REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

UNIVERSAL ROBINA CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9530

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 14 2020 1:57pm

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DECISION

MANAHAN, *J.:*

The instant *Petition for Review* filed by petitioner Universal Robina Corporation (URC) against respondent Commissioner of Internal Revenue prays that judgment be rendered:

> a. Declaring the assessment for improperly accumulated earnings tax (IAET) in the total amount of ₱2,099,212,103.60 null and void, and therefore cannot give rise to any valid tax liability on the part of petitioner;
>
> b. Cancelling the assessment for IAET in the total amount of ₱2,099,212,103.60; and
>
> c. Declaring Revenue Memorandum Circular (RMC) No. 35-11 null and void (i) for not having been published in a newspaper of general circulation; and (ii) insofar as it excludes any excess capital over and above par from paid-up capital for purposes of imposing the IAET.[1]

[1] Docket, CTA Case No. 9530, Vol. 3, Summary of the Case, Pre-Trial Order, p. 1221.

THE PARTIES

Petitioner URC is a corporation duly registered and existing under the Philippine laws.[2] It is also a registered taxpayer with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 000-400-016-000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) with office address at BIR Building, Diliman, Quezon City.[4]

THE FACTS

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

Thereafter, on November 25, 2014, petitioner received from respondent a copy of the *Preliminary Assessment Notice* (PAN) finding it liable for deficiency income tax (IT), 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.[6] Petitioner protested the said PAN on December 10, 2014.[7]

On December 12, 2014, petitioner received a copy of the *Formal Letter of Demand* (FLD) which merely reiterated the findings and deficiency assessments in the PAN, and assessed petitioner 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.[8]

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[2] Docket, Vol. 3, Exhibit "P-1", pp. 1284 to 1297.
[3] *Id.*, Vol. 3, Exhibit "P-2", p. 1298.
[4] *Id.*, Vol. 2, Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 726.
[5] *Id.*, Vol. 2, Par. 2, Summary of Admitted Facts, JSFI, p. 726.
[6] *Id.*, Vol. 2, Par. 3, Summary of Admitted Facts, JSFI, p. 726; Exhibit "P-4", BIR Records, Folder 1, pp. 423 to 427.
[7] *Id.*, Vol. 3, Exhibit "P-5", pp. 1322 to 1348.
[8] *Id.*, Vol. 2, Par. 4, Summary of Admitted Facts, JSFI, p. 727.

Petitioner likewise disputed the said assessment on January 9, 2015.[9]

Subsequently, on June 28, 2016, petitioner 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 petitioner's protest on the FLD, thus, reducing the amount of the deficiency tax assessment to ₱11,448,895,398.57, inclusive of increments.[10] Petitioner subsequently filed a *Request for Reconsideration* of the said FDDA before Commissioner Cesar R. Dulay on July 28, 2016.[11]

On December 29, 2016, petitioner received a copy of the Amended FDDA dated June 30, 2016 signed by respondent, 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,[12] inclusive of increments, broken down as follows:[13]

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**

Petitioner filed the instant *Petition for Review* on January 30, 2017.[14] The instant case was initially raffled to this Court's Third Division.

In the *Answer* filed on April 11, 2017,[15] respondent interposed the following:

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[9] Docket, Vol. 3, Exhibit "P-7", pp. 1369 to 1398.
[10] *Id.*, Vol. 2, Par. 5, Summary of Admitted Facts, JSFI, p. 727; Exhibit "P-8", BIR Records, Folder 2, pp. 1112 to 1114. Based on the FDDA, the amount should be ₱11,448,592,398.30.
[11] *Id.*, Vol. 3, Exhibit "P-9", pp. 1418 to 1436.
[12] Based on the Amended FDDA, it should be ₱2,482,707,836.73.
[13] Docket, Vol. 2, Par. 6, Summary of Admitted Facts, JSFI, p. 727; Vol. 3, Exhibit "P-10", pp. 1437 to 1440.
[14] *Id.*, Vol. 1, pp. 10 to 27.
[15] *Id.*, Vol. 1, pp. 179 to 189.

"3. Except as to existence of the cited provisions of law and jurisprudence which respondent **ADMITS**, he **DENIES** all the allegations in paragraphs 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 45.1, 45.2, 46, 47, 48 and 49 under the caption 'DISCUSSION', of the petition, for being false, the truth of the matter being that petitioner is liable for deficiency improperly accumulated earnings tax (IAET) in the amount of ₱2,099,212,108.60, as discussed hereunder:

3.1 As mandated under Section 29 of the NIRC of 1997, as amended, it was ascertained that petitioner posted an excess over outstanding paid-up capital stock or improperly accumulated taxable income amounting to P15,160,950,265.00 subject to IAET at 10% pursuant to Sec. 29 of the NIRC of 1997, as amended. Petitioner was unable to present pertinent records including that which would establish it is a publicly-held corporation.

3.2 Section 29 of the NIRC of 1997, as amended, provides that:

'SEC. 29. Imposition of Improperly Accumulated Earnings Tax. –

(A) In General. – In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.

(B) Tax on Corporations Subject to Improperly Accumulated Earnings Tax. –

(1) In General. – The improperly accumulated earnings tax imposed in the preceding Section shall apply to <u>every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders</u> or the shareholders of any other corporation, <u>by permitting earnings and profits to accumulate instead of being divided or distributed.</u>

xxx xxx

(C) Evidence of Purpose to Avoid Income Tax. –

(1) Prima Facie Evidence. – the fact that any corporation is a mere holding company or investment company shall be a prima facie evidence of a purpose to avoid the tax upon its shareholders or members.

(2) Evidence Determinative of Purpose. – The fact that the earnings or profits of a corporations are permitted to accumulate beyond the reasonable needs of the business shall be <u>determinative of the purpose to avoid the tax upon its shareholders or members</u> unless the corporation, by the clear preponderance of evidence, shall prove to the contrary.

xxx xxx

(E) Reasonable Needs of the Business. – For purposes of this Section, the term 'reasonable needs of the business' includes the reasonably anticipated needs of the business.'

3.3 On the other hand, Revenue Regulations No. 2-2001 (RR 2-2001) which implements the provision on IAET under Section 29 of the Tax Code provides:

'SEC. 3. Determination of Reasonable Needs of the Business. – An accumulation of earnings or profits (including undistributed earnings or profits of prior years) is unreasonable if it is not necessary for the purpose of the business, considering all the circumstances of the case. To determine the 'reasonable needs' of the business in order to justify an accumulation of earnings, these Regulations hereby *adhere* to the so-called 'Immediacy Test' under American jurisprudence as adopted in this jurisdiction. Accordingly, the term 'reasonable needs of the business' are hereby construed to mean the immediate needs of the business, including reasonably anticipated needs. In either case, the corporation should be able to prove an immediate need for the accumulation of the earnings and profits, or the direct correlation of anticipated needs to such accumulation of profits. Otherwise, such accumulation would be deemed to be not for the reasonable needs of the business, and the penalty tax would apply. For purposes of these Regulations, the following constitute accumulation of earnings for the reasonable needs of the business:

a. Allowance for the increase in the accumulation of earnings up to 100% of the paid-up capital of the corporation as of Balance Sheet date, inclusive of accumulations taken from other years; xxx xxx'

3.4 In addition, Section 4 of RR 2-2001 provides that:

'SEC. 4. Coverage. The 10% Improperly Accumulated Earnings Tax (IAET) is imposed on improperly accumulated taxable income earned starting January 1, 1998 by domestic corporations as defined under the Tax code and which are classified as closely-held corporations. Provided, however, that Improperly Accumulated Earnings Tax shall not apply to the following corporations:

a. Banks and other non-bank financial intermediaries;

b. Insurance companies;

c. Publicly-held corporations;

d. Taxable partnerships;

e. General professional partnerships;

f. Non-taxable joint ventures; and

g. Enterprises duly registered with the Philippine Economic Zone Authority (PEZA) under R.A. 7916, and enterprises registered pursuant to the Bases Conversion and Development Act of 1992 under R.A. 7227, as well as other enterprises duly registered under special economic zones declared by law which enjoy payment of special tax rate on their registered operations or activities in lieu of other taxes, national or local.

For purposes of these Regulations, **closely-held corporations** are those corporations at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals. Domestic corporations not falling under the aforesaid definition are, therefore, publicly held corporation.

For purposes of determining whether the corporation is closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:

1. **Stock Not Owned by Individuals.** – Stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries.

2. Family and Partnership Ownership. – An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family, or by or for his partner. For purposes of this paragraph, the 'family of an individual' includes his brothers or sisters (whether by whole or half-blood), spouse, ancestors and lineal descendants.

