REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

RITEGROUP INCORPORATED, *Petitioner,*	**CTA Case No. 9708**
	Members:
- versus -	**DEL ROSARIO**, *PJ, Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 22 2022 : 3:05 p.m.

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DECISION

REYES-FAJARDO, *J*.:

This Amended Petition for Review[1] dated January 29, 2018 seeks to annul, reverse and set aside the Final Assessment Notices (FAN) all under Demand No. 043A-B207-13, and Formal Letter of Demand (FLD) No. 043A-B207-13 dated January 11, 2017, whereby the Commissioner of Internal Revenue assessed Ritegroup Incorporated for deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT) and Withholding Tax on Compensation (WTC), inclusive of surcharge, interest and penalty for taxable year (TY) 2013 in the total amount of Three Million Seven Hundred Forty-Nine Thousand One Hundred Eight Pesos and Thirteen Centavos (₱3,749,108.13).[2]

FACTS

Petitioner Ritegroup Incorporated is a domestic corporation duly organized under Philippine laws, engaged in the business of supplying medical and laboratory products, with principal office at

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1 In the Resolution dated March 28, 2018, the Court admitted the Amended Petition for Review dated January 29, 2018. See Docket (Vol I.), pp. 270-272.

2 Nature of the Petition, Amended Petition for Review dated January 29, 2018. *Id.* at p. 215.

Unit 2202, Prestige Tower, F. Ortigas Road, Ortigas Center, Pasig City 1605.[3]

Respondent is the duly appointed Commissioner of Internal Revenue, with principal office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On September 15, 2014, a Letter of Authority (LOA) No. 43A-2014-00000750 was issued by Regional Director Alfredo V. Misajon of RR 7 - Quezon City, authorizing Revenue Officer (RO) Verjun Solomon Catapia and Group Supervisor (GS) Roummel Bernos to examine petitioner's books of account and other accounting record for the periods January 1, 2013 to December 31, 2013.[5]

Pursuant to LOA No. 43A-2014-00000750, a Preliminary Assessment Notice (PAN) was issued, finding petitioner liable for deficiency IT, VAT, EWT, and WTC, inclusive of interest and surcharge in the total amount of Three Million Seven Hundred Seven Thousand Two Hundred and Twenty-Nine Pesos and Forty-Eight Centavos (₱3,707,229.48), broken down as follows:

Tax Type	Amount Due
Deficiency IT	₱3,331,015.67
Deficiency VAT	83,469.19
Deficiency EWT	124,976.72
Deficiency WTC	167,767.90
Total	**₱3,707,229.48**[6]

On January 11, 2017, respondent released the FAN,[7] and FLD with Details of Discrepancy,[8] assessing petitioner for deficiency IT, VAT, EWT, and WTC inclusive of surcharge, interest and penalty for TY 2013 in the total amount of Three Million Seven Hundred Forty-

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3 Par. 1, Roman Numeral I., Join Stipulation of Facts. Docket (Vol II.), p. 595.

4 Par. 2. *Ibid.*

5 Exhibit "P-1." Docket (Vol. III.), p. 820.

6 Par. 3, Roman Numeral I., Join Stipulation of Facts. Docket (Vol II.), pp. 595-596.

7 Annexes "D-1" to "D-1.3," Original Petition for Review. Docket (Vol. I.), pp. 67-70. Identified in the answer to questions 15 and 16 of Judicial Affidavit (JA) of Mary Grace Castro dated July 19, 2018, see Docket (Vol. II.), p. 567.

8 Annex "D," Original Petition for Review. *Id.* at pp. 71-76. Identified in the answer to questions 15 and 16 of Judicial Affidavit (JA) of Mary Grace Castro dated July 19, 2018, see Docket (Vol. II.), p. 567.

Nine Thousand One Hundred Eight Pesos and Thirteen Centavos (₱3,749,108.13), computed as follows:

Tax Type	Amount Due
Deficiency IT	₱3,368,760.89
Deficiency VAT	84,388.96
Deficiency EWT	126,348.68
Deficiency WTC	169,609.60
Total	**₱3,749,108.13**[9]

On February 10, 2017, petitioner protested the FAN, and FLD with Details of Discrepancy by way of a request for reinvestigation.[10]

In respondent's Letter dated March 7, 2017, petitioner was informed that its request for reinvestigation was given due course, and was directed to submit supporting documents within sixty (60) days from filing of its protest,[11] which was complied with through petitioner's Letter dated April 7, 2017, and filed with the BIR on even date.[12]

On November 3, 2017, petitioner filed its Original Petition for Review dated October 30, 2017, docketed as CTA Case No. 9708, initially raffled to the Third Division of the Court. [13]

On January 12, 2018, respondent filed an Answer to the Original Petition for Review.[14]

On January 29, 2018, petitioner filed a Motion for Leave to File Amended Petition for Review,[15] together with the attached Amended Petition for Review of even date.[16] In so moving, petitioner explained that the Amended Petition for Review seeks to add matters which transpired after the filing of its Original Petition for Review.

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9 Par. 4, Roman Numeral I., Join Stipulation of Facts. Docket (Vol II.), p. 596.
10 Exhibit "P-3." Docket (Vol. III.), pp. 821-838.
11 Par. 5, Roman Numeral I., Join Stipulation of Facts. Docket (Vol II.), p. 596.
12 Exhibit "P-5." Docket (Vol III.), pp. 841-844.
13 Docket (Vol I.), pp. 10-37.
14 *Id.* at pp. 204-207.
15 *Id.* at pp. 211-214.
16 *Id.* at pp. 215-243.

On February 2, 2018, petitioner filed a Motion to Set for Hearing (Motion for Leave to File Amended Petition for Review),[17] which the Court denied in the Resolution dated February 19, 2018.[18]

In a Resolution dated March 28, 2018, the Court granted petitioner's Motion for Leave to File Amended Petition for Review and accordingly admitted the Amended Petition for Review dated January 29, 2018 attached thereto as part of the case record.[19]

On May 4, 2018, respondent filed an Amended Answer to the Amended Petition for Review dated January 29, 2018.[20]

In the Pre-Trial Conference held on July 24, 2018, the Court directed the parties to submit their Joint Stipulation of Facts and Issues (JSFI), set the schedule for the presentation of evidence for the parties and the commissioner's hearings for the marking of their respective evidence.[21]

On August 8, 2018, the parties submitted their JSFI.[22]

On August 29, 2018, the Court issued a Pre-Trial Order.[23]

In an Order dated September 25, 2018, this case was transferred from the Third Division to the First Division of the Court pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018.[24]

During trial, petitioner presented Mhay Madlangbayan Agana,[25] Franklin R. Casedo,[26] and Mary Grace L. Castro[27] as its witnesses.

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17 *Id.* at pp. 255-257.
18 *Id.* at pp. 264-265.
19 *Id.* at pp. 270-272.
20 *Id.* at pp. 280-283.
21 Minutes of Hearing held on July 24, 2018. Docket (Vol. II.), at p. 585.
22 *Id.* at pp. 595-600.
23 *Id.* at pp. 604-611.
24 *Id.* at p. 619.
25 Exhibit "P-17," Judicial Affidavit of Mhay Madlangbayan dated July 19, 2018. Identified during the hearing held on February 19, 2019. See minutes thereof, *id.* at pp. 623-624.
26 Exhibit "P-18," Judicial Affidavit of Franklin Casedo dated July 19, 2018. Identified during the Hearing held on June 11, 2019. See minutes thereof, *id.* at pp. 651-654.
27 Exhibit "P-22," Judicial Affidavit of Mary Grace Castro dated July 19, 2018. Identified during the hearing held on June 11, 2019, see minutes thereof, *ibid.*; and Exhibit "P-23,"

On June 17, 2019, petitioner filed a Manifestation with Omnibus Motion for (1) Leave to File and Admit the Supplemental Judicial Affidavit of Mary Grace Castro; (2) Issuance of Subpoena Duces Tecum; and (3) Referral to Mediation.[28]

In the Hearing held on July 19, 2019, petitioner's request for issuance of subpoena duces tecum and motion to refer the case for mediation were denied; while petitioner's witness Mary Grace Castro was allowed to testify on the additional matters stated in her Supplemental Judicial Affidavit.[29]

On July 26, 2019, petitioner filed its Manifestation with *Ad Cautelam* Formal Offer of Evidence.[30]

Under Resolution dated August 3, 2020,[31] the pieces of evidence offered by petitioner were admitted, save for Exhibits "P-9" and "P-9-a."

On September 11, 2020, petitioner filed its Motion for Reconsideration (Re: Resolution dated 03 August 2020),[32] followed by another Motion to Refer Case to Mediation filed on October 29, 2020.[33]

In a Resolution dated December 2, 2020, the Court granted petitioner's Motion for Reconsideration (Re: Resolution 03 August 2020). Accordingly, Exhibits "P-9" and "P-9-a" were admitted as petitioner's evidence. Its Motion to Refer Case to Mediation was again denied.[34]

In the Hearing held on May 27, 2021, upon motion of counsel for respondent, the initial presentation of evidence for respondent was reset on September 7, 2021 at 9:00 a.m. Counsel for respondent was also required to submit the Judicial Affidavits of the proposed

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Supplemental Judicial Affidavit of Mary Grace Castro dated June 17, 2019. Identified during the during held on July 9, 2019, see minutes thereof, *infra* note 29.

[28] *Id.* at pp. 660-664.

[29] *Id.* at pp. 801 to 801-D.

[30] Docket (Vol. III.), pp. 810-819.

[31] *Id.* at pp. 1266-1269.

[32] *Id.* at pp. 1272-1277.

[33] *Id.* at pp. 1287-1289.

[34] *Id.* at pp. 1305-1308.

witnesses until June 7, 2021, lest the presentation of his evidence be waived.

In a Resolution dated July 8, 2021, the presentation of respondent's witnesses was waived because of counsel for respondent's failure to file the Judicial Affidavits of his witnesses within the period granted.[35]

In a Resolution dated December 16, 2021, the case was submitted for decision taking into account the filing of petitioner's Memorandum; and respondent's failure to her Memorandum within the period granted.[36]

ISSUES

For resolution are: *first,* whether petitioner timely filed its Petition for Review; and *second,* whether petitioner is liable for deficiency income tax, valued-added tax, expanded withholding tax, and withholding tax for compensation.[37]

ARGUMENTS

Petitioner argues that respondent erred in assessing it for deficiency WTC for failure to withhold taxes on salaries and wages in the total amount of ₱488,925.09. Such figure was the alleged discrepancy in the 13th month pay and employee benefits between its Audited Financial Statement (AFS) and BIR Form No. 1604-C. According to petitioner, respondent failed to consider that the amount of ₱488,925.00 corresponds to the taxes it withheld on basic salaries and wages.

Petitioner also faults respondent in treating the unaccounted expenses pertaining to broker's fees amounting to ₱287,750.60 as unaccounted income because purchases alone does not automatically equate to income. For income tax to be imposed, there must be gain received by the taxpayer, which was not obtaining in this case. Granting that income taxes may be imposed on such broker's fees,

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35 *Id.* at pp. 1334-1335.
36 *Id.* at p. 1377.
37 Joint Statement of Issues to be Resolved, JSFI. Docket (Vol. II.), p. 596.

petitioner nevertheless asserts that: *first,* it was properly reflected as a component of cost of sales of goods from which taxes were withheld; and *second,* the alleged discrepancy in its record is not among the requirements for disallowance of business expenses as a deduction from gross income under Revenue Regulations (RR) No. 2-1940.[38]

Petitioner, too, disagrees with respondent's disallowance of expenses in the total amount of ₱6,398,455.94 as deduction from its gross income due to non-withholding of taxes thereon. It explains that taxes thereon were properly withheld and remitted on such expenses. Also, a portion thereof pertains to its reimbursement of costs incurred by its local forwarders. In addition, a fragment of such expenses are casual purchases not subject to withholding taxes under Section 2.57.2 of RR No. 2-98.[39] Assuming that it is liable for EWT for such expenses, it had paid under protest the amount of ₱6,829.95; thus, the disallowance of expenses as a deduction from gross income due to non-withholding of taxes, despite actual payment thereof by the taxpayer is contrary to Section 34(K) of the National Internal Revenue Code (NIRC), as amended.

Petitioner as well states that respondent may not impose VAT on the alleged unaccounted expenses pertaining to broker's fees amounting to ₱287,750.60, claiming that VAT is imposed on sales of goods, properties, and services as stated in Section 105 of the NIRC, as amended; and not on purchases of services such as the broker's fees.

Petitioner further points out that respondent's deficiency VAT by reason of unsupported zero-rated sales is without bearing because it properly substantiated its zero-rated sales by various Certificates of VAT Zero-Rating.

To punctuate its arguments, petitioner believes that respondent's deficiency tax assessments issued against it for TY 2013 lack legal and factual basis; hence, void.

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[38] Income Tax Regulations, issued February 10, 1940.

[39] SUBJECT: Prescribes the regulations to implement RA No. 8424 relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, issued April 17, 1998.

By way of an Amended Answer,[40] respondent counters that the FAN, and FLD No. 043A-B207-13 with Details of Discrepancy dated January 11, 2017 attained finality under Section 228 of the NIRC, as amended, because petitioner failed to present proof of submission of documents in support of its request for reinvestigation.

OUR RULING

The Amended Petition is impressed with merit.

First, the jurisdiction of the Court. Section 7(a)(1) and (2) of Republic Act (RA) No. 1125,[41] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations 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 of action, in which case the inaction shall be deemed a denial;
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> . . .[42]

Section 3(a)(1) and (2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA)[43] provides that the Court in Division has jurisdiction over the decision or inaction of respondent involving

40 Docket (Vol. I.), pp. 280-283.
41 An Act Creating the Court of Tax Appeals.
42 Boldfacing supplied.
43 A.M. 05-11-07-CTA.

disputed assessments, among others.[44] Hence, for the decision or inaction of respondent or her authorized representative to be raised on appeal before the Court in Division, there must first be a disputed assessment. To properly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC,[45] as amended which states:

> Section 228. *Protesting of Assessment.* — ...
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> ...
>
> If the taxpayer fails to respond, the Commissioner or his duly authorized representative 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 the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**[46]

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44 SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments ....

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments .... Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules ...

45 Tax Reform Act of 1997.

46 Boldfacing supplied.

In turn, Section 3.1.4 of RR No. 18-2013[47] defines the two (2) types of administrative protest in the following manner:

> **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:
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> ...
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> **3.1.4** ***Disputed Assessment.*** **–** The taxpayer or its duly authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (i) Request for reconsideration – refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation – refers to a plea for re-evaluation of an assessment on the basis of newly-discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or law or both.
>
> ...

As it stands, the taxpayer has thirty (30) days from receipt of the final assessment to file an administrative protest, either by way of request for reconsideration or request for reinvestigation. If a request for reinvestigation was filed, the taxpayer has sixty (60) days from the filing of its request for reinvestigation to submit documents in support thereof. Respondent or his authorized representative has one hundred eighty (180) days from said date of submission of supporting documents to decide on the taxpayer's request for reinvestigation. Upon the lapse of such 180-day period and no decision was made by respondent or his authorized representative, the taxpayer has another thirty (30) days to appeal to the Court.

Petitioner received respondent's FAN,[48] and FLD[49] with Details of Discrepancy on January 11, 2017. Counting thirty (30) days

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[47] SUBJECT: Amends Certain Sections of RR No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

therefrom, petitioner had until February 10, 2017 to file an administrative protest thereto; thus, its request for reinvestigation was timely filed[50] on February 10, 2017. Counting another sixty (60) days from February 10, 2017, petitioner had until April 11, 2017 to submit documents in support thereof. Therefore, by its Letter dated April 7, 2017 and filed with the BIR on even date,[51] the submission of such supporting documents was as well timely made by petitioner.

Respondent or his duly authorized representative has one hundred eighty (180) days from April 7, 2017, or until October 4, 2017 to decide on petitioner's request for reinvestigation. As respondent failed to render a decision thereon as of October 4, 2017, petitioner had another thirty (30) days, or until November 3, 2017, to file a Petition for Review before the Court. Precisely, petitioner's Original Petition for Review was timely filed on November 3, 2017,[52] vesting the Court with jurisdiction over this case.

Respondent contends that the Court has no jurisdiction over this case, claiming that the FAN all under Demand No. 043A-B207-13, and FLD No. 043A-B207-13 with Details of Discrepancy dated January 11, 2017 are final and unappealable under Section 228 of the NIRC, as amended for petitioner's failure to present proof of submission of documents in support of its request for reinvestigation.

This is misleading.

As discussed earlier, petitioner timely submitted the relevant documents in support of its request for reinvestigation through the Letter dated April 7, 2017 and filed with the BIR on even date. This militates against respondent's claim that petitioner did not seasonably file its supporting documents pertaining to its request for reinvestigation.

Granting *arguendo* that petitioner failed to submit documents in support of its request for reinvestigation within the 60-day period, such failure would not result in the finality of the assessment. To be

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48 *Supra* note 7.
49 *Supra* note 8.
50 Exhibit "P-3." Docket (Vol. III.), pp. 821-840.
51 *Supra* note 12.
52 Docket (Vol. I.), p. 10.

precise, the word "final" in the paragraph "... Within sixty (60) days from filing of the protest, all relevant, supporting documents shall have been submitted; otherwise, the assessment shall become final." under Section 228 of the NIRC, as amended is not meant as the assessment being final and unappealable. Rather, the word "final" means that the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence. This would result in the denial of the request for reinvestigation and consequently, the issuance of the Final Decision on Disputed Assessment (FDDA) against the taxpayer.[53]

We now proceed to the merits of this case.

To be sure, the FAN all under Demand No. 043A-B207-13, and FLD No. 043A-B207-13 with Details of Discrepancy dated January 11, 2017 containing respondent's deficiency tax assessments issued against petitioner for TY 2013 were not offered as evidence by the parties.[54] Under Section 34, Rule 132 of the Rules of Court, courts shall, as a rule, not consider evidence which was not formally offered.[55]

However, Section 34, Rule 132 of the Rules of Court admits of an exception. Specifically, evidence not formally offered may be considered by the Court provided the following requisites are present: (1) the evidence must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case.[56] These requisites were duly met. Consider:

First, petitioner's witness Mary Grace Castro identified respondent's FAN all under Demand No. 043A-B207-13, and FLD No.

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53 See *Commissioner of Internal Revenue v. Max's Sta. Mesa, Inc.*, CTA EB No. 2036, November 18, 2020, citing Section 3.1.4 of RR No. 18-2013.

54 Petitioner did not offer said documents in its Formal Offer of Evidence, *supra* note 30. Respondent's presentation of evidence was waived, *supra* note 35.

55 **Section 34.** *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. See *Montelibano v. Yap*, G.R. No. 197475, December 6, 2017; and *Republic of the Philippines v. Gimenez*, G.R. No. 174673, January 11, 2016.

56 *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021; *Heirs of Mabborang v. Mabborang*, G.R. No. 182805, April 22, 2015; *Sabay v. People of the Philippines*, G.R. No. 192150, October 1, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Star Two (SPV-AMC), Inc. v. Ko*, G.R. No. 185454, March 23, 2011; and *The Heirs of Romana Saves v. The Heirs of Escolastico Saves*, G.R. No. 152866, October 6, 2010.

043A-B207-13 with Details of Discrepancy dated January 11, 2017 in her answer to question nos. 15 and 16 of her Judicial Affidavit,[57] duly attested in open court during the hearing held on June 11, 2019.[58]

Second, the FAN all under Demand No. 043A-B207-13,[59] as well as the FLD No. 043A-B207-13[60] with Details of Discrepancy dated January 11, 2017 are incorporated in the record of this case.

Therefore, respondent's FAN all under Demand No. 043A-B207-13, and FLD No. 043A-B207-13 with Details of Discrepancy dated January 11, 2017 may be considered in adjudicating this case despite the parties' failure to offer such documents as evidence.

Are respondent's deficiency tax assessments issued against petitioner for TY 2013 valid? No.

Section 6(A) of the NIRC, as amended, provides that the tax or deficiency tax so assessed shall be paid upon notice and demand from the CIR or his duly authorized representative.[61] An assessment is described as 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.[62]

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[63] the tax assessment therein was invalidated for lack of due dates in the

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57 Exhibit "P-22." Docket (Vol. II) p. 567.

58 *Id.* at p. 653.

59 Docket (Vol. I), pp. 67-70.

60 *Id.* at pp. 71-76.

61 SEC. 6. *Power of the Commissioner to Make and Prescribe Additional Requirements for Tax Administration and Enforcement.* -

> *(A) Examination of Return and Determination of Tax Due.* After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: 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.**
>
> ... (Boldfacing supplied)

62 *Commissioner of Internal Revenue v. Megabucks Merchandising Corp.*, CTA EB No. 1974, February 12, 2020, citing *Adamson v. Court of Appeals*, G.R. No. 120935, May 21, 2009.

63 G.R. No. 215957, November 9, 2016.

assessment notices,[64] along with failure to provide a fixed and determinate amount of taxes due. These infirmities permeate respondent's FAN all with Demand No. 043A-B207-13 and FLD No. 043A-B207-13 with Details of Discrepancy dated January 11, 2017 issued against petitioner. For instance:

One, respondent's FLD No. 043A-B207-13 dated January 11, 2017 referred the period for petitioner to pay the deficiency taxes in the FAN.[65] Yet, the due dates on respondent's FAN all under Demand No. 043A-B207-13 for IT,[66] VAT,[67] EWT,[68] and WTC[69] covering TY 2013 remain unaccomplished, thereby showing the absence of respondent's demand for payment against petitioner.

Two, respondent's FLD No. 043A-B207-13 dated January 11, 2017 contains the following notation: "*Please note that the interest and total amount due will have to be adjusted if paid after the due date specified herein.*"[70] Since the total amount due is subject to change depending on petitioner's date of payment, the FLD No. 043A-B207-13 dated January 11, 2017 lacks a fixed and determinate amount of tax liability.

Ergo, respondent's deficiency tax assessments for TY 2013 embodied in the FAN all under Demand No. 043A-B207-13, and FLD No. 043A-B207-13 with Details of Discrepancy dated January 11, 2017 issued against petitioner are void. Being void, it bears no valid fruit.[71]

WHEREFORE, the Amended Petition for Review dated January 29, 2018, filed by Ritegroup Incorporated is **GRANTED**. Accordingly, the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation assessments, inclusive of surcharge, interest, and penalty for taxable year 2013 in the total amount ₱3,749,108.13 issued against Ritegroup

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[64] The principle that an assessment is void because of lack of due dates thereon was applied in the recent case of *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022.

[65] Annex "D," Original Petition for Review. Docket (Vol. I.), p. 72.

[66] Annex "D-1," Original Petition for Review. *Id.* at p. 67.

[67] Annex "D-1.1," Original Petition for Review. *Id.* at p. 68.

[68] Annex "D-1.2," Original Petition for Review. *Id.* at p. 69.

[69] Annex "D-1.3," Original Petition for Review. *Id.* at p. 70.

[70] Annex "D," Original Petition for Review. *Id.* at p. 72. Italics in the original.

[71] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021; *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, July 9, 2018; and *Commissioner of Internal Revenue v. Reyes*, G.R. No. 159694, January 27, 2006.

Incorporated under the Final Assessment Notices all with Demand No. 043A-B207-13 and Formal Letter of Demand No. 043A-B207-13 dated January 11, 2017 are **CANCELLED**.

The Commissioner of Internal Revenue, his [or her] representatives, agents, or other persons acting in his [or her] behalf are **ENJOINED** from enforcing the collection of deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation assessments, inclusive of surcharge, interest and penalty for taxable year 2013 in the total amount of ₱3,749,108.13, under the Final Assessment Notices all with Demand No. 043A-B207-13 and Formal Letter of Demand No. 043A-B207-13 dated January 11, 2017 issued against Ritegroup Incorporated.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, 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