percent (50%) surcharge had been imposed pursuant to Section 245 (B) of the Tax Code.

26. Also, it must be emphasized that the period to assess petitioner for the deficiency taxes is ten (10) years pursuant to Section 222(A) of the Tax Code in relation to Section 248 (B) of the Tax Code.

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27. Therefore, the assessments against petitioner were made within the period prescribed by law.

B. Even assuming but without conceding that the ordinary period of prescription within which to assess tax liabilities is applicable, respondent's right to assess petitioner for taxable year 2010 still did not prescribe.

28. Section 203 of the Tax code provides the period within which assessment should be made, to wit:

> '**SECTION 203. Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, internal revenue taxes shall be assessed <u>within three (3) years</u> after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.' (Underscoring supplied)

29. Since internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, applying the foregoing provision, the last day for filing of return for taxable year 2010 is 15 April 2011, hence, petitioner's internal revenue taxes can be assessed three (3) years therefrom, or until 15 April 2014.

30. As an exception to the ordinary three (3) year prescriptive period, Section 222 (b) of the Tax Code allows extension of the period to assess provided there is a waiver of the statute of limitation.

31. A perusal of the BIR records revealed that, before the expiration of the three (3) year prescriptive period, petitioner executed waiver which validly extended the period to assess. Hence, on **8 April 2013**, before the expiration of the three (3) year period to assess, the Waiver of the Statute of Limitations under the National Internal Revenue Code was

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executed by petitioner extending the period to assess until 31 December 2014.

32. From the foregoing, considering that petitioner executed waiver extending the period to assess until 31 December 2014, the Formal Letter of Demand (FLD) dated 10 October 2014 and Final Assessment Notices (FAN) that were received by petitioner on 10 October 2014 did **not prescribe.**

33. Considering the foregoing discussion, it is clear that respondent's right to assess petitioner for the deficiency taxes has not prescribed, thus, the assessment is valid and lawful.

THE ASSESSMENTS ISSUED AGAINST PETITIONER HAVE BASES IN FACTS AND LAW.

34. Petitioner's contentions in its petition are bereft of merit. The assessments issued against it have bases in fact and in law.

35. After the conduct of investigation, records reveal that there is due from petitioner deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax for taxable year 2010.

A. Income Tax

36. Respondent assessed deficiency income tax of petitioner after considering the following discrepancies discussed hereunder.

37. The Final Decision on Disputed Assessment (FDDA) dated 29 February 2016, in its Details of Discrepancies, explains how respondent arrived to the assessment of deficiency income tax against petitioner, thus:

1. Unsupported Sales Discounts, Returns & Allowance - P40,834,976.58

True Value's [petitioner herein] financial statements showed Sales Discounts, Returns & Allowances aggregating P40,834,976.58. The monthly amounts thereof likewise reflected in the monthly GL. However, the debit notes should be the primary source document issued for said discounts, returns and allowances did not show that there were issuances to any costumer. Nor were there presented any other supporting documents that would support the truthfulness of the same, hence, disallowed as deduction from Gross Sales and assessed pursuant to Section 32(A) of the NIRC.

2. Undeclared Cash Sales - P887,406,397.09

Significant amounts of debits and credits to the account 'Undeposited Collections' were noted. The total of the monthly debits and credits were summarized, and as can be gleaned from the summary, the debits approximated the credits. This means that the undeposited cash collection were eventually deposited. Utilizing said data that was culled from the Cash Receipts Books, analysis on cash sales was made utilizing the Net Sales reported per books and tax returns. Charge Sales were likewise considered by utilizing the total amounts of income payments made by credit card companies per Summary of Creditable Withholding Taxes claimed. This analysis disclosed undeclared cash sales, hence, assessed pursuant to Section 32(A) of the NIRC. The ratio of undeclared cash sales to the net sales declared per return which is 127% is so substantial constituting prima facie evidence of a false or fraudulent return that warrants imposition of 50% Surcharge.

Extract of Undeposited Collection Account per Cash Receipts Books:

PERIOD	DEBIT	CREDIT
1/31/2010	120,773,185.91	120, 773,190.91
2/28/2010	166,782,731.82	166,782,731.82
3/31/2010	93,647,450.47	91,647,450.47
4/30/2010	159,478,289.25	159,478,289.25
5/31/2010	77,313,136.02	77,313,136.01
6/30/2010	124,743,771.33	124,743,771.33
7/31/2010	120,598,102.30	120,136,244.30
8/31/2010	108,419,621.62	108,419,168.62
9/31/2010	163,174,852.28	163,033,252.17
10/31/2010	83,056,334.41	83,056,404.16
11/30/2010	38,171,811.40	38,171,811.40
12/31/2010	92,118,733.66	92,118,733.66
TOTAL	1,348,269,020.47	1,345,674,184.10
Divide by:	112%	112%
Sales of net of VAT	1,203,811,625.42	1,201,494,807.23

Computation of Undeclared Cash Sales:

Cash Sales per Cash Receipts Books (based on Undeposited Collection)

1,203,811,625.42		
Less: Cash Sales Reported per Audit:		
Net Sales per Books	699,921,414.00	
Less: Credit Card Sales based on SAWT	383,216,185.67	316,405,228.33
Undeclared Cash Sales		**887,406,397.09**

3. Undeclared Income from Concessionaires - P13,824,705.65

True Value had an account in its General Ledger describes 'Income from Concessionaires' but there are no amounts reflected. Upon verifying its General Journal, there are debits to the accounts described as 'Purchases – Concessionaires (IFC)' for its different branches. In December, however, these accounts were reversed/credited. The said reversals which were accumulations to the said account for the whole year represents Income from Concessionaires which were accumulation to the said account for the whole year represents Income from Concessionaires which were undeclared in True Value's tax returns, thus assessed pursuant to Section 32(A) of the NIRC. (See FDDA-Schedule 1)

4. Undeclared Income per General Journal - P16,414,001.55

Perusal of the General Journal disclosed debits to the account 'Purchase Discounts' for Gondola Rentals, Advertising Support, Discounts Fee – True Perks, etc. Purchase Discount is a contra-action to Purchases and is normally credited. The debit entries to Purchase Discounts made by True Value is a misrepresentation because in reality, they represent other income earned for gondola rentals, advertising and other charges which were not declared in it Tax Returns. In view of the foregoing, the total amount of debits to Purchase Discounts is being assessed as undeclared income pursuant to Section 32(A) of the NIRC. (See FDDA-Schedule 2)

5. Undeclared Income per Debit Memos Issued - P523,502.51

The debit and credit memo books presented merely showed a list of the debit and credit memo numbers issued without the corresponding entries. Perusal of the debit memos disclosed income items such as handling fees for gift check redemptions, charges to Robinsons Handyman, Inc. For share in warehouse rental, etc., which were not reflected in its tax returns. As such, said income items are being assessed pursuant to Section 32(A) of the NIRC. (See FDDA-Schedule 3)

6. Undeclared Income from Gondola Rentals per Purchases Books - P2,013,248.54

Verification of True Value's Purchase Book disclosed that there were entries described as 'Purchase Discount – Gondola Rentals' for its various branches. This was deliberately booked as a Purchase Discount when this should have been reported as Other Income. There was no Other Income declared by True Value in its financial statements and tax returns aside from Sale of Goods. This is assessed pursuant to section 32(A) of the NIRC. (See FDDA-Schedule 4)

7. Undeclared Other Income per GL - P672,768.91

Verification of True Value's monthly GL disclosed that there was Other Income booked on a monthly basis for its various branches. In December, however, the same were reversed without any justifiable reason. These monthly Other Incomes should have been reported for tax purposes, thus assessed pursuant to Section 32(A) of NIRC. (See Schedule 5)

8. Fictitious Expenses arising from Bank Overdraft - P127,461,682.39

The Trial Balance submitted by True Value reflected a significant bank overdraft in one of its bank accounts, particularly RSB CA#100-23-001615-3. Bank overdraft are not permitted under the Philippines laws and violates generally accepted accounting principles. Moreover, the total cost and expenses declared/claimed by True Value for taxable year 2010 only amounted to P503,220,818.00 and P179,048,320.00, respectively, for an aggregate of P682,269,138.00 which were all deducted from the Net Sales of P699,621,414.00. For it to have had a negative balance or bank overdraft in its bank account at year end by an amount which is more than twice its average monthly expenses is rather absurd and unbelievable. Said negative balance generally connotes that there were unreflected/unexplained sources of funds and following the doctrine that was held in the case of CTA vs. Perez and CIR L-10507 dated May 30, 1958, unreflected sources of funds not accounted for in the taxpayer's returns to leads the inference that the part of its

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income had not been reported. The bank overdraft is therefore added to taxable income and assessed pursuant to Section 32(A) of NIRC.

9. <u>Undeclared Income per Matching of TPI-Relief & SAWT vs. SLS - P26,502,990.27</u>

True Value did not submit the Z-readings of all POS machines used in 2010. The monthly Summary List of Vatable Sales aggregating P693,565,034.75 during the year were lumped under 'various accounts' and did not reflect any customer names, TINs, etc., as required. This amount is the same as the Net Vatable Sales reported in its financial statements and income and value added tax return. True Value claims that the customer names were unidentifiable since they were all made though the POS Machines. It is argued, however, that while Sales were made through the POS Machine, it is not true that all customers are unidentifiable because it claimed creditable withholding taxes totalling P1,955,117.00. The certificates thereof (Form 2307 & 2306) only prove that many, it not some of its customers, were identifiable. Likewise, perusal of both the certificates of creditable withholding taxes and TPI-Relief data shows that True Value's income were not only sourced from Sale of Goods as represented in its financial statements and income tax returns but also from the sale of service and rentals. Absent of Z-readings, there is no proof that all sales of goods made through POS machines or otherwise had been fully declared in its income tax returns. In view of the foregoing, Purchases declared by its customers per combined analysis of the summary of creditable withholding taxes (SAWT) and TPI-Relief Data, except for those attributable to certificates of creditable withholding taxes on income payments made by credit card companies, are assessed as undeclared income pursuant of Section 32(A) of the NIRC. (See schedule 6)

Summary of Undeclared income per matching of TPI-Relief & SAWT vs. SLS

Sale of Goods	21,487,015.75
Service	4,722,979.49
Rental	214,285.86
Exempt	42,157.14
Zero-rated	36,552.03
Total	**26,502,990.27**

10. <u>Undeclared Income on Undeclared Purchases (SLP vs. TPI-Relief vs. EWT) - P490,725.77</u>

Comparison and analysis conducted among True Value's Summary List of Purchases (SLP), EWT Alphalist and Sales declared by its suppliers per TPI-Relief data disclosed undeclared/unaccounted Purchases in the total amount of P490,725.77. (See Schedule 7) Said discrepancies connote undeclared revenues following the doctrine held in the case of CTA vs. Perez and CIR L- 10507 dated May 30, 1958, which states that unreflected sources of funds not accounted for in the Taxpayer's returns leads to the inference that part of its income had not been reported, thus, the same is assessed pursuant to Section 32(A) of the NIRC.

11. <u>Undeclared Income on Unaccounted Salaries & Wages P262,626.69</u>

This was originally as assessment for Unsupported Salaries in the amount of P7,234,337.06 which was arrived at after comparison and reconciliation of Salaries and Wages Expense against the Alphalists of Employees submitted, disallowed pursuant to Section 34(A)(1)(b) of the NIRC, computed as follows:

Reconciliation:

Salaries & Allowance per FS		29,812,116.00
Less: Pension Cost	289,430.74	
Fringe benefits	2,418,470.23	
Contracted or outside services	8,839,497.00	11,547,397.97
Salaries & Wages per FS		18,264,718.03
Less: Compensation per Alphalist Employees		11,030,380.97
Compensation not supported by Alphalist		**7,234,337.06**

Taxpayer's Protest: True Value submitted the other alphalists of employees which it previously failed to submit. Likewise, it provided reconciliation of the Salaries and Allowances per ITR as against the Salaries per 1604CF.

RO's Stand: Data per additional alphalists submitted have been takes into consideration. However, a reconciliation thereof against the Salaries and Allowances per ITR results to unaccounted salaries. Following the doctrine held in the case CTA vs. Peres and CIR L-10507 dated May 30, 1958, unreflected sources of funds not accounted for in the taxpayer's returns leads to the inference that part of its income had not been reported, thus the same assessed pursuant to Section 32(A) of the NIRC.

Salaries & allowances per FS			29,812,116.00
Less:	Contracted/Outside Services	8,839,497.00	
	Pension Cost	289,430.74	9,128,927.74
	Salaries & Allowances per ITR		20,683,188.26
Less: Fringe/Employee Benefits			2,418,470.23
Salaries and Allowances net of employee benefit			18,264,718.03
Less: Compensation and Alphalist (See FDDA-Schedule 8)			18,527,344.72
Unaccounted Salaries			**(2,626,260.69)**

12. <u>Unsupported Licenses and Permit Fees - P2,885,135.00</u>

Verification disclosed that True Value claimed Licenses and Permit Fees in the total amount of P2,885,135.00 which included documentary stamp tax in the amount of P51,559.00. The said account normally pertains to business permit fees paid to the local government units and is usually based on gross sales. It is therefore imperative that this expense is fully substantiated so that the sales figures upon which it is based likewise be compared against the sales declarations per financial statements and tax returns. Since no supporting evidence were submitted, the said amount is disallowed as an expenses/deduction from gross income pursuant to Section 34(A)(1)(b) of the NIRC.

Taxpayer's Protest: True Value claims that assessments of taxes and license on business permits are not necessarily based on gross sales. Various LGUs have different assessment basis. In support, it submitted Official Receipts as proof of payments.

RO's Stand: Based on the Official Receipts and schedule submitted by True Value, there remains unsupported Taxes and Licenses Expense in the amount of P755,165.55 disallowed as deduction from gross income.

Taxes and licenses per FS	P 2,885,135.00
Less: Taxes and Licenses as Supported	2,129,358.45
Unsupported Taxes and Licenses	**P 755,165.55**

38. Respondent submits that the discrepancies resulting to assessment were ascertained in accordance with actual facts and law.

39. The discrepancies were discovered pursuant to Section 5 of the Tax Code which provides the power of the Commissioner of Internal Revenue (CIR) to ascertain the correctness of the return filed in order to determine the liability for any internal revenue tax, thus:

> '**SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.** – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
>
> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or – controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;
>
> xxx xxx

40. Corollary to such power the CIR has the authority to determine the correct tax. Section 6 of the Tax Code provides:

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'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, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.

(B) Failure to Submit Required Returns, Statements, Reports and other Documents. – When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

In case a person fails to file a required return or other document at the time prescribed by law, or wilfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which

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> shall be prima facie correct and sufficient for all legal purposes.
>
> (C) Authority to Conduct Inventory-taking, surveillance and to Prescribe Presumptive Gross Sales and Receipts. – The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes. The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed prima facie correct.
>
> When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Sections 113 and 237 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base, and such amount so prescribed shall be prima facie correct for purposes of determining the internal revenue tax liabilities of such person.'

41. Consistent with the foregoing provisions of law, audit procedures were adopted by respondent which include analysis of the accounting system, reconciliation of books of accounts against per returns, matching of data, sampling, and verification of revenue as to whether income reported by petitioner truly reflects the actual results of its business operations.

42. Respondent examined and scrutinized petitioner's protests and the supporting documents, and compared the

same with other relevant records, after which the discrepancies were still maintained.

43. Respondent informed petitioner in writing of the law and facts on which the assessment was made; he clarified the assessment in the issued Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD), and Final Decision on Disputed Assessments (FDDA).

44. All presumptions are in favour of the correctness of tax assessment *(Sy Po vs. Court of Tax Appeals, 164 SCRA 524).* Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

45. Considering that the assessments are prima facie correct, respondent need not prove the presumption of regularity of the assessment.

46. Section 3, Rule 131 of the Rules of Court provides:

> **Section 3.** Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx
>
> (m) That official duty has been regularly performed;

47. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. *(Marcos II vs. Court of Appeals, G.R. NO. 120880, June 5, 1997.)*

48. Perusal of the BIR Records, petitioner failed to substantiate its allegations to prove irregularities in the assessment.

49. 'The basic rule is that mere allegation is not evidence, and is not equivalent to proof.'

50. In the case of *Perez vs. Court of Tax Appeals, et al* the Honorable Supreme Court made it explicit that **unreflected sources of funds not accounted for in the taxpayer's returns leads to the inference that part of his income had not been reported.**

51. Thus, petitioner is correctly assessed of deficiency income tax for taxable year 2010.

B. Value-Added Tax (VAT)

52. The Final Decision on Disputed Assessment (FDDA) states petitioner's deficiency VAT liability on account of unsupported exempt sales per return/financial statement, to wit:

1. Unsupported Exempt Sales Returns/FS - P6,056,379.14

Vat-Exempt Sales that were declared per VAT returns and disclosed in the supplemental information to the financial statements were not supported by True Value, hence, assessed of 12% VAT pursuant to Section 106 of the NIRC, as amended.

53. As regards all other discrepancies from which VAT is imposed as stated in the FDDA, the same were already discussed in the assessment for income tax as explained above.

54. Pursuant to Section 106 of the Tax Code, the corresponding findings of discrepancies will not only make petitioner liable for deficiency income tax but also value-added tax.

55. For failure of petitioner to controvert the investigation made by respondent, i.e. its failure to present documentary evidence that will substantiate its claims, the assessed deficiency taxes must be maintained.

56. Settled is the rule that, 'bare allegations unsubstantiated by evidence, are not equivalent to proof' *(Domingo vs Roble, 453 SCRA 812, March 18, 2005).*

57. Considering the foregoing, petitioner cannot escape its liability for value added tax assessment.

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C. Expanded Withholding Tax (EWT)

58. The assessment for expanded withholding tax is properly imposed against petitioner. The FDDA explicitly states:

Reconciliation of income payments per financial statements and tax returns disclosed that you failed to withhold the creditable withholding taxes due on various income payments in accordance with their corresponding withholding tax rates as prescribed under 2.57.2 of RR 2-98, in violation of Section 57(B) of the NIRC. (See Schedule 9)

Taxpayer's Protest: True Value alleges that the discrepancies were merely attributable to timing differences and submitted supporting debit memos, statements of accounts and billing invoices.

RO's Stand: The reconciling item for Professional Fees amounting to P72,800.00 is acceptable since it was supported by billing invoices from SGV and CO, a GPP which is exempt from income tax and withholding taxes. For the other accounts and alleged timing differences, True Value failed to satisfactorily establish with competent and sufficient proof that they had indeed been subjected to expanded withholding taxes. Likewise, the debit memos submitted did not prove anything since it was not able to show/present how this were recorded in its books. The assessment it thus reiterated with revision on Professional Fees only.

59. No merits were given to petitioner's claim of cancellation/reduction of EWT. Petitioner merely made allegations but no supporting documents were submitted to rebut respondent's findings.

60. Hence, petitioner was validly assessed of the deficiency EWT.

D. DOCUMENTARY STAMP TAX (DST)

61. The assessment for documentary stamp tax is likewise correctly imposed against petitioner. The FDDA provides:

Verification disclosed that True Value claimed Rental expenses in its tax returns. As disclosed in its financial statements, said Lease contracts had terms ranging from 3 to 10 years. No documentary stamp tax returns were however submitted by

True Value despite several demands. In view thereof, documentary stamp tax is being assessed pursuant to section 194 of the NIRC. Since the lease contracts were not submitted, the Rental expense claimed per FS had been multiplied by the maximum lease term of 10 years as disclosed in the FS to determine the total lease contract amount. Likewise, increase in Security Deposits account was considered in determining the taxable basis for DST.

62. The DST returns covering each one of the Lease Contract involved should have been submitted to prove that petitioner indeed paid and remitted the DST on all lease contracts.

63. Again, petitioner failed to controvert the investigation made by respondent, and its failure to present documentary evidence that will substantiate its claims renders the assessed deficiency taxes valid and uncontroverted.

64. Thus, petitioner is properly assessed of DST in accordance with the Tax Code.

E. Imposition of 50% Surcharge

65. As discussed above, the imposition of 50% Surcharge is in accordance with the provision of law. The Final Decision on Disputed Assessment (FDDA) specifically states that:

> The bookkeeping methods adopted by True Value particularly on the transactions/items that it recorded as Purchase Discount rather than Other Income, resulted to falsity of the returns it filed. This originally book as credits to Purchase Discounts were eventually reversed/debited at year-end, while yet still, No Other Taxable Income were declared/recognized in its financial statements and tax returns for said gondola rentals, advertising charge and etc. True value has deliberately mispresented the true and correct result of its business operations for taxable year 2010, thereby justifying imposition of the 50% surcharge on income and Value Added tax pursuant to Section 248(B) of the NIRC.

66. In view of petitioner's willful filing of false or fraudulent returns and neglect to file documentary stamp tax

return, as shown in the FDDA, fifty percent (50%) surcharge had been imposed pursuant to Section 248 (B) of the Tax Code.

THE ASSESSMENT ISSUED AGAINST PETITIONER IS VALID AND LAWFUL.

67. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. *(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005.)*

68. All told, petitioner's assertions that the assessment issued to it by respondent has no basis in fact and law are mere fallacy. Above discussions disprove petitioner's claim. Thus, it is reiterated that petitioner is liable for the assessed deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, and Documentary Stamp Tax for taxable year 2010."

On December 5, 2016, respondent filed a *Motion for Leave to Defer Transmittal of BIR Records*,[21] which the Court granted in the Order dated December 8, 2016.[22]

The pre-trial conference was initially set on February 22, 2017.[23] However, considering respondent's *Urgent Motion to Reset Pre-Trial Conference* filed on February 15, 2017,[24] the pre-trial conference was reset to, and held on, May 18, 2017.[25]

On February 17, 2017, petitioner then filed its *Pre-Trial Brief*,[26] which the Court noted in the Order dated February 21, 2017.[27]

[21] Docket – Vol. I, pp. 277 to 280.
[22] Docket – Vol. I, p. 286.
[23] Notice of Pre-Trial Conference dated December 6, 2016, Docket – Vol. I, pp. 282 to 283.
[24] Docket – Vol. I, pp. 293 to 297.
[25] Order dated February 17, 2017, Docket – Vol. I, p. 299; Minutes of the hearing held on, and Order dated, May 18, 2017, Docket – Vol. I, pp. 351 to 354 and 356 to 359.
[26] Docket – Vol. I, pp. 301 to 306.
[27] Docket – Vol. I, p. 314.

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On the other hand, *Respondent's Pre-Trial Brief* was submitted on May 12, 2017.[28]

Respondent submitted his *Compliance* on May 12, 2017,[29] transmitting the BIR Records of petitioner's tax case which the Court noted.[30]

The parties submitted their *Joint Stipulation of Facts and Issues* on June 16, 2017.[31] The Court approved the same on July 7, 2017, deeming the pre-trial terminated.[32] Consequently, the Court issued the Pre-Trial Order on July 31, 2017.[33]

As trial ensued, petitioner presented documentary and testimonial evidence. As part of its testimonial evidence, petitioner offered the testimonies of (1) Ms. Jessica C. Bugnot,[34] petitioner's Controller; and (2) Ms. Ria Anne P. Abanto,[35] the Court-commissioned Independent Certified Public Accountant (ICPA).[36]

On August 15, 2017, petitioner submitted a *Motion to Admit Independent Certified Public Accountant's Report*,[37] and the Court granted the same, and admitted the attached ICPA Report thereto.[38]

On October 4, 2017, the *Formal Offer of Evidence for Petitioner* was filed.[39]

In the Resolution dated January 3, 2018,[40] the Court admitted petitioner's Exhibits, *except* for the following:

1. Exhibits "P-16-B", "P-45", and "P-57", for failure to present the originals for comparison;

[28] Docket – Vol. I, pp. 315 to 319.
[29] Docket – Vol. I, pp. 346 to 347.
[30] Minute Resolution dated May 26, 2017, Docket – Vol. I, p. 360.
[31] Docket – Vol. I, pp. 369 to 375.
[32] Resolution dated July 7, 2017, Docket – Vol. I, p. 408.
[33] Pre-Trial Order dated July 31, 2017, Docket – Vol. II, pp. 933 to 944.
[34] Exhibit "P-35", Docket – Vol. II, pp. 422 to 456; Minutes of the hearing held on, and Order dated, August 1, 2017, Docket – Vol. II, pp. 945 to 948; Exhibit "P-66", Docket – Vol. II, pp. 1021 to 1025; Order dated September 19, 2017, Docket – Vol. III, pp. 1028 to 1029.
[35] Exhibit "P-64", Docket – Vol. II, pp. 990 to 998; Order dated September 5, 2017, Docket – Vol. II, pp. 1002 to 1003.
[36] Minutes of the hearing held on, and Order dated, June 29, 2017, Docket – Vol. I, pp. 394 to 396, and 398 to 399; *Oath of Commission* dated June 29, 2017, Docket – Vol. I, p. 397.
[37] Docket – Vol. II, pp. 950 to 953.
[38] Resolution dated September 5, 2017, Docket – Vol. II, p. 1007.
[39] Docket – Vol. III, pp. 1032 to 1051.
[40] Docket – Vol. III, pp. 1338 to 1340.

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2. Exhibits "P-30", "P-30-A", "P-31-A", "P-31-B", "P-31-C", "P-31-D", and "P-32", for failure to identify; and

3. Exhibit "P-31", for failure to present the original for comparison and failure to identify.

Petitioner's admitted documentary exhibits are as follows:

Exhibit:	Description:
P-1	Amended Articles of Incorporation of Robinsons True Serve Hardware Philippines, Inc.
P-2	Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC000059028
P-3	Waiver of Defense of Prescription dated 8 April 2013 (Waiver)
P-3-A	Waiver of Defense of Prescription accepted by the BIR on 8 April 2013
P-3-B	Waiver of Defense of Prescription delivered to petitioner and received by Ms. Jessica Bugnot
P-4	Preliminary Assessment Notice (PAN) dated 12 September 2014
P-5	Protest Letter against the PAN dated 30 September 2014
P-6	Formal Letter of Demand (FLD) dated 10 October 2014
P-7	Protest Letter against the FLD dated 7 November 2014
P-8	Supplemental Protest Letter against the FLD dated 6 January 2015
P-9	Final Decision on Disputed Assessment (FDDA) dated 29 February 2016
P-10	Request for Reconsideration dated 7 April 2016
P-11	BIR Denial Letter dated 30 June 2016
P-12	Annual Income Tax Return 2010 (ITR)
P-12-A	Annual Income Tax Return 2010 with electronic date/time stamp "April 13 2011 12:53 PM"
P-12-B	eFPS Payment Details for the Annual Income Tax Return 2010 with electronic date stamp "4/14/2011"
P-13	VAT Return – 1st Quarter of 2010
P-13-A	VAT Return – 1st Quarter of 2010 with electronic date stamp "April 21, 2010"
P-14	VAT Return – 2nd Quarter of 2010
P-14-A	VAT Return – 2nd Quarter of 2010 with electronic date stamp "July 22, 2010"
P-14-B	Transaction Acknowledgment Receipt for 2nd Quarter VAT 2010
P-15	VAT Return – 3rd Quarter of 2010

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P-15-A	VAT Return – 3rd Quarter of 2010 with electronic date stamp "October 21, 2010"
P-16	VAT Return – 4th Quarter of 2010
P-16-A	VAT Return – 4th Quarter of 2010 with electronic date stamp "January 20, 2011"
P-16-C	eFPS Payment Details for 4th Quarter 2010 VAT
P-17	EWT Return – January 2010
P-17-A	EWT Return – January 2010 with electronic date stamp filed on 11 February 2010
P-17-B	EWT Return – January 2010 eFPS payment details dated paid on 14 February 2010
P-18	EWT Return – February 2010
P-18-A	EWT Return – February 2010 with electronic date stamp filed on 10 March 2010
P-18-B	EWT Return – February 2010 eFPS payment details date paid on 11 March 2010
P-19	EWT Return – March 2010
P-19-A	EWT Return – March 2010 with electronic date stamp filed on 8 April 2010 and
P-19-B	EWT Return – March 2010 eFPS payment details date paid on 12 April 2010
P-20	EWT Return – April 2010
P-20-A	EWT Return – April 2010 with electronic date stamp filed on 11 May 2010
P-20-B	EWT Return – April 2010 eFPS payment details date paid on 14 May 2010
P-21	EWT Return – May 2010
P-21-A	EWT Return – May 2010 with electronic date stamp filed 11 June 2010
P-21-B	EWT Return – May 2010 eFPS payment details date paid on 11 June 2010
P-22	EWT Return – June 2010
P-22-A	EWT Return – June 2010 with electronic date stamp filed 9 July 2010
P-22-B	EWT Return – June 2010 with eFPS payment details date paid on 12 July 2010
P-23	EWT Return – July 2010
P-23-A	EWT Return – July 2010 with electronic date stamp filed on 10 August 2010
P-23-B	EWT Return – July 2010 with eFPS payment details date paid on 12 August 2010
P-24	EWT Return – August 2010
P-24-A	EWT Return – August 2010 with electronic date stamp filed on 8 September 2010
P-24-B	EWT Return – August 2010 with eFPS payment details date paid on 13 September 2010
P-25	EWT Return – September 2010
P-25-A	EWT Return – September 2010 with electronic date stamp filed on 8 October 2010
P-25-B	EWT Return – September 2010 with eFPS payment

