Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 970** (CTA Case No. 7160)
	Present:
-*versus*-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ*.
FITNESS BY DESIGN, INC., Respondent.	Promulgated:
	JUL 14 2014 Apolinario 9:10 a.m.

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DECISION

CASTAÑEDA, JR., *J*.:

This involves an appeal[1] by the Commissioner of Internal Revenue (CIR) assailing the Decision dated July 10, 2012[2] and the Resolution on the Motion for Reconsideration dated November 21, 2012[3] both promulgated by the Court of Tax Appeals-First Division (Court in Division) entitled, *FITNESS BY DESIGN, INC., -versus- COMMISSIONER OF INTERNAL REVENUE,* and docketed as CTA Case No. 7160. The *fallo* of the assailed Decision and Resolution are reproduced, thus:

Decision dated July 10, 2012:

> **WHEREFORE**, the Petition for Review dated February 24, 2005 filed by petitioner Fitness by Design, Inc., is hereby

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[1] Pursuant to Section 18, Republic Act No. 1125, as amended by Republic Act Nos. 9282 and 9503 and Sec. 2(a)(1), in relation to Sec. 4(b) of the Revised Rules of the Court of Tax Appeals, as amended.

[2] Penned by Associate Justice Esperanza R. Fabon-Victorino with then Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy concurring. *Rollo*, pp. 27-54, Annex "A".

[3] Id. at 55-67.

> **GRANTED**. Accordingly, the Final Assessment Notice dated March 17, 2004, finding petitioner liable for deficiency income tax, documentary stamp tax and value-added tax for taxable year 1995 in the total amount of P10,647,529.69 is hereby **CANCELLED** and **SET ASIDE**. The Warrant of Distraint and Levy dated February 1, 2005 is likewise **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

Resolution dated November 21, 2012:

> **WHEREFORE**, the Motion for Reconsideration dated August 1, 2012 and the Supplemental Motion For Reconsideration dated August 28, 2012, both filed by respondent, are hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue mandated by law to enforce and implement the National Internal Revenue Code and related statutes, including, among others, the power to cancel disputed assessments, who holds office at the Bureau of Internal Revenue, National Office Building, BIR Road, Diliman, Quezon City.

Respondent, on the other hand, is a duly organized domestic corporation with principal office at Lower Level Alabang Town Center, Ayala Alabang Village, Muntinlupa City. It was registered with the Bureau of Internal Revenue on August 4, 1995 and with the Securities and Exchange Commission on May 30, 1995 under SEC Registration No. ASO95-005166.

THE FACTS

The following are the undisputed facts as found by the Court in Division, to wit:

> On April 11, 1996, petitioner[4] filed its Annual Income Tax Return for the taxable year 1995 reflecting that it was still on its pre-operating stage.

[4] Fitness by Design was the petitioner before the Court in Division and is now the respondent before this Court.

On June 9, 2004, petitioner received a copy from respondent[5] a FAN dated March 17, 2004, for deficiency taxes in the total amount of P10,647,529.68.

On June 25, 2004, petitioner filed a protest to the FAN raising prescription and lack of basis of the assessment as defense given that petitioner was incorporated only on May 30, 1995, thus, had no unreported sales for the period in question for which it could be held liable for the alleged deficiencies.

On February 2, 2005, respondent issued a Warrant of Distraint and/or Levy (WDL) with Reference No. OCN WDL-95-05-005 dated February 1, 2005 addressed to petitioner at 169 Aguirre Street, BF Homes, Parañaque City. The said WDL demanded payment of the following internal revenue taxes from petitioner:

Assessment/ Demand No.	Date Issued	Period Covered	Tax Type	Amount
NID 95-IT-020-04	March 17, 2004	1995	Income Tax	P8,265,568.17
NID 95-VAT-021-04	March 17, 2004	1995	VAT	2,377,274.01
NID 95-DST-022-04	March 17, 2004	1995	DST	4,687.50
TOTAL				P10,647,529.68

On March 1, 2005, petitioner lodged the instant Petition for Review (With Motion to Suspend Collection of Income Tax, Value Added Tax, Documentary Stamp Tax and Surcharges and Interests subject of this Petition).

On May 17, 2005, respondent filed her Answer, interposing the following special and affirmative defenses:

"3. The assessments/warrant of distraint and levy in question were made and issued in accordance with law, rules and regulations.

4. The Honorable Court has no jurisdiction to adjudicate the instant case.

5. The right of respondent to assess petitioner for deficiency income tax, VAT and Documentary Stamp Tax for the year

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[5] The Commissioner of Internal Revenue is the respondent before the Court in Division and is now the petitioner before this Court.

1995 has not prescribed pursuant to Section 222(a) of the 1997 Tax Code. Petitioner's 1995 Income Tax Return (ITR) filed on April 11, 1996 was false and fraudulent for its deliberate failure to declare its true sales. Petitioner declared in its 1995 Income Tax Return that it was on its pre-operation stage and has not declared its income. Investigation by the revenue officers of the respondent, however, disclosed that it has been operating/doing business and had sales operations for the year 1995 in the total amount of P7,156,336.08 which it failed to report in its 1995 ITR. Thus, for the year 1995, petitioner filed a fraudulent annual income tax return with intent to evade tax. Likewise, petitioner failed to file Value-Added Tax (VAT) Return and reported the amount of P7,156,336.08 as its gross sales for the year 1995. Hence, for failure to file a VAT return and for filing a fraudulent income tax return for the year 1995, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such omission or fraud pursuant to Section 222(a) of the 1997 Tax Code.

6. The subject deficiency tax assessments have already become final, executory and demandable for failure of the petitioner to file a protest within the reglamentary (sic) period provided for by law. The "alleged protest" allegedly filed on June 25, 2004 at the Legal Division, Revenue Region No. 8, Makati City is nowhere to be found in the BIR Records nor reflected in the Record Book of the Legal Division as normally done by our receiving clerk when she received any document. This respondent, therefore, has legal basis to collect the tax liability either by distraint and levy or civil action.

7. Petitioner's motion for suspension of collection of taxes must be denied. It failed to present meritorious reasons that

the collection of the aforesaid taxes may jeopardize petitioner's interest other than its allegation that the right of the respondent to assess/collect taxes has already prescribed. Taxes are the lifeblood of the government and should be collected without unnecessary hindrance. It is upon taxation that the Government chiefly relies to obtain the means to carry on its operations and it is of the utmost importance that the means adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible **(Churchill & Tait v. Rafferty, 32 Phil. 580)**. As discussed above, considering that the right of the respondent to assess herein petitioner for deficiency income tax, value-added tax and documentary stamp tax has not prescribed pursuant to Section 222(a) of the 1997 Tax Code, and considering further that the subject tax assessments have already become final, executory and demandable, the said taxes have already been ripened for collection.

8. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)**."

On March 2, 2006, or after petitioner and respondent filed their respective Pre-Trial Briefs on January 12, 2006 and January 19, 2006, submitted their Joint Stipulation of Facts and Issues, which the Court approved by its Resolution of January 15, 2007.

To support its allegation, petitioner presented its Liaison Officer Tyron Buala as its first witness. He testified that on June 25, 2004, petitioner's Managing Director Domingo C. Juan instructed him to file with the Legal Division of the BIR, Revenue Region 8, Makati City, a protest dated June 25, 2004 to the FAN issued pursuant to Letter of Authority No. 00002953, which petitioner received on June 9, 2004. One Elaine Magadia received the said protest.

Petitioner's President, Domingo C. Juan, Jr. also took the witness stand. He testified that petitioner was incorporated on May 30, 1995, thus, it indicated in its annual income tax return for 1995 that it was still in its pre-operating stage during the covered period. Per its Articles of Incorporation, petitioner was a pioneer in the business of buying, selling, distributing, wholesale marketing of sporting and exercise equipment, such as strength and cardiovascular machines which were entirely imported from the United States. During its pre-operating stage in 1995, petitioner imported equipment and distributed them for market testing in the Philippines without earning any profit.

More than three (3) years from the time petitioner filed its 1995 annual income tax return on April 11, 1996, respondent issued to petitioner a FAN dated March 17, 2004 for the year 1995, pursuant to the Letter of Authority No. 00002953 dated May 13, 2002. The attached Details of Discrepancy containing the assessment for income tax (IT), value added tax (VAT) and documentary stamp tax (DST) as well as the Audit Result/Assessment Notices do not impute fraud on the part of petitioner. Moreover, it was based on information and documents illegally obtained by a BIR informant from petitioner's accountant Elnora Carpio in 1996.

When cross-examined, the witness admitted that he was not only the President of petitioner but was also its Managing Director. He further testified that petitioner's importation and distribution of equipment for market testing were covered with official receipts or sales invoices.

Petitioner's last witness Elnora Carpio testified that from May 30, 1995 until the middle of 1996, she was a part time Bookkeeper of petitioner thus had access to its books of accounts and other accounting records. In relation to her function, she constantly sought the assistance of her colleague and certified public accountant Leonardo Sablan. The latter verified the entries in the invoices, receipts and other documents against petitioner's books of accounts and accounting records.

On or about March 2005, petitioner's President and Managing Director Domingo Juan asked her to locate the accounting records, invoices and official receipts of petitioner pertinent to this case, copies of which allegedly reached the hands of the BIR. She denied complicity to the insinuation as no document of petitioner was in her possession when she left the company. However, she recalled that Leonardo Sablan had access to and was aware of petitioner's transactions although she did not permit him to gain custody of any documents pertaining thereto. She intimated that any information gathered or documents given to the BIR were illegally and surreptitiously obtained from petitioner.

In the Resolution dated October 5, 2009, the Court, acting on petitioner's Formal Offer of Evidence filed on August 20, 2009, admitted Exhibits A to E, and I to L but denied admission of the rest. Subsequently, the Court, in its Resolution of November 26, 2009 on petitioner's Motion for Reconsideration filed on October 23, 2009, further admitted Exhibits S, T, U, U-1, U-2, U-3, U-4, V, V-1 and V-2 but denied the admission of the remaining exhibits.

On December 8, 2009, petitioner filed a Formal Tender of Excluded Evidence, viz, Exhibits F, F-1, F-2, G, G-1, G-2, G-3, G-4, H, H-1, M-1 to M-14, N, N-1, O, O-1, O-2, P, P-1, P-2, P-3, P-4, Q, R, R-1, W, W-1, W-2. The action was noted by the Court in the Resolution dated January 20, 2010.

In support of her defense, respondent presented Socrates Regala from BIR RDO 49 North Makati. He was the Group Supervisor of the team that conducted the examination of petitioner's income tax liabilities. He testified that from the year 2000 to 2006, he was a Group Supervisor in the Tax Fraud Division, National Office. Acting on a tip gathered from an informant, his team examined the tax liabilities of petitioner for taxable year 1995.

Their investigation revealed that while petitioner was still at a pre-operating stage in 1995, it already made substantial sales amounting to P7,151,336.08. Petitioner however, did not reflect this income in its ITR for the said year resulting in deficiencies in IT and VAT in the respective amounts of P8,265,568.17 and P2,377,274.02, inclusive of interest and surcharges, and DST in relation to subscription of capital stock. The Memorandum Report dated March 17, 2003, contained the result of their investigation.

Upon verification, petitioner's customers confirmed their purchases from petitioner for the year 1995. Among these customers were Congressman Jules Ledesma; Philippine Realty and Holdings Corporation, which issued a Certification on its payment in favor of petitioner for the supply of the life fitness equipment with Invoice No. 006 dated October 1995; the University of the Philippines-Diliman, which issued a Confirmation Letter dated July 3, 1997; and the Makati Sports Club, which issued a Letter dated September 26, 2001. *jc*

The informant provided them with the List of Sales of petitioner. The scheme was resorted to because petitioner refused to furnish them with a copy of its Books of Accounts, despite requests.

In their Memorandum Report, they recommended the filing of a civil case for the collection of petitioner's tax liabilities and a criminal case, for its failure to declare in its ITR for the year 1995 the income derived from its cited sales. Thus, the BIR's filing of a criminal case against petitioner with the Department of Justice (DOJ).

The witness confirmed that the gathered information did not indicate that petitioner's failure to state in its ITR its income and sales for the year 1995 was deliberate. The instant case was precipitated by the issuance of the Letter of Authority on May 13, 2002.

Respondent's last witness Atty. Hayle F. Bonilla, assigned at the BIR's Prosecution Division, testified that he was previously a Technical Assistant at the Office of the Deputy Commissioner for Legal Inspection Group. His duties include review of the evaluation made by the Technical Working Group on the taxpayer's offer to settle or compromise.

He handled petitioner's case in which he prepared a Memorandum dated May 18, 2010 recommending the denial of petitioner's offer to settle its tax liabilities for taxable year 1995 on the ground that the case involved fraud which could not be a subject of compromise under Section 204 of the NIRC of 1997.

Besides, a criminal complaint had already been lodged against petitioner before the DOJ.

The case against petitioner originated from a confidential information that petitioner filed a fraudulent tax return. After conducting an investigation based on information, assessments were issued and a criminal complaint was filed before the DOJ.

In the resolution dated January 14, 2011, respondent's Formal Offer of Evidence belatedly filed on December 30, 2010 was admitted. Acting on the incident, the Court admitted respondent's Exhbits 1, 1-a, 2, 3, 4, 5, 7, 7-a and 7-b in its Resolution of March 3, 2011.

The Court in Division promulgated a Decision granting respondent's petition for review by cancelling and setting aside the Final Assessment Notice dated March 17, 2004 amounting to ₱10,647,529.69. In addition, it ordered the cancellation and setting aside of the Warrant of Distraint and Levy which respondent issued on February 1, 2005.[6]

Unconvinced by the Decision *a quo*, petitioner filed a motion for reconsideration followed by a supplemental motion for reconsideration on August 1 and 29, 2012 respectively. In both motions, petitioner prayed to reconsider its decision and to enter a new one ordering the respondent to pay deficiency income tax, documentary stamp tax and value added-tax in the total amount of ₱10,647,529.68 plus accrued deficiency and delinquency interest pursuant to Section 249(B) and (C) of the NIRC of 1997, as amended.

However, on November 21, 2012, the Court in Division promulgated a resolution denying both motions.[7] Hence, this prompted petitioner to seek further redress by elevating her appeal before this Court.

Having received the abovementioned resolution, petitioner opted to initially file a "Motion for Extension of Time to File Petition for Review," seeking an extension of 15 days from December 12, 2012 or until December 27, 2012 within which to file her petition before this Court.[8] The Court granted such extension as prayed for via a minute resolution dated December 21, 2012.[9] Thereafter, within the extended period, she filed her petition on December 27, 2012.[10]

Acting on the petition, this Court ordered the respondent to file its comment within ten (10) days from receipt thereof.[11] Respondent, however, instead filed a motion for extension of time to file comment.[12] The Court granted such motion and accordingly gave respondent an additional period of 20 days from July 11, 2013 or until July 31, 2013 to file the same.[13] Thus, on July 26, 2013 it filed its comment on the petition.[14]

On August 14, 2013, after due consideration of the petition in conjunction with respondent's comment thereon, the Court accorded due course to the petition and consequently required both parties to submit their respective memoranda within 30 days from receipt thereof.[15]

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[6] *Rollo*, pp. 27-54.
[7] Id. at 55-67.
[8] Id. at 1-2.
[9] Id. at 4.
[10] Id. at 5-26.
[11] Id. at 99-100.
[12] Id. at 101-103.
[13] Id. at 104.
[14] Id. at 105-139.
[15] Id. at 141-142.

Thus, on January 15, 2014, the Court issued a resolution submitting this case for decision taking into consideration petitioner's memorandum filed on November 5, 2013 but *sans* respondent's memorandum despite notice.

THE ISSUES

The following are the issues[16] raised by the petitioner for the Court's disposition to wit:

I.

WHETHER OR NOT THE QUESTIONED INCOME TAX, VALUE-ADDED TAX AND DOCUMENTARY STAMP TAX ASSESSMENTS FOR TAXABLE YEAR 1995 ISSUED AGAINST RESPONDENT IS FINAL AND EXECUTORY.

II.

WHETHER OR NOT HEREIN RESPONDENT AS WELL [AS] THE HONORABLE CTA HAS THE POWER AND AUTHORITY TO QUESTION THE VALIDITY OF THE SUBJECT ASSESSMENTS THAT HAD ALREADY ATTAINED FINALITY.

THE COURT'S RULING

Petitioner asserts that the questioned assessments became final, executory and demandable for failure of petitioner to file its protest within the required period. Moreover, even assuming that the questioned assessments are essentially void, respondent belatedly questioned it only for the first time in its memorandum. Besides, as petitioner claims, the Court has admitted several exhibits demonstrating respondent's unreported income and that it failed to contest such unreported income in the administrative level. Finally, petitioner claims that the 10-year prescriptive period should apply since the return that where filed are false and fraudulent and that respondent failed to file its Value-added tax and documentary stamp tax returns.

On the other hand, respondent argues that the Final Assessment Notice cannot be considered as a valid deficiency assessment since it is only a request for payment without specifying the period within which to pay the alleged assessments, hence, it is not in accordance with Section 228 of the National Internal Revenue Code of 1997, as amended, and implemented by Section 3.1.4 of Revenue Regulations No. 12-99.

We find for respondent.

[16] Id. at p. 9.

Sec. 228 of the National Internal Revenue Code of 1997, as amended, provides:

> Sec. 228. *Protesting an Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. *Provided, however,* That a presentment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer shall be required to respond, the Commissioner or his duly authorized representatives shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all

> relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> 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 thirty (30) days from receipt of said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

In compliance with Sec. 228 of the NIRC of 1997, as amended, Sec. 3.1.4 of Revenue Regulations No. 12-99 provides:

> Sec. 3. Due Process Requirement in the Issuance of a Deficiency Assessment.
>
> x x x x
>
> Sec. 3.1.3. Formal Letter of Demand and Assessment Notice. – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.[17]

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for the citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while taxes are the lifeblood of the government, "the power to tax has its limits, in spite of all its plentitude."[18]

Also, the case of *Commissioner of Internal Revenue v. Azucena T. Reyes*,[19] is instructive where the Supreme Court held that Sec. 228 of the NIRC of 1997, as amended requires that an assessment notice and the demand letter must state the facts and the law on which they are based. It is a substantive, not merely a formal requirement. The High Court further emphasized that to put it otherwise would mean

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[17] As amended by Revenue Regulations No. 18-2013 dated November 28, 2013.
[18] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633, 647.
[19] G.R. Nos. 159694 and 163581, January 27, 2006, 480 SCRA 382, 396.

that the taxing authorities will violate a cardinal rule in administrative law that the taxpayer be accorded due process; for not only was the law here disregarded, but no valid notice was sent, either. A void assessment bears no fruit.

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corp.*,[20] the Supreme Court categorically pronounced that "**An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period**. It also signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor."[21]

Pascor also provides that an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments. To start with, an assessment must be sent to and received by a taxpayer, and **must demand payment of taxes described therein within a specific period**. In other words, Assessment is a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof.[22] It fixes and determines the tax liability of a taxpayer.

In the case at bar, the Final Assessment Notice (FAN) contained computations of the following alleged deficiency taxes of petitioner for the year 1995:

Income Tax		
Taxable Income per return		P -
Add: Unreported Sales		7,156,336.08
Taxable Income per audit		P 7,156,336.08
Tax due (35%)		P 2,504,717.63
Add: Surcharge (50%)	P 1,252,358.81	
Interest (20% p.a. until 4.15.04)	4,508,491.73	5,760,850.54
Deficiency Income Tax		**P 8,265,568.17**
Value Added Tax		
Unreported sales		P 7,156,336.08
Output tax (10%)		P 715,633.61
Add: Surcharge (50%)	P 357,816.80	
Interest (20% p.a. until 4.15.04)	1,303,823.60	1,661,640.40
Deficiency VAT		**P 2,377,274.01**
Documentary Stamps Tax		
Subscribed Capital Stock		P 375,000.00
DST Due (2/200)		P 3,750.00
Add: Surcharge (25%)		937.50
Deficiency DST		**P 4,687.50**
Total Deficiency Taxes		**P 10,647,529.68**

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[20] G.R. No. 128315, June 29, 1999, 309 SCRA 402, 404.
[21] Id. Also cited in *Commissioner of Internal Revenue v. Menguito*, G.R. No. 167560, September 17, 2008, 565 SCRA 461, 481.
[22] *Republic v. Lim De Yu*, G.R. No. 17438, April 10, 1964, 10 SCRA 737, 741 citing *Alhambra Cigar and Cigarette Manufacturing Company v. The Collector of Internal Revenue*, L-12026, May 29, 1959.

Interestingly, the last paragraph of the FAN provides:

> *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.*** (Emphasis supplied)

As contained in Exhibits "C", "D", and "E", noteworthy is that in each of Audit Result/Assessment Notices (AR/AN) provided in the FAN, there is no *indicia* of any due dates. This, in effect, simply negates petitioner's demand for payment as held in *Pascor*. Thus, as what respondent suggests, such FAN indeed does not amount to a formal demand but a mere request for payment.

In other words, as shown in petitioner's FAN, the due date in the assessment notices were noticeably left blank. To be sure, the Court cannot subscribe on petitioner's argument that it already attained finality given that the petitioner still needs a reckoning date before such notice becomes final and executory. As such, this assessment notice cannot withstand the test of validity. Hence, the Court in Division correctly struck down the assessment as void:

> Clear as a day that a definite period or a date certain within which a taxpayer must pay the assessed tax liabilities is an important pre requisite to a valid formal assessment notice and subsequent tax collection, as reiterated by the High Court when it set aside a formal assessment notice that did not contain a definite period for payment of the tax assessed, viz:
>
> > We rule that the recommendation letter of the Commissioner cannot be considered a formal assessment. Even a cursory perusal of the said letter would reveal three key points:
> >
> > 1. It was not addressed to the taxpayers;
> >
> > 2. **There was no demand made on the taxpayers to pay the tax liability <u>nor a period for payment set therein</u>.**
> >
> > 3. The letter was never mailed or sent to the taxpayers by the Commissioner.
>
> The date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest begin to accrue against the

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> taxpayer as well as the measures or remedies which are still available upon the taxpayer under the rules. x x x
>
> x x x x
>
> However, <u>the enclosed Audit Result/Assessment Notices referred to in the subject FAN reveals that the due date are left blank or unaccomplished. Thus, the subject FAN cannot be deemed a valid formal assessment notice absent *a specific* date or period *within* which *the* alleged tax liabilities *must be* settled or *paid* by *petitioner*</u>. (Emphasis and underlining supplied)

For lack of a definite and unequivocal demand for payment of a certain date and for want of due process, the assessment is perforce void. Moreover, neither can this Court subscribe to the argument that the FAN that contains a statement that the interest and total amount due will be adjusted if paid prior or beyond April 15, 2004 be regarded as the actual due date. On this score, we further sustain the findings of the Court in Division, thus:

> While it may be true that the second paragraph on the second page of the FAN contains a date, the same is hardly a definite and unequivocal demand for payment on a date certain. Firstly, the amount indicated therein is not fixed as it is still subject to adjustments depending on when the actual payment of the tax liabilities is made. The uncertainty in the amount due and the date of payment is a far cry from the basic requirement, viz., a definite demand to immediately pay the assessed tax liabilities within a time certain x x x.
>
> Secondly, the date of April 15, 2004 is obviously not the deadline for payment of the alleged tax liabilities as the FAN itself refers to the enclosed assessment notices for the due date. But as earlier pointed out the said documents bear no date or the boxes for the due date were left blank and unaccomplished.
>
> Thirdly, the subject FAN did not make a clear and categorical demand for payment of the alleged tax liabilities for it contains merely a request for payment.
>
> In sum, the FAN failed to comply with the requirements of a valid assessment notice and create confusion on the part of the taxpayer. In one case, the Supreme Court admonished respondent for using vague language in an assessment notice. It was held that words must be carefully chosen to avoid any confusion that could adversely affect the rights and interest of

> the taxpayer. Respondent must therefore indicate in a clear and unequivocal language whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. This is certainly absent in the subject assessment notices. (Underlining supplied)

In sum, the Court in Division did not err when the subject FAN and AR/AN's issued by the petitioner against the respondent for taxable year 1995 covering alleged deficiency income tax, value-added tax and documentary stamp tax amounting to ₱10,647,529.68, inclusive of surcharges and interest were cancelled and set aside for being void. The case of *Adamson et al., v. Court of Appeals*[23] bolsters this point:

> In the context which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. A written communication containing a computation by a revenue officer of the tax liability of a taxpayer and giving him an opportunity to contest or disprove the BIR examiner's findings is not an assessment since it is yet indefinite.

Verily, taxes are the lifeblood of the Government and so should be collected without necessary hindrance. However, such collection should be made in accordance with the law as any arbitrariness will negate the very reason for the Government itself.[24]

Anent the second issue, the Court in Division correctly held that the Court has the power and authority to question the validity of such assessments that has attained finality. Sec. 7 of Republic Act No. 1125, as amended by Republic Act Nos. 9282 and 9503 is explicit:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) x x x x
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of

[23] G.R. Nos. 120935 and 124557, May 21, 2009, 588 SCRA 27, 44.
[24] *Commissioner of Internal Revenue v. Enron Subic Power Corporation,* G.R. No. 166387, January 19, 2009, 576 SCRA 212, 218 citing *Reyes v. Almanzor*, G.R. No. 49839-46, April 26, 1991, 196 SCRA 322, 329.

> internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial; (Emphasis supplied)

Under the foregoing provision, the second part of the provision refers to other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the Court the jurisdiction to determine if the warrant of distraint or levy issued by the Bureau of Internal Revenue is valid.[25] Besides, the validity of the assessment itself is considered as a separate issue and may be tried by this Court to wit:

> x x x The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, **the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed**. This issue of prescription, being a matter provided by the NIRC, is well within the jurisdiction of the CTA to decide.[26]

Resolving the issue of whether the petitioner timely filed a protest against the subject assessment is markedly distinct from the issue on the validity or enforceability of the Warrant of Distraint and/or Levy issued against it. As correctly pointed out by the Court in Division, the averments in the complaint clearly vests the Court with jurisdiction to hear and determine this case.

With the above disquisitions, the Court will no longer belabor on the rest of the arguments raised therein.

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

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[25] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, 447 SCRA 214, 224.

[26] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17, 2010, 635 SCRA 162, 170.

SO ORDERED.

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

WE CONCUR:

(I concur in the result.) with concurring opinion
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 970** (CTA CASE NO. 7160)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, RINGPIS-LIBAN,** *JJ.*
FITNESS BY DESIGN, INC. Respondent.	Promulgated: JUL 14 2014 9:10 a.m.

x---x

CONCURRING OPINION

DEL ROSARIO, PJ:

Records show that the due dates in the Audit Result/Assessment Notices are left blank. Applying the ruling in **Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation**,[1] I submit that the Audit Result/Assessment Notices cannot be regarded as valid assessments as they failed to demand payment of the taxes mentioned therein within a specific period.

Relative to the effect of an invalid assessment *vis-à-vis* the requirement to file protest against the assessment, **Commissioner of Internal Revenue vs. Metro Star Superama, Inc.**[2] elucidates:

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[1] G.R. No. 128315, June 29, 1999.
[2] G.R. No. 185371. December 8, 2010.

> "Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, **the assessment made by the CIR is void**.
>
> Xxx xxx xxx.
>
> **The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit**." *(Emphases supplied)*

In **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**,[3] the Supreme Court clarified:

> "**When the BIR validly issues an assessment, within either the three-year or ten-year period**, whichever is appropriate, then the BIR has another three years [now five years] **after the assessment** within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding." *(Emphasis supplied)*

Clearly, the right of the Bureau of Internal Revenue (BIR) to collect the tax assessed within the five-year period provided under Section 222(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, is ***premised*** on the existence of a valid assessment. Needless to say, a void assessment does not justify the collection of deficiency taxes.

For the reasons afore-stated, I concur in the result. I VOTE to DENY the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] G.R. No. 139736, October 17, 2005.