

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEPSI-COLA PRODUCTS
PHILIPPINES, INC.,

Petitioner,

CTA Case No. 9170

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated:

MAY 06 2022

1:36 p.m.

x ----- x

DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on October 16, 2015 by Pepsi-Cola Products Philippines, Inc., petitioner, against the Commissioner of Internal Revenue, respondent, praying for the cancellation and withdrawal of the deficiency assessments on income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), documentary stamp tax (DST), and compromise penalties for the fiscal year ending June 30, 2010 in the amount of ₱916,988,478.42; and for the period of July 1, 2010 to December 31, 2010 in the amount of ₱581,615,870.52, or the aggregate amount of ₱1,498,604,348.94, inclusive of increments.

THE PARTIES

Petitioner Pepsi-Cola Products Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at Km. 29, National Road, Tunasan, Muntinlupa.¹ It is registered with the Bureau of

¹ Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 3, p. 1257.

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Internal Revenue (BIR), as shown by its Certificate of Registration dated September 19, 1990, with Taxpayer's Identification No. (TIN) 000-168-541-000.²

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code of 1997, as amended, and other tax laws, rules and regulations. He may be served summons, pleadings, and other processes of this Court at his office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.³

THE FACTS

On July 5, 2011, respondent, through Zenaida G. Garcia, Assistant Commissioner for the Large Taxpayers Service (LTS), issued *Letter of Authority* (LOA) No. 116-2011-00000010⁴ authorizing Revenue Officers (RO) Aurelio Zamora, Ruby Anne Oradia, Gilquin Tolentino, Amelia Molinos, Jan Andre Abellera, Johnro Galicia and Group Supervisor (GS) Edgar Espiritu, the examination of petitioner's books of accounts and other accounting records for VAT for the period July 1, 2009 to June 30, 2010.

On the same date, respondent issued LOA No. 116-2011-0000007⁵ authorizing ROs Amelia Molinos, Ruby Anne Oradia, Gilquin Tolentino, Aurelio Zamora, Jan Andre Abellera, Johnro Galicia and GS Edgar Espiritu, the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period July 1, 2010 to December 31, 2010.⁶

On September 20, 2011, respondent issued LOA No. 116-2011-00000064⁷ authorizing ROs Aurelio Zamora, Ruby Anne Oradia, Gilquin Tolentino, Amelia Molinos, Jan Andre Abellera, Johnro Galicia and Group Supervisor (GS) Edgar Espiritu the examination of petitioner's books of accounts and other accounting

² Par. 2, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1257.

³ Par. 3, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1257.

⁴ Exhibit "R-3", Docket – Vol. 8, p. 3479.

⁵ Exhibit "R-1" and Exhibit "P3-3", BIR Records Folder F1/F4, p. 2680.

⁶ Par. 11, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1259.

⁷ Exhibit "R-2", Docket – Vol. 8, p. 3478.

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records for all internal revenue taxes for the period July 1, 2009 to June 30, 2010.⁸

Thereafter, petitioner executed various *Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code*⁹ on the following dates, and with the following details as indicated in the respective waivers:¹⁰

Date Signed ¹¹	Signatory of Petitioner	Date Signed by Respondent	Signatory of Respondent	Assessment Period Extended Until
May 30, 2013	Partha Chakrabarti	June 7, 2013	Alfredo V. Misajon	December 31, 2013
September 11, 2013	Partha Chakrabarti	September 19, 2013	Alfredo V. Misajon	December 31, 2014
October 15, 2014	Imran Moid	October 28, 2014	Nestor S. Valeroso	June 30, 2015

On September 18, 2014, petitioner received the Preliminary Assessment Notice (PAN)¹² where the respondent assessed petitioner the following alleged deficiency taxes¹³ for fiscal year ending June 30, 2010:

Tax Type	Basic	Interest	Compromise Penalty	Surcharges/ Others	TOTAL
Income	1,869,392,498.92	1,480,149,129.28	50,000.00	-	3,349,591,628.20
VAT	2,177,061,115.10	1,827,538,426.48	50,000.00	-	4,004,649,541.58
WTC	22,593,055.09	21,330,319.96	50,000.00	-	43,973,375.05
EWT	6,397,648.32	5,405,574.63	50,000.00	478,902.35 ¹⁴	12,332,125.30
DST	18,710,426.00	15,860,289.88	50,000.00	4,677,606.50	39,298,322.38
TOTAL	4,094,154,743.43	3,350,283,740.23	250,000.00	5,156,508.85	7,449,844,992.51

⁸ Par. 4, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1257.

⁹ Exhibits “P-10-1” to “P-10-6”, Docket – Vol. 6, pp. 2582 to 2587.

¹⁰ Par. 18, Stipulated Facts, JSFI, Docket – Vol. 3, pp. 1260 to 1261.

¹¹ The Waivers for both the long and short periods were concurrently executed on May 30, 2013, while the subsequent waivers for both periods were also concurrently executed on September 11, 2013 and October 15, 2014.

¹² Exhibit “P-4-1”, Docket – Vol. 6, pp. 2461 to 2470; Exhibit “R-6”, BIR Records Folder F3/F4, pp.1689 to 1698.

¹³ Par. 5, Stipulated Facts, JSFI, Docket – Vol. 3, pp. 1257 to 1258.

¹⁴ Interest on Late Remittance.

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On even date, petitioner received another PAN¹⁵ assessing petitioner the following alleged deficiency taxes for the period of July 1 to December 31, 2010:¹⁶

Tax Type	Basic	Interest	Compromise Penalty	Surcharges/ Others	TOTAL
Income	715,154,449.31	494,926,065.47	50,000.00	-	1,210,130,514.78
VAT	1,093,137,700.17	807,424,449.22	50,000.00	-	1,900,612,149.39
WTC	21,235,960.90	15,801,882.14	50,000.00	-	37,087,843.04
EWT	4,136,021.82	3,077,653.50	25,000.00	140,558.65	7,379,233.97
DST	10,735,001.00	2,683,750.25	50,000.00	8,017,428.14	21,486,179.39
TOTAL	1,844,399,133.20	1,323,913,800.58	225,000.00	8,157,986.79	3,176,695,920.57

On October 3, 2014, petitioner filed two position papers¹⁷ in reply to the PANs, where petitioner prayed for the cancellation and withdrawal of the proposed assessments.¹⁸

On February 9, 2015, petitioner received a Formal Letter of Demand (FLD) with attached Details of Discrepancies and Audit Result/Assessment Notices,¹⁹ where respondent requested petitioner to pay the following alleged deficiency taxes:²⁰

Tax Type	Basic	Interest	Compromise Penalty	Surcharges/ Others	TOTAL
Income	779,590,627.43	669,807,180.17	50,000.00	-	1,449,447,807.60
VAT	998,822,656.67	905,781,642.07	50,000.00	-	1,904,654,298.74
WTC	22,593,055.09	22,853,029.97	50,000.00	-	45,496,085.06
EWT	6,397,648.32	5,836,758.60	50,000.00	478,902.35 ²¹	12,763,309.27
DST	945,426.00	865,129.55	20,000.00	236,356.50	2,066,912.05
TOTAL	1,808,349,413.51	1,605,143,740.36	220,000.00	715,258.85	3,414,428,412.72

¹⁵ Exhibit "R-7", BIR Records Folder F1/F4, pp. 3074 to 3082; Exhibit "P-4-2", Docket-Vol. 6, pp. 2471 to 2479.

¹⁶ Par. 12, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1259.

¹⁷ Exhibit "P-5-1", BIR Records Folder F3/F4, pp. 1963 to 1985; Exhibit "P-5-2", BIR Records Folder F1/F4, pp. 3145 to 3167.

¹⁸ Par. 6 and 13, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1258.

¹⁹ Exhibits "R-10" and "P-6-1", BIR Records Folder F3/F4, pp. 2020 to 2033.

²⁰ Par. 7, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1258.

²¹ Interest on Late Remittance.

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On the same date, petitioner received another FLD with attached Details of Discrepancies and undated Audit Result/Assessment Notices,²² where respondent requested petitioner to pay the following alleged deficiency taxes:²³

Tax Type	Basic	Interest	Compromise Penalty	Surcharges/ Others	TOTAL
Income	178,374,573.91	135,466,936.68	50,000.00	-	313,891,510.59
VAT	457,986,497.27	369,149,664.38	50,000.00	-	827,186,161.65
WTC	21,235,960.90	17,233,127.72	50,000.00	-	38,519,088.62
EWT	4,136,021.82	3,356,410.04	25,000.00	140,558.65	7,657,990.51
DST	1,770,001.00	1,441,217.25	25,000.00	442,500.25	3,678,718.50
TOTAL	663,503,054.90	526,647,356.07	200,000.00	583,058.90	1,190,933,469.87

On March 11, 2015, petitioner filed its Protest Letters²⁴ requesting for reinvestigation of the FLDs with attached details of discrepancy and praying for the cancellation and withdrawal of the deficiency income tax, VAT, WTC, EWT and DST assessments.²⁵

Subsequently, petitioner submitted additional documents to support its protest and request for investigation as per transmittal letter²⁶ dated May 8, 2015.²⁷

On September 17, 2015, petitioner received respondent's Final Decision on Disputed Assessment (FDDA),²⁸ with attached Details of Discrepancies. In the FDDA, respondent reiterated his request for payment of petitioner's alleged deficiency taxes in the aggregate amount of ₱916,988,478.42, for TY ending June 30, 2010 pursuant to LOA Nos. 116-2011-00000010 and 116-2011-000000 64 dated July 5, 2011 and September 20, 2011, broken down as follows:²⁹

²² Exhibits "R-11" and "P-6-2", BIR Records Folder F1/F4, pp. 3196 to 3209.

²³ Par. 14, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1259 to 1260.

²⁴ Exhibit "P-7-1", Docket – Vol. 6, pp. 2480 to 2506; Exhibit "P-7-2", Docket – Vol. 6, p. 2507 to 2532.

²⁵ Par. 8 and 15, Stipulated Facts, JSFI, Docket – Vol. 3, pp. 1258 and 1260.

²⁶ Exhibit "P-8-1", Docket – Vol. 6, p. 2538.

²⁷ Par. 9 and 16, Stipulated Facts, JSFI, Docket – Vol. 3, pp. 1258 and 1260.

²⁸ Exhibit "P-9-1", Docket – Vol. 6, pp. 2550 to 2566.

²⁹ Par. 10, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1258.

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Tax Type	Basic	Interest	Compromise Penalty	Surcharges/ Others	TOTAL
Income	137,142,732.23	133,761,130.62	50,000.00	-	270,903,862.85
VAT	313,932,835.85	321,157,591.52	50,000.00	-	635,140,427.37
WTC	729,331.68	822,446.35	20,000.00	-	1,571,778.03
EWT	3,269,309.02	3,362,461.93	25,000.00	478,902.35	7,135,673.30
DST	945,426.00	974,954.37	30,000.00	236,356.50	2,186,736.87
TOTAL	456,019,634.78	460,078,584.79	175,000.00	715,258.85	916,988,478.42

On the same date, petitioner received another FDDA³⁰ from respondent with attached Details of Discrepancies where respondent reiterated her request for payment of petitioner's alleged deficiency income tax, VAT, EWT and DST in the total amount of ₱581,615,870.52, for the period of July 1 to December 31, 2010 pursuant to LOA Nos. 116-2011-00000007 dated July 5, 2011, broken down as follows:³¹

Tax Type	Basic	Interest	Compromise Penalty	Surcharges/ Others	TOTAL
Income	121,674,126.10	118,673,942.17	50,000.00	-	240,398,068.27
VAT	162,571,569.21	166,312,942.30	50,000.00	-	328,934,511.51
EWT	4,051,481.52	4,166,920.99	25,000.00	140,558.65	8,383,961.16
DST	1,770,001.00	1,646,828.33	40,000.00	442,500.25	3,899,329.58
TOTAL	290,067,177.83	290,800,633.79	165,000.00	583,058.90	581,615,870.52

Thus, on October 16, 2015, petitioner filed the instant *Petition for Review*.³²

For his part, respondent filed two (2) *Motions for Extension of Time to File Answer*³³ which was both granted by the Court in the Resolutions dated December 9, 2015³⁴ and January 21, 2016

³⁰ Exhibit "P-9-2", Docket – Vol. 6, pp. 2567 to 2581.

³¹ Par. 17, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1260.

³² Docket- Vol. 1, pp. 10 to 44.

³³ *Motion for Extension of Time to File Answer* filed on November 27, 2015, and *Second Motion for Extension of Time to File Answer* filed on December 28, 2015, Docket, Vol. 1, pp.306 to 309, pp. 313 to 316 respectively.

³⁴ Docket – Vol. 1, p. 312.

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respectively.³⁵ Further, respondent was ordered to certify and elevate to the Court within ten (10) days after the filing of his Answer, the BIR Record of the instant case.

On January 27, 2016, respondent posted his *Answer*³⁶ which was received by this court on February 5, 2016, interposing, among others, the following special and affirmative defenses: that petitioner lodged an invalid protest before this Court; that the LOAs issued against petitioner was for the conduct of two (2) independent audit/examinations that resulted to the issuance of two (2) FDDAs issued in this case; and that to consolidate them in one (1) Petition for Review is an erroneous application of this Court's jurisdiction over decisions of respondent. According to respondent, the assessments has attained finality by operation of law.

Moreover, without conceding to the validity of the judicial protest to the two FDDAs issued against petitioner, respondent maintains that the findings of the audit investigation in both assessments for July 1 to December 31, 2010 and for fiscal year ending June 30, 2010 that petitioner is liable for deficiency income tax, VAT, WTC, EWT and DST are correct. Respondent asserts that the assessments against petitioner were issued with legal and factual bases.

Lastly, respondent argues that his right to assess petitioner did not prescribe as the three (3) year period within which to make the assessment finds no application to the instant case.

On April 11, 2016, petitioner filed a *Motion to Set Case for Preliminary Hearing to Resolve Issue of Prescription*.³⁷

On the other hand, respondent filed its *Pre-Trial Brief*³⁸ on April 14, 2016. Thereafter, respondent filed a *Manifestation*³⁹ on April 18, 2016, averring that he will require additional time to finalize the judicial affidavit of his witnesses.

During the Pre-Trial Conference held on April 19, 2016, the Court dismissed the instant case, upon motion of respondent's

³⁵ Docket – Vol. 1, pp. 318 to 319.

³⁶ Docket - Vol. 1, pp. 320 to 335.

³⁷ Docket – Vol. 1, pp. 345 to 356.

³⁸ Docket - Vol.1, pp. 357 to 361.

³⁹ Docket – Vol. 1, pp. 362 to 364.

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counsel, for petitioner's failure to file its Pre-Trial Brief pursuant to Sections 5 and 6, Rule 18 of the Revised Rules of Court.⁴⁰

Aggrieved, petitioner filed a *Motion for Reconsideration (Re: Resolution dated April 19, 2016)*⁴¹ on April 20, 2016 seeking for the following reliefs: (1) to reverse and set aside the Court's Resolution on April 19, 2016; (2) admit the attached Pre-Trial Brief of petitioner; (3) submit for resolution the Motion to Set Case for Preliminary Hearing to Resolve Issue on Prescription, upon resolution of petitioner's evidence; and (4) set the case for Pre-Trial Conference, upon resolution on the Motion to Set Case for Preliminary Hearing to Resolve Issue on Prescription.

Respondent filed his *Comment*⁴² to petitioner's Motion for Reconsideration (Re: Resolution dated April 19, 2016) on May 23, 2016.

In the Resolution⁴³ dated June 30, 2016, the Court granted petitioner's Motion for Reconsideration (Re: Resolution dated April 19, 2016). Petitioner was ordered to pay a fine in the amount of P10,000.00. Accordingly, petitioner's *Pre-Trial Brief* filed on April 20, 2016⁴⁴ was admitted into the records of this case. Moreover, as regards to petitioner's Motion to Set Case for Preliminary Hearing to Resolve Issue on Prescription, it was held that a preliminary hearing to resolve the issue of prescription would actually prolong the proceedings rather than speed it up as the same would be a piece meal presentation of the parties' evidence to overturn the presumption of the regularity of the tax assessment. Thus, said motion was denied for lack of merit.⁴⁵

On October 6, 2016, petitioner filed a *Pre-Trial Brief*.⁴⁶ The Pre-Trial Conference was held on October 11, 2016, and thereafter, the parties submitted their *JSFI* on November 10, 2015.⁴⁷ Subsequently, the Court issued its *Pre-Trial Order* on December 5, 2016⁴⁸. 

⁴⁰ Minutes of the hearing dated April 19, 2016 and Resolution dated April 27, 2016, Docket – Vol. 1, p. 366 and pp. 394.

⁴¹ Docket – Vol. 1, pp. 367 to 373.

⁴² Docket – Vol. 3, pp. 951 to 954.

⁴³ Docket – Vol. 3, pp. 956 to 959.

⁴⁴ Docket - Vol. 1, pp. 374 to 392.

⁴⁵ Docket – Vol. 3, pp. 956 to 959.

⁴⁶ Docket – Vol. 3, pp. 1214 to 1233.

⁴⁷ JSFI, Docket – Vol. 3, pp. 1256 to 1273.

⁴⁸ Docket - Vol. 3, pp. 1310 to 1321.

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On January 19, 2018, petitioner filed an *Omnibus Motion for Leave of Court (I) To Present Additional Witnesses, (II) To Recall Witness, (III) To Set Commissioner's Hearing, and (III) To Reset Hearing on February 5, 2018*.⁴⁹ The Court granted petitioner's motion to reset the hearing on February 5, 2018 and ordered respondent to file his comment on the motion to present additional witnesses and motion to recall witness.⁵⁰

On March 14, 2018, the Court granted petitioner's motion to present additional witnesses and motion to recall witness and ordered the issuance of an Amended Pre-Trial Order.⁵¹

Relative thereto, petitioner filed a *Motion to Clarify Resolution dated March 14, 2018*⁵² praying that the Court clarify its Resolution dated March 14, 2018, and issue an Amended Resolution to set the hearing date on the presentation of petitioner's witness on July 2, 2018, or at any date thereafter and time convenient to the Court.

On April 12, 2018, the Court issued a Resolution granting petitioner's Motion to Clarify Resolution dated March 14, 2018 and ordered that the Pre-Trial Order be further Amended.⁵³ Subsequently, the Court issued *Amended Pre-Trial Order* on April 20, 2018.⁵⁴

On May 2, 2018, petitioner filed a *Motion for Extension of Time to Submit Corrections on Amended Pre-Trial Order (Re: Amended Pre-Trial Order dated April 20, 2018)* praying for an extension period of ten (10) days from May 2, 2018 or until May 12, 2018, to file its Motion to Correct the Amended Pre-Trial Order.⁵⁵ In the Resolution dated May 9, 2018, the Court granted petitioner's said motion for extension of time to submit Corrections on Amended Pre-Trial Order.⁵⁶



⁴⁹ Docket – Vol. 4, pp. 1548 to 1553.

⁵⁰ Resolution dated January 25, 2018, Docket – Vol. 4, pp. 1557 to 1558.

⁵¹ Docket – Vol. 4, pp. 1560 to 1561.

⁵² Docket – Vol. 4, pp. 1562 to 1565.

⁵³ Docket – Vol. 4, pp. 1572 to 1573.

⁵⁴ Docket – Vol. 4, pp. 1579 to 1590.

⁵⁵ Docket – Vol. 4, pp. 1596 to 1597.

⁵⁶ Docket – Vol. 4, p. 1612.

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Thereafter, petitioner filed on May 10, 2018 a *Motion to Correct the Amended Pre-Trial Order*⁵⁷ praying that the proposed corrections in the said motion be adopted accurately to reflect all the names of the witnesses and the corresponding hearing dates.

On May 22, 2018, the Court granted petitioner's *Motion to Correct the Amended Pre-Trial Order* and ordered that the Amended Pre-Trial Order be further amended.⁵⁸ The Court issued a *Second Amended Pre-Trial Order* on June 19, 2018.⁵⁹ With the issuance of the second amended PTO, the *Pre-Trial Conference* was terminated.

During trial, petitioner presented the following witnesses:

- a) Agustin S. Sarmiento,⁶⁰ petitioner's Assistant Vice-President for Tax and Reporting;
- b) Atty. Rey T. Llesol,⁶¹ petitioner's Senior Tax Manager;
- c) Delia M. Montaña dated May 30, 2018, Corporate Secretary of Rush Trucking Services;⁶²
- d) Edna D. Ortega dated May 30, 2018, Senior Accounting Officer of MMG Construction and Development Corporation;⁶³
- e) Jerome Antonio B. Constantino, Court-commissioned Independent Certified Public Accountant (ICPA),⁶⁴ and
- f) Atty. Michael Angelo D. Adrid dated May 16, 2019, petitioner's Senior Tax Manager.⁶⁵

Petitioner filed its *Formal Offer of Evidence*⁶⁶ on September 3, 2018. In the Resolutions dated March 13, 2019,⁶⁷ the Court admitted most of petitioner's exhibits with some observations; while it denied Exhibit "P-7-14", for not being found in the records of the case; and Exhibits "P-3-1", "P-28-1" to "P-28-41", "P-33-4", "P-38-2260" to "P-



⁵⁷ Docket – Vol. 4, pp. 1613 to 1616.

⁵⁸ Docket – Vol. 4, pp. 1619 to 1620

⁵⁹ Docket – Vol. 4, pp. 1667 to 1678.

⁶⁰ Exhibits "P-18", Docket – Vol. 1, pp. 397 to 412; Exhibit "P-19", Docket – Vol. 3, pp. 974 to 995

⁶¹ Exhibit "P-20", Docket – Vol. 3, pp. 1350 to 1357; Exhibit "P-62", Docket – Vol. 4, pp. 1681 to 1696.

⁶² Exhibit "P-56", Docket – Vol. 4, pp. 1624 to 1629.

⁶³ Exhibit "P-57", Docket – Vol. 4, 1644 to 1649.

⁶⁴ Exhibit "P-61", Docket – Vol. 4, pp. 1891 to 1932.

⁶⁵ Exhibit "P-68", Docket – Vol. 7, pp. 3289 to 3301.

⁶⁶ Docket – Vol. 6, pp. 2391 to 2442.

⁶⁷ Docket – Vol. 7, pp. 3234 to 3237.

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38-2264" and "P-50-16" to "P-50-20", for failure to present their originals for comparison.

On April 3, 2019, petitioner filed a *Motion for Reconsideration (Re: Resolution dated March 13, 2019)*⁶⁸ without respondent's comment despite due notice.⁶⁹

Meanwhile, on May 17, 2019, petitioner filed a *Submission and Motion (Re: Motion for Reconsideration dated April 3, 2019)*⁷⁰ praying for the setting of a hearing for the presentation of petitioner's witness, Atty. Michael Angelo D. Adrid. The Court granted petitioner's motion on September 5, 2019 and directed petitioner to file its Supplemental Formal Offer of Evidence.⁷¹ The resolution of petitioner's *Motion for Reconsideration (Re: Resolution dated March 13, 2019)* was held in abeyance.

On January 21, 2020, petitioner filed its *Supplemental Formal Offer of Evidence (With Submission)*⁷² with respondent's *Comment (to Petitioner's Supplemental Formal Offer of Evidence)* filed on January 28, 2020.⁷³ On July 1, 2020⁷⁴, the Court admitted all of petitioner's evidence, except *Exhibit "P-7-1-14"* for failure of the said exhibit to be formally offered and identified to correspond with the document found in the BIR records.

For his part, respondent presented RO Aurelio Agustin T. Zamora⁷⁵ as his sole witness.

Thereafter, respondent filed his *Formal Offer of Evidence* on October 28, 2020⁷⁶ with petitioner's *Comment (Re: Respondent's Formal Offer Evidence)* filed on November 23, 2020.⁷⁷ The Court admitted all of respondent's evidence in the Resolution⁷⁸ dated January 8, 2021. 

⁶⁸ Docket – Vol. 7, pp. 3262 to 3275.

⁶⁹ Resolution dated June 14, 2019, Docket - Vol.7, pp. 3329 to 3330.

⁷⁰ Docket – Vol. 7, pp. 3284 to 3288.

⁷¹ Resolution dated September 5, 2019, Docket – Vol. 7, pp. 3336 to 3338.

⁷² Docket – Vol. 7, pp. 3357 to 3363.

⁷³ Docket – Vol. 8, pp. 3433 to 3434.

⁷⁴ Docket – Vol. 8, pp. 3438 to 3456.

⁷⁵ Exhibit "R-16", Docket – Vol. 3, pp. 965 to 970.

⁷⁶ Docket – Vol. 8, pp. 3471 to 3476.

⁷⁷ Docket – Vol. 8, pp. 3481 to 3489.

⁷⁸ Docket – Vol. 8, pp. 3491 to 3492.

On March 10, 2021, petitioner filed its *Memorandum*,⁷⁹ while respondent filed his *Memorandum*⁸⁰ on February 16, 2021. Accordingly, the instant case was submitted for Decision in the Resolution⁸¹ dated May 25, 2021. Hence, this Decision.

THE ISSUES

The parties presented the following issues⁸² for this Court's resolution, to wit:

1. Whether the Honorable Court has jurisdiction over the present Petition for Review assailing the propriety of Two FDDAs for the period July 1, 2009 to June 30, 2010 (or the "Long Period") and for the period July 1, 2010 to December 31, 2010 (or the "Short Period").
2. Whether or not petitioner is liable for deficiency income tax, VAT, WTC, EWT and DST for the Long Period, in the amount of ₱916,988,478.42 and for the Short Period, in the amount of ₱581,615,870.52, or in the aggregate amount of ₱1,498,604,348.94, inclusive of increments.

Petitioner's arguments:

According to petitioner, respondent's right to assess petitioner's alleged deficiency tax liabilities has already prescribed. Allegedly, the assessments for deficiency income tax, VAT, WTC, EWT, and DST are null and void for having been issued beyond the three (3)-year prescriptive period provided under Section 203 of the Tax Code. To be specific, the FLDs were received by petitioner beyond the 3-year prescriptive period.

Moreover, petitioner asserts that the Waivers of the Defense of Prescription under the Statute of Limitations did not validly extend the three-year prescriptive period to assess for being invalid. Additionally, the date of execution and the acceptance of respondent's representative were made after the expiration of the period of

⁷⁹ Docket – Vol. 8. pp. 3521 to 3587.

⁸⁰ Docket – Vol. 8, pp. 3493 to 3519.

⁸¹ Docket – Vol. 8, p. 3590.

⁸² JSFI, Issues, Docket – Vol. 3, pp. 1261 to 1262.

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prescription; and the Waivers failed to strictly comply with the requirements of a valid waiver under Section 222 (b) of the Tax Code, and Revenue Memorandum Order No. 20-90, in relation to Revenue Delegation Authority Order No. 05-01.

Assuming that the assessments have not prescribed, petitioner contends that the subject assessments should be cancelled for lack of factual and legal basis.

Respondent's counter-arguments:

Respondent counter-argues that petitioner filed an invalid judicial protest before the Court by assailing two (2) FDDAs in one Petition for Review, which shows an erroneous misapplication of the Court's jurisdiction over decisions of respondent. Allegedly, the subject assessments have attained finality by operation of law.

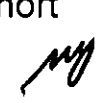
Assuming *arguendo* that the instant Petition is valid, respondent submits that petitioner was duly informed of the legal and factual basis of the findings resulting to the subject deficiency assessments.

Respondent further submits that his right to assess petitioner did not prescribe as the 3-year prescriptive period within which to make an assessment does not apply to the instant case. According to respondent, the ten (10)-year prescriptive period under Section 222 (a), which pertains to false or fraudulent returns, should apply instead.

Lastly, respondent contends that all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called and it is incumbent upon taxpayer to prove the contrary. Failure to do so shall vest legality on respondent's actions and assessments.

THE COURT'S RULING

The first issue pertains to the jurisdiction of this Court over the present Petition for Review assailing the propriety of two (2) FDDAs for the period July 1, 2009 to June 30, 2010 (or the "Long Period") and for the period July 1, 2010 to December 31, 2010 (or the "Short Period").



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The foregoing issue is in relation to respondent's allegation that the Petition for Review is invalid for assailing two (2) FDDAs.

We rule in favor of the validity of the instant Petition for Review in light of the provision of our Rules of Court on joinder of causes of action.

Joinder of causes of action is permissible under the rules subject to certain requisites.

Under Section 5, Rule 2 of the Rules of Court,⁸³ a party may, in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to conditions.

In *Spouses Perez v. Hermano*,⁸⁴ the rules on joinder of causes of action as discussed by the Supreme Court is instructive, to wit:

"To better understand the present controversy, it is vital to revisit the rules on joinder of causes of action as exhaustively discussed in *Republic v. Hernandez*,⁸⁵ thus:

By a joinder of actions, or more properly, a joinder of causes of action, is meant the uniting of two or more demands, or rights of action in one action, the statement of more than one cause of action in a declaration. It is the union of two or more civil causes of action, each of which could be made the basis of a separate suit, in the same complaint, declaration or petition. A plaintiff may under



⁸³ Section 5. *Joinder of causes of action*. - A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

(a) The party joining the causes of action shall comply with the rules on joinder of parties;

(b) The joinder shall not include special civil actions or actions governed by special rules;

(c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and

(d) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction.

⁸⁴ G.R. No. 147417, July 8, 2005.

⁸⁵ G.R. No. 117209, February 9, 1996.

certain circumstances join several distinct demands, controversies or rights of action in one declaration, complaint or petition.

XXX XXX XXX

While joinder of causes of action is largely left to the option of a party litigant, **Section 5, Rule 2 of our present Rules allows causes of action to be joined in one complaint conditioned upon the following requisites: (a) it will not violate the rules on jurisdiction, venue and joinder of parties; and (b) the causes of action arise out of the same contract, transaction or relation between parties, or are for demands for money or are of the same nature and character.**

The objective of the rule or provision are to avoid a multiplicity of suits where the same parties and subject matter are to be dealt with by effecting in one action a complete determination of all matters in controversy and litigation between the parties involving one subject matter, and to expedite the disposition of litigation at minimum cost. The provision should be construed so as to avoid such multiplicity, where possible, without prejudice to the rights of the litigants. **Being of a remedial nature, the provision should be liberally construed, to the end that related controversies between the same parties may be adjudicated at one time;** and it should be made effectual as far as practicable, with the end in view of promoting the efficient administration of justice. " (*Emphasis supplied*)

From the foregoing, the joinder of causes of action in a suit is permitted provided that: (a) it will not violate the rules on jurisdiction, venue and joinder of parties; and (b) the causes of action arise out of the same contract, transaction or relation between parties, or are for demands for money or are of the same nature and character.

Both requisites are present in the instant Petition.



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First Requisite: The Court has jurisdiction over the instant case.

Respondent contends that the Petition for Review filed by petitioner is invalid for assailing two (2) FDDAs, which is an erroneous application of this Court's jurisdiction over decisions of respondent.

We do not agree.

Section 7 (a) (1) of Republic Act (RA) No. 1125,⁸⁶ as amended by RA Nos. 9282⁸⁷ and 9503,⁸⁸ confers upon this Court, jurisdiction over tax assessments, *inter alia*, to wit:

"SEC. 7. Jurisdiction. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(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;" (*Emphasis and underscoring supplied*)

This provision is reiterated in Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), which provides:

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⁸⁶ AN ACT CREATING THE COURT OF TAX APPEALS.

⁸⁷ 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.

⁸⁸ AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

"RULE 4
Jurisdiction of the Court

XXX XXX XXX

SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Division shall exercise:

(a) Exclusive original over 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;"
(Emphasis supplied)

Based on the foregoing, this Court shall exercise jurisdiction over decisions of the CIR on disputed assessments.

In the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*,⁸⁹ the Supreme Court elucidated that the word "decisions" in the above-quoted provision of R.A. No. 9282 has been interpreted to mean the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against an issued assessment.

In relation thereto, Section 228 of the NIRC of 1997, as amended, provides the procedure for protesting an assessment, to wit:

"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 taxpayers of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

XXX XXX XXX



⁸⁹ G.R. No. 175097, February 5, 2010.

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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.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred (180)-day period; otherwise the decision shall become final, executory and demandable."

In this case, the parties admitted in their JSFI that petitioner received from respondent the two (2) FDDAs on September 17, 2015. Thus, petitioner had thirty (30) days therefrom or until October 17, 2015, within which to file its Petition for Review with this Court. Petitioner filed the instant Petition for Review on October 16, 2015, well-within the 30-day period. Hence, the Court has jurisdiction over the instant case.

Second Requisite: The causes of action arise out of the same relation between the parties and are of the same nature and character.

As regards to the second requisite, although two (2) FDDAs are assailed in the instant Petition for Review, the relation between

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the two (2) FDDAs are readily apparent. These FDDAs pertain to petitioner's alleged deficiency taxes; are of the same nature and present a common question of fact or law that would warrant their joinder. To the mind of the court, assailing both FDDAs in the instant Petition does not run counter to the rules on joinder of causes of action.

To the contrary, it is in keeping with the rules on proper joinder of causes of action,⁹⁰ and serves the interest of judicial economy-avoiding multiplicity of suits and cushioning litigants from the vexation and cost of a protracted pleading of their cause.⁹¹

Moreover, assuming *arguendo* that there is a misjoinder of causes of action, the same is not a ground for dismissal of an action as set out in Section 6, Rule 2 of the Rules of Court:

"Section 6. *Misjoinder of causes of action.* – Misjoinder of causes of action is not a ground for dismissal of an action. A misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately."

Based on the foregoing, misjoinder of causes of action is not a ground for dismissal, provided the court trying the case has jurisdiction over all the causes of action therein notwithstanding the misjoinder of the same. If the court trying the case has no jurisdiction over a misjoined cause of action, then such misjoined cause of action has to be severed from other causes of action, and if not severed, any adjudication rendered by the court with respect to the same would be a nullity.⁹²

In this case however, as discussed earlier, the rules on joinder of causes of action has not been violated by petitioner. Thus, there is no erroneous application of this Court's jurisdiction to review the FDDAs issued by respondent against petitioner. Accordingly, this Court can proceed to resolve the merits of this case.



⁹⁰ *Abella vs. Cabañero*, G.R. No. 206647, August 9, 2017.

⁹¹ *Id.*

⁹² *Ada et al., vs. Baylon*, G.R. No. 182435, August 13, 2012.

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The Court may rule upon issues not stipulated by the parties.

Before resolving the second issue as to whether or not petitioner is liable for deficiency income tax, VAT, WTC, EWT and DST for the Long Period, in the amount of ₱916,988,478.42 and for the Short Period, in the amount of ₱581,615,870.52, or in the aggregate amount of ₱1,498,604,348.94, inclusive of increments, the Court deems it necessary to address a vital and related issue to achieve an orderly disposition to this case, to wit:

“Whether or not the FLDs with Details of Discrepancies and Assessment Notices issued against petitioner are null and void for failure to demand payment within a specific due date.”

While the foregoing issue was not stipulated by the parties in this case, the Court is empowered to resolve the same pursuant to Section 1, Rule 14 of the RRCTA, which reads as follows:

“RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. *Rendition of judgment.* – xxx xxx 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.**” (*Emphasis supplied*)

On the basis thereof, this Court is not limited to the issues raised by the parties and may rule upon related issues necessary to achieve an orderly disposition of the case. This was confirmed and recognized in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,⁹³ where the Supreme Court held:

“On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.



⁹³ G.R. No. 183408, July 12, 2017.

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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."

Indeed, based on the foregoing pronouncements, it is within the authority of this Court to delve on other issues or matters even if the same were not stipulated by the parties if such issues are related and necessary to achieve an orderly disposition of the case.

In this case, though the issue on the absence of due date in the FLDs and Assessment Notices were not stipulated by the parties, said matter is related to the issue of validity of the assessments issued against petitioner. Hence, the Court can appropriately deal with this matter to achieve an orderly disposition of the case.

The subject deficiency tax assessments are void for failure of the FLD, Assessment Notices, and Details of Discrepancies, to state a due date for the payment of the assessed tax liabilities.

In the context in which it is used in the NIRC, an assessment is a written notice and demand by the BIR on the taxpayer for the settlement of a due tax liability **that is there definitely set and fixed.**⁹⁴

An assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period.** The ultimate purpose of assessment is to ascertain the amount that each taxpayer is to pay.⁹⁵

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc. (Fitness by design)*,⁹⁶ the Supreme Court emphasized that a

⁹⁴ *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.

⁹⁵ G.R. No. 127777, October 1, 1999, citing *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*, G.R. No. 128315, June 25, 1999 and *Commissioner vs. Ayala Securities Corporation*, 70 SCRA 204 (1976).

⁹⁶ G.R. No. 215957, November 9, 2016.

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formal assessment notice must contain a specific due date, among other requirements, to wit:

"The disputed Final Assessment Notice is not a valid assessment.

XXX XXX XXX

Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. 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:**

In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. **The notice, therefore, did not contain a definite and actual demand to pay.**

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (*Emphases and underscoring ours*)

The factual circumstance of the instant case is similar to the *Fitness by design* case. A cursory reading of the following FLDs with Details of Discrepancies and Assessment Notices reveal that there is



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no indication that respondent demanded payment of the supposed tax liabilities within a specific period, to quote:

FLD covering fiscal year ending
June 30, 2010 (Exhibit "R-10 and
Exhibit "P-6-1")⁹⁷

"FORMAL LETTER OF DEMAND

xxx xxx xxx

Pursuant to Revenue Regulations No. 18-2013, a Formal Letter of Demand is hereby issued on the deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation, Expanded Withholding Tax, and Documentary Stamp Tax xxx

xxx xxx xxx

Pursuant to the provision of Section 228 of the aforesaid Code and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within thirty (30) days from receipt hereof. However, if you are amenable, you may pay the above assessment thru the EFPS facility. Afterwards, submit the proof of payment thereof to the Regular Large Taxpayers Audit Division I at Rm 216 BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records. xxx

xxx xxx xxx

"DETAILS OF DISCREPANCY

Fiscal Year ending June 30, 3010(sic)

xxx xxx xxx

It is requested that your aforesaid deficiency tax/taxes be paid immediately upon receipt hereof, inclusive of penalties otherwise the Formal Letter of Demand and Assessment Notice shall be issued. xxx" 

⁹⁷ Exhibits "R-10" and "P-6-1", BIR Records Folder F3/F4, pp. 2020 to 2033.

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FLD covering the period July 1 to
December 31, 2010 (Exhibit "R-11
and Exhibit "P-6-2")⁹⁸

"FORMAL LETTER OF DEMAND

xxx xxx xxx

Pursuant to Revenue Regulations No. 18-2013, a Formal Letter of Demand is hereby issued on the deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation, Expanded Withholding Tax, and Documentary Stamp Tax xxx

xxx xxx xxx

Pursuant to the provision of Section 228 of the aforesaid Code and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within thirty (30) days from receipt hereof. However, if you are amenable, you may pay the above assessment thru the EFPS facility. Afterwards, submit the proof of payment thereof to the Regular Large Taxpayers Audit Division I at Rm 216 BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records. xxx

xxx xxx xxx

**"DETAILS OF DISCREPANCY
for the period July 1 to December 31, 2010**

xxx xxx xxx

It is requested that your aforesaid deficiency tax/taxes be paid immediately upon receipt hereof, inclusive of penalties otherwise the Formal Letter of Demand and Assessment Notice shall be issued. xxx"

Furthermore, the due date in the enclosed Assessment Notices attached to both FLDs with Details of Discrepancies were left blank. 

⁹⁸ Exhibits "R-11" and "P-6-2", BIR Records Folder F1/F4, pp. 3196 to 3209.

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Since the FLDs with Details of Discrepancies and Assessment Notices issued by respondent failed to clearly demand payment petitioner's supposed tax liabilities within a specific period, the Court finds that the FLDs cannot be considered valid formal assessment notices.

To be clear, an assessment must not only indicate the legal and factual bases of the assessment but also state categorically a demand for payment of the computed tax liabilities within a specific period. Indicating a fixed and definite period within which a taxpayer must pay the tax deficiencies is necessary to the validity of an assessment. In the absence thereof, it negates the CIR's demand for payment making the final assessment notice defective and therefore void. As a rule, a void assessment bears no valid fruit.⁹⁹

With the foregoing findings of invalidity of the assailed FLDs, it becomes unnecessary to discuss the second issue raised in the instant Petition for Review.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax, VAT, WTC, EWT, DST and compromise penalties for the fiscal year ending June 30, 2010, in the amount of ₱916,988,478.42; and for the period of July 1, 2010 to December 31, 2010 in the amount of ₱581,615,870.52, or the aggregate amount of ₱1,498,604,348.94, inclusive of increments issued against petitioner are hereby **CANCELLED** and **SET ASIDE**.

Moreover, unless reversed by higher courts, respondent is hereby **ORDERED** to **DESIST** from undertaking any collection proceedings of the subject tax deficiencies for taxable year 2010

SO ORDERED.


ERLINDA P. UY
Associate Justice

⁹⁹ *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et seq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

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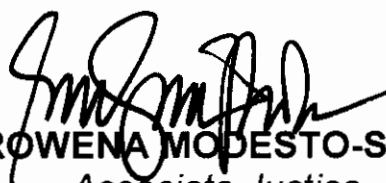
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WE CONCUR:



MA. BELEN M. RINGPIS-LIBAN

Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice

ATTESTATION

I attest 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's Division.



ERLINDA P. UY

Associate Justice

Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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