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	details date paid on 13 October 2010
P-26	EWT Return – October 2010
P-26-A	EWT Return – October 2010 with electronic date stamp filed on 10 November 2010
P-26-B	EWT Return – October 2010 eFPS payment details date paid on 12 November 2010
P-27	EWT Return – November 2010
P-27-A	EWT Return – November 2010 with electronic date stamp filed on 8 December 2010
P-27-B	EWT Return – November 2010 eFPS payment details date paid on 10 December 2010
P-28	EWT Return – December 2010
P-28-A	EWT Return – December 2010 with electronic date stamp filed on 12 January 2011
P-28-B	EWT Return – December 2010 eFPS payment details date paid on 14 January 2011
P-29	2010 Audited Financial Statements (2010 AFS)
P-31-D	2010 Alphalist of Minimum Wage Earners for the Calendar Year 2010, Schedule 7.5
P-32	Motion for Reconsideration filed on 4 August 2016
P-33	Independent Certified Public Accountant (ICPA) Report dated 14 August 2017
P-33-A	Signature of Ms. Ria Anne P. Abanto
P-34	Affidavit in Lieu of Direct Examination of Ms. Ria Anne P. Abanto executed on 16 June 2017
P-34-A	Signature of Ria Anne P. Abanto
P-35	Affidavit in Lieu of Direct Examination of Ms. Jessica C. Bugnot
P-35-A	Signature of Ms. Jessica C. Bugnot
P-36	2010 Point of Sale (POS) End of Day Readings
P-37	General Ledger (GL)
P-38	Journal Entries of Sales Returns from JDA Software
P-39	Summary of Debit Entries Petitioner's Cash Receipt Book
P-40	2010 Cash Receipts Book
P-41	Copies of Cash Receipts Vouchers
P-42	2010 Bank Statements
P-43	Summary of Contracts/Agreements with Concessionaries
P-44	General Journals
P-46	Confirmation replies from Affiliates related to Debit Memos
P-47	2010 Purchases Book
P-48	Summary of 2010 cashier's shortages and overages
P-49	2010 Bank Reconciliations
P-50	Schedule of 2010 outstanding checks
P-51	January 2011 Bank Statements
P-52	Summary of outstanding money market placements as of December 31, 2010 from the Bank
P-53	2010 Summary List of Sales (SLS)

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P-54	2010 Summary List of Purchases (SLP)
P-55	1604-E and Alphalist of Expanded Withholding Taxes
P-56	Schedule of 2010 Licenses and Permits Fee
P-58	2010 BIR Forms 2550M and 2550Q and all its attachments
P-59	Reconciliation of EWT prepared by the petitioner
P-60	Schedule of Purchases Expenses for 2009 paid in 2010
P-61	Confirmation replies from Affiliates related to EWT
P-62	Schedule of Payments made to security agency
P-63	Lease Contracts covering taxable year 2010
P-64	Copies of POS Machine Permits
P-65	Affidavit in Lieu of Direct Examination of Ms. Ria Anne P. Abanto executed on 31 August 2017
P-65-A	Signature of Ria Anne P. Abanto
P-66	Supplemental Judicial Affidavit of Ms. Jessica C. Bugnot 14 September 2017
P-66-A	Signature of Ms. Jessica C. Bugnot

Respondent also presented his documentary and testimonial evidence. With respect to testimonial evidence, respondent proffered only the testimony of Ms. Vivien C. Guillermo,[41] Revenue Officer II of the BIR.

On March 12, 2018, respondent filed his *Formal Offer of Evidence*.[42] The Court then admitted respondent's Exhibits, *except* for Exhibit "R-7", for failure to present the original for comparison.[43]

Subsequently, respondent filed, on June 13, 2018, his *Omnibus Motion 1. Motion for Partial Reconsideration Re: Resolution dated May 22, 2018; 2. Motion to Set Commissioner's Hearing; 3. Motion to Submit Supplemental Formal Offer of Evidence; and 4. Motion to Defer Submission of Memorandum*.[44] Pursuant to the Court's Resolution dated July 3, 2018,[45] petitioner filed its *Comment (Re: Omnibus Motion dated 11 June 2018 [1] Motion for partial reconsideration re: Resolution dated May 22, 2018; [2] Motion to set commissioner's hearing; [3] Motion to submit supplemental formal*

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[41] Exhibit "R-13", Docket – Vol. I, pp. 327 to 339; Minutes of the hearing held on February 20, 2018, Docket – Vol. III, pp. 1430 to 1431; Order dated February 20, 2018, Docket – Vol. III, pp. 1341 to 1342.
[42] Docket – Vol. III, pp. 1344 to 1350.
[43] Resolution dated May 23, 2018, Docket – Vol. III, pp. 1362 to 1363.
[44] Docket – Vol. III, pp. 1364 to 1368.
[45] Docket – Vol. III, p. 1414.

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offer of evidence; and [4] Motion to defer submission of memorandum) on July 20, 2018.[46]

The Court granted the *Motion to Set Commissioner's Hearing, Motion to Submit Supplemental Formal Offer of Evidence*, and *Motion to Defer Submission of Memorandum*; and held in abeyance the resolution of the *Motion for Partial Reconsideration Re: Resolution dated 22 May 2018*.[47]

In the meantime, on June 26, 2018, the *Memorandum for Petitioner* was filed.[48]

On September 19, 2018, the instant case was transferred to this Court's Second Division.[49]

On October 17, 2018, a Commissioner's Hearing was held.[50] Thereafter, respondent filed his *Supplemental Formal Offer of Evidence* on October 18, 2018.[51]

In the Resolution dated November 20, 2018,[52] respondent's *Motion for Partial Reconsideration Re: Resolution dated 22 May 2018* was granted; and thus, Exhibit "R-7" was admitted in evidence.

The admitted documentary evidence for the respondent are the following:

Exhibit:	**Description:**
R-1	Letter of Authority LOA-116-2012-00000017 dated July 3, 2012
R-1-A	Checklist of Requirements for 2010 Tax Investigation
R-2	Waiver of the Defense of Prescription under the Statue of Limitations of the National Internal Revenue Code executed on April 8, 2013
R-3	Memorandum dated May 26, 2014
R-4	Preliminary Assessment Notice dated September 12, 2014 with attached Details of Discrepancies and

[46] Docket – Vol. III, pp. 1415 to 1418.
[47] Resolution dated August 18, 2019, Docket – Vol. III, pp. 1424 to 1426.
[48] Docket – Vol. III, pp. 1370 to 1409.
[49] Order dated September 19, 2018, Docket – Vol. III, p. 1427.
[50] Commissioner's Report Hearing on October 17, 2018, Docket – Vol. III, p. 1432.
[51] Docket – Vol. III, pp. 1434 to 1436.
[52] Docket – Vol. III, pp. 1444 to 1445.

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	attached Schedules to Preliminary Assessment Notice
R-5	Memorandum dated October 1, 2014
R-6	Formal Letter of Demand (FLD) dated October 10, 2014 with attached Details of Discrepancies and attached Schedules to Formal Letter of Demand
R-7	Audit Result/Assessment Notice (BIR Form No. 0401)
R-8	Memorandum dated February 20, 2016
R-9	Final Decision on Disputed Assessment dated February 29, 2016 with attached Details of Discrepancies
R-9-A	Schedules referred to in the Details of Discrepancies of the FDDA
R-10	Audit Result/Assessment Notice (BIR Form No. 0401) dated February 29, 2016
R-11	Letter addressed to The President of Robinsons True Serve Hardware Phils. Inc.
R-12	BIR Records consisting of four (4) folders of documents described as Folder 1 with pages 1 to 1324, Folder 2 with pages 1324-A to 1833, Folder 3 with pages 1 to 1070, and Folder 4 with pages 1 to 587
R-13	Judicial Affidavit of Revenue Officer Vivien C. Guillermo
R-13-a	Signature of Revenue Officer Vivien C. Guillermo

Respondent then submitted his *Memorandum* on January 24, 2019.[53]

On February 4, 2019, this case was deemed submitted for decision.[54]

THE ISSUE RAISED

The parties set forth the following issue for this Court's resolution, to wit:

> "Whether or not Petitioner is liable to pay the assessed deficiency income tax, VAT, EWT, and DST for taxable year 2010, plus 50% surcharge, 20% deficiency and delinquency interest pursuant to Sections 248 and 249 of the Tax Code."[55]

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[53] Docket – Vol. III, pp. 1452 to 1475.
[54] Resolution dated February 4, 2019, Docket – Vol. III, p. 1477.
[55] Par. II, JSFI, Docket – Vol. I, p. 370.

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Petitioner's arguments:

Petitioner contends that respondent's right to assess the former for deficiency income tax, VAT, and EWT has already prescribed. Allegedly, the *Waiver* signed by petitioner is defective as it failed to specify the kind of taxes and the respective amounts of deficiency due.

According to petitioner, the assessments for deficiency income tax and VAT have no factual or legal basis. As to the assessment for deficiency EWT, petitioner opines that respondent has failed to consider the following: (i) the timing differences at the end of the year for which remittance of withheld taxes was made the following month; (ii) expenses paid by affiliates and subsequently charged to petitioner pursuant to their expense sharing scheme for which withholding taxes were withheld and remitted by the affiliates concerned as the entities in control of the income payments made to the corresponding suppliers; and (iii) payments for security services under agency where only the agency fees were subject to withholding taxes. Likewise, petitioner posits that respondent has ignored the following in assessing petitioner for deficiency DST: (i) the subject lease agreements were long-term lease agreements that most of which were executed before the year ended December 31, 2010 and was beyond the coverage of respondent's audit investigation; (ii) security deposits which were refunded to the lessee at the end of the lease, were not part of the rent due under the lease agreement and should not have been considered in determining the amount of DST due; and (iii) in the absence of an agreement to the contrary, DST on lease agreements are primarily the obligation of the lessor.

With respect to the 50% surcharge on deficiency income tax, VAT, and DST, petitioner avers that the same were bereft of any basis to support a finding of fraud. Petitioner likewise claims that there was no basis on the imposition of additional deficiency interest based on the assessed deficiency VAT, EWT, and DST, even if there was basis for the assessments of the same for TY 2010.

Respondent's counter-arguments:

Respondent counter-argues that petitioner must show the instant *Petition for Review* was filed within the prescriptive period.

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Respondent also claims that his right to assess petitioner for TY 2010 did not prescribe as the ordinary three (3) year period within which to make the assessment finds no application to the instant case. Even assuming that the ordinary period of prescription within which to assess tax liabilities applied to this case, respondent asserts that his right to assess petitioner for TY 2010 still did not prescribe.

It is averred by respondent that the assessments issued against petitioner have factual and legal basis. Thus, the assessment issued against petitioner is allegedly valid and lawful.

THE COURT'S RULING

Notwithstanding the above-quoted issue raised by the parties, this Court resolves to raise, and rule on, the following related issue, which it deems as necessary to achieve an orderly disposition of the instant case, before looking into the said issue raised by the parties, if still warranted, to wit:

> **"Whether or not the subject tax assessments are invalid."**

The foregoing issue is relevant primarily because in the instant *Petition for Review*, petitioner prays for the declaration of nullity and cancellation of the subject tax assessments for TY ended December 31, 2010, in the aggregate amount of ₱1,182,392,770.89. Thus, it is proper to resolve the said issue raised by this Court.

After all, there is even a legal basis allowing this Court to resolve the same issue.

Legal basis to resolve the issue raised by this Court.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals reads as follows:

"RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. – *Rendition of judgment* – xxx

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> **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**" *(Emphasis supplied)*

Based on the foregoing provision, this Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.[56] Such authority of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[57] *viz*:

> "**On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > **SECTION 1. *Rendition of judgment.* – xxx**
> >
> > **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**
>
> **The above section is clearly worded.** On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphases ours)*

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[56] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017.
[57] G.R. No. 183408, July 12, 2017.

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Furthermore, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[58] the Supreme Court held:

> "The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
>
> xxx xxx xxx
>
> **<u>The rule against raising new issues on appeal is not without exceptions</u>; it is a procedural rule that the Court may relax <u>when compelling reasons so warrant or when justice requires it</u>. What constitutes good and sufficient cause that would merit suspension of the rules is <u>discretionary upon the courts</u>**. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
>
> > **<u>The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, although they have not been specifically raised as issues by the pleadings</u>.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]
>
> xxx xxx xxx

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[58] G.R. No. 163835, July 7, 2010.

Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance." *(Emphases and underscoring ours)*

On the basis of the foregoing jurisprudential pronouncements, it is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and (ii) questions involving *matters of public importance*.

In this case, whether or not the subject tax assessments are valid is a *matter of record*, and *of public importance*. The said issue is a *matter of record* because the parties submitted their respective evidence to establish what transpired in the proceedings *a quo*, and thus, could be resolved by simply referring to the same evidence. Moreover, the issue raised by this Court has some bearing on the issues submitted by the parties. Furthermore, the same issue can be deemed as *matter of public importance*, simply because a void assessment bears no valid fruit.[59] Taxpayers, including petitioner, must not be held liable under an invalid tax assessment.

Correspondingly, We see no legal obstacle to resolve the above-stated issue raised by this Court.

The subject tax assessments are void, since petitioner's tax liabilities remain indefinite.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (hereinafter referred to as the "*Fitness By Design* case"),[60] the Supreme Court said:

"**The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue

[59] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.
[60] G.R. No. 215957, November 9, 2016.

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. <u>Its main purpose is to determine the amount that a taxpayer is liable to pay</u>.**

xxx xxx xxx

A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'

The disputed Final Assessment Notice is not a valid assessment.

xxx **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. <u>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 tax liability that is there definitely set and fixed</u>.' Although the disputed notice provides for the computation of respondent's tax liability, the amount remains indefinite. <u>It only provides that the tax due is still subject to modification, depending on the date of payment</u>.** 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)

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> xxx. **The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**" *(Emphases ours)*

In this case, the contents of the FLD dated October 10, 2014 issued against petitioner,[61] are, in part, state as follows:

> "FORMAL LETTER OF DEMAND
>
> The President
> ROBINSONS TRUE SERVE HARDWARE PHILS., INC.
> 110 E. Rodriguez Jr. Avenue
> Libis, Quezon City
> TIN: 006-643-830-000
>
> Sir/Madam:
>
> Please be informed that we have received your letter of protest against our Preliminary Assessment Notice dated September 12, 2014, on September 30, 2014. While you have provided explanations/justifications, the same cannot be given any credit to warrant revision or cancellation of our assessments since you have failed to submit relevant and competent supporting evidence. In order to properly evaluate and validate the explanations and justifications you have provided, it is imperative that the soft copies of all the books be submitted. Likewise, the Z-readings of all POS Machines, contracts/agreements, and source documents that were repeatedly requested during the course of audit, and other supporting documents to your protest, should likewise be submitted.
>
> In view thereof, pursuant to RR 18-2013, we reiterate our assessments for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Fringe Benefit Tax, Documentary Stamp Tax and Improperly Accumulated Earnings Tax for the taxable year 2010, pursuant to Letter of Authority (LOA) No. 116-2012-00000017 dated July 3, 2012, as shown hereunder:
>
> xxx xxx xxx

[61] Exhibit "P-6", Docket – Vol. III, pp. 1105 to 1107; Exhibit "R-6", BIR Records, Folder 1, pp. 1314 to 1322.

****Please take note that the interest <u>will have to be adjusted if paid beyond the date specified therein</u>.***

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX –A of this letter.

The twenty percent (20%) interest per annum has imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay the tax within the time prescribed by law for its payment.

In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through the e-filing and payment system (eFPS) using BIR Payment Form (BIR Form 0605). Afterwards, submit proof of payment thereof to the Regular Large Taxpayers Audit Division I located at Rm 216 National Office Building, BIR Road, Diliman, Quezon City for updating of your records and cancellation of the herein Formal Letter of Demand, if warranted.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

By:

(SIGNED)
NESTOR S. VALEROSO
OIC- Assistant Commissioner
Large Taxpayers Service"

(Emphases and underscoring ours)

A careful reading of the foregoing would reveal that the subject tax assessments lack the definite amount of tax liabilities for which petitioner is accountable. Specifically, the said FLD states that the interest will still *"be adjusted if paid beyond the date specified therein."* Similar to the *Fitness By Design* case, although the FLD provides for a computation of petitioner's supposed tax liabilities, the respective amount thereof remains indefinite, since the said tax assessments are still subject to modification or adjustment, depending on the date of payment by petitioner.

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In the same vein, the FDDA dated February 29, 2016[62] is likewise to the effect that *"the interest will have to be adjusted if paid beyond March 30, 2016".* Thus, just as in the subject FLD, the supposed tax liabilities of petitioner remain indefinite in the said FDDA.

Such being the case, on the basis of the aforequoted ruling in the *Fitness By Design* case, the subject tax assessments are void, and thus, bear no valid fruit.[63]

The subject tax assessments are likewise void, for violation of petitioner's right to due process.

Section 3.1.5 of Revenue Regulations (RR) No. 12-99[64], as amended by RR No. 18-2013[65], provides as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> **3.1 Mode of procedure in the issuance of a deficiency tax assessment:**
>
> xxx xxx xxx
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – **The decision of the Commissioner** or his duly authorized representative **shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void*** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his *final decision." (Emphases ours)*

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[62] Exhibit "P-9", Docket – Vol. III, pp. 1148 to 1162; Exhibits "R-9", and "R-10", BIR Records – Folder 2, pp. 1775 to 1816.

[63] Refer to *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

[64] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[65] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

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Based on the foregoing provision, part of the due process requirement in the issuance of a deficiency tax assessment is that the decision of respondent shall state: (1) the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based; and (2) that the same is his or her final decision. In case of failure to state the said facts, *etc.*, respondent's decision shall be rendered void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,[66] the Supreme Court said:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> xxx xxx xxx
>
> **The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** xxx. Finally, **Section 3.1.6**[67] **specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.**
>
> **'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to** the Preliminary Assessment Notice, Final Letter of Demand with

[66] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[67] Now the aforequoted Section 3.1.5 of RR No. 12-99, as amended by RR 18-2013.

the Final Assessment Notices, and **the Final Decision on Disputed Assessment.**

xxx xxx xxx

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[68]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> xxx xxx xxx
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)

xxx. ***[The Commissioner of Internal Revenue's] disregard of the standards and rules renders the deficiency tax assessments null and void.*** xxx." *(Emphases and underscoring ours)*

Based on the foregoing doctrinal pronouncements, one of the due process requirements in the issuance of tax assessments is that the taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied in the decision of respondent, in that it must state the facts and law, rules and regulations, and jurisprudence on which the

[68] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

decision is based. In case respondent or the BIR fails to observe, *inter alia*, the said due process requirement, it shall have the effect of rendering the subject deficiency tax assessments void, and of no force and effect.

In this case, the contents of the letter dated June 30, 2016 of respondent,[69] purporting to be the latter's FDDA, read as follows:

> "The President
> ROBINSONS TRUE SERVE HARDWARE PHILS., INC.
> 110 E. Rodriguez Jr. Avenue
> Libis, Quezon City
> TIN: 006-643-830-000
>
> Subject: All Internal Revenue Taxes for taxable year 2010 pursuant to LOA No. 116-2012-00000017 dated July 3, 2012
>
> Sir/Madam:
>
> This has reference to your Motion for Reconsideration dated April 7, 2016 relative to our Final Decision on Disputed Assessment (FDDA) dated February 29, 2016 representing deficiency income tax, value added tax, expanded withholding tax and documentary stamp tax in the amounts of P835,117,452.82, P341,512,632.78, P4,100,489.72 and P1,662,195.56, respectively, for taxable year 2010.
>
> Please be informed that after a thorough and diligent review of your case, we noted that you have merely reiterated previous contentions per your letter of protest against our Formal Letter of Demand which have already been addressed and discussed in our FDDA, thus your Motion for Reconsideration is DENIED. Accordingly, the aforesaid deficiency tax assessments per our FDDA are hereby reiterated.
>
> In view thereof, It is requested that the deficiency taxes contained in the FDDA and Assessment Notices aggregating P,182,392,770.89, inclusive of interest and penalties, be paid immediately upon receipt hereof.
>
> <u>This is our final decision</u>. If you disagree, you may appeal the same with the Court of Tax Appeals within thirty (30) days from receipt hereof, otherwise, the said deficiency

[69] Exhibit "P-11", Docket – Vol. III, p. 1192; Exhibit "R-11", BIR Records – Folder 3, p. 1066.

tax assessments shall become final, executory and demandable.

For your information and guidance.

Very truly yours,

(signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue"

A careful reading of the foregoing letter would reveal that the same does ***not*** state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, as required under above-quoted Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013. Thus, there is a clear violation of petitioner's due process rights under the said provision. Such being the case, such violation renders the subject tax assessments null and void.

In sum, the subject tax assessments are invalid, because petitioner's tax liabilities remain indefinite, and petitioner's right to due process was violated by respondent. With this finding, it becomes unnecessary to address the issue raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency income tax, VAT, EWT, and DST assessments issued against petitioner for taxable year ended December 31, 2010, in the aggregate amount of ₱1,182,392,770.89 are **CANCELLED and SET ASIDE**, for being void.

SO ORDERED.

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

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(See Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ROBINSONS TRUE SERVE HARDWARE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9418

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated: JAN 2 3 2020

x - x
1:10 p.m.

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect, I beg to differ with the conclusions reached in the *ponencia* of our esteemed colleague, Hon. Justice Cielito N. Mindaro-Grulla.

As stated in the *ponencia*, the invalidity of respondent's assessment against petitioner was essentially anchored on two grounds: (1) the tax liabilities remain indefinite applying the doctrine laid down in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[1] (**Fitness By Design**); and, (2) petitioner's right to due process was violated for failure of respondent to state the facts, applicable law, rules and regulations or jurisprudence on which his decision was based.

[1] G.R. No. 215957, 09 November 2016.

The bases of my respectful dissent are discussed below, *in seriatim*.

THE AMOUNT OF TAX LIABILITY IS DEFINITE.

The facts of the instant case are not in all fours with *Fitness By Design* as to warrant its application herein.

In *Fitness By Design*, the Supreme Court noted that the amount in the Final Assessment Notice (**FAN**) remained indefinite as the same was subject to modification, depending on the date of the taxpayer's payment. The wordings in the FAN there is quoted, as follows:

> ...
> 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, ***<u>however, that the interest and the total amount due will have to be adjusted if paid prior or beyond April 15, 2004</u>***.[2]
> ...

The Supreme Court also emphasized that the FAN there did not contain due dates, thus, it held:

> ...
> 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.*

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2 Emphasis and underscoring supplied.

> However, based on the findings of the Court of Tax Appeals First Division, **<u>the enclosed assessment pertained to remain unaccomplished</u>**.[3]
>
> ...

Whereas, the pertinent portion of the Formal Letter of Demand (FLD) in the case at bar reads:

> ...
> ***Please take note that the <u>interest</u> will have to be adjusted if paid beyond the date specified therein.***[4]
> ...

In the FLD in herein case, it is clear to mean that the *interest* will only be adjusted if the taxpayer pays *beyond* the deadline or due date provided (which is 10 November 2014[5]). Insofar as the total amount indicated in the FLD, there is no indefiniteness although the computation of interest coincided with the due date for payment which was shown conspicuously on the assessment notices attached to it. From these, the taxpayer is demanded to pay the total amount reflected in both FLD and assessment notices at any time within the prescribed period.

What is crucial in determining the validity of the assessment is the definiteness of the amount indicated in the FLD and the deadline for payment (shown in the assessment notices attached to the FLD). If the FLD apprises both substantively, then the FLD could not be deemed insufficient or that the assessment is void. While the computation of interest may not yet appear definite, the same is understandable since the BIR could not really be expected to know or to foresee when the taxpayer will actually settle the tax obligation. To invalidate the entire assessment on the basis of the indefiniteness *<u>not</u>* of the amount of tax liability but of the interest that may accrue (beyond the deadline of payment) will therefore not be in accord with the doctrines laid down in *Fitness By Design*.

Moreover, the *proviso* in *Fitness By Design* used the phrase "prior to or beyond April 15, 2004". The logical interpretation of this phrase

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[3] Italics in the original text, emphasis and underscoring supplied.
[4] Exhibit "P-6", emphasis and underscoring supplied.
[5] As shown in Assessment Notices of the BIR, see BIR Records.

entails requiring taxpayers, after receiving the assessment, to come forward to the BIR and inform the latter of its intended payment date (even if within the period prescribed) for the adjustment of interest, and correspondingly the total amount due. This makes the total amount in the FAN indefinite and subject to modification. In effect, the total amount of assessment in the FAN is merely suggestive as the final computation of liability is entirely dependent on the actual date of payment by the taxpayer. Hence, the Supreme Court held:

> ...
>
> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."
>
> 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.*
>
> ...
>
> 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.[6]
>
> ...

The above circumstance is not the scenario in the instant case.

The more significant difference between the two cases is the deadline for payment indicated in the assessment notices. The deadline for payment is vital as it is the reckoning date from which delinquency interest will run (assuming the taxpayer pays beyond the prescribed period).

In *Fitness By Design*, the deadline for payment in the assessment notices remained unaccomplished. The absence of the said deadline was fatal to the BIR's claim because the FAN itself indicated that the taxpayer was requested to pay the deficiency taxes due "within the time shown in the enclosed assessment notice". It was for this reason that April 15, 2004 indicated in the FAN was not considered as deadline for payment.

On the other hand, in the case at bar, the assessment notices attached to the FLD show that the deadline for payment to be "10 November 2014". As stated earlier, the computation of interest in the FLD coincided with the said deadline for payment.

It is also noteworthy that the FLD issued by respondent in this case is compliant with the pro-forma FLD in Annex B of RR 12-99.

NO VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS

This ground for invalidity of the assessment is hinged on Section 3.1.5 of Revenue Regulations (RR) No. 18-2013, which amended RR 12-99, to wit:

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6 Emphasis and underscoring supplied, and italics in the original text.

> ...
> 3.1.5 ***Final Decision on a Disputed Assessment (FDDA).*** - The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise the **decision** shall be void (see illustration in ANNEX "C" hereof), and (ii) that the same is his final decision. (Emphasis and underscoring supplied)
> ...

The *ponencia* quoted the letter dated 30 June 2016 of then BIR Commissioner Kim Henares, in response to petitioner's Motion for Reconsideration on the FDDA, and found the same to be lacking the facts, applicable law, rules and regulations, or jurisprudence (on which Henares had based her decision on the FDDA). While it may be true that it was not complete, the whole assessment should not be invalidated or cancelled.

The Supreme Court made an exhaustive discussion on this matter in *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[7], to wit:

> ...
> The importance of providing the taxpayer of adequate written notice of his tax liability is undeniable. Section 228 of the NIRC declares that an assessment is void if the taxpayer is not notified in writing of the facts and law on which it is made. Again, Section 3.1.4 of RR No. 12-99 requires that the FLD must state the facts and law on which it is based, otherwise, the FLD/FAN itself shall be void. Meanwhile, Section 3.1.6[8] of RR No. 12-99 specifically requires that the decision of the CIR or his duly authorized representative on a disputed assessment shall state the facts, law and rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the FDDA.
> ...
>
> A void FDDA does not *ipso facto* render the assessment void
> ...
>
> In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an "assessment" from a "decision". In *St. Stephen's Association v. Collector of Internal Revenue*, the Court has long recognized that a "decision" differs from an "assessment" to wit:

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[7] G.R. Nos. 215534 and 215557, 18 April 2016.

[8] Section 3.1.5 of RR 18-2013.

...

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other — unless the law or regulations otherwise provide.

Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. <u>This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which it is based will make the **decision** void. It, however, does not extend to the nullification of the entire assessment.</u>

...

As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.

...

To recapitulate, a "decision" differs from an "assessment" and failure of the FDDA to state the facts and law on which it is based renders the decision void — but not necessarily the assessment. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[9]

...

9 Emphasis and underscoring supplied.

With the foregoing, it is my opinion that it is only the decision of respondent CIR that should be declared void - and *not* the entire assessment itself. In such case, the necessary result is not to automatically void or cancel the assessment but to deem that the CIR did not act on the Motion for Reconsideration (and his inaction gives the taxpayer the right of appeal before this Court).

With the above, I vote in favor of the validity of the assessment against petitioner.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice