REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

ROBINSONS TOYS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9161

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
DEC 1 1 2021
9:28 a.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

For resolution are the following:

1) Respondent's "Motion for Reconsideration [Decision dated September 2, 2020]"[1] filed on October 08, 2020 *via* registered mail, with Petitioner's "Comment/Opposition (To Respondent's Motion for Reconsideration dated 8 October 2020)"[2], filed on December 16, 2020; and

2) Respondent's "Motion for Reconsideration (of the Resolution dated 07 June 2021)", filed on June 30, 2021, with Petitioner's "Comment/Opposition (To Respondent's Motion for Reconsideration dated 30 June 2021), filed on October 15, 2021 *via* registered mail.

Respondent's "Motion for Reconsideration (of the Resolution dated 07 June 2021)"

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[1] Docket, pp. 1095-1135.
[2] *Id.*, pp. 1263-1276.

On June 07, 2021, the Court promulgated a Resolution granting Petitioner's "Urgent Motion to Lift Warrant of Distraint and/or Levy and for Suspension of Collection of Taxes" and suspending the collection of taxes, the dispositive portion of which provides:

> "**WHEREFORE,** premises considered, the court **RESOLVES** Petitioner's **Formal Offer of evidence (in support of the Urgent Motion to Lift Warrant of Distraint and/or Levy and For Suspension of Collection of Taxes)** in accordance with the foregoing findings as to the admissibility of Petitioner's exhibits.
>
> Also, Petitioner's **Urgent Motion to Lift Warrant of Distraint and/or Levy and [f]or Suspension of Collection of Taxes** is **GRANTED**. Accordingly, the collection of taxes is hereby **SUSPENDED.**
>
> **SO ORDERED.**"

Undaunted, Respondent move for the reconsideration of the above Resolution.

In his motion, Respondent claims that the evidence presented by Petitioner in the hearing of its motion miserably failed to establish that there exists an urgent and paramount necessity for the issuance of a suspension of collection of tax. Petitioner's financial position shows that it can pay the assessed deficiency taxes while maintaining sound bank operations. On the contrary, it is the government that stands to suffer damages if it will be prevented from implementing an administrative issuance that was meant to augment internal revenue collection.

Respondent likewise asserts that assuming without conceding that Petitioner is entitled to the suspension order prayed for, Petitioner is not excused from posting the required bond or cash deposit.

In line with the directive in *Spouses Pacquiao v. CTA-First Division and Commissioner of Internal Revenue*[3] ("*Pacquiao*"), before there could be a complete dispensation of the required cash deposit or bond in its entirety, the movant must prove that there is an extreme violation of the law committed by Respondent in his summary collection methods that is patent and blatant in all aspects. According to Respondent, this is lacking in the case at bar. Petitioner's claim of exception from the posting of bond is grounded only on the fact that

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[3] G.R. No. 213394, April 06, 2016.

the assessment issued by Respondent is void. This finding of the Court has yet to attain finality. Moreover, the means by which the collection has been made was proper and in accordance with law.

On the other hand, Petitioner in its comment/opposition, claims that it is entitled to the injunctive relief prayed for, because it was able to fully satisfy the requisites for the issuance of a suspension order. Petitioner through its witness, was able to prove that allowing Respondent to implement the Warrant of Distraint and/or Levy ("WDL") would cause Petitioner grave and irreparable injury as it would cause undue restraint on its cashflows, give rise to financial hardships or default, and paralyze and eventually significantly diminish its overall business operations.

Furthermore, Petitioner maintains that owing to the special circumstances surrounding the instant case, particularly the improvident timing and manner of the issuance of the WDL, there is sufficient basis to grant its motion to suspend collection of tax and dispense with the bond requirement. Petitioner avers that a full-blown trial had already been conducted and the assessments were determined to be null and void. Thus, with more cogent reason that Petitioner be entitled to a suspension of collection without need of posting of a bond.

Petitioner also asseverates that Respondent may only avail of civil remedies for the collection of delinquent taxes. A delinquent account pertains to a tax due that have become final and executory for failure to file a valid administrative protest or appeal a final decision rendered by the Bureau of Internal Revenue ("BIR"). Since Petitioner was able to file a timely appeal to this Court, the assessment is not yet final and executory.

Finally, Petitioner declared that it is absurd to require the posting of a bond as a condition for the suspension of collection of tax after the Court's decision that the assessments sought to be collected are null and void.

We are not persuaded of Respondent's contentions in his motion for reconsideration.

For one, Petitioner was able to prove that the collection of the subject deficiency taxes will jeopardize its interest. Petitioner's cash balance, as stated in its Audited Financial Statements, is insufficient to cover both its current liabilities and the amount Respondent seeks to collect. More importantly, this Court had already ruled in the September 02, 2020 Decision that the subject assessments are void. A void assessment cannot be enforced. Hence, Respondent cannot proceed with tax collection.

As for the granting of the motion to suspend tax collection without the need for any bond, the same has basis in jurisprudence. As held in *Pacquiao*, "whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law, the bond requirement under Section 11 of R.A. No. 1125 should be dispensed with." In the instant case, the Court found that Respondent failed to properly serve the WDL to Petitioner.

Accordingly, We find no justifiable reason to change or modify the conclusion reached in our Resolution dated June 07, 2021. Respondent's "Motion for Reconsideration (of the Resolution dated 07 June 2021)", filed on June 30, 2021 is **DENIED**.

Respondent's "Motion for Reconsideration [Decision dated September 2, 2020]"

Respondent moves for reconsideration of the Court's Decision dated September 02, 2020, granting Petitioner's "Petition for Review". The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the subject assessments issued against [P]etitioner for deficiency income tax, VAT, EWT, WTC, FT, DST, and compromise penalties in the total amount of [Php]286,445,331.48, for taxable year 2009, as embodied in the FLD dated June 27, 2014 and FDDA dated September 3, 2015, are hereby **ANNULLED, CANCELLED, and SET ASIDE**.
>
> **SO ORDERED.**"

Respondent alleges that his basic right to fair play and due process was violated when the Court ruled on a matter not raised as an issue by Petitioner in the Petition for Review or Pre-Trial Brief, not joined by the parties, nor defined by the Court in Division in the Pre-Trial Order.

Respondent further argues that the issue on the absence of eLOA has already become final in the administrative level and Petitioner cannot raise the same for the first time on appeal. As such, the Court erred in ruling on this issue. Assuming without conceding that the case may be decided based on as issue raised for the first time, the assessments are valid as the tax examination was pursuant to a valid LOA. According to Respondent, the absence of eLOA does not invalidate the assessments.

In addition, Respondent asserts that the Court erred in relying on the decision in *Commissioner of Internal Revenue vs. Fitness by Design*[4] ("*Fitness by Design*"). Assuming, *arguendo*, that the ruling in *Fitness by Design* may be considered in the instant case, the Court erred in ruling that the assessments have no definite amount of tax liabilities and due date for payment.

On the other hand, Petitioner opposes Respondent's motion for reconsideration (of the Decision dated September 02, 2020) for the arguments raised therein are mere reiterations of the previous arguments raised in his Memorandum dated July 24, 2019 and Counter-Manifestation dated July 06, 2020.

We resolve.

The court shall delve first on the argument that the Court erred in ruling on a matter not raised as an issue by Petitioner.

The second paragraph of Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "SECTION 1. *Rendition of judgement.* – 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."

In the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[5], the Supreme Court recognized that this Court is not bound by the issues specifically raised by the parties but may rule upon related issues necessary to achieve an orderly disposition of the case, to wit:

> "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:
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> SECTION 1. *Rendition of judgment.* - x xx

[4] G.R. No. 215957, November 09, 2016.
[5] G.R. No. 183408, July 12, 2017.

> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

The issue stipulated by the parties for the Court's determination is whether Petitioner is liable for deficiency income tax, value-added tax ("VAT"), withholding tax on compensation ("WTC"), expanded withholding tax ("EWT"), final tax, and documentary stamp tax ("DST") in the aggregate amount of Php286,445,331.49, inclusive of increments, for taxable year 2009. In resolving the said issue, it necessarily includes the ascertainment of the validity of the assessment since its resolution necessarily determines the issue of whether Petitioner has a tax liability.

Accordingly, although the validity of the assessment was not one of the issues stipulated by the parties, it is a related issue that this Court deemed imperative to decide for the achievement of an orderly disposition of the case.

We now go to the issue of the lack of definite amount of tax liabilities and failure to state the due date for payment on the assessments.

Respondent claims that the Court violated his basic right to fair play and due process when it ruled on the issue of the lack of definite amount of tax liabilities and failure to state the due date for payment on the assessment. He asserts that the Formal Letter of Demand ("FLD") and Final Decision on Disputed Assessment ("FDDA") have fixed and set the deficiency tax liabilities of Petitioner due on or before July 09, 2014 and July 31, 2015, respectively. Respondent points out that since the tax deficiency is already definite, subject to adjustment as the interest is running, Petitioner is cognizant of the amount to be paid on its tax liabilities. Thus, Respondent maintains the validity of his deficiency tax assessments against Petitioner.

On the other hand, in its comment/opposition, Petitioner avers that the Court properly applied the doctrine in the case of *Fitness by Design* based on the principle of *stare decisis*, considering the said case actually traces its roots from landmark cases of *Commissioner of Internal Revenue v. Pascor Realty and Development*

Corporation, et. al.,[6] and *Petronila C. Tupaz v. Honorable Benedicto B. Ulep*[7]. Petitioner claims that the foregoing cases, including the *Commissioner of Revenue v. Dominador Menguito* case,[8] emphasized that a definite computation of tax liabilities and specific demand for payment within a prescribed period must be indicated in the assessment notices as part of essential requirements of a valid assessment.

Petitioner received the FLD and Assessment Notices on June 27, 2014, assessing it for deficiency income tax, VAT, EWT, WTC, FWT, and DST in the aggregate amount of Php257,485,553.51, inclusive of increments, for taxable year ended December 31, 2009,[9] broken down as follows:

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	Php 87,506,623.08	Php -	Php 74,128,898.00	Php 50,000.00	Php 161,685,521.08
VAT	43,941,959.51	-	39,150,480.00	50,000.00	83,142,439.51
WTC	1,063,906.11	-	953,726.00	50,000.00	2,067,632.11
EWT	2,862,014.04	-	2,565,798.43	50,000.00	5,477,812.47
Final Tax	1,612,795.05	1,545,863.40	1,623,227.78	230,000.00	5,011,886.23
DST	48,261.11	-	43,501.00	8,500.00	100,262.11
Total	**Php 137,035,558.90**	**Php1,545,863.40**	**Php 118,465,631.21**	**Php438,500.00**	**Php 257,485,553.51**

Petitioner then protested the assessments in the FLD.[10] Nevertheless, respondent issued the FDDA and the accompanying Assessment Notices, which was received by Petitioner on September 03, 2015,[11] broken down as follows:

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	Php 87,506,623.08	Php -	Php 92,685,097.00	Php 50,000.00	Php 180,241,720.08
VAT	43,941,959.51	-	48,468,583.00	50,000.00	92,460,542.51
WTC	1,063,906.11	-	1,179,332.64	50,000.00	2,293,238.75
EWT	2,862,014.04	-	3,172,522.00	50,000.00	6,084,536.04
Final Tax	1,612,795.05	1,545,863.40	1,866,377.44	230,000.00	5,255,035.89
DST	48,261.11	-	53,497.11	8,500.00	110,258.22
Total	**Php 137,035,558.90**	**Php1,545,863.40**	**Php 147,425,409.19**	**Php438,500.00**	**Php 286,445,331.49**

As properly held by this Court in the assailed Decision, it bears stressing that the accompanying Audit Result/Assessment Notices both in the FLD and FDDA do not contain any due date for payment of the assessed deficiency taxes.

6 G.R. No. 128315, June 29, 1999.
7 G.R. No. 127777, October 1, 1999.
8 G.R. 167560, December 17, 2008.
9 Docket - Vol. 2, Exhibit "P-6", pp. 736 to 760; BIR Records (F1/F2), Exhibit "R-17", pp. 966 to 986.
10 Docket – Vol. 2, Exhibit "P-7", pp. 761 to 780.
11 Docket - Vol. 1, JSFI, Stipulation of Facts, Par. 3, p. 228; Docket - Vol. 2, Exhibit "P-8", pp. 781 to 797; BIR Records (F1/F2), Exhibit "R-20", pp. 1265 to 1288.

An assessment, in the context of the National Internal Revenue Code ("NIRC") of 1997, as amended, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed."[12]

The term "assessment" refers to the determination of amounts due from a person obligated to make payments.[13] In the context in which it is used in the NIRC of 1997, as amended, 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.[14] It must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period,[15] the purpose of which is to determine the amount that a taxpayer is liable to pay.[16] In reverse, an assessment which failed to include a due date or a fixed and determinate amount of tax liability is *not* an assessment contemplated by the Tax Code and related jurisprudence.

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the NIRC of 1997, as amended, nor the revenue regulations provide for a "specific definition or form of an assessment." However, the Tax 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.[17]

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."[18]

Based on the foregoing, a valid written assessment must contain a fixed amount of tax liability with a demand for payment within a prescribed period.

Respondent's contention that the FLD and FDDA have fixed and definitely set the deficiency tax liabilities of Petitioner due on or before July 09, 2014 and July 31, 2015, respectively, cannot be accepted.

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[12] Commissioner of Internal Revenue v. Fitness By Design, Inc., G.R. No. 215957, November 09, 2016.

[13] SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue, G.R. No. 175410, November 12, 2014.

[14] Adamson v. Court of Appeals, G.R. No. 120935, May 21, 2009.

[15] Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, G.R. No. 128315, June 29, 1999.

[16] Petronila C. Tupaz v. Honorable Benedicto B. Ulep, G.R. No. 127777, October 01, 1999.

[17] *Id.*

[18] *Id.*

The FLD issued in the instant case states:

> "In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through eFPS using BIR Payment Form (BIR Form 0605) within the time shown in the enclosed assessment notice."[19]

However, the aforesaid enclosed Audit Result/Assessment Notices alluded to did not indicate the due dates for payment in the space provided,[20] negating compliance with the requirement that the formal written assessment must contain a demand for payment within a prescribed period.

Given that there was failure to state a date certain for the payment of the deficiency taxes in the subject assessments, as well as to provide a definite amount of taxes to be paid, Petitioner's obligation for payment of the alleged deficiency taxes in the subject assessment is not deemed to have legally accrued. Simply put, Petitioner may not be adjudged to account for deficiency taxes which in the first place are not legally demandable.[21]

The same inadequacies are present in the FDDA, which contained the following statements:

> "It is requested that your aforesaid deficiency tax/taxes be paid immediately upon receipt hereof, inclusive of penalties."[22]

As with the FLD, the enclosed Assessment Notices to the FDDA did not indicate the due date for payment,[23] negating Respondent's compliance with the requisite demand for payment within a prescribed period.

Contrary to Respondent's view, July 09, 2014[24] and July 31, 2015[25], on FLD and FDDA, respectively, were the reckoning dates of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when Petitioner decides to pay. Moreover, it is to be emphasized that Respondent's FDDA and the accompanying Assessment Notices were received by Petitioner on September 03, 2015,[26] which is a later

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19 Exhibit "P-6", Docket – Vol. 2, p. 739; Exhibit "R-17", BIR Records (F1/F2), p. 983.
20 Exhibit "P-6", Docket – Vol. 2, pp. 744 to 749; Exhibit "R-17", BIR Records (F1/F2), pp. 966 to 971.
21 Commissioner of Internal Revenue v. Megabucks Merchandising Corp., CTA E.B. Case No. 1974 (CTA Case No. 9345), February 12, 2020.
22 Exhibit "P-8", Docket - Vol. 2, p. 783; Exhibit "R-20", BIR Records (F1/F2), p. 1286.
23 Exhibit "P-8", Docket - Vol. 2, pp. 791 to 797; Exhibit "R-20", BIR Records (F1/F2), p. 1265 to 1270.
24 Exhibit "P-6", Docket – Vol. 2, p. 738; Exhibit "R-17", BIR Records (F1/F2), p. 984.
25 Exhibit "P-8", Docket - Vol. 2, p. 783; Exhibit "R-20", BIR Records (F1/F2), p. 1286.
26 Par. 3, Stipulation of Facts, JSFI, Docket - Vol. 1, p. 228; Exhibit "P-8", Docket - Vol. 2, pp. 781 to 797; Exhibit "R-20", BIR Records (F1/F2), pp. 1265 to 1288.

date than the alleged due date on July 31, 2015. The FLD and FDDA, therefore did not contain a definite and actual demand to pay.

On account of these infirmities in both the FLD and FDDA, the subject assessments are void for failure to comply with the due process requirements of a valid assessment under the NIRC of 1997, as amended.

In view of the foregoing disquisition, a discussion on the remaining issues is deemed unwarranted.

WHEREFORE, finding no cogent reason to reverse the ruling in the Assailed Decision, Respondent's "Motion for Reconsideration [Decision dated September 2, 2020]" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice