REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SUMITOMO CORPORATION – PHILIPPINE BRANCH, Petitioner,	**CTA CASE NO. 9422**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 15 2021 1:56 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is respondent's **Motion for Reconsideration [re: Decision dated 09 July 2020]** filed on September 1, 2020, with petitioner's **Comment/Opposition (To the Motion Reconsideration dated 28 August 2020)** filed on October 6, 2020.

On June 30, 2020, this Court promulgated a Decision cancelling respondent's deficiency value-added tax (VAT) assessment against petitioner for failing to issue a Letter of Authority (LOA) and to indicate a definite tax liability in the assessment notices, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the forgoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency VAT assessment for taxable year ended March 31, 2011 is **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

In his Motion, respondent prays that the above Decision be reconsidered and set aside, raising the following grounds as basis thereof, *viz*:

I.

THE HONORABLE COURT ERRED IN RULING ON AN ISSUE NEVER RAISED BY PETITIONER, NEVER JOINED BY THE PLEADINGS, NEVER RAISED DURING THE PRE-TRIAL AND NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER. THUS, RESPONDENT'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED WHEN THE COURT RULED TO GRANT THE PETITION ON THE GROUND THAT THE ASSESSMENTS ARE VOID ON THE GROUNDS THAT REVENUE OFFICERS LACKED AUTHORITY, FAILURE TO INDICATE DUE DATES IN THE ASSESSMENT NOTICE AND DEFINITE TAX LIABILITY OF PETITIONER.

II.

ASSUMING THE COURT MAY SUDDENLY DECIDE THE CASE BASED ON AN ISSUE THAT WAS NEVER RAISED BY PETITIONER, NEVER JOINED BY THE PLEADINGS, NEVER RAISED AT THE PRE-TRIAL ORDER, NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER AND NEVER TRIED BY THE PARTIES – THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENTS ARE VOID.

With regard to the first ground, respondent primarily claims that his basic right to fair play and due process was violated when the Court resolved the issues of [i] lack of authority of the revenue officers in conducting the audit/investigation of petitioner, and [ii] failure to indicate a definite tax liability in the Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA). Respondent asserts that the said issues were never raised in the Petition for Review and Pre-Trial Briefs, joined in any of the pleadings, or even stipulated and defined in the Pre-Trial Order. Nonetheless, respondent argues that as head of the investigating office, the Chief of Regular Large Taxpayer Audit Division 1 (RLTAD 1) is authorized to effect modifications to a validly issued LOA through a Memorandum of Assignment (MOA), pursuant to Revenue Memorandum Order (RMO) No. 8-2006, in relation to RMO No. 62-2010.

As to the second ground, respondent likewise asserts that the subject FLD and FDDA sufficiently complied with the mandatory requirements of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. He continues that petitioner was duly informed of the facts and the law on which the assessment was based, and for that reason was able to intelligently file a protest thereon. Respondent also claim that since the basic tax deficiency, surcharge and interest were already fixed in the said notices, the alleged failure to indicate the due date for payment thereof does not automatically render the said assessment void, as it is already given that petitioner has thirty (30) days from receipt of notice to pay the same. Failure to do so, inevitably renders the assessment final, executory and demandable.

Lastly, respondent assails the ruling in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[1] (*"Fitness by Design case"* hereafter), appealing that the case should be revisited on the ground that it misapplied the doctrine laid down in *Commissioner of Internal Revenue v. Dominador Menguito*[2] (*"Menguito case"* hereafter).

On the other hand, in its comment, petitioner points out that the issues raised by respondent in the instant Motion are not novel. Petitioner asserts that the issuance of a valid formal assessment is substantive prerequisite to tax collection, and must strictly comply with the requirement set forth under Section 228, of the NIRC of 1997, as amended. Petitioner continues that in order to constitute a valid assessment, the following elements must concur: (1) a computation of tax liabilities; (2) a demand for payment within the prescribed period; and (3) a statement of the legal and factual basis/bases used. More importantly, it is incumbent upon respondent to establish that there is a valid assessment.

Petitioner further claims that respondent erroneously assails the *Fitness by Design case* since the issue being raised by respondent with regard to the *Menguito case* has already been settled by this Court in the Court of Tax Appeals (CTA) case of *Megabucks Merchandising Corp. v. Commissioner of Internal Revenue (CTA Case No. 9345, November 22, 2018)*. Petitioner avers that the *Fitness by Design case* is not only based on *Menguito case*, but also traces its roots to the cases of *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*[3] and *Petronila C. Tupaz v. Honorable Benedicto B. Ulep*[4], where the Supreme Court has consistently ruled that the assessment must contain not only the computation of tax liabilities, but also a definite amount of tax liability and a demand for payment within a prescribed period.

Moreover, petitioner insists that respondent was not denied his right to due process of law since the Court has the authority to pass upon the validity of the subject assessment notices pursuant to Section 1, Rule 14 of the Revised Rules of Court of Tax Appeals (RRCTA). Thus, petitioner maintains that the Court correctly ruled that Revenue Officers Gisela R. Amodia, Emeteria M. Ang and Philips Caesar No. Pardillo have no authority to conduct the tax audit as they were merely authorized through a MOA, and not through a LOA. In fact, the Court has consistently held that a MOA is not a valid substitute for an LOA to authorize the revenue officer to examine a taxpayer's books of accounts.

Accordingly, respondent's Motion for Reconsideration is bereft of merit.

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[1] G.R. No. 215957, November 9, 2016.
[2] G.R. NO. 167560 : September 17, 2008.
[3] G.R. No. 128315, June 29, 1999.
[4] G.R. No. 127777, October 1, 1999.

The Court would like to point out that the instant Motion was belatedly filed. Based on the records of the present case, the Decision dated June 30, 2020 was received by respondent on July 30, 2020. As such, respondent has fifteen (15) days from July 30, 2020, or until August 14, 2020, within which to file a motion for reconsideration. However, respondent argues that since the said period fell on the suspension of the reglementary period for the filing of, among others, motions pursuant to Supreme Court (SC) Administrative Circular No. 43A-2020, he therefore has eleven (11) days left from the implementation of the suspension which is from August 4 to 18, 2020, within which to file his motion. Adding these 11 days to August 19, 2020, the date when the reglementary period resumed, respondent now claims that he had until August 29, 2020 to file the same.[5] Thus, respondent claims that the instant Motion was timely filed on the next working day, which was September 1, 2020.

This Court finds respondent's interpretation of the SC Administrative Circular No. 43A-2020 erroneous.

Verily, Section 1, Rule 15 of the RRCTA,[6] provides that an aggrieved party may seek a reconsideration of any decision by filing a motion for reconsideration within fifteen (15) days from the date of receipt of notice of the decision of the Court in question.

However, due to the rising cases affected by the 2019 Coronavirus Disease (COVID-19), the Supreme Court issued Administrative Circular No. 43-2020 on August 2, 2020, declaring the physical closure of courts in areas under Enhanced Community Quarantine or Modified Enhanced Community Quarantine from August 3 to 14, 2020, but the court operations however shall continue to receive petitions and pleadings electronically and shall continue to resolve and decide cases pending before them, the relevant portion of which is quoted hereafter as follows:

> "Due to the reported surge in Covid-19 cases, the Court *en banc* has provided the following guidelines in the operation of the courts **from 3 — 14 August 2020**:
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> 1. Unless here provided, ALL the courts in the National Capital Judicial Region, and those in areas under Enhanced Community Quarantine or Modified Enhanced Community Quarantine, **SHALL BE PHYSICALLY CLOSED to all court users**, and shall only be reached through their respective hotline numbers, email addresses and/or Facebook accounts as posted on the website of the Supreme Court. x x x

[5] However, August 29, 2020 fell on a Saturday and August 31, 2020 was a legal holiday.
[6] A.M. No. 05-11-07-CTA, November 22, 2005.

x x x

5. The Court of Appeals, Sandiganbayan, and **Court of Tax Appeals shall continue to receive petitions and pleadings electronically**, and in accordance with Paragraph 1 herein, and process the same pursuant to their respective internal rules.

6. The Court of Appeals, Sandiganbayan, and **Court of Tax Appeals shall continue to resolve and decide cases pending before them. Regular hearings shall be conducted through videoconferencing.**" *(Emphases supplied)*

Thereafter, on the next day, an addendum to the above mentioned circular, Administrative Circular No. 43A-2020, was issued by the Supreme Court modifying the suspension of the reglementary periods for the filing of petitions, appeals, complaints, **motions**, pleadings and other court submissions before the courts from August 4 to 18, 2020, and shall resume on August 19, 2020, to wit:

> "In view of the imposition of Modified Enhance Community Quarantine (MECQ) in Metro Manila, Cavite, Rizal, Bulacan and Laguna from 4 to 18 August 2020, and in addition to the provisions of Administrative Circular No. 43-2020 *[inadvertently numbered as A.C. No. 42-2020]* dated 2 August 2020, the court in the said areas during the period of 4 to 18 August 2020, shall also observe, as follows:
>
> 1. The reglementary periods for the filing of petitions, appeals, complaints, motions, pleadings and other court submissions before the courts **shall be suspended from 4 to 18 August 2020, and shall resume on 19 August 2020**, without prejudice to those who have already filed such pleadings and documents within the reglementary periods. In the same manner, the periods for court actions with prescribed periods are likewise suspended, and shall resume on 19 August 2020.
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> 2. Administrative Circular No. 43-2020 *[inadvertently numbered as A.C. No. 42-2020*] shall be extended until 18 August 2020.
>
> **All previously issued circulars and their respective provisions which are not inconsistent herewith shall remain valid and in effect.**" *(Emphases supplied)*

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From the foregoing SC circulars it is clear that while the CTA was physically closed to court users from August 3 to 18, 2020, it shall still continue to receive petitions and pleadings electronically and will continue to resolve and decide cases pending before them during the said period, including hearings conducted through videoconferencing.

Evidently, there is no basis for respondent to add the number of suspended days from August 3, 2020 up to August 14, 2020 (the last day for respondent to file his Motion for Reconsideration), which totals eleven (11) days, and add the same on the date of the resumption of the reglementary period for the submission of the parties' pleadings, etc. on August 19, 2020. By filing the instant Motion for Reconsideration on September 1, 2020, instead on August 19, 2020, respondent nearly doubled the period of fifteen (15) days allocated to him within which to file the subject motion.

At any rate, assuming *arguendo* that the instant Motion is admitted and considered, the same would still fail on the merits for the reasons stated in the assailed Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration [re: Decision dated 09 July 2020] is **DENIED**, for having been filed out of time.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

(With due respect, I maintain my CDO)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice