REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

UNIVERSAL ROBINA CORPORATION,
Respondent.

CTA EB NO. 2280
(CTA Case No. 9530)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

Promulgated:

DEC 07 2021
3:31 p.m.

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DECISION

RINGPIS-LIBAN, *J*.:

Before the Court *en banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) against the respondent Universal Robina Corporation (URC) within an extended period[2] granted by the Court[3], seeking the reversal of the Decision dated January 14, 2020[4] (assailed Decision) rendered by the First Division of this Court in CTA Case No. 9530, as well as the Resolution dated June 8, 2020[5] (assailed Resolution) denying its motion for reconsideration.

[1] *Rollo*, pp. 6-25, with Annexes "A" to "B", pp. 26-58.
[2] *Id.*, pp. 1-4.
[3] *Id.*, p. 5.
[4] *Id.*, pp. 26-49.
[5] *Id.*, pp. 50-58.

In the Petition, the CIR prays that both the assailed Decision and Resolution be reversed and set aside and that judgment be rendered ordering URC to pay its assessed deficiency improperly accumulated earnings tax (IAET) for fiscal year (FY) ended September 30, 2010 in the amount of ₱2,099,212,108.60 plus 25% Surcharge, 20% Deficiency and Delinquency interest until December 31, 2017, as well as 12% interest on the total unpaid amount computed from January 1, 2018 until full payment thereof pursuant to Section 249(c) of the National Internal Revenue Code of 1997 (NIRC), as amended by Republic Act No. (RA) 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN), and as implemented by Revenue Regulation No. (RR) 21-2018.

The Parties

Petitioner CIR is the duly appointed Commissioner of Internal Revenue with office address at BIR Building, Diliman, Quezon City.[6]

On the other hand, respondent URC is a corporation duly registered and existing under the Philippine laws.[7] It is also a registered taxpayer with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 000-400-016-000.[8]

The Facts[9]

On March 5, 2012, the CIR issued Letter of Authority (LOA) No. LOA-116-2012-00000004 (eLA201100003073), authorizing the examination of URC's books of accounts and other accounting records for taxable year (TY) ended September 30, 2010.[10]

Thereafter, on November 25, 2014, URC received from the CIR a copy of the Preliminary Assessment Notice (PAN) finding it liable for deficiency income tax (IT), improperly accumulated earnings tax (IAET), value-added tax (VAT), withholding tax on compensation (WTC), fringe benefits tax (FBT), expanded withholding tax (EWT), and documentary stamp tax (DST), in the aggregate amount of ₱27,435,710,257.57, inclusive of increments, for fiscal year (FY) ended 30 September 2010.[11] URC protested the said PAN on December 10, 2014.[12]

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[6] *Id.*, Vol. 2, p. 726. Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, par. 1.
[7] Docket, Vol. 3, pp. 1284-1297, Exhibit "P-1".
[8] *Id.*, p. 1298, Exhibit "P-2".
[9] As found by the First Division and as culled from the records of the case.
[10] *Id.* at Note 6, p. 726.
[11] *Id.*, p. 726, Exhibit "P-4"; pp. 423-427, BIR Records.
[12] *Id.*, pp. 1322-1348, Exhibit "P-5".

On December 12, 2014, URC received a copy of the Formal Letter of Demand (FLD) which merely reiterated the findings and deficiency assessments in the PAN, and assessed URC for deficiency IT, IAET, VAT, WTC, FBT, EWT, and DST in the aggregate amount of ₱27,435,710,257.57, inclusive of increments, for taxable year ended 30 September 2010.[13] URC likewise disputed the said assessment on January 9, 2015.[14]

Subsequently, on June 28, 2016, URC received a copy of the Final Decision on Disputed Assessment (FDDA) signed by Assistant Commissioner Nestor S. Valeroso of the BIR Large Taxpayers Service, partially granting URC's protest on the FLD, thus, reducing the amount of the deficiency tax assessment to ₱11,448,895,398.57, inclusive of increments.[15] URC subsequently filed a Request for Reconsideration of the said FDDA before Commissioner Cesar R. Dulay on July 28, 2016.[16]

On December 29, 2016, URC received a copy of the Amended FDDA dated June 30, 2016 signed by the CIR, partially granting its request for reconsideration, cancelling the assessment for deficiency FBT, and further reducing the deficiency income tax, IAET, VAT, WTC, and DST to ₱2,482,975,836.73,[17] inclusive of increments, broken down as follows:[18]

KIND OF TAX	BASIC TAX	SURCHARGE	INTEREST	COMPROMISE	TOTAL
Income Tax	₱ 141,516,859.55	₱	₱ 168,734,622.67	50,000.00	₱ 310,301,482.22
IAET	841,185,889.90	210,295,472.48	1,047,679,741.23	50,000.00	2,099,212,103.60
VAT	21,271,122.90		26,317,915.35	100,000.00	47,689,038.25
WTC	1,228,043.24		6,911.24	3,000.00	1,237,954.48
EWT	9,189,199.84		12,300,708.83	25,000.00	21,514,908.67
DST	1,325,649.00		1,654,700.51	40,000.00	3,020,349.51
Total	**₱1,015,716,764.43**	**₱210,295,472.48**	**₱1,256,694.599.83**	**₱268,000.00**	**₱ 2,482,975,836.73**

On January 30, 2017, URC filed a Petition for Review with the Court of Tax Appeals (CTA), docketed as CTA Case No. 9530.

The CIR filed his Answer[19] on April 11, 2017, interposing the Special and Affirmative Defenses that: URC posted an excess over outstanding paid-up capital stock or improperly accumulated taxable income amounting to ₱15,160,950,265.00 which is subject to IAET at 10% pursuant to Sec. 29 of the NIRC of 1997, as amended; URC was unable to present pertinent records which would establish it is a publicly-held corporation; the ownership of a domestic

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[13] *Id.*, p. 727.
[14] *Id.* at Note 7, pp. 1369-1398, Exhibit "P-7".
[15] *Id.* at Note 7, p. 727, Exhibit "P-8"; pp. 1112-1114, BIR Records. Based on the FDDA, the amount should be ₱11,448,592,398.30.
[16] *Id.*, pp. 1418-1436, Exhibit "P-9".
[17] Based on the Amended FDDA, it should be ₱2,482,707,836.73.
[18] *Id.* at Note 6, p. 727; *id.* at Note 7, pp. 1437-1440, Exhibit "P-10".
[19] Docket, Vol. 1, pp. 179-189.

corporation for purposes of determining whether it is a closely-held corporation or a publicly-held corporation is ultimately traced to the individual shareholder of the parent company; additional paid in capital is not part of paid-up capital and cannot be made the basis for computation of accumulated earnings; Revenue Memorandum Circular No. (RMC) 35-2011 states that paid-up capital is the amount contributed to the corporation representing the par value of the shares of stock, thus excluding any excess capital over and above par; URC had excess retained earnings over the 100% par value of its shares of stocks as it posted an excess over outstanding paid up capital stock or improperly accumulated taxable income amounting to ₱8,411,858,899.00 and deficiency IAET should be assessed; as regards the alleged non-publication of Revenue RMC 35-2011, merely clarified certain issues relative to the imposition of the 10% IAET, hence, publication is dispensable; RMC is a mere circular addressed to all revenue officers as a guidance in the performance of their duties; the Court of Tax Appeals is without jurisdiction to declare the RMC as null and void because such duty belongs to the Court of general jurisdiction; when the CIR issues rulings, circulars or memoranda, he is performing a quasi-legislative function whereby his interpretation of tax laws is subject to review by the Secretary of Finance, appealable to the Office of the President and ultimately to the regular courts in consonance with the doctrine of exhaustion of administrative remedies and existing jurisprudence; and in the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner and approved by his superior officers should not be disturbed as all presumptions are in favor of the correctness of tax assessments.

On June 30, 2017,[20] the CIR filed his Pre-Trial Brief while URC's Pre-Trial Brief was submitted on July 7, 2017.[21] On July 14, 2017, the CIR transmitted the BIR Records of the case.[22]

The parties filed their Joint Stipulation of Facts and Issues (JSFI)[23] on July 31, 2017. The Pre-Trial Order (PTO),[24] was subsequently issued on August 22, 2017.

Trial ensued. URC presented the following witnesses: (1) Ms. Alma Joy M. Agati,[25] URC's Assistant Vice President-Controller; (2) Mr. Nicasio Lim,[26]

[20] *Id.*, pp. 202-204.
[21] *Id.*, pp. 214-221.
[22] *Id.*, pp. 231-232.
[23] *Id.* at Note 6, pp. 726-732.
[24] *Id.* at Note 7, pp. 1221-1230.
[25] Docket, Vol. 4, Exhibit "P-30", pp. 1854-1868; pp. 1248-1249, Minutes of the hearing held on, and Order dated, October 9, 2017.
[26] *Id.* at Note 19, pp. 237-243, "P-32"; *id.* at Note 7, pp. 1254-1255, Minutes of the hearing held on, and Order dated, January 22, 2018.

Administrative Manager of Gokongwei Brothers Foundation, Inc.; and (3) Atty. Rosalinda F. Rivera,[27] URC's Corporate Secretary.

After the filing of Formal Offer of Evidence for URC on July 19, 2018,[28] the Court admitted its exhibits.[29]

The CIR then presented his lone witness, Mr. Aurelio Zamora,[30] Revenue Officer III, assigned at the Regular Large Taxpayers Audit Division I of the BIR.

On September 18, 2018, the CIR formally offered in open court his exhibits, without objection from URC, which the Court admitted.[31]

URC filed its Memorandum for the Petitioner on October 18, 2018.[32] Within the extended period granted,[33] the CIR filed its Memorandum[34] which the Court in Division admitted in a Resolution dated January 28, 2019.[35] In the same Resolution, the Court in Division submitted the instant case for decision.[36]

On January 14, 2020, the Court in Division promulgated the Assailed Decision and granted URC's Petition. The dispositive portion of the Assailed Decision reads, as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for IAET for taxable year ended September 30, 2010 is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"[37]

On January 31, 2020, the CIR filed his Motion for Reconsideration Re: Decision dated 14 January 2020 praying that a new Decision be rendered and a new one be issued instead. URC filed its Comment (To Respondent's Motion for Reconsideration Re: Decision Promulgated on 14 January 2020) on February

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[27] *Id.* at Note 6, pp. 531-551, Exhibit "P-31"; *id.* at Note 7, pp. 1258-1259, Minutes of the hearing held on, and Order dated, June 19, 2018.
[28] *Id.* at Note 7, pp. 1268 to 1283.
[29] *Id.* at Note 25, pp. 1899-1900, Resolution dated August 22, 2018.
[30] *Id.* at Note 19, pp. 210-213, Exhibit "R-2"; *id.* at Note 25, pp. 1901-1903, Minutes of the hearing held on, and Order dated September 18, 2018.
[31] *Id.* at Note 25, pp. 1901-1903, Minutes of the hearing held on, and Order dated September 18, 2018.
[32] *Id.*, pp. 1906-1938.
[33] *Id.*, p. 1940.
[34] *Id.*, pp. 1948-1960.
[35] *Id.*, pp. 1962-1963.
[36] *Id.*
[37] *Id.*, p. 47.

27, 2020.

On June 8, 2020, the Court in Division issued the assailed Resolution denying the motion for lack of merit.[38] The dispositive portion of the Assailed Resolution reads, as follows:

> **"WHEREFORE,** premises considered, respondent's *Motion for Reconsideration Re: Decision dated 14 January 2020* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**[39]

Within an extended period[40] granted by the Court[41], the CIR timely posted his appeal via Petition for Review on July 27, 2020, which the Court *en banc* received on August 26, 2020.[42]

On September 18, 2020, URC was directed to file Comment thereto.[43]

On October 1, 2020, URC filed its Comment (to Petition for Review dated 20 July 2020).[44]

In a Resolution issued on October 9, 2020[45], the case was referred to mediation pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals and proceedings were suspended for the duration thereof. However, on November 6, 2020, the parties submitted PMC-CTA Form No. 6 - No Agreement to Mediate[46] and informed the Court that they decided not to have their case mediated by the Philippine Mediation Center Unit-CTA.

On January 6, 2021, the Court *en banc* issued a Resolution submitting the case for decision.[47]

The Assignments of Errors

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[38] *Id.* at Note 5.
[39] *Id.*, p. 51.
[40] *Id.* at Note 1, pp. 1-4.
[41] *Id.*, p. 5.
[42] *Id.* at Note 1.
[43] *Id.*, pp. 61-62.
[44] *Id.*, pp. 63-80.
[45] *Id.*, pp. 82-83.
[46] *Id.*, p. 84.
[47] *Id.*, pp. 86-87.

The CIR assigns the following errors to the Court in Division's assailed Decision and Resolution:

1. In granting a relief that was not prayed for by URC, thereby violating the CIR's right to fair play and due process; and

2. In ruling that the deficiency tax assessment is void for not containing a definite due date for payment.

The Arguments of the Parties

The CIR argues that since URC never questioned the validity of the FLD in its Petition for Review nor during the trial, the Court in Division erred in ruling upon an issue that was never raised. The CIR claims that he was denied procedural and substantive due process as he was neither heard nor given the opportunity to be heard on the issue.

The CIR also contends that the FLD has fixed and definitely set the deficiency tax liabilities of URC, including the basic tax deficiency as well as the surcharge and interest. However, as provided for in Section 249 of the NIRC, if URC still fails to pay the stated tax liability on or before the date up to where the interests were computed, the deficiency interest will have to be adjusted accordingly. As the CIR has no control over when URC will pay its deficiency tax assessment, the phrase "be adjusted if paid beyond the date specified therein" is merely a safeguard should URC pay beyond the period provided.

Finally, the CIR argues that the doctrine in the *Fitness by Design* case[48] needs to be revisited as the ruling in the *Menguito* case[49] was misapplied therein.

On the other hand, URC claims that the CIR's right to due process was not violated as it raised the issue on the validity of the FLD and the defects in the assessment notices in its pleadings and Formal Offer of Evidence (FOE) which became part of the Court's records. Moreover, the Court in Division has the authority to rule on the issue of the validity of the FLD and the assessment notices under the Revised Rules of the Court of Tax Appeals (RRCTA) and prevailing jurisprudence which allows the CTA to consider other related matters necessary to dispose the case on the merits.

URC likewise argues that the subject tax assessment is void because it lacks a definite amount payable and due date in violation of Section 228 of the NIRC. The doctrine in *Fitness by Design* was properly applied by the Court in Division

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[48] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.
[49] *Commissioner of Internal Revenue vs. Menguito*, 587 Phil. 234, 256 (2008).

based on the principle of *stare decisis.*

The Ruling of the Court

The CIR claims that his basic right to fair play and due process was violated when the Court in Division ruled on matters which were not raised as an issue in the pleadings or during trial, particularly, the issue on the lack of definite amount of tax liabilities and failure to state the due date of payment on the assessments.

On this score, the Court *En Banc* finds the CIR's claim untenable.

Pursuant to Section 1, Rule 14 of the RRCTA, the 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. The provision states:

> "**RULE 14**
> **JUDGMENT, ITS ENTRY AND EXECUTION**
>
> SECTION 1. *Rendition of judgment.* – x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but **may also rule upon related issues necessary to achieve an orderly disposition of the case**." *(Emphasis supplied)*

The above Section was reiterated by the Supreme Court in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,*[50] to wit:

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> SECTION 1. *Rendition of judgment.* -xxx

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

> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

From the foregoing, though the issues on the lack of definite amount of tax liabilities and due date on the subject tax assessment were not stipulated by the parties, these matters are related to the issue on the validity of the assessments issued against URC. As correctly observed by the Court in Division, the Court can delve on other issues or matters related to the *lis mota* of the case which will help in its complete resolution.

In *Salvador Comilang v. Francisco Burcena and Mariano Burcena*[51], the Supreme Court discussed the wide berth of the scope of review given to courts to arrive at a comprehensive resolution of litigated matters, thus:

> "**Once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law.** Indeed, the Rules of Court recognize the broad discretionary power of an appellate court to consider errors not assigned. **Section 8, Rule 51** of the 1997 Rules of Civil Procedure provides:

>> SEC. 8 *Questions that may be decided.* No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, **or closely related to or dependent on an assigned error and properly argued in the brief,** save as the court may pass upon plain errors and clerical errors.

>> Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a)

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[51] G.R. No. 146853, February 13, 2006.

> **grounds not assigned as errors but affecting jurisdiction over the subject matter;** (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which **is necessary in arriving at a just decision and complete resolution** of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are **matters of record having some bearing on the issue submitted** which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but **closely related to an error assigned;** and (f) matters not assigned as errors on appeal but **upon which the determination of a question properly assigned, is dependent."** *(Emphasis supplied)*

In the instant case, the issue on the absence of a definite amount and due date in the assessment notice is inextricably intertwined with the validity of the assessment itself. This becomes more important in view of the doctrine that a void assessment bears no valid fruit.[52] As such, the Court in Division was well within its authority to solve the said related matters.

Moreover, the case records show that, indeed, the validity of the FLD and the assessment notices were taken up during trial. As pointed out by URC in its Comment, in their JSFI[53] and as stated in the PTO[54], the parties agreed that one of the issued to be resolved by the Court in Division was "[w]hether or not [URC] is liable for deficiency IAET in the amount of ₱2,099,212,103.60, inclusive of increments."

In *Commissioner of Internal Revenue vs. Ale Mart Corporation,*[55] the Court *En Banc* held that when both parties agree in the JSFI that the issue to be resolved by the Court is whether or not the taxpayer is liable for the tax assessment, such stipulation is general enough to include the issue on the validity of the FLD and corresponding Assessment Notices.

Both parties also offered and identified the FLD and Assessment Notices in their respective FOEs as Exhibits "P-6"[56] and "R-11"[57]. These have been

[52] *Commissioner of Internol Revenue vs. Reyes,* G.R. Nos. 159694 and 163581, January 27, 2006.
[53] *Id.* at Note 23.
[54] *Id.* at Note 24.
[55] CTA EB Case No. 1983, July 29, 2020.
[56] Docket-Vol. IV, pp. 1899-1900.
[57] *Id.*, pp. 1901-1903.

repeatedly alluded to by the CIR in his Answer, Pre-Trial Brief and other pleadings, thereby negating the CIR's claim that his right to due process has been violated.

The CIR also contends that the *Fitness by Design* case should be revisited as it is not an interpretation of the law but a pronouncement in a previous decision in the case of *Commissioner of Revenue v. Dominador Menguito.*[58]

Article 8 of the New Civil Code which provides for the doctrine of *stare decisis et non quieta movere,*[59] states that judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

Under the said doctrine, when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same. It means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to re-litigate the same issue.[60]

It should likewise be noted that the ruling in the *Fitness by Design* case is consistent with pronouncements of the Supreme Court in the cases of *Menguito, Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et. al.*[61], and *Petronila C. Tupaz v. Honorable Benedicto B. Ulep.*[62] The said cases were based on the Supreme Court's interpretation of the functions and effects of a tax assessment in accordance with the NIRC which established the rule that a valid tax assessment must not only include a computation of tax liabilities but also a demand for payment within a period prescribed. To recapitulate, the doctrine was first laid down in the *Pascor* case wherein the Supreme Court held, to wit:

> "We agree with Petitioner. Neither the NIRC nor the regulations governing the protest of assessments provide a specific definition or form of an assessment. **However, the NIRC defines the specific functions and effects of an assessment**. xxx.

[58] G.R. 167560, December 17, 2008.
[59] "To stand by decisions and disturb not what is settled."
[60] *Chinese Young Men's Christian Association of the Philippine Islands, doing business under the name of Manila Downtown YMCA v. Remington Steel Corporation*, G. R. No. 159422, March 28, 2008; citing *Nancy L. Ty v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 144705, November 15, 2005.
[61] G.R. No. 128315, June 29, 1999.
[62] G.R. No. 127777, October 1, 1999.

x x x

> To start with, **an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period**. xxx." *(Emphases and underscoring supplied)*

This was consistently applied by the Supreme Court in the *Tupaz, Menguito,* and *Fitness by Design* cases under the doctrine of *stare decisis et non quieta movere.* Clearly, the *Fitness by Design* and *Menguito* cases are based on the rule laid down by the Supreme Court from its interpretation of the law.

The CIR asserts, however, that the FLD has fixed and definitely set the deficiency tax liabilities of URC, including the basic tax deficiency as well as the surcharge and interest. However, if URC still fails to pay its deficiency tax liabilities on or before the date up to where the interests were computed, the deficiency interest will have to be adjusted, especially since the CIR has no control over when URC will pay. Since the tax deficiency is already definite, subject to adjustment as the interest is running, the taxpayer is cognizant of the amount to be paid on its tax liabilities.

Quite recently, this Court in *Tektite Insurance Brokers, Inc. v. Commissioner of Internal Revenue,*[63] construed a note appended to the FAN that said, *"Please note that the interest and the total amount due will have to be adjusted* **if paid beyond July 16, 2014**", and discussed its distinction from the note in the *Fitness by Design* case, thus:

> "In the ***Fitness by Design Case,*** the BIR failed to provide an exact and definite deadline on when the tax liability is due for payment. Indeed, the note in the FAN made the tax liability indefinite and dependent on when the taxpayer would settle the assessment because of the phrase **'prior or beyond April 15, 2004'**. This is not the case herein.
>
> Here, the statement in the FAN did, in fact, mention a due date which is 18 July 2014. **The added phrase in the FAN did not make the same indefinite but merely served as a reminder to petitioner that the interest will increase if the tax liability will not be paid within the due date. In short, the statement only emphasized the eventual consequence of not paying the assessment within the due date."** *(Emphasis supplied)*

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[63] CTA EB No. 1923, June 8, 2021.

A close reading of the note involved in *Fitness by Design* and the note in *Tektite Insurance Brokers* shows that they are distinct from one another and, that the note in the latter case renders a difference in its import and meaning, rendering the doctrine in *Fitness by Design* inapplicable. In *Tektite Insurance Brokers,* the Court *en banc* considered the FAN/FLD as having stated a definite amount of tax liability for which the taxpayer was held accountable.

In the present case, however, as correctly observed by the Court in Division, a perusal of the FLD shows that it does not state a due date for the payment of the assessed taxes. Neither did the Court in Division find any due date in the corresponding undated Audit Result/Assessment Notice No. IAET-116-LOA-00000004-10-14-1306.[64] In fact, the space in the Assessment Notice where the due date is to be indicated *"remained unaccomplished"*.

Consequently, the failure of the CIR to state the due date for payment invalidates the assessment. In *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*[65], the Supreme Court reminds us of the consequences of an invalid assessment, thus:

> **"An invalid assessment bears no valid fruit. The law imposes a <u>substantive</u>, not merely a formal, requirement.** To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence."[66]

Accordingly, the Court *en banc* upholds the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The assailed Decision dated January 14, 2020 and the Resolution dated June 8, 2020 of the First Division in CTA Case No. 9530 are **AFFIRMED.**

SO ORDERED.

Ma. Belen RL

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[64] Exhibit "P-6", BIR Records (Exhibit "R-11"), at p. 489.
[65] G.R. No. 198677, November 26, 2014.
[66] *Id.*

WE CONCUR:

(I reiterate my Concurring Opinion on the assailed Decision)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(on leave)
LANEE S. CUI-DAVID
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice