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REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- **versus** -

**SOUTH LUZON TOLLWAY CORPORATION,**
Respondent.

**CTA EB NO. 2004**
(CTA CASE NO. 9272)

*Present:*

**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
DEC 10 2019
4:11 p.m.

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# RESOLUTION

For the Court's resolution is petitioner Commissioner of Internal Revenue's (**petitioner's/CIR's**) Motion for Reconsideration[1] (**MR**) of the Court *En Banc's* Decision in the above-titled case, dated 28 October 2019[2]. The dispositive portion of which reads:

> ...
>
> **WHEREFORE,** the foregoing considered, this Petition for Review is **DISMISSED** for lack of merit. The questioned Decision of

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[1] Filed 19 November 2019, *Rollo*, pp. 192-203.
[2] Id., pp. 176-187.

> the Court's First Division in CTA Case No. 9272, entitled *South Luzon Tollway Corporation v. Commissioner of Internal Revenue,* dated 27 July 2018 and its 14 January 2019 Resolution are **AFFIRMED** accordingly.
>
> ...

The dismissal of petitioner's Petition for Review was premised mainly on the invalidity of its Formal Letter of Demand (**FLD**) for lack of a definite date of payment. The assailed Decision was reached pursuant to the Supreme Court's ruling in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[3] (**Fitness**) which held:

> ...
>
> ...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. Its main purpose is to determine the amount that a taxpayer is liable to pay.
>
> ...
>
> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> ....

Simply put, a valid FLD or a Final Assessment Notice (**FAN**) must not only inform the taxpayer of the full amount of his or her tax liabilities, it must also set a fixed period within which payment must be made. Absent one of these twin requirements, the FAN/FLD is inescapably rendered void.

Additionally, petitioner in insisting that the FAN/FLD issued by his office contained a fixed date of demand, recited in his MR the very contents of the FLD, to wit:

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

...

In view of the foregoing, and in accordance with Section 228 of the Tax Code, there is still found due from you deficiency Documentary Stamp Tax for the fiscal year ending March 31, 2012, as shown hereunder:

DOCUMENTARY STAMP TAX
Assessment Notice No. DS-125-00000018-11-15-517

| | | | |
|---|---|---|---|
| Basic deficiency tax (Schedule 1) | | | P25,540,865.00 |
| Add: | Penalties | | |
| | Surcharge (25%) | P 6,385,216.25 | |
| | Interest (4/6/12 to 11/27/15) | 18,613,342.71 | |
| | Compromise penalty | 50,000.00 | 25,048,558.96 |
| TOTAL AMOUNT DUE | | | P50,589,423.96 |

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

...

According to petitioner, the FLD clearly shows the exact amount due respondent, only that interest would have to be adjusted if not paid within the specified time. Petitioner misses the whole point. The FLD was invalidated not for failing to provide the total tax liabilities due respondent, rather for its failure to state a specific due date for its payment. It is true that the subject FLD demands that the respondent's tax liabilities be paid within a specified time as indicated in the FLD otherwise, the amount of interest would necessitate adjustment. However, the alleged due date appears nowhere in the FLD. As observed correctly by the First Division, the space where the due date should have appeared was left in blank thus, leaving the taxpayer guessing as to when the payment falls due. Unfortunately for petitioner, this misstep voids the FLD for being an inadequate form of demand.

Incidentally, in his present MR, petitioner virtually raises exactly the same arguments he had previously stated in his Petition for Review. Although petitioner reminds the Court *En Banc* that rehashing of arguments does not make his MR in any way *pro forma;* it does, however, do little in convincing the Court into reversing its assailed Decision. The principles of *stare decisis*, hierarchy of courts, and applicability of the *Fitness* ruling in the present case have already been discussed exhaustively by the Court in the assailed Decision. We, therefore, deem it unnecessary to belabor ourselves further with a repeated discussion on these matters.

**WHEREFORE**, with the foregoing, the Court finds no reason to reverse the assailed Decision of 28 October 2019. Accordingly, petitioner's Motion for Reconsideration dated 19 November 2019 is **DENIED** for lack of merit.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

**ON LEAVE**
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice