REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PANAY ELECTRIC COMPANY, INC., *Petitioner,*	**CTA CASE NO. 9523** For: Assessment
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 01 2020 8:40 a.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision on August 15, 2019 is the *Petition for Review* filed by Panay Electric Company, Inc. against the Commissioner of Internal Revenue on January 19, 2017, praying that the *Final Decision on Disputed Assessment* (FDDA) of the latter be reversed and set aside; and that the deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and documentary stamp tax (DST), in the aggregate amount of ₱890,996,459.00, inclusive of interest and penalties, for taxable year 2009, be declared null and void.[1]

Petitioner Panay Electric Company, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at No. 23, General Luna Street, Iloilo City, Philippines.[2] It is registered with the Bureau

[1] Statement of the Case, Pre-Trial Order dated July 20, 2017, Docket – Vol. II, p. 809.
[2] Exhibits "P-1" and "P-2", Docket – Vol. III, pp. 959 to 968.

L

of Internal Revenue (BIR) with Taxpayer Identification Number 001-002-833-000.[3]

Respondent Commissioner of Internal Revenue is the officer duly appointed and empowered by law to act on national revenue tax assessments, with office address at the BIR Building, Agham Road, Diliman, Quezon City.[4]

On May 14, 2010, then Commissioner of Internal Revenue issued the *Letter of Authority* (LOA) No. 116-2010-00000076,[5] authorizing Revenue Officers Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Walter Batoon, Reynoso Bravo, and Group Supervisor Erlinda Ulgado, of the LT Regular Audit Division I of the BIR, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2009.

Petitioner executed two (2) *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code*, the details of which are as follows:

Waiver	**Date Executed by petitioner**	**Agreed period to assess petitioner**	**Date Accepted by the BIR**
First Waiver[6]	July 10, 2012	Until June 30, 2013	July 12, 2012
Second Waiver[7]	May 17, 2013	Until June 30, 2014	May 29, 2013

On June 5, 2014, petitioner received the *Preliminary Assessment Notice* (PAN) dated May 30, 2014, with *Details of Discrepancies*, issued by the BIR which stated that after investigation, petitioner has been found [liable for] deficiency income tax, VAT, EWT, WTC, final tax (FT), fringe benefits tax (FBT), and DST, for the year 2009.[8]

Petitioner then filed with the BIR a *Reply* dated June 19, 2014 to the PAN on June 20, 2014,[9] arguing that the assessment is invalid

[3] Exhibit "P-3", Docket – Vol. III, p. 969.
[4] Par. A.1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 769.
[5] Exhibits "P-44" and "R-1", BIR Records, p. 1.
[6] Exhibits "P-45" and "R-8", BIR Records, p. 519.
[7] Exhibits "P-46" and "R-11", BIR Records, p. 524.
[8] Exhibit "P-47", Docket – Vol. III, pp. 1024 to 1030; Exhibit "R-13", BIR Records, pp. 625 to 632.
[9] Exhibit "P-48", Docket – Vol. III, pp. 1031 to 1055.

L

and ineffectual for being made after the lapse of the prescriptive period.

On June 30, 2014, petitioner received the *Formal Letter of Demand* (FLD) dated June 27, 2014 with *Details of Discrepancies*, and with the corresponding *Audit Result/Assessment Notices*,[10] assessing petitioner in the aggregate amount of ₱1,973,630,053.21, inclusive of interests and penalties, broken down as follows:

Assessment No.	Type of Tax	Amount
IT-116-LOA-00000076-09-14-1037	Income tax	₱1,122,876,420.88
VT-116-LOA-00000076-09-14-1038	VAT	809,428,169.65
WE-116-LOA-00000076-09-14-1039	EWT	21,436,773.59
WC-116-LOA-00000076-09-14-1040	WTC	8,851,271.56
WF-116-LOA-00000076-09-14-1041	FT	8,957,322.00
WR-116-LOA-00000076-09-14-1042	FBT	559,122.93
DS-116-LOA-00000076-09-14-1043	DST	1,520,972.60
Total Deficiency Assessment		**₱1,973,630,053.21**

Petitioner then filed its *Request for Reinvestigation*, on July 30, 2014,[11] submitting that the assessment is invalid and ineffectual on the ground that they have no factual and/or legal bases, and requesting the cancellation of the same, after reinvestigation.

On December 21, 2016, petitioner received the FDDA dated December 20, 2016 issued by respondent, with *Details of Discrepancies*, and with the corresponding *Audit Result/Assessment Notices*,[12] declaring that petitioner is still liable for income tax, VAT, EWT, WTC, FT, and DST, in the total amount of ₱890,996,459.00, for the year 2009, the details of which are broken down as follows:

Assessment No.	Type of Tax	Amount
IT-116-LOA-00000076-09-16-418	Income tax	₱794,335,529.70
VT-116-LOA-00000076-09-16-419	VAT	70,233,417.98
WE-116-LOA-00000076-09-16-420	EWT	25,612,805.55
WC-116-LOA-00000076-09-16-421	WTC	103,475.25
DS-116-LOA-00000076-09-16-1043	DST	711,230.53
Total Deficiency Assessment		**₱890,996,459.00**

[10] Exhibit "P-49", Docket – Vol. III, pp. 1056 to 1070; Exhibit "R-15", BIR Records, pp. 663 to 678.
[11] Exhibit "P-50", Docket – Vol. III, pp. 1071 to 1091.
[12] Exhibit "P-52", Docket – Vol. III, pp. 1093 to 1105; Exhibit "R-19", BIR Records, pp. 1748 to 1755.

Petitioner filed the instant *Petition for Review* on January 19, 2017.[13] The instant case was initially raffled to this Court's First Division.

Respondent filed his *Answer* on April 26, 2017,[14] interposing, *inter alia*, the following defenses, to wit: (1) the waivers executed by petitioner are valid and effectively extended the period of assessment; (2) even assuming but without conceding that respondent failed to strictly comply with Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 5-2001, the waiver remains valid as upheld by the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[15]; (3) petitioner is liable to pay the assessment for deficiency income tax, VAT, EWT, WTC, and DST for taxable year 2009; (4) the assessed deficiency withholding as penalty to petitioner does not fall within the ambit of the period of limitation provided in Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended; and (5) tax assessments by examiners are presumed correct and made in good faith, and the taxpayer has the duty to prove otherwise.

The pre-trial conference was initially set on May 25, 2017.[16] However, upon the filing of petitioner's *Motion To Reset The Pre-Trial Conference* on May 17, 2017,[17] the pre-trial conference was further reset to,[18] and held on, June 22, 2017.[19]

On June 16, 2017, the *Pre-Trial Brief for Petitioner* was filed;[20] while *Respondent's Pre-Trial Brief* was submitted on June 19, 2017.[21]

The parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on July 6, 2017.[22] The Court issued the Pre-Trial Order on August 30, 2016,[23] which approved and adopted the parties' JSFI, and deemed the pre-trial as terminated.

---

[13] Docket – Vol. I, pp. 10 to 50.
[14] Docket – Vol. I, pp. 261 to 273.
[15] G.R. No. 212825, December 7, 2015.
[16] Notice of Pre-Trial Conference dated May 3, 2017, Docket – Vol. I, pp. 339 to 340.
[17] Docket – Vol. I, pp. 341 to 344.
[18] Order dated May 18, 2017, Docket – Vol. I, p. 347.
[19] Minutes of the hearing held on, and Order dated, June 22, 2017, Docket – Vol. II, pp. 767 to 768.
[20] Docket – Vol. I, pp. 357 to 378.
[21] Docket – Vol. II, pp. 761 to 764.
[22] Docket – Vol. II, pp. 769 to 787.
[23] Pre-Trial Order dated July 20, 2017, Docket – Vol. II, pp. 809 to 817.

L

As trial ensued, petitioner presented documentary and testimonial evidence. As part of its testimonial evidence, petitioner offered the testimonies of the following individuals: (1) Mr. Emmanuel D. Lubis,[24] petitioner's Vice President for Administration and Finance; (2) Mr. Jon Mikel Lorenzo C. Afzelius,[25] petitioner's Corporate Secretary; and (3) Ms. Madonna Mia S. Dayego,[26] the Court-commissioned Independent Certified Public Accountant (ICPA).[27]

On November 17, 2017, the ICPA Report was submitted to this Court.[28]perusal

Petitioner filed its *Formal Offer of Evidence* on February 5, 2018.[29] Respondent then filed his *Comment (Re: Petitioner's Formal Offer of Exhibits)* on February 12, 2018.[30] In the Resolution dated March 2, 2018,[31] the Court admitted petitioner's Exhibits, *except* for the following:

1. Exhibits "P-51", and "P-59", for failure to present originals for comparison; and
2. Exhibit "P-74-5", for not being found in records of the case.

The admitted documentary exhibits for the petitioner are as follows:

Exhibit:	Description:
P-1	SEC Certificate of Filing Amended Articles of petitioner dated 02 May 2011
P-2 and P-2-A	Amended Articles of Incorporation of petitioner Primary Purpose in the Amended Articles
P-3	BIR Certificate of Registration of petitioner with OCN-8RC00000055068
P-4	Quarterly Income Tax Return of petitioner for

[24] Exhibit "P-64", Docket – Vol. II, pp. 384 to 415; Minutes of the hearing held on, and Order dated, August 7, 2017, Docket – Vol. II, pp. 829 to 830.
[25] *Judicial Affidavit of Mr. Jon Mikel Lorenzo C. Afzelius*, Docket – Vol. I, pp. 353 to 356; Minutes of the hearing held on, and Order dated, September 27, 2017, Docket – Vol. II, pp. 867 to 868.
[26] Exhibit "P-119", Docket – Vol. II, pp. 884 to 911; Minutes of the hearing held on, and Order dated, December 6, 2017, Docket – Vol. III, pp. 925 to 926.
[27] *Oath of Commission* dated August 17, 2017, Docket – Vol. II, p. 852; Minutes of the hearing held on, and Order dated, August 17, 2017, Docket – Vol. II, pp. 853 to 855.
[28] Docket – Vol. II, pp. 912 to 924.
[29] Docket – Vol. III, pp. 936 to 957.
[30] Docket – Vol. III, pp. 1240 to 1241.
[31] Docket – Vol. III, pp. 1247 to 1248.

L

	the 1st Quarter of 2009
P-5	Quarterly Income Tax Return of petitioner for the 2nd Quarter of 2009
P-6	Quarterly Income Tax Return of petitioner for the 3rd Quarter of 2009
P-7	Annual Income Tax Return of petitioner for the Year 2009
P-8	Monthly VAT Return for January 2009
P-9	Monthly VAT Return for February 2009
P-10	Monthly VAT Return for April 2009
P-11	Monthly VAT Return for May 2009
P-12	Monthly VAT Return for July 2009
P-13	Monthly VAT Return for August 2009
P-14	Monthly VAT Return for October 2009
P-15	Monthly VAT Return for November 2009
P-16	1st Quarter VAT Return for taxable year 2009
P-17	2nd Quarter VAT Return for taxable year 2009
P-18	3rd Quarter VAT Return for taxable year 2009
P-19	4th Quarter VAT Return for taxable year 2009
P-20	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of January 2009
P-21	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of February 2009
P-22	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of March 2009
P-23	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of April 2009
P-24	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of May 2009
P-25	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of June 2009
P-26	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of July 2009
P-27	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of August 2009
P-28	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of September 2009
P-29	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of October 2009
P-30	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering

L

	the month of November 2009
P-31	The Monthly Remittance Return for Creditable Income Taxes Withheld (Form 1601-E) covering the month of December 2009
P-32	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of January 2009
P-33	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of February 2009
P-34	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of March 2009
P-35	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of April 2009
P-36	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of May 2009
P-37	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of June 2009
P-38	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of July 2009
P-39	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of August 2009
P-40	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of September 2009
P-41	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of October 2009
P-42	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of November 2009
P-43	Monthly Remittance Return of Income Taxes Withheld on Compensation (Form 1601-C) covering the month of December 2009
P-44	BIR Letter of Authority No. LOA-116-2010-00000076 dated May 14, 2010 issued to petitioner
P-45	1st Waiver of the Statute of Limitations dated 10 July 2012 executed by Neil Parcon
P-46	2nd Waiver of Statute of Limitations dated 17 May 2013 executed by Neil Parcon
P-47	Preliminary Assessment Notice (PAN) dated 30 May 2014 for taxable year 2009 which was received by petitioner on 05 June 2014
P-48	The protest letter dated 19 June 2014 of

L

	petitioner against the PAN which was filed with the BIR on 26 June 2014
P-49	The Formal Letter of Demand (FLD) dated 27 June 2014 together with all the attachments thereto, which were received by petitioner on 30 June 2014 assessing it for various deficiency taxes for the year 2009
P-50	Petitioner's Protest Letter dated 30 July 2014 against the FLD which was filed with the BIR on 30 July 2014
P-52	The Final Decision on Disputed Assessment dated 20 December 2016 which reiterated the various deficiency assessments for the year 2009, which was received by petitioner on December 21, 2016
P-53	2009 Audited Financial Statement of petitioner
P-54	Monthly Summary of the Rental Expenses for Year 2009
P-55	Summary Expenses in the Name of Cashier (Neil Parcon)
P-56	Certification dated April 12, 2017
P-57	Reconciliation of Net Income per Books against Taxable Income
P-58	Schedule of General and Administrative Expense
P-60	Summary of Legal Expenses, Audit Expenses, and other Professional Fees
P-61	Schedule of Payments made to Panay Power Corp. (PPC) for the cost of fuel
P-62	ERC Decision No. 2005-043C dated March 10, 2006 wherein the ERC confirmed that the cost of start-up diesel fuel and banker fuel is a pass-on cost of PPC to petitioner
P-63	FPS Payment Details filed by PEDC dated 17 January 2014
P-64	Judicial Affidavit of Emmanuel D. Lubis
P-73 to P-116	Supporting documents of the ICPA Report
P-117	ICPA Report dated 15 November 2017
P-118	Universal Serial Bus (USB) containing the supporting documents of the ICPA Report
P-119	Judicial Affidavit of the commissioned ICPA

Respondent also presented his documentary and testimonial evidence. With respect to testimonial evidence, respondent proffered the testimony of Ms. Olivia Sison,[32] Revenue Officer III of the BIR.

[32] Exhibit "R-20", Docket – Vol. III, pp. 1260 to 1266; Minutes of the hearing held on, and Order dated, April 30, 2018, Docket – Vol. III, pp. 1268 to 1269.

L

On May 15, 2018, the *Respondent's Formal Offer of Evidence* was filed.[33] Petitioner then filed its *Comment/Opposition (Re: Formal Offer of Evidence of Respondent)* on May 28, 2018.[34] The Court then admitted all of respondent's Exhibits, in the Resolution dated September 3, 2018.[35]

Respondent's documentary exhibits are the following:

Exhibits:	Description:
R-1	Letter of Authority No. 116-2010 00000076 dated May 14, 2010
R-2	Letter dated May 14, 2020
R-3	Notice of Change of Audit Jurisdiction
R-4	First Notice for the Presentation of Books of Accounts and other Accounting Records
R-5	Second and Final Notice for the Presentation of Books of Accounts and other Accounting Records
R-6	Letter dated September 13, 2010
R-7	Letter dated April 6, 2011
R-8	Letter dated April 8, 2011
R-9	Letter dated May 25, 2011
R-10	Waiver executed on July 10, 2012
R-11	Waiver executed on May 17, 2013
R-12	Memorandum dated May 15, 2014
R-13	Preliminary Assessment Notice with Details of Discrepancies
R-14	Memorandum dated June 19, 2014
R-15	Formal Letter of Demand dated June 27, 2014, Assessment Notices and Details of Discrepancies
R-16	Receipt issued by LBC
R-17	Registry Receipt
R-18	Memorandum dated June 22, 2016
R-19	Final Decision on Disputed Assessment dated December 20, 2016 with Details of Discrepancies
R-20	Judicial Affidavit of Revenue Officer Olivia Sison executed on April 24, 2018
R-20-A	Signature of Olivia Sison

On November 7, 2018, petitioner filed its *Memorandum*.[36] Respondent, however, failed to file his memorandum.[37]

---

[33] Docket – Vol. III, pp. 1273 to 1278.
[34] Docket – Vol. III, pp. 1280 to 1283.
[35] Docket – Vol. III, pp. 1286 to 1287.
[36] Docket – Vol. III, pp. 1292 to 1340.

L

In the Resolution dated November 16, 2018,[38] the Court considered the instant case submitted for decision.

On January 25, 2019, the parties filed a *Joint Motion To Hold in Abeyance The Resolution Of The Case*,[39] praying for the suspension of the proceedings and to hold in abeyance the resolution of the case for sixty (60) days, in view of the *Offer of Compromise* submitted by petitioner to respondent. Thus, in the Resolution dated February 11, 2019,[40] the Court granted the said *Joint Motion*, and cancelled and set aside the Resolution dated November 16, 2018.

Subsequently, the parties filed a *Joint Compliance/Report* and a *Joint Motion For Extension To Submit Compromise Agreement* on March 18, 2019,[41] and April 15, 2019,[42] respectively. In the Resolution dated May 10, 2019,[43] the Court took note of the said *Joint Compliance/Report*, and granted the said *Joint Motion For Extension*, thereby giving the parties an additional period of thirty (30) days from April 16, 2019, or until May 16, 2019, within which to submit the compromise agreement.

However, on May 16, 2019, the parties filed a *Joint Motion For Second Extension To Submit Compromise Agreement*.[44] Thus, in the Resolution dated June 14, 2019,[45] the Court granted the said *Joint Motion For Second Extension*, and gave the parties an additional period until June 15, 2019, within which to submit the compromise agreement. In the same Resolution, the Court ordered the parties to submit a joint report on the status of the compromise settlement within five (5) days from June 15, 2019.

The parties, nonetheless, failed to submit the said joint report within the period given.[46] Thus, in the Resolution dated August 15,

---

[37] Records Verification dated November 9, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1342.
[38] Docket – Vol. III, p. 1343.
[39] Docket – Vol. III, pp. 1345 to 1348.
[40] Docket – Vol. III, pp. 1392 to 1394.
[41] Docket – Vol. III, pp. 1395 to 1396.
[42] Docket – Vol. III, pp. 1397 to 1400.
[43] Docket – Vol. III, pp. 1402 to 1403.
[44] Docket – Vol. III, pp. 1404 to 1407
[45] Docket – Vol. III, pp. 1409 to 1410
[46] Records Verification dated July 26, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. III, pp.

L

2019,[47] considering the parties' failure to submit a compromise settlement or joint report, the case was considered submitted for decision on the said date.

THE ISSUES:

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

> "I.
>
> WHETHER OR NOT THE PERIOD TO ASSESS PETITIONER WITH DEFICIENCY TAXES FOR THE YEAR 2009 HAVE ALREADY PRESCRIBED; and
>
> II.
>
> WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX, EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, AND DOCUMENTARY STAMP TAX, INCLUDING INTEREST AND PENALTIES FOR THE YEAR 2009".[48]

Petitioner's arguments:

Petitioner argues that respondent's right to assess petitioner for taxable year 2009 has already prescribed. In support thereof, petitioner points out that the *Waiver of the Statute of Limitations* executed by petitioner is invalid and therefore, did not stall the running of the prescriptive period; that there was no Board Resolution authorizing the signatory to sign the *Waivers* on behalf of petitioner; that the revenue officer did not request the signatory of the *Waiver* to present his written authority from petitioner's Board of Directors; and that the revenue officer who accepted the *Waivers* is equally not authorized to accept the same.

Moreover, petitioner avers that respondent's arbitrary assessment against the petitioner is a clear violation of due process,

[47] Docket – Vol. III, pp.
[48] Par. B.4, JSFI, Docket – Vol. II, p. 770.

L

thus rendering the same void. According to petitioner, the BIR's disregard of the documents submitted by petitioner in support of its position violated the latter's right to due process.

Finally, petitioner contends that it is not liable for deficiency income tax, VAT, WTC, FWT, FBT, and DST.

Respondent's counter-arguments:

Respondent counter-argues that *Waivers*, duly executed by petitioner's VP-Comptroller, Ana Maria S. Del Rosario, extended the period to assess petitioner; that petitioner was not and was never deprived of its constitutionally protected right to due process; that respondent has complied with the auditing rules and procedures as prescribed in the issuances of the BIR; that there was no violation of petitioner's right to speedy disposition of cases; and that petitioner is liable for deficiency income tax, VAT, WTC, FBT, and DST.

THE COURT'S RULING

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

"Whether or not the subject *Waivers* are valid."

"Whether or not the subject tax assessments are valid."

Relative thereto, 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

In deciding a case, the Court may not limit itself to the issues stipulated by the parties but

L

> **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.[49] 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.,*[50] *viz*:

> **"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> **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.** xxx." *(Emphases ours)*

Relative thereto, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,*[51] the Supreme Court held:

---

[49] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017.
[50] G.R. No. 183408, July 12, 2017.
[51] G.R. No. 163835, July 7, 2010.

ℒ

"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

> **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 *Waivers* and tax assessments are valid is a *matter of record*, and *of public importance.* The said issues are 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. Furthermore, the same issues can be deemed as *matter of public importance*, simply because a void assessment bears no valid fruit.[52]

Moreover, the issues raised by this Court have some bearing on the issues submitted by the parties. It must be emphasized that the matter of validity or invalidity of the said *Waivers* is closely related to the issue of whether the subject tax assessments have already prescribed. In the same vein, the determination of whether the subject tax assessments are valid is not only related to the issues raised by the parties, but is also crucial, since taxpayers, including petitioner, must not be held liable under an invalid tax assessment.

Such being the case, We see no legal obstacle to resolve the above-stated issues raised by this Court.

The subject Waivers are not valid, and thus, could not have

---

[52] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

L

extended the period to assess petitioner.

To repeat, respondent avers that the *Waivers*, duly executed by petitioner's VP-Comptroller, Ana Maria S. Del Rosario, extended the period to assess petitioner.

We disagree with respondent.

Section 203 of the NIRC of 1997 states the period of limitation upon the assessment taxes, to wit:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years 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-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." *(Emphases and underscoring supplied)*

The foregoing provision mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[53] Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[54]

However, under Section 222(b) of the NIRC of 1997, there is an instance when the government may assess pertinent taxes against a taxpayer even beyond the said three-year prescriptive period. Said provision reads as follows:

---

[53] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[54] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

L

"SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

xxx xxx xxx

(b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

xxx xxx xxx." (*Emphasis ours*)

Thus, under Section 222(b) of the NIRC of 1997, the same three-year prescriptive period under Section 203 of the same Code, may be extended, if before the expiration thereof, both respondent and the taxpayer agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.

Indeed, a *Waiver* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[55] However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[56] The *Waiver* must faithfully comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 in order to be valid and binding.[57]

In *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.* ("*La Flor* case"),[58] the Supreme Court held:

"In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[59] the Court had ruled that **waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-**

[55] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[56] *Id.*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, supra.
[57] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, supra.
[58] G.R. No. 211289, January 14, 2019.
[59] G.R. No. 220835, July 26, 2017.

ℒ

90 and <u>must indicate the nature and amount of the tax due</u>, to wit:

> **<u>These requirements are mandatory and must strictly be followed</u>.** To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
>
> x x x x
>
> The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank,* because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.
>
> Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:
>
> x x x x
>
>> 3. Similar to *Standard Chartered Bank,* the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity. (Emphasis supplied)

In the present case, <u>the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the</u>

ℒ

> <u>**exact amount of the tax to be assessed or collected**</u>**. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity.** The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — **the assessments had prescribed as there was no valid waiver.**" *(Emphases and underscoring ours)*

Based on the foregoing jurisprudential pronouncements, it is required, *inter alia*, that the *Waiver*, must indicate the nature and the amount of the tax due, to be valid, and would have the effect of extending the three-year prescriptive period to assess. These details are material as there can be no true and valid agreement between the taxpayer and respondent absent these information.

In this case, a careful reading of the subject *Waivers* [60] would reveal that they do not indicate the kind and amount of the taxes to be assessed or collected. Thus, the said *Waivers* are invalid. Correspondingly, the same did not effectively extend the three-year prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity.

In any event, even granting that the said *Waivers* are valid, the same is of no consequence. This must be so because all the subject tax assessments are actually void.

The subject assessments are void since petitioner's tax liability remains indefinite.

An assessment "refers to the determination of amounts due from a person obligated to make payments."[61] In the context in

[60] Exhibits "P-45" and "R-8", BIR Records, p. 519; Exhibits "P-46" and "R-11", BIR Records, p. 524.
[61] *SMI-ED Phil. Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.

L

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.**[62]

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.* ("*Fitness by Design* case"),[63] the Supreme Court ruled as follows:

> "**The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. **<u>Its main purpose is to determine the amount that a taxpayer is liable to pay</u>**.
>
> xxx xxx xxx
>
> **The disputed Final Assessment Notice is not a valid assessment.**
>
> xxx **<u>it lacks the definite amount of tax liability for which respondent is accountable</u>. 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 <u>a due tax liability that is there definitely set and fixed</u>.'** 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

[62] *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[63] G.R. No. 215957, November 9, 2016.

> investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.* (Emphasis Supplied)
>
> xxx xxx xxx
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. **Tax collection should be premised on a valid assessment**, which would allow the taxpayer to present his or her case and produce evidence for substantiation." *(Emphases supplied)*

A careful scrutiny of the subject FLD dated June 27, 2014[64] reveals that just as in the *Fitness by Design* case, although the same FLD provides for the computations of petitioner's supposed tax liabilities, the amounts thereof remain indefinite, since the tax dues are still subject to modification. Specifically, the subject FLD-FAN states:

> "***Please take note that the interest <u>will have to be adjusted</u> if paid beyond the date specified therein.***"[65]

Furthermore, the same statements are found in the assailed FDDA dated December 20, 2016 issued by respondent.[66]

Hence, it is clear that the amounts assessed are still indefinite, since the same are subject to further adjustment after the payment thereof. In addition, it is not clear as to which does the phrase *"the date specified therein"* refer. In view of this vagueness, the

[64] Exhibit "P-49", Docket – Vol. III, pp. 1056 to 1070; Exhibit "R-15", BIR Records, pp. 663 to 678.
[65] Exhibit "P-49", Docket – Vol. III, at p. 1058; Exhibit "R-15", BIR Records, at p. 676.
[66] Exhibit "P-52", Docket – Vol. III, at p. 1094; Exhibit "R-19", BIR Records, at p. 1754.

L

indefiniteness in the amounts being assessed becomes more apparent.

In the case of *Commissioner of Internal Revenue vs. Northern Tobacco Redrying Co., Inc.*[67], the Court of Tax Appeals *En Banc* ruled that the mutability or changeableness of the amount due constitutes failure to comply with the mandatory requirement of stating a definite amount of liability and that the there must be a clear demand to pay, to wit:

> *"[F]or a formal assessment to be valid, it must contain not only a computation of tax liabilities but also a demand for payment within a prescribed period, to wit:*
>
> > *The issuance of a valid formal assessment is a substantive prerequisite to tax collection,* ***for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period,*** *thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer. (emphasis supplied)*
>
> *Thus, to be valid, an assessment must contain not only the computation of tax liabilities, but must also indicate a definite amount of the tax due, and categorical demand for payment within a prescribed period.*
>
> *Evidently, the subject FLD utterly failed to comply with the requirement of the law to state a definite amount of liability, and a period or date certain for the payment of the tax assessed.*
>
> *For emphasis, the FLD states, as follows:*
>
> > *Please note that the interest and the total amount due will have to be adjusted if paid beyond November 30, 2013.*
>
> *Undeniably, the amount of tax liability subject of the questioned assessment is not yet certain, as the total amount due will change depending on the date of payment by respondent. The amount of the tax liability*

[67] CTA EB No. 1760 (CTA Case No. 8857), July 2, 2019.

h

> *will necessarily change once the deficiency and delinquency interests are adjusted.*
>
> *The mutability or changeableness of the amount due constitutes failure to comply with the mandatory requirement of stating a definite amount of liability. It has been consistently held that an assessment must state the tax due which is definitely set and fixed, to wit:*
>
>> *In the context in which it is used in the NIRC, **an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. 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**. (emphasis supplied)*
>
> *As earlier noted, the FLD as well failed to state a definite due date for payment of the tax due, and a clear demand for payment of the assessed tax deficiencies on such due date as shown below:*
>
>> *In view thereof, you are **requested** to pay your aforesaid deficiency income tax, value added tax and documentary stamp tax through the duly authorized agent bank in which you are enrolled, within the time shown in this assessment notice." (boldfacing ours)*
>
> *In other words, the subject FLD is vague and cannot be legally deemed as a valid formal assessment notice since petitioner did not indicate therein a demand for payment of the alleged tax liabilities on a specific date or period."*

Suffice it to say, a request to pay is not a demand to pay. To demand means to "require (a person) to do"[68] and is also defined as "the assertion of a legal right", "an imperative request preferred by one person to another under a claim of right, requiring the latter to do or yield something or to abstain from some act. An examination of the Formal Letter of Demand (FLD) would reveal that there is no demand or requirement for the taxpayer to pay the taxes due. The phrase *"you are requested to pay your aforesaid deficiency tax*

---

[68] Shorter Oxford English Dictionary (6th Edition) Vol. I, p. 639.

liabilities xxx" negates the imperative nature and assertion of a legal right of an assessment.

Correspondingly, the subject FLD and the assessments made in the FDDA hardly fall under the jurisprudential definition of a tax assessment under the NIRC, considering that they lack *"a due tax liability that is there definitely set and fixed."* They do not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. Clearly, the subject tax assessments are void, and thus, bear no valid fruit.[69]

With the foregoing disquisitions, it becomes unnecessary to address the specific issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FDDA dated December 20, 2016 issued by respondent, and the assessments for deficiency income tax, VAT, EWT, WTC, and DST, in the aggregate amount of ₱890,996,459.00, inclusive of interest and penalties, for taxable year 2009, are **CANCELLED and SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

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

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

---

[69] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018, G.R. No.197945 citing *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

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.
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

PANAY ELECTRIC COMPANY, INC., Petitioner,	**CTA CASE NO. 9523**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 01 2020

x - x
8:40 a.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 waivers executed by the parties did not specify the nature and amount; and, (2) the tax liabilities remain indefinite applying the doctrine laid down in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[1] (**Fitness By Design**).

---

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

In my humble opinion, the waivers[2] reasonably and practically encompassed the nature of taxes subject of it, *to wit:*

> ...
>
> *I, NIEL PARCON of PANAY ELECTRIC COMPANY, INC. request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its **ALL INTERNAL REVENUE tax liabilities** for the year 2009.*
>
> ....

I am of the position that the waivers should not be invalidated for the reason that the kinds of taxes were not named with particularity, especially since the waivers were executed *during* the pendency of the investigation and *prior* to the issuance of the Preliminary Assessment Notice (**PAN**). At the time of their execution, both parties could not be expected to know or specify the kinds of taxes that the taxpayer may be held liable for or what deficiency taxes were to be due.

As regards the findings that the amount of tax due in the waivers is absent, I am also constrained to disagree that its non-indication therein will render them invalid.

The doctrines enunciated in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[3] (**Philippine Journalists, Inc.**) and *Commissioner of Internal Revenue v. Standard Chartered Bank*[4] (**Standard Chartered Bank**) which cited, among others, the non-indication of the amount of tax due as a crucial violation that would warrant the invalidation of the waivers issued, must be viewed in relation to Revenue Delegation Authority Order (**RDAO**) No. 05-01[5] issued on 02 August 2001 (which introduces a new Waiver form).

It is noteworthy that the cases of *Philippine Journalists, Inc.* and *Standard Chartered Bank* involve tax assessments covering the years 1994 and 1998, respectively, and hence the old form prescribed under Revenue Memorandum Order (**RMO**) No. 20-90 was used as basis.

[2] Exhibits "P-45" and "P-46".
[3] G.R. No. 162852, 16 December 2004.
[4] G.R. No. 192173, 29 July 2015.
[5] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

However, considering that the instant case covers taxable year <u>2009</u>, the waivers must be compared with the new form[6] prescribed under RDAO No. 05-01 to determine whether the subject waivers conformed accordingly. From the reading of Annex "A" of RDAO No. 05-01, nothing in the prescribed form requires the indication of the amount of tax due. In fact, the waivers executed by petitioner bear **a striking resemblance to the prescribed form**. It can thus be said that petitioner's waivers were patterned after the pro-forma waiver in RDAO No. 05-01.

As regards the *ponencia's* holding that the assessment is void because the tax liabilities remain indefinite (applying the doctrine in the case of *Fitness By Design*), 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, however, that the interest and the total amount due will have to be adjusted <u>if paid prior or beyond April 15, 2004</u>.**[7]
> ...

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:

6 Annex "A" of RDAO No. 05-01 - WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE.

7 Emphasis in the original text and underscoring supplied.

> 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.*
>
> However, based on the findings of the Court of Tax Appeals First Division, **<u>the enclosed assessment pertained to remain unaccomplished</u>**.[8]
>
> ...

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.***[9]
> ...

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 15 July 2014[10]). Insofar as the total amount indicated in the FLD, it is undeniable that the amount of the liability and the deadline for payment of the same are definite. This fact remains to be true despite warning on the part of the Bureau of Internal Revenue (**BIR**) that additional interest shall continue to accrue beyond the due date. It would be therefore unfair to admonish the BIR for reminding the taxpayer of the necessary consequences of a delayed settlement.

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 substantially satisfies both requirements, then the FLD could not be found wanting nor that the assessment be considered void. It is true that while the computation of interest may not yet appear definite, the same is only logical as BIR could not reasonably be expected to foresee when the taxpayer will actually settle the tax obligation. Therefore, to set aside the entire assessment on the basis of the indefiniteness <u>not</u> of the amount of tax liability but of the interest

---

8 Italics in the original text, emphasis and underscoring supplied.
9 Exhibit "P-49", emphasis and underscoring supplied.
10 As shown in Assessment Notices (BIR Form No. 0401); see Exhibit "R-15", BIR Records, pp. 663 to 678.

that may accrue (beyond the deadline of payment) is in discord with the ratio in *Fitness By Design.*

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". On the other hand, in the case at bar, the Audit Result/Assessment Notice (BIR Form No. 0401) attached to the FLD[11] shows the deadline for payment to be "15 July 2014". As stated earlier, the computation of interest in the FLD coincided with the said deadline for payment.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[11] Id.