3. Option to Acquire Stocks. – If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option and each one of a series of option shall be considered as an option to acquire such stock.

4. Constructive Ownership as Actual Ownership. – Stock constructively owned by reason of the application of paragraph (1) or (3) hereof shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by the individual by reason of the application of paragraph (2) hereof shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

xxx xxxx'

3.5 The ownership of a domestic 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.

3.6 Clearly, under Section 229 of the NIRC of 1997, as amended, the same is subject to IAET.

3.7 As to petitioner's argument that additional paid in capital is part of paid-up capital as the basis for computation of accumulated earnings, the same lacks merit.

3.8 Revenue Memorandum Circular No. 35-2011 is clear, paid-up capital is the amount contributed to the corporation representing the par value of the shares of stock. Hence, any excess capital over and above par shall be excluded.

3.9 Thus, there is no question that for petitioner's excess retained earnings over the 100% par value of its shares of stocks, deficiency IAET should be assessed.

3.10 In the case at hand, it is undisputed that petitioner posted an excess over outstanding paid up capital stock or improperly accumulated taxable income amounting to ₱8,411,858,899.00.

3.11 As here, petitioner failed to present pertinent records including that which will establish that it was indeed a publicly-held corporation.

3.12 It was held in *NARRA NICKEL MINING AND DEVELOPMENT CORP., TESORO MINING AND DEVELOPMENT, INC. and Mc ARTHUR MINING, INC., vs. REDMONT CONSOLIDATED MINES CORP., G.R. No. 195580, January 28, 2015*:

> 'As further defined by Dean Cesar Villanueva, the Grandfather Rule is "the method by which the percentage of Filipino equity in a corporation engaged in nationalized and/or partly nationalized areas of activities, provided for under the Constitution and other nationalization laws, is computed, in cases where corporate shareholders are present, by attributing the nationality of the second or even subsequent tier of ownership to determine the nationality of the corporate shareholder." Thus, to arrive at the actual Filipino ownership and control in a corporation, both the direct and indirect shareholdings in the corporation are determined.

> This concept of stock attribution inherent in the Grandfather Rule to determine the ultimate ownership in a corporation is observed by the Bureau of Internal Revenue (BIR) in applying Section 127(B) of the National Internal Revenue Code on taxes imposed on closely held corporations, in relation to Section 96 of the Corporation code on close corporations.'

3.13 Petitioner's argument, that it is a publicly held corporation, thus it is not subject to IAET. The same are mere averments without proof.

3.14 As regards the alleged non-publication of Revenue Memorandum Circular No. 35-2011.

3.15 Respondent submits that Revenue Memorandum Circular No. 35-2011 merely clarified certain issues relative to the imposition of the 10% Improperly Accumulated Earnings Tax (IAET) pursuant to Section 29 of the NIRC of 1997, as amended. Hence, publication is dispensable.

3.16 Further, RMC is a mere circular addressed to all revenue officers. The same serves as a guidance to all revenue officers in the performance of their duties.

3.17 Even without the said RMC, Section 29 of the NIRC of 1997, as amended implemented by Revenue Regulation No. 2-2001 is clear and unambiguous. A straightforward application of Section 29 will produce the same result. That petitioner is liable for improperly accumulated earnings tax.

3.18 The Honorable Court does not have jurisdiction to declare RMC 35-2011 as null and void.

3.19 In accordance with Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, the Commissioner of Internal Revenue has two powers; quasi-legislative and quasi-judicial. The first is the power to interpret tax laws and second, to decide tax cases. Section 4 of the NIRC of 1997 provides:

> **Sec. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.**
>
> - The power to interpret the provision of this code and other tax laws shall under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> - The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or

> other matters arising under this code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

3.20 When the Commissioner of Internal Revenue interprets provisions of the NIRC and other laws, she is doing so in the exercise of her quasi legislative function. Quasi-legislative or rule-making power is the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of power. Thus, when the Commissioner issues rulings, circulars or memoranda, he is performing a quasi-legislative function. Interpretation of tax laws rendered by the Commissioner is subject to review by the Secretary of Finance. Thus, the first paragraph of Section 4 of the NIRC deals with quasi-legislative functions.

3.21 In view of the foregoing, RMC was issued in the exercise of the quasi-legislative function of the Commissioner of the Bureau of Internal Revenue. Thus, the remedy of petitioner is to appeal such circular to the Secretary of Finance. An adverse decision of the Secretary of Finance is appealable to the Office of the President and ultimately to the regular courts. This is in consonance with the doctrine of exhaustion of administrative remedies and existing jurisprudence.

3.22 Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

3.23 Jurisdiction of the court is determined by the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.

3.24 It is respondent's submission that the Court of Tax Appeals is without jurisdiction to declare the RMC as null and void. Such duty belongs to the Court of general jurisdiction.

3.25 This brings forth the authority of courts of general jurisdiction to declare administrative issuances as void. This is part of the general power conferred by the Constitution on regular courts and not on courts of special jurisdiction.

> 'Where what is assailed is the validity or constitutionality of a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. Incipiently, the instant petition should have been filed with the regional trial court.'

3.26 This case does not involve any judgment, order, or resolution of the respondent rather, what is questioned here are circulars issued in the exercise of quasi-legislative functions.'

3.27 This same rationale was further stressed by this Honorable Supreme Court stating:

> 'However, where what is assailed is the validity or constitutionality of a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess or jurisdiction on the part of any branch or instrumentality of the Government.'

3.28 On a final note, the Decision of the Honorable Supreme Court in the case of *Commissioner of Internal*

Revenue vs. Bank of Philippine Islands can be well use as a guide, to wit:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. **In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.**' (Emphasis ours)"

The pre-trial conference was set and held on July 11, 2017.[16]

After the Court ordered respondent to transmit the entire BIR Records of the case,[17] respondent filed a *Motion to Defer Transmittal of BIR Records.*[18] Consequently, the Court granted the same on May 29, 2017.[19]

Respondent's Pre-Trial Brief was filed on June 30, 2017,[20] while petitioner's *Pre-Trial Brief* was submitted on July 7, 2017.[21]

On July 14, 2017, respondent transmitted the BIR Records for the instant case.[22]

The parties submitted their *Joint Stipulation of Facts and Issues* on July 31, 2017.[23] Consequently, the Court issued the Pre-Trial Order on August 22, 2017,[24] and terminated the Pre-Trial Conference.

The proceedings continued to trial.

During trial, petitioner presented its documentary and testimonial evidence. As regards testimonial evidence,

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[16] Docket, Vol. 1, Notice of Pre-Trial Conference dated April 17, 2017, pp. 191 to 192; Vol. 1, Minutes of the hearing held on, and Order dated, July 11, 2017, pp. 224 to 226.
[17] *Id.*, Vol. 1, Resolution dated May 11, 2017, p. 195.
[18] *Id.*, Vol. 1, pp. 196 to 198.
[19] *Id.*, Vol. 1, Resolution dated May 29, 2017, p. 201.
[20] *Id.*, Vol. 1, pp. 202 to 204.
[21] *Id.*, Vol. 1, pp. 214 to 221.
[22] *Id.*, Vol. 1, *Compliance* dated July 13, 2014, pp. 231 to 232.
[23] *Id.*, Vol. 2, pp. 726 to 732.
[24] *Id.*, Vol. 3, pp. 1221 to 1230.

petitioner proffered the testimonies of Ms. Alma Joy M. Agati,[25] petitioner's Assistant Vice President – Controller; Mr. Nicasio Lim,[26] Administrative Manager of Gokongwei Brothers Foundation, Inc.; and Atty. Rosalinda F. Rivera,[27] petitioner's Corporate Secretary.

After the filing of *Formal Offer of Evidence for Petitioner Universal Robina Corporation* on July 19, 2018,[28] the Court admitted petitioner's exhibits.[29]

For his part, respondent likewise presented his testimonial and documentary evidence. Respondent's lone witness is Mr. Aurelio Zamora,[30] Revenue Officer III, assigned at the Regular Large Taxpayers Audit Division I of the BIR.

On September 18, 2018, respondent formally offered in open court his exhibits, which the Court admitted, there being no objection interposed by petitioner.[31]

Pursuant to the Order dated October 1, 2018, this case was transferred to the First Division.[32]

Thereafter, the *Memorandum for the Petitioner* was filed on October 18, 2018.[33] On the same date, respondent filed a Motion for Extension of *Time to File Memorandum,*[34] which the Court granted in the Order dated October 22, 2018.[35] Respondent submitted a *Motion to Admit Attached Memorandum* on January 10, 2019,[36] thereby attaching his *Memorandum.*[37]

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[25] Docket, Vol. 4, Exhibit "P-30", pp. 1854 to 1868; Vol. 3, Minutes of the hearing held on, and Order dated, October 9, 2017, pp. 1248 to 1249.
[26] *Id.*, Vol. 1, Exhibit "P-32", pp. 237 to 243; Vol. 3, Minutes of the hearing held on, and Order dated, January 22, 2018, pp. 1254 to 1255.
[27] *Id.*, Vol. 2, Exhibit "P-31", pp. 531 to 551; Vol. 3, Minutes of the hearing held on, and Order dated, June 19, 2018, pp. 1258 to 1259.
[28] *Id.*, Vol. 3, pp. 1268 to 1283.
[29] *Id.*, Vol. 4, Resolution dated August 22, 2018, pp. 1899 to 1900.
[30] *Id.*, Vol. 1, Exhibit "R-2", pp. 210 to 213; Vol. 4, Minutes of the hearing held on, and Order dated September 18, 2018, pp. 1901 to 1903.
[31] *Id.*, Vol. 4, Minutes of the hearing held on, and Order dated September 18, 2018, pp. 1901 to 1903.
[32] *Id.*, Vol. 4, p. 1904.
[33] *Id.*, Vol. 4, pp. 1906 to 1938.
[34] *Id.*, Vol. 4, pp. 1936 to 1928.
[35] *Id.*, Vol. 4, p. 1940.
[36] Docket, Vol. 4, pp. 1943 to 1946.
[37] *Id.*, Vol. 4, pp. 1948 to 1960.

In the Resolution dated January 28, 2019,[38] the Court granted the *Motion to Admit* of respondent, and thus, his *Memorandum* was admitted. In the same Resolution, the Court submitted the instant case for decision.[39]

ISSUE

The parties set forth the following issues for the Court's resolution, to wit: [40]

> "1. Whether or not Petitioner is liable for deficiency IAET in the amount of ₱2,099,212,103.60, inclusive of increments
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> 1.1. Whether or not petitioner has improperly accumulated earnings on which the IAET can be imposed;
>
> 1.2. Whether or not petitioner's additional paid-in capital should be considered part of its paid-up capital;
>
> 1.3. Whether or not petitioner is a publicly-held corporation that is not subject to IAET; and
>
> 1.4. Whether or not the Honorable Court has jurisdiction to review Revenue Memorandum Circular No. 35-2011."

Petitioner's Arguments[41]

Petitioner contends that it did not have any improperly accumulated earnings subject to IAET for the fiscal year ended September 30, 2010; that the additional paid-in capital is not earnings or profits, but part of the paid-up capital of petitioner for purposes of computing the IAET; that RMC No. 35-2011 is not applicable to this case.

Moreover, petitioner avers that it is a publicly-held corporation which is exempt from the IAET; that its shares

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[38] *Id.*, Vol. 4, pp. 1962 to 1963.
[39] *Id.*
[40] *Id.*, Vol. 3, Stipulation of Issues, Pre-Trial Order dated August 22, 2017, p. 1223.
[41] *Supra.*, Note 33. *cu*

have been listed and traded on the Philippine Stock Exchange since 1994; and that it is not a closely-held corporation even when the "Grandfather Rule" of Revenue Regulations (RR) No. 2-2001 is applied.

Respondent's Arguments[42]

On the other hand, respondent avers that petitioner is liable to pay the assessed deficiency IAET in the amount of ₱2,099,212,108.60, plus 25% surcharge and 20% deficiency and delinquency interest for late payment until fully paid, pursuant to Sections 248 and 249 of the 1997 NIRC, as amended; that RMC No. 35-2011 merely clarified certain issues relative to the imposition of the 10% IAET, pursuant to Section 29 of the NIRC of 1997, as amended, and hence, publication can be dispensed with.

RULING OF THE COURT

This Court resolves to raise, and rule on, the following related issue, which it deems necessary to achieve an orderly disposition of the instant case, to wit:

> **"Whether or not the subject FLD is a valid assessment."**

It must be remembered that the instant *Petition for Review* seeks, *inter alia*, the declaration of nullity of the subject assessment IAET in the total amount of ₱2,099,212,103.60. Thus, it is proper to primarily resolve the said issue raised by this Court.

Moreover, there is legal basis in allowing this Court to resolve the same issue.

Legal basis to resolve the foregoing issue.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals reads as follows:

"RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

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[42] *Supra.*, Note 37.

> SECTION 1. – *Rendition of judgment* – xxx
>
> **In deciding a 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)*

Based on the foregoing provision, this Court 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.[43] Such power of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[44] *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 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." *(Emphases ours)*

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[43] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[44] *Ibid.*

Furthermore, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[45] the Supreme Court held:

> "The general rule is that appeals can only raised questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
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> xxx xxx xxx
>
> **The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.** Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
>
>> **<u>The 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 ignore, although they have not been specifically raised as issues by the pleadings</u>.** This is in consonance with the liberal spirits 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. [Emphasis supplied.]
>
> xxx xxx xxx
>
> **<u>Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance</u>**." *(Emphases and underscoring ours)*

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[45] G.R. No. 163835, July 7, 2010.

On the basis of the foregoing pronouncements, it is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and (ii) questions involving *matters of public importance.*

In this case, whether or not the subject tax assessment is valid is a *matter of record,* and *of public importance.* The said issue is a *matter of record* because the parties submitted their respective evidence to establish what transpired in the proceedings *a quo,* and thus, could be resolved by referring to the said evidence. As a corollary, the issue raised by this Court has some bearing on the issues submitted by the parties. Moreover, the same issue can be deemed as *matter of public importance,* simply because a void assessment bears no valid fruit.[46] Taxpayers, including petitioner, must not be held liable under an invalid tax assessment.

In view thereof, We see no legal hindrance to resolve the above-stated issue raised by this Court.

The subject tax assessment is void for lack of a definite amount payable and due date for payment indicated therein.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (hereinafter referred to as the "*Fitness By Design* case"),[47] the Supreme Court said:

> "...**the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**
>
> xxx xxx xxx
>
> **The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue

[46] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue,* G.R. No. 193100, December 10, 2014.
[47] G.R. No. 215957, November 9, 2016.

regulations provided 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.**

xxx xxx xxx

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 the 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.

<u>First</u>, 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 tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation 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 prior or beyond April 15, 2004.*** (Emphasis Supplied)

<u>Second</u>, 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.* (Emphasis in the original)

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 supplied)*

In this case, the contents of the undated FLD issued against petitioner[48] are as follows:

"FORMAL LETTER OF DEMAND

THE PRESIDENT
UNIVERSAL ROBINA CORPORATION
110 E. Rodriguez Jr. Ave., Bagumbayan, Quezon City
T.I.N.: 000-400-016

Sir:

This has reference to the Preliminary Assessment Notice (PAN) served on 25 November 2014 covering your deficiency Income Tax, Improperly Accumulated Earnings Tax, Value-Added Tax, Withholding Tax on Compensation, Fringe Benefits Tax, Expanded Withholding Tax, and Documentary Stamp Tax for the fiscal year ending September 30, 2010.

Pursuant to Revenue Regulations No. 18-2013, a Formal Letter of Demand is hereby issued on the deficiency Income Tax, Improperly Accumulated Earnings Tax, Value-Added Tax, Withholding Tax on Compensation, Fringe

[48] Exhibit "P-6", BIR Records (Exhibit "R-11"), pp. 484 to 503.

Benefits Tax, Expanded Withholding Tax, and Documentary Stamp Tax for the fiscal year ending September 30, 2010, as shown hereunder:

xxx xxx xxx

Assessment No. IAET-116-LOA-00000004-10-14-1306

<u>Improperly Accumulated Earnings Tax</u>		
Taxable Income for the year		Php1,082,958,199.00
Add: Income subj to Final Tax	Php1,875,178,938.00	
NOLCO	-	
Income exempt from tax	754,455,611.00	
Income excluded from gross income	-	2,629,634,549.00
Total		4,432,592,748.00
Less: Income tax paid	Php540,887,460.00	
Dividends declared and paid	-	540,887,460.00
Total		3,891,705,288.00
Add: Retained Earnings from prior years		13,496,883,910.00
Total		17,388,589,198.00
Less: Amount that may be retained (100% paid up capital)		2,227,638,933.00
Improperly Accumulated Taxable Income		15,160,950,265.00
Rate		10.00%
Basic Deficiency Tax		Php1,516,095,026.50
Add: Increments		
Surcharge	Php 758,047,513.25	
Interest 10.11.10 to 12.31.14	1,280,996,455.27	
Compromise Penalty	-	2,039,043,968.52
DEFICIENCY IMPROPERLY ACCUMULATED EARNINGS TAX		Php3,555,138,995.02

xxx xxx xxx

Please take note that the interest <u>will have to be adjusted if paid beyond the date specified therein</u>.

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying SCHEDULE 1 of this letter.

The fifty percent (50%) surcharge and the twenty percent (20%) interest per annum has been imposed pursuant to Section[s] 248(B) and 249(B) of the NIRC of 1997, as amended due to your failure to pay the tax within the time prescribed by law for its payment.

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.

We hope that you will give this matter your preferential action.

Very truly yours,

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

By:

(SIGNED)
NESTOR S. VALEROSO
OIC- Assistant Commissioner
Large Taxpayers Service

xxx xxx xxx

DETAILS OF DISCREPANCY
Fiscal Year ending September 30, 2010

xxx xxx xxx

In case you disagree to the assessment, you or your duly authorized representative or your duly authorized BIR accredited Tax Agent, may protest administratively against the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) within thirty (30) days from date of receipt thereof, and submit the same to the Office of the Assistant Commissioner, Large Taxpayers Service at Rm 307 BIR National Office Building, BIR Road, Diliman, Quezon City, stating the nature of the protest whether for reconsideration or reinvestigation, specifying the newly discovered or additional evidence you intend to present, the date of assessment notice, and the applicable law, rules and regulations or jurisprudence from which your protest is based pursuant to Revenue Regulations No. 18-2013, otherwise your protest shall be considered void and without force and effect. However, if you are amenable, whether in whole or in part, it is requested that you settle first the tax attributable to the undisputed issue and furnish this office a photocopy of the proof of payment thereof, otherwise a collection letter shall be issued calling for the payment of the said deficiency tax or attributable thereto, inclusive of the applicable surcharge and/or interest.

In case of failure to file a valid protest or pay the tax within the time prescribed, the assessment shall become final, executory and demandable and therefore subject to delinquency penalties pursuant to RR No. 18-2013.

Very truly yours,

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

By:

(SIGNED)
NESTOR S. VALEROSO
OIC- Assistant Commissioner
Large Taxpayers Service"

(Emphases and underscoring ours)

A careful reading of the foregoing would reveal that the subject tax assessment lacks the definite amount of tax liabilities for which petitioner is accountable. Specifically, the FLD states that the interest will still *"be adjusted if paid beyond the date specified therein"*. Similar to the *Fitness By Design* case, although the disputed notice provides for a computation of petitioner's tax liability, the amount thereof remains indefinite, since the said tax assessment is still subject to modification or adjustment, depending on the date of payment by petitioner.

Furthermore, the said undated FLD does not contain any due date for the payment of the assessed taxes. Neither does this Court find any due date in the corresponding undated Audit Result/Assessment Notice No. IAET-116-LOA-00000004-10-14-1306.[49] Particularly, the space in this Assessment Notice where the due date is to be stated *"remained unaccomplished"*, just as in the *Fitness By Design* case.

Correspondingly, the subject tax assessment is void, and thus, bears no valid fruit.[50]

In view of the finding that the subject tax assessments are invalid, it becomes unnecessary to address the arguments raised by the parties.

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**.

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[49] Exhibit "P-6", BIR Records (Exhibit "R-11"), at p. 489.
[50] Refer to *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
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 the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

UNIVERSAL ROBINA CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9530

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 14 2020 1:57 pm

x- -x

CONCURRING OPINION

I concur in the grant of the Petition for Review and the cancellation and setting aside of the undated Formal Letter of Demand and Assessment Notices issued against Universal Robina Corporation assessing it for deficiency taxes for taxable year ending September 30, 2010 ***solely*** on the ground that the aforesaid undated Formal Letter of Demand and Assessment Notices are void for their **failure to demand payment of the tax due within a specific period**

A final assessment notice must not only indicate the legal and factual bases of the assessment **but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period.**[1] Absent a valid demand, as in this case, the undated Formal Letter of Demand and Assessment Notices are fatally infirm. Being void assessments, they bear no fruit[2] and must be slain at sight.

All told, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] *Commissioner of Internal Revenue vs. Fitness By Design,* G.R. No. 215957, November 9, 2016.

[2] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.