REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2350** (CTA Case No. 9230)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
FONTERRA BRANDS PHILIPPINES, INC., *Respondent.*	Promulgated: AUG 25 2022 4:26 pm

x - x

RESOLUTION

CUI-DAVID, J.:

Submitted before the Court *En Banc* is petitioner's **Motion for Reconsideration [re: Decision dated 11 April 2022]** filed on May 4, 2022, with respondent's **Comment (Re: Motion for Reconsideration dated May 4, 2022)** filed on June 15, 2022.

On April 11, 2022, the Court *En Banc* promulgated a Decision,[1] denying the present Petition for Review and affirming the Court *a quo's* Decision[2] dated February 14, 2020 and Resolution[3] dated September 2, 2020 in CTA Case No. 9230. In its Decision, the Court *En Banc* sustained the cancellation of petitioner Commissioner of Internal Revenue's deficiency income tax, value-added tax (VAT), expanded withholding tax

[1] Court *En Banc* Docket, pp. 83 to 96.
[2] *Id.*, pp. 28 to 46.
[3] *Id.*, pp. 47 to 52.

(EWT), final withholding tax (FWT), final withholding value-added tax (FWVAT), and documentary stamp tax (DST) assessments against respondent Fonterra Brands Philippines, Inc. for fiscal year August 1, 2009 to July 31, 2010, in the aggregate amount of ₱1,291,706,904.96, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision dated February 14, 2020 and the Resolution dated September 2, 2020 are **AFFIRMED**.
>
> **SO ORDERED**."

In the instant Motion, petitioner assails the above Decision, raising the following grounds for the Court *En Banc's* consideration, *viz.*:

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR BY RESPONDENT.

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT PRESCRIPTION HAS SET IN DUE TO THE INVALIDITY OF THE WAIVERS.

III.

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE FLD AND FAN ARE VOID BECAUSE THEY FAILED TO DEMAND PAYMENT THEREOF WITHIN A SPECIFIC PERIOD.

As to the first ground, petitioner insists that the right to assess respondent has not yet prescribed since the old format of the *Waiver of the Statute of Limitations Under the National Internal Revenue Code* ("waiver" hereinafter for brevity) found under Revenue Memorandum Order (RMO) No. 20-90,[4] which necessitates the type and amount of tax, has already been revised and abandoned by Revenue Delegated Authority Order

[4] "SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code," dated April 4, 1990.

(RDAO) No. 05-01[5] and Revenue Memorandum Circular (RMC) No. 29-12.[6] Petitioner continues that the new prescribed format does not require that the taxpayer indicate the specific type and amount of tax.

With regard to the second ground, petitioner claims that his right to fair play and due process was violated when the Court *a quo* ruled on a matter not raised as an issue by respondent in its Petition for Review or Pre-Trial Brief, nor joined by the parties or defined by the court in the Pre-Trial Order. As such, petitioner maintains that Court *a quo* should not have considered the same in resolving the case since it would violate petitioner's constitutional right to due process of law and would further sanction disorder by violating the very rules the court seeks to implement.

As to the third ground, petitioner argues that assuming the court may decide the case based on an issue that was not raised by respondent, the assessments are still valid as there was no violation of respondent's right to due process of law. Petitioner asserts that the due date for payment of the assessed deficiency taxes need not be indicated in the assessment notices as the law only requires that the taxpayer be informed in writing of the findings of petitioner, stating therein the facts and law on which the assessment is based. Petitioner likewise avers that – granting for the sake of argument – a Final Assessment Notice (FAN) should indicate the due date for payment, the assessment is valid as there was a demand for payment within a prescribed period.

Lastly, petitioner reiterates that the doctrine laid down in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[7] (*"Fitness by Design"* case hereafter) which this Court relied on, should be revisited since it misapplied the ruling laid down in the *Commissioner of Internal Revenue v. Dominador Menguito*[8] (*"Menguito"* case hereafter).

On the other hand, in its comment, respondent maintains that the subject waivers are void for failing to indicate the specific tax involved and the amount of the tax due, which consequently, did not extend the prescriptive period for

---

[5] "SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations," dated August 2, 2001.
[6] "SUBJECT: Waiver of the Defense of Prescription Under the Statute of Limitations," dated June 29, 2012.
[7] G.R. No. 215957, November 09, 2016.
[8] G.R. No. 167560, September 17, 2008.

petitioner to assess the said deficiency taxes. Respondent points out that the Supreme Court in a long line of cases has already settled that RMO No. 20-90 and RDAO No. 05-01, contain mandatory provisions for the proper execution of waivers and failure to strictly adhere to these provisions will invalidate the said waiver.

Respondent further argues that the Formal Letter of Demand (FLD) that was served upon it is fatally defective since an assessment should contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. Respondent claims that the FLD that was served upon it is void for failing to indicate a definite due date for the payment of its alleged deficiency tax liabilities.

Finally, respondent submits that the Court *a quo* correctly ruled on the validity of the FLD considering that the issue was necessary to achieve an orderly disposition of the present case.

After due consideration, the Court *En Banc* finds petitioner's Motion for Reconsideration bereft of merit.

As correctly observed by respondent, the arguments proffered by petitioner in the instant Motion for Reconsideration are the same arguments brought forth in the previous pleadings and motions that petitioner filed in the Court *a quo*, which have already been considered and weighed upon.

Again, the Court *En Banc* emphasizes that the prevailing rule is that waivers must faithfully comply with the provisions of RMO No. 20-90 and RDAO No. 05-01 in order to be valid and binding.[9] In the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*,[10] the Supreme Court categorically held that, "waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due xxx. These requirements are **mandatory** and **must strictly be followed**. 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."

ᴍ

---

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

[10] G.R. No. 211289, January 14, 2019; citing *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, G.R. No. 220835, July 26, 2017.

As to petitioner's argument that the format of waivers under RMO No. 20-90 has been revised and abandoned by RDAO No. 05-01 and RMC 29-12 and, therefore, the subject waivers need not specifically state the nature and amount of tax due, the Court *En Banc* deems the argument waived for petitioner's failure to timely raise the same.

In the case of *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*,[11] the Supreme Court held that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings, to wit:

> "Rule 9, Section 1 of the Rules of Court provides:
>
> > SECTION 1. *Defenses and objections not pleaded.*– **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived**. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.
>
> The CIR did not argue straight away in his Answer in CTA Case No. 5762 that Toshiba had no right to the credit/refund of its input VAT payments because the latter was VAT-exempt and its export sales were VAT-exempt transactions. The Pre-Trial Brief of the CIR was equally bereft of such allegations or arguments. The CIR passed up the opportunity to prove the supposed VAT-exemptions of Toshiba and its export sales when the CIR chose not present any evidence at all during the trial before the CTA. He missed another opportunity to present the said issues before the CTA when he waived the submission of a Memorandum. The CIR had waited until the CTA already rendered its Decision dated October 16, 2000 in CTA Case No. 5762, which granted the claim for credit/refund of Toshiba, before asserting in his Motion for Reconsideration that

mw

[11] G.R No. 157594, March 10, 2010.

> Toshiba was VAT-exempt and its export sales were VAT-exempt transactions.
>
> **The CIR did not offer any explanation as to why he did not argue that VAT-exemptions of Toshiba and its export sales before and during the trial held by the CTA, only doing so in his Motion for Reconsideration of the adverse CTA judgment. Surely, said defenses or objections were already available to the CIR when the CIR filed his Answer to the Petition for Review of Toshiba in CTA Case No. 5762.**
>
> **It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.** xxx." *(Emphases supplied)*

Herein, petitioner is raising a new theory which by observing due diligence could have been raised in the previous pleadings. Notably, petitioner did not raise this argument in any of the pleadings filed during trial in the Court *a quo*,[12] nor did the argument was raised in the present *Petition for* Review[13] filed before the Court *En Banc*. It is only in the instant *Motion for Reconsideration* that petitioner is asserting the same which can be considered as a mere afterthought. Hence, considering that the said defense was already available when petitioner filed the *Answer* during trial in the Court *a quo*, petitioner has, therefore, effectively waived the right to raise the same.

With regard to petitioner's argument that his right to fair play and due process was violated when the Court *a quo* ruled on a matter that was not raised as an issue by respondent, the Court *En Banc* does not agree.

To reiterate, the Court has, time and again, ruled that it is not bound by the issues raised by the parties, but may also rule on related issues necessary to achieve an orderly disposition of the case. This authority has been recognized by the Supreme Court in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[14] as follows:

---

[12] *Answer*, CTA Case No. 9230, Docket – Vol. 1, pp. 384 to 406; *Respondent's Pre-Trial Brief*, CTA Case No. 9230, Docket – Vol. 3, pp. 1155 to 1158; Respondent's *Memorandum*, CTA Case No. 9230, Docket – Vol. 6, pp. 2824 to 2846.

[13] Court *En Banc* Docket, pp. 6-20.

[14] G.R. No. 183408, July 12, 2017.

"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.*— x x x.
>
> 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." *(Emphasis supplied)*

As a rule in statutory construction, if the language is clear and unambiguous, the Court will just simply apply the language used without any qualification, modification or alteration.

As to petitioner's argument that the due date for payment of the assessed deficiency taxes need not be indicated in the assessment notices, the Court *En Banc* reiterates that settled is the rule that an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.[15] Absent a specific date or period within which the tax deficiencies must be settled or paid by a taxpayer, the FLD is necessarily fatally infirmed. Consequently, the Final Decision on Disputed Assessment (FDDA) which rooted from

[15] *Lucas G. Adamson, et al. v. Court of Appeals, et al., et seq.*, G.R. Nos. 120935 and 124557, May 21, 2009; *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*, G.R. No. 128315, June 29, 1999.

the said FLD is likewise inescapably void, and the deficiency tax assessments contained in the former are of no consequence since a void assessment bears no valid fruit.[16] Indeed, to sustain petitioner's argument despite the glaring nullity of the FLD would result in greater injustice to respondent.

Consequently, the failure to indicate the due date in the assessment notices invalidates the assessment. An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal requirement.[17]

Lastly, petitioner claims that the Court *En Banc* needs to revisit the doctrines laid down in the cases of *Menguito* and *Fitness by Design.*

However, petitioner is reminded that the doctrines laid down by the Supreme Court in *Menguito* and *Fitness by Design* are binding precedents, which the Court *En Banc* is mandated to follow. Article 8 of the Civil Code embodies the principle of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established), which provides that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." Hence, *stare decisis* binds this Court to adhere to a rule already established in a final decision of the Supreme Court.

Again, the ruling of the Supreme Court in the *Menguito* and *Fitness by Design* cases is concise yet clear. Once its judgment becomes final, it is binding on all inferior courts, and **hence beyond their power and authority to alter or modify.**[18] As such, until and unless the Supreme Court modifies or reverses the doctrine laid down in the *Menguito* and *Fitness by Design* cases, the said doctrine is binding on all courts.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motion for Reconsideration, the Court *En Banc* finds no compelling reason to reverse, amend, or modify the Decision promulgated on April 11, 2022.

---

[16] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

[17] *Commissioner of Internal Revenue v. BASF Coating +Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.

[18] *Lorezno E. Macansantos, et al. v. Hon. Wenceslao L. Fernan, et al.*, L-13726, May 31, 1961; *Jose Kabigting v. Acting Director of Prisons*, L-15548, Oct. 30, 1962.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration [re: Decision dated 11 April 2022] is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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

MARIAN IVY F. REYES-FAJARDO
Associate Justice