REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

THE LANDMARK CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9317

Members:

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

Promulgated:

MAR 25 2024
2:00 p.m.

x---x

RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is respondent's **Motion for Reconsideration [re: Decision dated 14 September 2023]** filed through registered mail on October 13, 2023, and received by the Court on October 23, 2023, with petitioner's **Opposition (Re: Motion for Reconsideration dated 13 October 2023)** filed on January 29, 2024.

On September 14, 2023, the Court promulgated a Decision cancelling respondent's Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA) for being issued out of time in violation of petitioner's right to due process of law, the dispositive portion of which states:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. The FLD dated July 22, 2015, and the FDDA dated March 1, 2016, both issued against petitioner, for deficiency income, VAT, EWT, DST, and IAET, and deficiency interests and penalties, in the aggregate amount of ₱583,998,287.78, for taxable year 2011, are **CANCELLED and SET ASIDE**.
>
> **SO ORDERED.**"

In his Motion, respondent assails the above Decision and argues that the *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* ("waiver" hereafter for brevity) executed by petitioner is valid, hence, respondent's right to assess petitioner has not yet prescribed. Respondent expounds that since the waiver was executed by petitioner on July 10, 2014, a year prior to the issuance of the FLD on July 22, 2015, respondent has not yet determined with certainty the amount of deficiency tax or the tax types that are due from petitioner. Respondent continues that when the waiver was executed he is still in the process of conducting an investigation and evaluation of the documents submitted by petitioner. As such, absent a final assessment, respondent cannot give petitioner the exact amount of tax and tax types to be stated in the waiver. Respondent submits that when a waiver executed by the taxpayer pertains to the extension of the period to assess, the nature and the amount of tax due need not be specifically stated in the said waiver.

Moreover, respondent claims that assuming that the waiver should state the amount and type of tax, petitioner is estopped from assailing the validity of the waiver pursuant to the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.).*[1] Respondent asserts that petitioner's act of impugning the waiver after benefitting from them is considered in bad faith. Also, respondent avers that a simple perusal of petitioner's reply to the Preliminary Assessment Notice (PAN) and protest to the FLD would show that petitioner did not assail the validity of the waiver it voluntarily executed, and, in fact, only raised for the first time the issue on the validity of the waiver in its Petition for Review.

Respondent likewise argues that his right to due process was violated when the Court invalidated the deficiency tax assessments because the assessment notice did not indicate the due date for the payment of the assessed deficiency taxes. Respondent stresses that this issue was never raised by petitioner in its Petition for Review, in truth, petitioner only raised the issues on the validity of the waiver and the factual and legal bases of the deficiency tax assessments. Respondent insists that the issue of failure to state the due date for payment of tax was never joined by the pleadings nor raised by the parties during the pre-trial conference or were never defined by the Court in the pre-trial order. Respondent claims that had he was given the opportunity to be heard, he would have presented his evidence to prove why the due date for payment was not allegedly stated in the waiver.

Respondent further cites the case of *Commissioner of Internal Revenue v. Hon Raul M. Gonzalez, Secretary of Justice, LM Camus Engineering Corporation (represented by Luis M. Camus and Lino D. Mendoza),*[2] wherein he claims that in order for a final assessment notice to be valid, what is essential is that the taxpayer was informed in writing of the findings of respondent stating therein the facts and laws on which the assessments is based. Respondent asserts that in the FLD, the

[1] G.R. No. 212825, December 7, 2015.
[2] G.R. No. 177279, October 13, 2010.

petitioner was clearly informed of the law and the facts on which the assessment was made as it was able to make intelligent protests to the assessments.

On the other hand, in its Opposition, petitioner points out that respondent's Motion for Reconsideration should be denied outright for being *pro forma*.

Petitioner maintains that there was no valid waiver in the present case that extended the period of respondent's right to assess petitioner of deficiency taxes for the taxable year 2011. Guided by *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[3] *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*,[4] and *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[5] petitioner argues that this Court was correct in ruling that the subject waiver is invalid for failure to state the kind and amount of taxes to be assessed. Petitioner also asserts that the waiver was not executed by a responsible officer or duly authorized representative of petitioner.

Petitioner further assails the *Next Mobile* case that respondent invoked for not being applicable in the present case considering that it involves different factual circumstances. Petitioner explains that in the *Next Mobile* case, the defects of the waiver include the failure to indicate the dates of acceptance by Bureau of Internal Revenue (BIR) and that the Waiver was not executed with a duly notarized written authority from the board of directors. Petitioner contends that the more appropriate case is the Supreme Court's ruling in *Universal Weavers Corporation v. Commissioner of Internal Revenue*,[6] wherein it essentially ruled that there is no justification to deviate from the general rule considering that no special circumstances exist that would warrant the application of the exception.

Lastly, petitioner maintains that this Court may rule upon related issues necessary to achieve an orderly disposition of the case as held in the cases of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[7] and *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*.[8]

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

To reiterate, in the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*,[9] the Supreme Court held that a waiver must indicate the nature and amount of taxes to be assessed, to wit:

---

[3] G.R. No. 220835, July 26, 2017.
[4] G.R. No. 211289, January 14, 2019.
[5] G.R. No. 162852, December 16, 2004.
[6] G.R. No. 233990, May 12, 2021.
[7] G.R. No. 222476, May 5, 2021.
[8] G.R. No. 249153, September 12, 2022.
[9] G.R. No. 211289, January 14, 2019, citing *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, G.R. No. 220835, July 26, 2017.

"[T]he Court had ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and **must indicate the nature and amount of the tax due**, to wit:

> **These requirements are mandatory and must strictly be followed.** To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
>
> x x x
>
> The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*, because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; **(3) they did not specify the kind and amount of the tax due**; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.
>
> Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:
>
> x x x
>
> > 3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity. (Emphasis supplied)

In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 **Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity.** The issue on

> whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — **the assessments had prescribed as there was no valid waiver.**" *(Emphasis supplied)*

Applying the foregoing in the present case, since the subject waiver does not indicate the kind and exact amount of the taxes to be assessed, the same is considered invalid. To stress, these details are material as there can be no true and valid agreement between the taxpayer and respondent, absent these information. Also worth mentioning is that, in the above-cited case, the September 3, 2008, February 16, 2009 and December 2, 2009 waivers were all executed **prior** to the date of the FLD and FAN on December 17, 2009 just like in the present case.

With regard to respondent's claim of estoppel, the Court rules that the cited case of *Next Mobile*[10] does not squarely apply in the present case and instead, as correctly pointed out by petitioner, the case of *Universal Weavers Corporation v. Commissioner of Internal Revenue*[11] is more applicable in the current predicament, to wit:

> "The CIR invokes the oft-repeated principle that taxes are the lifeblood of the government and contends that the equitable principles of *in pari delicto*, unclean hands, and estoppel should be applied to sustain the validity of defective waivers, citing as a basis the Court's ruling in *Next Mobile*. In said case, the taxpayer, after **deliberately executing five waivers**, insisted on their invalidity due to the following defects: (1) the waivers were signed by an employee without any notarized written authority from the Board of Directors; (2) the dates of the acceptance by the Revenue District Officer were not indicated in the waivers; and (3) the fact of receipt by the taxpayer of its copy of the second waiver was not indicated on the face of the original second waiver. The Court therein reiterated the general rule that failure to comply with the requirements of RMO No. 20-90 and RDAO No. 05-01 renders the waiver invalid and ineffective. However, we also found sufficient reasons to uphold the validity of the defective waivers in *Next Mobile* **due to its peculiar circumstances**, *viz*.:
>
> > *First*, the parties in this case are **in pari delicto or 'in equal fault.'** *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of

---

[10] *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*, G.R. No. 212825, December 7, 2015.
[11] G.R. No. 233990, May 12, 2021.

one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

Second, the Court has repeatedly pronounced that **parties must come to court with clean hands**. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, [the taxpayer] should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, respondent is **estopped** from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. **Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it.** Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this **highly suspicious situation**. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

N

> It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO [05-01]. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith. (Emphases supplied; citations omitted)

In contrast with *Next Mobile*, only the first waiver in the present case was replete with defects attributable to both petitioner and the BIR. The first waiver was not properly executed on September 16, 2009 as it did not contain the agreed date within which the BIR may assess and collect taxes and the date of acceptance by the CIR. The first waiver could not have effectively extended the three-year prescriptive period to assess and collect taxes for the taxable year 2006. Even if we recognize the doctrine of estoppel and uphold the first waiver because the parties were *in pari delicto*, the second waiver did not toll the prescriptive period because of the failure to affix the date of acceptance of the second waiver — a mistake solely on the BIR's part. Similarly, the date of acceptance by the CIR was absent in the third waiver executed on October 18, 2010. Thus, even assuming that the first and second waivers were validly executed, the third waiver still resulted in the non-extension of the period to assess or collect taxes since its execution was contrary to the procedural guidelines in RMO No. 20-90 and RDAO No. 05-01.

Equally telling, there is **no justification for the application of the doctrine of estoppel as an exception to the statute of limitations on the assessment of taxes in light of the detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. There is nothing vague nor difficult to understand about the procedural guidelines. The CIR and the revenue officials knew fully well the drastic consequences of noncompliance with RMO No. 20-90 and RDAO No. 05-01, yet they utterly failed to faithfully follow these BIR issuances. Clearly, the BIR is not entitled to the mantle of protection accorded by the doctrine of estoppel. Having caused the defects in the waivers, the BIR must bear the consequence of its own negligence.**

Given that *Next Mobile* is of a different factual milieu, the equitable principles of *in pari delicto*, unclean hands, and estoppel cannot be properly applied to herein case. In all, having established that petitioner's defective waivers of the statute of limitations did not suspend the three-year prescriptive period to

> issue an assessment, we hold that the right of the government to assess or collect the alleged deficiency taxes in this case is already barred by prescription." *(Emphases supplied)*

From the foregoing, it should be noted that the validity of the defective waivers in *Next Mobile* case was upheld due to its *peculiar circumstances*, which is not present herein. Evidently, the doctrine of estoppel cannot be applied in the present case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. The BIR is not entitled to the mantle of protection accorded by the doctrine of estoppel. Again, having caused the defect in the waiver, *i.e.*, failure to indicate the kind and amount of taxes assessed, the BIR must bear the consequence of its own negligence.

As to respondent's claim that his right to due process was violated as the issue on the invalidity of the deficiency tax assessments for failure to indicate the due date for the payment of the assessed deficiency taxes was never raised in issue in the Petition for Review or in the Pre-Trial Order, the Court holds otherwise.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,*[12] the Supreme Court recognized that this Court can rule on an issue not raised by the parties, *viz*:

> "**On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> **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**
> >
> > **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 authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA <u>even though the parties had not raised the same in their</u>**

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

> **<u>pleadings or memoranda</u>.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphases and underscoring supplied)*

Moreover, in the case of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[13] the Supreme Court applied the aforequoted Section 1, Rule 14 of the RRCTA, as follows:

> "As the CTA *En Banc* held, **the CTA Division was justified in ruling on the issue that respondent was denied due process <u>even though it was not expressly raised by respondent in its petition for review</u>. Sec. 1, Rule 14 of the RRCTA provides that '[i]n 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**.' Herein, the issue of the validity of the assessment against respondent also necessarily requires the determination of the matter of the proper issuance of said assessment in accordance with the requirements of due process. In addition, there were sufficient allegations in respondent's petition for review on the dates of issuance by the BIR and receipt by respondent of the PAN and FLD/FAN, as well as documentary and testimonial evidence to establish the essential facts for resolution of the issue which were presented during the trial without any objection from petitioner. This could be deemed as petitioner's implied consent to try the issue, recognized under Sec. 5, Rule 10 of the Revised Rules of Court, which applies suppletorily to the RRCTA." *(Emphasis and underscoring supplied)*

In the same vein, the Supreme Court even recognized in *Prime Steel Mill Incorporated v. Commissioner of Internal Revenue*,[14] that the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, provided that (1) these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and (2) the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case, to wit:

> "At the outset, the Court shall delve into the propriety of the CTA *En Banc*'s action of entertaining petitioner's additional arguments, including the alleged violation of its right to due process when the BIR prematurely issued the FAN and FLD in this case, which were raised for the very first time on appeal, and only in its Supplemental Memorandum.

---

[13] G.R. No. 222476, May 5, 2021.
[14] G.R. No. 249153, September 12, 2022.

As correctly held by the CTA *En Banc*, **in deciding a case, the tax 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.'** However, **this authority of passing upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues submitted during the pre-trial stage is not unbridled.** As the CTA *En Banc* itself recognized, **such issues 'should be dealt with, based not only on substantive law but in light of the relevant rules of evidence.'**

Certainly, the thrust of proscribing a change of argument on appeal rests on upholding the basic tenets of equity and fair play. 'When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.'

This principle is also laid down in the Rules of Court which applies suppletorily to the Revised Rules of the CTA, *viz*:

> Section 15. Questions that may be raised on appeal. — Whether or not the appellant has filed a motion for new trial in the court below he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

Hence, in other civil cases, this Court has allowed derogation from this principle only in exceptional cases and only if the factual bases of the new theory would not require presentation of further evidence:

> In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.

For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.* that '[t]he appellate court may, in the interest of justice, properly take into consideration in deciding the case **matters of record** having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.'

Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that **the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.**

From the foregoing, the Court so holds that **the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: *one*, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and *two*, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.**

It bears stressing that the aforementioned parameters were employed by the CTA *En Banc* when it deigned to pass upon the issue on respondent's supposed lack of authority to conduct the audit investigation in this case. This Court quotes with approbation the following disquisition of the CTA *En Banc* in the assailed *Resolution*:

> It is not the failure of the party to raise the issue during the trial stage that renders it futile to raise it on appeal but the lack of opportunity of the other party to rebut or present evidence to contravene the same during the trial of the case that makes it objectionable for a court to rule on this issue at this stage of appeal. The allegation of the lack of an LOA or invalidity thereof conjures up secondary issues and factual matters that need to be adjudicated upon based on evidence or lack thereof. x x x
>
> This is the reason why we cannot entertain such issue at this stage, especially so when it was raised for the first time in [petitioner's] Supplemental Memorandum at the *En Banc* level. x x x

Conversely, the same procedural hindrance does not exist in resolving the issue on the violation of petitioner's right to due process.

First. The issue on the violation of petitioner's right to due process is inextricably linked to the validity of the assessment. It is

> primal that the BIR's right to collect deficiency taxes must flow from a valid assessment. This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit. Moreover, a resolution on the apparent violation of petitioner's right to due process is indispensable for an orderly and comprehensive disposition of this case.
>
> Second. Unlike the issue on the invalidity or non-existence of the LOA, the non-observance of the 15-day period to reply to PAN may be resolved by an examination of the evidence on record without requiring the presentation of additional proof. Thus, the CTA En Banc correctly took cognizance of this new issue."

In this case, the issue on invalidity of the assessment is intricately related to the principal issue to be resolved by this Court, *i.e.* whether or not petitioner is liable for deficiency taxes for taxable year 2011, and is necessary to achieve an orderly and comprehensive disposition of the case. Moreover, the said issue may be resolved by an examination of the evidence on record and would not require the presentation of additional evidence. Hence, the Court may resolve the issue on invalidity of the assessment even if the same was not raised in the Petition for Review and Pre-Trial conference.

Lastly, as to respondent's claim that what is essential is that the taxpayer was informed in writing of the findings, stating therein the facts and laws on which the assessments is based in order for a final assessment notice to be valid, the Court does not agree. Perforce, the Court's ruling that the subject tax assessments are void since they lack *"a due tax liability that is definitely set and fixed"* is supported by the ruling made by the Supreme Court in the case *Commissioner of Internal Revenue v. Fitness By Design, Inc.*,[15] to wit:

> "**The disputed Final Assessment Notice is not a valid assessment.**
>
> **First, <u>it lacks the definite amount of tax liability for which respondent is accountable</u>. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a '<u>written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the</u> <u>settlement of a due tax liability that is there definitely set and fixed</u>.' <u>Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment</u>.** Thus:

[15] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the <u>interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004</u>.*** (Emphasis Supplied)
>
> x x x
>
> 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. <u>The notice, therefore, did not contain a definite and actual demand to pay</u>.**" *(Emphases and underscoring supplied)*

Hence, similar to the *Fitness By Design* case, although the FLD and FDDA herein provide for a computation of petitioner's supposed tax liabilities, the respective amounts thereof remain indefinite, since the said tax assessments are still subject to modification or adjustment, depending on the date of payment by petitioner. Verily, the FLD and FDDA failed to indicate a fixed and definite amount of tax liability to be paid, rendering it legally infirm and without any legal consequence.

It must be emphasized that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[16]

Accordingly, since the Supreme Court in the *Fitness by Design* case has already declared that an assessment must not only include a computation of tax liabilities, but also a demand for the settlement of a due tax liability that is definitely set and fixed within a period prescribed, this Court has no other course but to follow the pronouncements enunciated therein.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on September 14, 2023.

---

[16] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July, 15, 2003.

WHEREFORE, premises considered, respondent's Motion for Reconsideration [re: Decision dated 14 September 2023] is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice