CTA Form No. 8

22-000150-0073

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10827

I-CYBERWORLD BIZ, INC. Represented by JACQUELINE GUINTO,
Petitioner,

- versus -

NOTICE OF DECISION

BUREAU OF INTERNAL REVENUE Represented by Commissioner of Internal Revenue CAESAR R. DULAY,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legaspi Village
Makati City

ATTY. FELIX PAUL R. VELASCO
ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

COMMISSIONER OF INTERNAL REVENUE
BIR National Office Building
Sen. Miriam Defensor-Santiago Avenue
Diliman, Quezon City

LAYUG CELICIOUS-SY & VILLAPANDO
Unit 503, 5th Floor, The Linden Suites
37 San Miguel Avenue
Ortigas Center, 1600 Pasig City

GREETINGS:

You are hereby notified by these presents that on **July 10, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 11, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

I-CYBERWORLD BIZ, INC., Represented by JACQUELINE GUINTO, *Petitioner,*	**CTA CASE NO. 10827**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
BUREAU OF INTERNAL REVENUE, Represented by Commissioner of Internal Revenue CAESAR R. DULAY, *Respondent.*	Promulgated: JUL 10 2025 9:10AM

x- -x

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on April 1, 2022, by petitioner I-Cyberworld Biz, Inc., represented by Jacqueline Guinto, (**Petitioner**), against respondent Bureau of Internal Revenue (**BIR**), represented by Commissioner of Internal Revenue (**CIR**) Caesar R. Dulay (**Respondent**). Petitioner seeks the reversal and setting aside of the Final Decision on Disputed Assessment (**FDDA**) dated February 28, 2022, which assessed petitioner of deficiency Final Withholding Taxes (**FWT**) and Documentary Stamp Taxes (**DST**) amounting to ₱88,299,629.23, inclusive of interest and surcharges, for calendar year (**CY**) 2016.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 4th Floor 3BB Building, 79 Kamuning Road, Brgy. Kamuning, Quezon City.[1] It is registered with the BIR as a Large Taxpayer with Tax Identification No. (**TIN**) 216-720-387-000.[2] It is a holder of several Gaming Licenses and Certificates of Registration issued by the Philippine Amusement and Gaming Corporation (**PAGCOR**) to operate gaming sites for electronic bingo ("**eBingo**"), electronic games ("**eGames**") and MegaSportsWorld (**MSW**) betting stations.[3]

Respondent is the duly appointed CIR who holds office at BIR Building, BIR Road, Diliman, Quezon City.[4] At the time of the filing of the petition, respondent was represented by Hon. Caesar R. Dulay who was the head of the said government bureau and the person who signed the FDDA dated February 28, 2022.[5] The current CIR is Hon. Romeo D. Lumagui, Jr.[6]

THE FACTS

On August 9, 2017, petitioner received a Letter of Authority (**LOA**) dated July 20, 2017 from respondent, authorizing Revenue Officer (**RO**) Edna Cau, RO Cristina Lati, and Group Supervisor (**GS**) Asela Sese to conduct the audit and examination of its books of accounts for CY 2016.[7]

On November 6, 2018, petitioner received an undated Notice for Informal Conference (**NIC**).[8]

On April 25, 2019, petitioner received another LOA authorizing RO Marlyn Sim and GS Asela Sese to conduct the audit and examination of its books of accounts for CY 2016.[9]

On December 17, 2018, respondent issued a Preliminary Assessment Notice (**PAN**), which petitioner received on even date.[10]

---

1 *Memorandum for Petitioner*, The Parties, par. 1.
2 *Memorandum for Petitioner*, Statement of Facts and the Case, par. 5; Exhibit "P-3".
3 *Memorandum for Petitioner*, Statement of Facts and the Case, par. 6; Exhibit "P-10" to "P-10-29".
4 *Joint Stipulation of Facts and Issues (JSFI)*, Stipulation of Facts, par. 1.
5 *Id.* at par. 1.2.
6 *Id.* at par. 1.3.
7 Exhibit "P-7" and Exhibit "R-1", BIR Records, p. 1.
8 Exhibit "P-8", BIR Records, p. 299.
9 Exhibit "P-7-1", Docket – Vol. II, p. 468.
10 Exhibit "P-9", Docket – Vol. II, pp. 469–475.

On February 13, 2019, petitioner received a Formal Letter of Demand dated February 11, 2019 and a Final Assessment Notices issued on January 3, 2019 (**FLD/FAN**), [11] indicating a due date of January 31, 2019 and covering the following:[12]

a. 'Basic Deficiency FWT' in the amount of ₱1,418,785.44 (Assessment No. FW-12600089679-2016-19-1);
b. 'Basic Deficiency Value-Added Tax (VAT)' in the amount of ₱14,719,392.84 (Assessment No. VT-12600089679-201-19-2);
c. 'Basic Deficiency DST' - eBingo/eGames (Schedule 3) in the amount of ₱43,807,716.79, based on an alleged Gross Revenue of ₱438,077,167.86 (Assessment No. DS-126-00089679-2016-19-3); and
d. Compromise penalty amounting to ₱125,000.00 (MC-126-00089679-2016-19-4)

On March 13, 2019, petitioner filed a *Protest* against the FLD/FAN.[13]

Respondent issued the assailed FDDA dated February 28, 2022 on even date, finding that there was still due and collectible from petitioner, to wit:[14]

a. Deficiency Final Withholding VAT in the amount of ₱1,418,785.44 and after adding surcharge and interest totaled ₱2,768,575.15;
b. Deficiency DST in the amount of ₱43,807,716.79 and after adding surcharge and interest totaled ₱85,461,054.08; and
c. Miscellaneous Tax amounting to ₱70,000,00.

On March 2, 2022, petitioner received the said FDDA,[15] the last paragraph of which states "You are hereby ordered to pay your total tax liabilities immediately upon receipt hereof. This is our final decision."[16]

---

[11] Exhibit "R-5-2", BIR Records, pp. 369–372.
[12] JSFI, Stipulation of Facts, par. 3; Exhibits "P-5-1" to "P-5-4", Docket – Vol. II, pp. 450–455.
[13] Exhibit "P-6", Docket – Vol. II, pp. 456–467.
[14] JSFI, Stipulation of Facts, par. 4.
[15] Exhibit "P-4", Docket – Vol. II, pp. 444–446.
[16] JSFI, Stipulation of Facts, par. 5.

PROCEEDINGS BEFORE THE COURT

On April 1, 2022, petitioner filed the instant *Petition for Review.*[17] Summons was issued to respondent on April 11, 2022.[18]

On May 17, 2022, respondent filed a *Motion for Extension of Time to File Answer,*[19] which was granted by the Court in the Order dated May 19, 2022.[20] This was followed by the filing of his *Answer* on June 20, 2022,[21] and the elevation of the BIR Records, consisting of 496 pages in one folder, on June 28, 2022.[22]

The respondent's *Pre-Trial Brief* was filed on September 22, 2022,[23] while the *Pre-Trial Brief for Petitioner* was filed on October 28, 2022.[24] The Pre-Trial Conference was held on November 3, 2022.[25]

On December 9, 2022, the parties filed their *Joint Stipulation of Facts and Issues.*[26] The Court issued the *Pre-Trial Order* on April 20, 2023.[27]

Thereafter, trial ensued.

On October 11, 2023, petitioner presented Ms. Jacqueline J. Guinto (**Ms. Guinto**), who testified through her judicial affidavit.[28]

On February 21, 2024, petitioner filed an *Urgent Omnibus Motion For Leave of Court I. To Recall Petitioner's Witness, Jaqueline J. Guinto, as Substitute Witness for PAGCOR Representative II. To Admit the Supplemental Judicial Affidavit of Jaqueline J. Guinto.*[29]

---

17 Docket – Vol. I, pp. 7–25.
18 *Id.* at 158.
19 *Id.* at 160–163.
20 *Id.* at 165, Order dated May 19, 2022.
21 *Id.* at 171–187.
22 *Id.* at 166–168, *Compliance* dated June 24, 2022.
23 *Id.* at 202–206.
24 *Id.* at 222–232.
25 *Id.* at 244–246, Order dated November 3, 2022.
26 *Id.* at 247–258.
27 *Id.* at 277–282.
28 *Id.* at 389, Order dated October 11, 2023.
29 *Id.* at 399-402.

At the hearing on February 22, 2024, the Court granted petitioner's *Urgent Omnibus Motion* and admitted Ms. Guinto's *Supplemental Judicial Affidavit.* Petitioner then presented Ms. Guinto as a witness.[30]

On March 8, 2024, petitioner filed a *Formal Offer of Evidence with Motion for Setting of Commissioner's Hearing to Affix Proper Notation and Signature of Clerk of Court on Exhibits "P-13-87", "P-15-15", and "P-15-89."*[31] On July 8, 2024, the Court admitted petitioner's exhibits, except for Exhibits "P-13-112" to "P-13-129", "P-13-130" to "P-13-134", and "P-13-135" to "P-13-140" for failure to submit the originals for comparison.[32]

On July 9, 2024, respondent presented RO Marlyn Sim, who testified by way of her judicial affidavit. During the same hearing, petitioner's counsel made an oral *Motion for Reconsideration* of the Court's *Resolution* on petitioner's *Formal Offer of Evidence.* Respondent's counsel orally objected and maintained the non-admission of the previously denied exhibits. Over the objection, the Court granted petitioner's *Motion for Reconsideration.*[33]

On July 15, 2024, *Respondent's Formal Offer of Evidence* was filed.[34] On September 23, 2024, the Court admitted respondent's exhibits.[35]

On October 29, 2024, the *Memorandum for Petitioner* was filed.[36] Respondent, on the other hand, filed a *Manifestation* on October 28, 2024, stating that the arguments raised in his *Answer* are adopted as his *Memorandum.*[37]

This case was deemed submitted for decision on November 11, 2024.[38]

---

[30] *Id.* at 410–410-A, Order dated February 22, 2024.
[31] Docket – Vol. II, pp. 411–432.
[32] Docket – Vol. III, pp. 1370–1375.
[33] *Id.* at 1377–1379, Order dated July 9, 2024.
[34] *Id.* at 1381–1385.
[35] *Id.* at 1398–1399.
[36] *Id.* at 1406–1436.
[37] *Id.* at 1400.
[38] *Id.* at 1440.

THE ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:[39]

> WHETHER OR NOT PETITIONER IS LIABLE FOR THE ASSSESSED DEFICIENCY FINAL WITHHOLDING VALUE-ADDED TAX, DOCUMENTARY STAMP TAX, AND MISCELLANEOUS TAX IN THE AMOUNT OF EIGHTY-EIGHT MILLION TWO HUNDRED NINETY-NINE THOUSAND SIX HUNDRED TWENTY-NINE PESOS AND TWENTY-THREE CENTAVOS (PHP88,299,629.23) FOR TAXABLE YEAR 2016, INCLUSIVE OF SURCHARGE, INTEREST, AND COMPROMISE PENALTY.

PETITIONER'S ARGUMENTS

In its *Memorandum,* petitioner contends that the FLD and FAN are void due to respondent's alleged violation of its right to due process. According to petitioner, the FLD and FAN (1) were issued after the due date indicated therein had already lapsed, (2) were issued without a fixed and determinate amount of taxes due, and (3) were without factual basis, particularly on the deficiency DST assessment.

Petitioner further contends that it is exempt from VAT and DST for CY 2016 pursuant to the PAGCOR Charter. It asserts that PAGCOR's exemption under its charter extends to third parties with contractual relations with PAGCOR. Petitioner also argues that it is not liable for the deficiency DST, arguing that eBingo and eGames are not considered as authorized number games subject to DST under Section 190 of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

RESPONDENT'S ARGUMENTS

In his *Answer,* which was adopted by respondent as his Memorandum, respondent counters that the exemption granted to PAGCOR does not inure to the benefit of petitioner. He submits that petitioner does not deal in casino operations with PAGCOR. He further argues that eBingo and eGames are included under "authorized number games" subject to DST under Section 190 of the NIRC of 1997, as amended. Lastly, he maintains that the tax assessment is based on fact and law and

---

[39] JSFI, Stipulation of Issues, par. 6.

that petitioner failed to overcome the presumption of validity and correctness of the assessment.

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

The Court has jurisdiction over the instant case.

Before delving into the merits, the Court must first determine whether it has jurisdiction over the present case.

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125,[40] as amended by RA No. 9282,[41] confers upon this Court exclusive appellate jurisdiction over decisions and inactions of the CIR, to wit:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the <u>[CIR]</u> in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the [CIR] in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; *(Emphasis supplied)*

Likewise, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

W

---

[40] An Act Creating the Court of Tax Appeals, June 16, 1954.

[41] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction of the [CIR]...**may file an **appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ...** *(Emphasis supplied)*

The above provisions are reiterated in Section 3(a)(1)(2), Rule 4,[42] and Section 3(a), Rule 8[43] of the Revised Rules of the Court of Tax Appeals.

Based on the foregoing, the Court has exclusive appellate jurisdiction to review, by appeal, decisions of the CIR provided the appeal is filed within thirty (30) days from petitioner's receipt of such decision.

In the present case, respondent issued the assailed FDDA on February 28, 2022, which petitioner received on **March 2, 2022.**[44] Petitioner filed the *Petition for Review* on **April 1, 2022**, the 30th day from receipt.[45] Accordingly, the Court finds that the *Petition for Review* was timely filed, and it has jurisdiction over the case.

The FLD and FAN are void for violating petitioner's right to due process.

Section 228 of the NIRC of 1997, as amended,[46] mandates that the taxpayer be informed in writing of the facts and the law

MT

[42] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

[43] Sec. 3. Who may appeal; period to file petition. — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[44] Docket – Vol. I, p. 7, *Petition for Review*, par. 1.

[45] Docket – Vol. I, pp. 7-25.

[46] SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:

upon which the assessment is based; otherwise, the assessment is void.[47] This requirement is mandatory, not merely directory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[48] Moreover, it must be emphasized that failure to comply with Section 228 renders the assessment void and finds no validation in any provision of the Tax Code.[49]

To implement Section 228 of the NIRC of 1997, as amended, Section 3 of Revenue Regulations (**RR**) No. 12-1999,[50] as amended by RR Nos. 18-2013[51] and 7-2018,[52] explicitly requires that the FLD/FAN must state the factual and legal bases of the assessment; otherwise, it is void. Section 3.1 of the said regulations provides:

> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> ....
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> ....

....

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. (*Emphasis supplied*)

47 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

48 *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division].

49 *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division] citing *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per CJ Panganiban, First Division].

50 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

51 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

52 Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, January 22, 2018.

> 3.1.4 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN** calling for payment of the taxpayer's deficiency tax or taxes **shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the assessment shall be void*** (see illustration in ANNEX 'B' hereof). *(Emphasis supplied)*

While Section 228 of the NIRC of 1997, as amended, does not require taxpayers to respond to a PAN, the BIR is nonetheless required to consider any reply received within the fifteen (15)-day period allotted to taxpayers.[53] This requirement is not merely procedural, it upholds due process and promotes a more efficient resolution of tax disputes by shortening the assessment procedure.

In its *Memorandum,* petitioner asserts that the FLD and FAN are void for violating its right to due process. Specifically, petitioner argues that:

1. The FLD and FAN were received after the due date indicated therein had already lapsed;

2. They failed to specify a fixed and determinate amount of taxes due; and

3. They lacked factual basis, particularly as to the deficiency DST assessment.

We find merit in petitioner's arguments.

The issuance of a valid formal assessment is a substantive prerequisite to the collection of taxes.[54] As held in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation,* [55] an assessment must include both a **computation of tax liabilities** and a **demand for payment** within a prescribed period. The Supreme Court explained:

hv

---

[53] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].
[54] *Commissioner of Internal Revenue v. Menguito*, G.R. No. 167560, September 17, 2008 [Per J. Austria-Martinez, Third Division].
[55] G.R. No. 128315, June 29, 1999 [Per J. Panganiban, Third Division]. See also *Tupaz v. Ulep, et al.*, G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].

> **An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period**. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. ... *(Emphasis supplied)*

Further, the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (*Fitness by Design*),[56] is unequivocal: for a tax assessment to be valid, it must contain a **demand for payment** and a **definite due date,** *viz.*:

> **A final assessment notice provides for the amount of tax due with a demand for payment.** ...
>
> . . . .
>
> 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. 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.**
>
> First, **it lacks the definite amount of tax liability** for which respondent is accountable. 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

[56] G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

> 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." **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: ...
>
> Second, **there are no due dates in the Final Assessment Notice.** This negates petitioner's demand for payment. [138] 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: ... (*Emphasis and underscoring supplied; Citations omitted*)

Following the above ruling in *Fitness by Design*, the Supreme Court has consistently nullified assessments that do not contain a **definite due date**,[57] as this renders the demand for payment legally ineffective.

The importance of a due date is underscored in Section 249(C) of the NIRC, which governs the computation of delinquency interest. Without a due date, delinquency interest cannot be properly computed. Section 249(C) provides, in part:

> SEC. 249. – *Interest. ...*
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> ... ...
>
> (3) A deficiency tax, or any surcharge or interest thereon <u>**on the due date appearing in the notice and demand of the Commissioner**</u>, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. [*Emphasis and underscoring supplied.*]

Under 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."[58] In *Fitness by Design*, the Supreme Court emphasized that a final assessment must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein

---

[57] *Republic v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022 [Per J. Y. Lopez, First Division]; and *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), August 24, 2020 [Per J. Inting, Second Division].

[58] *Adamson v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009 [Per C. J. Puno, First Division].

within a specific period." This "specific period" must refer to a **prospective or future due date** that affords the taxpayer a real and fair opportunity to comply. A due date that has already lapsed at the time of receipt deprives the taxpayer of this opportunity and thus violates the taxpayer's due process rights.

In this case, the FAN was issued on **January 3, 2019**, and indicated a due date of **January 31, 2019**.[59] The FLD, dated **February 11, 2019**, warned that failure to file a valid protest or pay the tax within the prescribed time would render the assessment final, executory, and demandable. However, petitioner received both the FLD and FAN only on February 12, 2019, after the stated due date had passed.

This Court must now determine whether an FLD and FAN received **after** the indicated due date can constitute valid assessments. Simply put: **Can the BIR set a due date that has already lapsed by the time the assessment is received?**

The answer is no.

Requiring payment on a date that has already passed at the time of receipt of the assessment notice renders compliance not only unreasonable but also **legally impossible**. A valid demand for payment presupposes that the taxpayer is **given a real and fair opportunity** to pay within the time prescribed, which must be a future date. When the due date has lapsed prior to receipt, that opportunity is effectively denied, undermining the basic requirement of due process embedded in tax assessments. Accordingly, a past due date is invalid and negates compliance with the requirement that an assessment must contain a demand for payment *within a prescribed period*, a period that must necessarily refer to a future date.

Here, the FAN attached to the FLD clearly indicated a due date of January 31, 2019, which had already lapsed by the time they were received on February 12, 2019. This does not constitute a valid demand for payment and renders the assessment invalid.

The Court further notes that the late service of the FLD and FAN is not a mere procedural infirmity; it directly affects the amount due to the taxpayer. Under Section 249(C)(3) of the

---

[59] JSFI, Stipulation of Facts, par. 3; Exhibits "P-5-1" to "P-5-4", Docket – Vol. II, pp. 450–455.

NIRC of 1997, as amended, delinquency interest is computed from the due date stated in the assessment until the date of actual payment. Allowing a prior due date in the assessment notices would unjustly permit the accumulation of delinquency interest before the taxpayer has even received the formal demand to pay. This cannot be permitted by the Court.

A demand for payment is negated when the due date is impossible to comply with. One cannot possibly fulfill an obligation that is set to be performed in the past. Stated alternatively, an impossible due date constitutes an impossible obligation.

In addition to the due process violation arising from the belated service of the FLD and FAN after the indicated due date, the Court must also address petitioner's contention that the FLD and FAN failed to specify a fixed and determinate amount of taxes due.

This argument is well-founded.

In *Fitness by Design*, the Supreme Court categorically held that a final assessment notice must contain a **definite amount of tax liability** and a clear **demand for payment** within a specific period. The absence of either requirement renders the assessment null and void.

In the present case, the FLD and FAN indicated a due date of January 31, 2019, but were only received by petitioner on February 12, 2019, **after the due date had already lapsed**. This defect is not merely procedural; it has a direct and substantive impact on the **definiteness of the tax liability** stated in the assessment.

Under Section 249(C)(3) of the NIRC of 1997, as amended, delinquency interest is computed from the due date stated in the assessment until the date of actual payment. Therefore, if the due date has already passed at the time of receipt, the amount stated in the assessment **no longer reflects the actual amount due**, as it would necessarily be subject to adjustment to account for additional interest and penalties that continue to accrue from the lapsed due date.

This means that the amount indicated in the FLD and FAN is **not fixed**, **not final**, and **not determinate.** It is inherently uncertain and contingent on a due date that the taxpayer had no opportunity to comply with. As a result, the assessment fails to meet the standard of definiteness required under *Fitness by Design.*

The Supreme Court, in *Fitness by Design,* emphasized that a taxpayer must be clearly informed of the exact amount being assessed to enable a meaningful protest or compliance. An assessment that fails to provide a definite amount, or that is based on a due date that has already passed, deprives the taxpayer of this opportunity and violates the fundamental requirements of due process.

The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standards must be the overriding concern of government agencies.[60] While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly and always in strict adherence to the requirements of the law and of the BIR's own rules.[61]

Given the foregoing, the Court finds that the FLD and FAN are void for failing to specify a definite amount of tax liability and containing a defective demand for payment tied to a lapsed due date.

Considering the nullity of the assessment, a further discussion of the remaining issues becomes unnecessary.

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **GRANTED**.

Accordingly, respondent's Final Assessment Notices dated January 3, 2019 and Formal Letter of Demand dated February 11, 2019 are hereby **CANCELLED** and **SET ASIDE**. Respondent's Final Decision on Disputed Assessment dated February 28, 2022, finding petitioner liable for deficiency Final Withholding Taxes and Documentary Stamp Taxes amounting

[60] *Mabuhay Textile Mills Corporation v. Ongpin, et al.*, G.R. No. L-67784, February 28, 1986 [Per J. Gutierrez, Jr., First Division].

[61] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

x---x

to ₱88,299,629.23, inclusive of interest and surcharges, for CY 2016, is hereby **REVERSED** and **SET ASIDE**.

Further, respondent Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** and **PROHIBITED** from proceeding with the collection of taxes in the above-captioned case.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice