REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

FABTECH KITCHENS UNLIMITED, INC.,
Respondent.

CTA *EB* NO. 2582
(CTA Case No. 9589)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JUL 03 2024 2:05 pm

x- -x

RESOLUTION

CUI-DAVID, J.:

For resolution of the Court *En Banc* is petitioner's ***Motion for Reconsideration (Re: Decision dated December 29, 2023)*** filed on January 19, 2024, with respondent's *Comment (to Petitioner's Motion for Reconsideration dated 19 January 2024)* filed on March 19, 2024.

Petitioner's *Motion for Reconsideration* (*Motion*) assails the *Decision* promulgated by the Court on December 29, 2023, with the following dispositive portion:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed *Decision* dated June 23, 2021, and *Resolution*

INV

dated February 22, 2022, in CTA Case No. 9589 are **AFFIRMED**.

SO ORDERED.

Similar to his *Petition for Review,* petitioner argues in his *Motion* that the Court in Division erred in ruling that he did not comply with due process requirements. According to him, he may serve the FAN/FLD to the registered address or the known address of respondent, and, considering that Revenue Regulations (**RR**) No. 18-2013[1] is couched in the alternative, service to the registered address complies with the said regulations. Petitioner adds that even if Revenue Officer Paula Maria Bea (**RO Bea**) knows respondent's known address, such knowledge "does not cure the fact that respondent failed to update its change of address to the Bureau."

Petitioner also argues that "nothing in the law which provides that the due date for payment is a substantive requirement for the validity of a final assessment notice."

In its *Comment*, respondent reiterates that the PAN and FAN/FLD were improperly served. *First*, RO Bea personally served the LOA to respondent's address at Magallanes Village, Makati City. *Second*, RO Bea examined respondent's records at its address at Magallanes Village, Makati City. Thus, the FAN/FLD should have been sent by respondent to the said address, considering that RO Bea had personal knowledge of respondent's new address.

We resolve.

After considering the arguments of both parties, We are constrained to deny petitioner's *Motion.*

Petitioner insists that service to the registered address is sufficient compliance with due process requirements, notwithstanding the fact that there is a "known address" where respondent is actually present.

This argument does not convince.

---

[1] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

As stated in the assailed *Decision*, the evident intention RR No. 12-1999,[2] as amended by RR No. 18-2013,[3] is for the taxpayer to be able to actually receive the assessment notices, which is an integral and indispensable part of procedural due process. True enough, it will be absurd to insist on sending the assessment notice to an empty and abandoned registered address when an actual address different from what is registered, where the taxpayer is present, is already known to respondent.

We quote the assailed *Decision*:

> In the instant case, it is undisputed that respondent's registered address with the BIR, which has already been vacated or abandoned, is No. 1229 Quezon Avenue, Sta. Cruz, Quezon City, and its new business address, where it holds office, is in Magallanes Village, Makati City.
>
> While the LOA issued in this case was *personally served* by RO Bea to respondent at its new address in Makati City, and RO Bea personally conducted the examination of respondent's records at the same address in Makati City, the PAN, FLD, and Assessment Notices subsequently issued were still served by *registered mail* at its old address in Quezon City. As expected, the notices were not received by respondent.
>
> As found by the Court in Division in the assailed *Decision*, at the start of petitioner's audit investigation on respondent, the assigned ROs were already aware that petitioner could not be located at its registered address in Quezon City. Still, the assessment notices were sent to said registered address, as testified by RO Bea, *viz.*:
>
> ...
>
> Moreover, the unrefuted documentary evidence that respondent presented and offered in evidence before the Court in Division, bearing its business address in Makati City, undeniably shows petitioner's prior knowledge of respondent's new address in Makati City.
>
> Given the foregoing, respondent's Makati City address, where the LOA was served and the audit examination of respondent conducted, is, indeed, its "known address."

[2] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes. Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty. 6 September 1999.
[3] *Supra* at note 1.

> Under Section 3.1.6 of RR No. 12-1999,[4] as amended by RR No. 18-2013 above, [5] the assessment notices must be served to the party by *personal service* at the registered or known address or ***wherever he may be found***. In case personal service is not practicable, the notice shall be served by *substituted service* or by *mail.*
>
> Considering that respondent could not be found at its registered address in Quezon City since it had already transferred to its "known address" in Makati City, petitioner should have served the assessment notices to respondent's "known address" in Makati City, not elsewhere.

In *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*,[6] the Supreme Court ruled that to enable the taxpayer to determine his remedies, due process requires that the assessment be served on and received by the taxpayer.

Indeed, petitioner cannot insist on serving the assessment to a registered address where respondent is absent, especially when he is aware of another address where respondent is present and able to receive the assessment. The fact that RR No. 18-2013 is phrased in the alternative does not give petitioner free rein to choose the address where the assessment notices will be sent.

Finally, We find no merit in petitioner's argument that the requirement to indicate a due date is not in the regulations. Our discussion in the assailed *Decision* is apropos, to wit:

> The issuance of a valid formal assessment is a substantive prerequisite for the collection of taxes. An assessment not only includes a computation of tax liabilities; it also includes a demand for payment within a prescribed period.
>
> In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation et al.*, the Supreme Court held:
>
>> **<u>An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period</u>**. It also signals the time when penalties and interests begin to accrue against the

[4] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty. 6 September 1999.
[5] *Supra* at note 2.
[6] G.R. No. 155541, January 27, 2004, citing *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, 368 Phil. 714 (1999).

> taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.

Further, the Supreme Court, in *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (*Fitness by Design* case), is unambiguous:

> **A final assessment notice provides for the amount of tax due with a demand for payment.** ...
>
> ...
>
> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**
>
> ...
>
> **A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof."** This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."
>
> **The disputed Final Assessment Notice is not a valid assessment.**
>
> ...
>
> First, **it lacks the definite amount of tax liability** for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the

> settlement of a due tax liability that is there definitely set and fixed." **Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.** Thus:
>
>> 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 interest and the total amount due will have to be adjusted if <u>prior</u> or <u>beyond</u>*** *April 15, 2004.*
>
> 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.

Following the *Fitness by Design* case, which the Court in Division cited in the assailed *Decision*, the Supreme Court has consistently nullified an assessment that does not contain a definite due date, such as in *Republic v. First Gas Power Corp.* and *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*

Reference to the due date in an assessment is found in Section 249(C) of the NIRC of 1997, as amended. We quote:

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

> Accordingly, **indicating the <u>due date</u> in an assessment is directly related to the requirement of showing the definite amount that is assessed**. The delinquency interest may not be properly computed if a due date does not appear in the FLD/FAN, as in this case. It bears stressing that an assessment, in the context of the NIRC, is a "written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed."
>
> Failing to indicate the due date negates petitioner's demand for payment. In the instant case, the spaces for the due date in the FAN were left blank. Thus, We rule that the assessments subject of this case are void for failure to indicate the due date for payment. [*Emphasis and underscoring supplied; citations omitted.*]

Accordingly, We see no compelling reason to depart from Our ruling in the assailed *Decision.*

WHEREFORE, in light of the foregoing, petitioner's *Motion for Reconsideration (Re: Decision dated December 29, 2023)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Official Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

x---x

CATHERINE T. MANAHAN
Associate Justice

ON OFFICIAL BUSINESS
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice