REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SAN MIGUEL FOODS, INC. (as surviving corporation in a merger involving MONTEREY FOODS CORPORATION),
Respondent.

CTA EB NO. 1880
(CTA CASE NO. 9046)

Present:
Del Rosario, ***P.J.,***
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, ***and***
Modesto-San Pedro, ***JJ***

Promulgated:

AUG 06 2019
9:31 a.m.

x---x

DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner[1] Commissioner of Internal Revenue (CIR) under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking nullification of the Decision[2] dated February 12, 2018 (Assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent's Formal Letter of Demand with attached Final Assessment Notices and Details of Discrepancy, dated October 9, 2014, issued against petitioner for deficiency income tax, VAT and DST for the period January 1, 2010 to August 31, 2010 and the Final

[1] Respondent in CTA Case No. 9046.
[2] Rollo, CTA EB No. 1880, pp. 34-74.

Decision on Disputed Assessment (FDDA) dated January 12, 2015, for being intrinsically void, are hereby CANCELLED.

SO ORDERED."

and the Resolution[3] dated June 4, 2018 of the same First Division of the Court (Court in Division) denying the CIR's Motion for Reconsideration, the dispositive portion thereof reads:

"**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The relevant antecedents stated in the assailed Decision[4] are as follows:

"Petitioner[5] San Miguel Foods, Inc. is a corporation organized and existing under Philippine laws, with office address at 23rd Floor, the JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City. It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 000-275-554-000, as evidenced by its Certificate of Registration issued on January 1, 1996.

On the other hand, respondent is the duly appointed Commissioner of the BIR who has 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 the National Internal revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On May 31, 2011, petitioner received Letter of Authority (LOA) dated May 12, 2011 from the BIR, authorizing concerned revenue officers to examine its books of accounts and other accounting records for all internal revenue taxes for the period covering January 1 to August 31, 2010.

[3] Ibid., pp. 75-79.
[4] Ibid., pp. 22-37. Citations omitted.
[5] Respondent San Miguel in this case.

On August 12, 2014, petitioner received the Preliminary Assessment Notice (PAN) from Officer-in-Charge (OIC) Assistant Commissioner Nestor S. Valeroso of the Large Taxpayers Service assessing petitioner for the alleged deficiency income tax, withholding tax on compensation (WTC), VAT and DST in the aggregate amount of P1,842,959,766.53, inclusive of interest, surcharge, and compromise penalties for the period January 1 to August 31, 2010.

On August 27, 2014, petitioner sent a letter to the BIR contesting the proposed imposition of deficiency income tax, WTC, VAT, and DST on the transfer of properties by Monterey Foods Corporation (MFC) to petitioner as a result of the merger between the parties.

On October 10, 2014, petitioner received a Formal Letter of Demand with attached Final Assessment Notices and Details of Discrepancy ("FLD-FAN" for brevity) dated October 9, 2014, reiterating the alleged deficiency income tax, VAT, and DST assessing in connection with the transfer of properties by MFC to petitioner pursuant to the merger in the aggregate amount of P1,840,424,492.03. Petitioner then protested the FLD-FAN on November 10, 2014.

On January 14, 2015, the FDDA dated January 12, 2015 was issued by OIC-Assistant Commissioner Nestor S. Valeroso, upholding the deficiency assessments on income tax, VAT, and DST for the period covering January 1, 2010 to August 31, 2010 in the aggregate amount of P1,570,938,751.79 inclusive of interest, surcharge, and compromise penalties.

On February 6, 2015, petitioner filed a Request for Reconsideration of the FDDA with the respondent.

On April 21, 2015, petitioner received a Letter dated March 12, 2015 from respondent informing it of the denial of its Request for Reconsideration.

As a result, petitioner filed the instant Petition for Review before this Court on May 15, 2015."

In the Answer[6], the CIR interposed the following as Special and Affirmative Defenses, that: the Waivers of the Defense of Prescription under the Statute of Limitations of the Tax Code which was duly accepted and

[6] Docket, CTA CASE NO. 9046, pp. 191-213, with Annexes.

approved by respondent and thereafter received by petitioner are valid and binding between them; that the waivers validly extended the period to assess petitioners; that assuming the waivers were not properly executed, petitioner is already estopped from assailing the validity of the waivers; that Revenue Memorandum Order (RMO) No. 20-90 is an internal memorandum of the Bureau of Internal Revenue (BIR), therefore, it is not a source of right of a taxpayer; that petitioner is liable to pay VAT; that a corporation contemplating merger/dissolution or reorganization must comply with Section 52 (c) of the NIRC of 1997, as amended, as well as its implementing revenue regulations; and that petitioner is liable to pay documentary stamp tax (DST).

In the Joint Stipulation of Facts and Issues[7], the parties agreed that the issues to be resolved by the Court in Division are as follows:

1. Whether or not petitioner is liable to pay deficiency income tax, VAT and DST in the aggregate amount of One Billion Five Hundred Seventy Million Nine Hundred Thirty Eight Thousand Seven Hundred Fifty One and 79/100 (P1,570,938,751.79), inclusive of interest, surcharge and compromise penalties, for the period January 1, 2010 to August 31, 2010.

   a. Whether or not the right of the government to assess petitioner for deficiency income tax, VAT and DST for the period January 1, 2010 to August 31, 2010 has prescribed.

   b. Whether or not the assessments for deficiency income tax, VAT and DST have factual and legal basis.

   c. Whether or not the assessments for alleged deficiency income tax, VAT and DST are violative of the rule on non-retroactivity of rulings under Section 246 of the 1997 National Internal Revenue Code.

   d. Whether or not the assessment of deficiency VAT on the transfer of real properties pursuant to a merger is proper.

   e. Whether or not the assessment of deficiency DST on the transfer of real properties pursuant to a merger is proper.

Trial thereafter ensued wherein both parties presented their respective evidence.

In the Resolution[8] dated December 21, 2016, the Court in Division ordered the parties to file their respective memoranda.

[7] Filed by the parties on October 28, 2015.
[8] Ibid. p. 1972-1973.

On January 31, 2017, San Miguel filed its Memorandum.[9] On February 17, 2017, the Judicial Records Division of this Court issued a Records Verification Report[10] stating that the CIR failed to file his Memorandum.

On February 28, 2017, the Court in Division issued a Resolution[11] submitting the case for decision.

On February 12, 2018 and June 4, 2018, the Court in Division rendered the questioned Decision and Resolution respectively.

Aggrieved, the CIR filed before the Court *En Banc* within the allowable period this Petition for Review[12] on July 13, 2018.

In the Resolution[13] dated August 3, 2018, San Miguel was directed by the Court *En Banc* to file its comment in this case.

On August 17, 2018, San Miguel filed its "Comment [on Petition for Review dated July 13, 2018]".[14]

In the Resolution dated September 7, 2018,[15] the Court gave due course to the Petition for Review and deemed the case submitted for decision.

THE ISSUE

The main issue in this case is whether or not the Court in Division erred in cancelling the FLD with attached FAN and Details of Discrepancy, dated October 9, 2014, issued against respondent San Miguel for deficiency income tax, VAT and DST for the period January 1, 2010 to August 31, 2010 and the FDDA dated January 12, 2015.

THE ARGUMENTS

The CIR contends that the Court in Division erred in granting a relief that was not prayed for by respondent San Miguel; that CIR's basic right to fair play and due process was violated; that the Court in Division erred in ruling that the Revenue Officer (RO) who conducted the audit investigation of San Miguel's books of accounts was not authorized and further declaring the subject assessment void for lack of authority of the RO who conducted the

---

[9] Ibid., pp. 1974 – 2018.
[10] Ibid., p. 2019.
[11] Ibid., p. 2022.
[12] Rollo CTA EB No. 1880, pp.7-30, with Annexes.
[13] Ibid. pp. 81-82.
[14] Ibid. pp. 83-116.
[15] Ibid pp. 57-58.

audit investigation; that the parties admitted the authority of the RO to conduct the audit; that the Court in Division erred in applying the ruling of the Supreme Court in Medicard Philippines Inc. vs. Commissioner of Internal Revenue; that the FAN and FLD sufficiently informed San Miguel of its deficiency tax liabilities and specifically demanded payment thereof; that the Details of Discrepancy attached to the FLD and Assessment Notice provides San Miguel with a remedy to file a protest administratively within 30 days thereof, otherwise the assessment shall become final and executory; that even assuming the assessment does not state the due date, it is clear that the CIR demands payment of the assessed deficiency tax within 30 days from receipt of the FAN and FLD, otherwise, San Miguel may opt to protest the assessment within the same period.

On the other hand, San Miguel counter-argues that the grounds relied upon by the CIR in the present petition are mere reiterations of the arguments found in its Motion for Reconsideration; that there was no violation of the CIR's right to due process; that the authority of the RO that actually conducted the examination of San Miguel's books of accounts and other financial records was never admitted by it; that respondent admits it received a Letter of Authority (LOA) but such was not considered an admission of the authority of the RO who actually conducted the examination; that it is within the authority of the Court to determine the existence of a valid LOA supporting the authority of the RO even if the parties do not raise the same as an issue; that the FAN and FDDA are inherently void for failing to state a definite demand for payment.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

On June 13, 2018, the CIR received the Resolution of the Court in Division denying his Motion for Reconsideration. Hence, the CIR has until June 28, 2018 within which to file the Petition for Review. On June 28, 2018, the CIR filed before this Court a "Motion for Extension of Time to File Petition for Review,"[16] praying for an extension of fifteen (15) days from June 28, 2018 or until July 13, 2018 within which to file the Petition for Review. On July 2, 2018, this Court issued a Minute Resolution[17] granting an extension of fifteen (15) days from June 28, 2018 or until July 13, 2018, within which to file the Petition for Review.

On July 13, 2018, the CIR filed the instant Petition for Review. Hence, this Petition for Review was timely filed.

[16] Ibid. pp. 1-5.
[17] Ibid. p. 6.

The Court *En Banc* shall now proceed to determine the merits of the Petition for Review. After a careful review of the CIR's arguments and the records of the case, the Court *En Banc* finds that the Court in Division did not err in granting San Miguel's Petition for Review and in denying the CIR's Motion for Reconsideration. The Court *En Banc* agrees with San Miguel that the arguments herein presented by the CIR are the very same arguments which he raised before the Court in Division in his Motion for Reconsideration, which were passed upon and discussed extensively by the Court in Division.

There was no violation of due process when the Court in Division granted a relief that was not prayed for by San Miguel Foods, Inc.

The CIR claims that the issues on lack of demand to pay the taxes due within a specific period and the lack of valid LOA were never raised by San Miguel in its Petition for Review filed with the Court in Division.

In the determination of whether San Miguel is liable for the assessed tax liabilities pursuant to the assessment notices issued to them, it is necessary that the Court shall determine the validity of the assessments issued. Thus, 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.[18] Hence, the findings of the Court in Division relative to the validity of the LOA and FANs did not violate the CIR's right to due process.

The revenue officers have no authority to continue the audit

The following are the events that transpired relative to the issuance of the assessments of San Miguel Foods, Inc.'s tax liabilities:

- May 31, 2011 – petitioner received LOA No. 116-2011-00000002 dated May 12, 2011 signed by Zenaida G. Garcia, Assistant Commissioner, Large Taxpayers Service, authorizing RO – Cletofel Parungao, Myrna Ramirez, Ma. Salud Maddela, Zenaida Paz, Allan Maniego, Joel Aguila, and Group Supervisor (GS) Glorializa Samoy of LT Regular August Division 1 to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2010 to August 31, 2010.

- February 25, 2013 – Cesar D. Escalada, Chief Regular LT Audit Division 1, issued a Memorandum of Assignment

[18] Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals.

(MOA) No. LOA-116-2013-0452 to RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña for the continuation of the audit/investigation to replace the previously assigned RO(s) who resigned/retired/transferred to another district office.

- July 28, 2014 – RO San Pedro submitted a Memorandum, which was noted by GS Allan M. Maniego and with recommending approval of Mr. Escalada, to Officer-in-Charge, Assistant Commissioner (OIC-ACIR) Nestor S. Valeroso, Large Taxpayer Service, recommending that a Preliminary Assessment Notice (PAN) be approved and issued to Monterey Foods Corporation covering the taxable period from January 1 to August 31, 2010. The Memorandum was approved by OIC-ACIR Valeroso.

- August 12, 2014, petitioner received the PAN dated August 12, 2014 from OIC-ACIR Valeroso assessing petitioner for the alleged deficiency income tax, withholding tax on compensation, VAT, and DST, inclusive of interest, surcharge, and compromise penalty covering the taxable period from January 1 to August 31, 2010.

- August 27, 2014 – petitioner sent a Letter dated August 27, 2014 to the Commissioner of Internal Revenue (CIR), thru Ms. Escalada, contesting the PAN.

- September 26, 2014 – RO San Pedro submitted a Memorandum, which was noted by GS Maniego and with recommending approval of Mr. Escalada, to OIC-ACIR Valeroso, recommending that FLD be approved and issued to Monterey Foods Corporation covering the taxable period from January 1 to August 31, 2010. The Memorandum was approved by OIC-ACIR Valeroso.

- October 10, 2014 – petitioner received the FLD dated October 9, 2014 with attached FANs dated October 9, 2014 and Details of Discrepancy issued by then CIR Kim S. Jacinto-Henares against Monterey Foods Corporation.[19]

The power of the Commissioner of Internal Revenue ("CIR") to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

[19] Decision, pp. 34–36.

"SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –

(A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[20]

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz.:*

"SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the

N

[20] *Emphasis and underscoring supplied.*

Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

"SEC. 10. **Revenue Regional Director.** – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:

xxx

(c) **<u>Issue Letters of Authority for the examination of taxpayers</u> within the region**;

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[21]

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Regional Director, his agent. On the other hand, the Regional Director may appoint a sub-agent.

Article 1892 of the Civil Code provides:

"Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;
(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

[21] *Emphasis and underscoring supplied.*

All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[22]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Cletofel Parungao, Myrna Ramirez, Ma. Salud Maddela, Zenaida Paz, Allan Maniego, Joel Aguila, and GS Glorializa Samoy who were originally named in the LOA may be revoked, transferred and reassigned to RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña for continuance of audit.

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[23] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[24]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[25] The title of the contract does not necessarily determine its true nature.[26] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[27] Similarly, every new

---

[22] *Emphasis supplied.*

[23] SEC. 13. Authority of a Revenue Officers. - subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Emphasis supplied*).

[24] Civil Code of the Philippines, Article 1869.

[25] Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

[26] Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

[27] Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and

statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[28]

RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña who conducted the examination of San Miguel's records may be deemed authorized to do so without need for a new LOA, **if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.**

Under RMO No. 29-07[29], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants</u>.**"[30]

In the instant case, the Memorandum of Assignment[31] was only signed by Cesar D. Escalada, Chief, Regular LT Audit Division 1. **Therefore, RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña were without authority to continue the audit.**

John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).
[28] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.
[29] Issued September 26, 2007.
[30] *Emphasis and underscoring supplied.*
[31] Exhibit "R-6," BIR Records, p. 282.

The FLD and FAN are void because they failed to demand payment thereof within a specific period

The CIR insists that San Miguel was notified of the assessment through the FLD and FAN and demanded payment thereof; that even assuming that the assessment notices do not state the due date, it is clear that the CIR demands payment of the assessed deficiency tax within thirty (30) days from receipt thereof, otherwise, San Miguel may opt to protest the assessment within the same period.

After consideration, the Court *En Banc* finds that, even assuming that the LOA was valid, still San Miguel cannot be held liable for the assessed taxes because the FLD and FAN were void. A perusal of the FLD and FAN shows that both failed to demand payment of taxes within a specific period.

The FLD[32] reads in part:

> "Sir/Madam:
>
> Please be informed that after investigation, there has been found deficiency Income Tax, Value Added Tax, Withholding Tax on Compensation and Documentary Stamp for the period **January 1, 2010 to August 31, 2010**, as shown hereunder:
>
> xxx xxx xxx
>
> *Please take note that the interest will have to be adjusted if paid beyond the date specified therein.*
>
> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX-A of this letter.
>
> The twenty-five percent (25%) surcharge has been imposed pursuant to Section 248 (A) (1) of the NIRC and Section 4.2 of Revenue Regulations No. 12-1999, as amended.
>
> The twenty percent (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay the tax within the time prescribed by law for its payment.
>
> The compromise penalty has been imposed in view of your failure to file and/or pay an internal revenue tax at the time or times required by law or regulation pursuant to Section 255 of the

[32] Exhibit "P-31" for San Miguel Foods, Inc. and Exhibit "R-14" for the CIR.

NIRC, as amended, as determined using the scheduled of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No. 19-2007.

In view thereof, you are requested to pay your deficiency tax liabilities **using the BIR Payment Form (BIR Form 0605) through eFPS** within the time shown in the enclosed assessment notice. Afterwards, **submit proof of payment thereof to our Office located at Room 216, Regular Large Taxpayers Audit Division 1, BIR National office Building, BIR Road, Diliman, Quezon City** for updating your records and cancellation of the herein FLD, if warranted.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

By:

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

The FLD states that San Miguel is requested to pay its deficiency tax liabilities using the BIR Payment Form (BIR Form 0605) through eFPS within the time shown in the enclosed assessment notice. However, the enclosed Details of Discrepancies[33] failed to indicate the specific period when the payment should be made and the portion in the Audit Result/Assessment Notice[34] indicating the "DUE DATE" was left blank.

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[35] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

"An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the same time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx

[33] BIR records, pp. 654 - 655.
[34] Ibid., pp. 651 – 653.
[35] G.R. No. 128315, June 29, 1999.

xxx xxx xxx

> (N)either the NIRC nor the revenue regulations governing the protest of assessments provide a specific definition or form of an assessment. However, the NIRC defined the specific functions and effects of an assessment. To consider the affidavit attached to the Complaint as a proper assessment is to subvert the nature of an assessment and to set a bad precedent that will prejudice innocent taxpayers.
>
> True, as pointed out by the private respondents, an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period.** Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> xxx xxx xxx
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondent's tax liability. It did not state a demand or a period for payment. Worse, it was addressed to the justice secretary, not to the taxpayers." (Boldfacing supplied)"

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[36], the Supreme Court emphasized the importance of the issuance of a **valid formal assessment**, *i.e.,* it must demand payment of the taxes described **within a specific period**, as follows:

> "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**

[36] G.R. No. 215957, November 09, 2016.

within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.

A pre-assessment notice 'do[es] not bear the gravity of a formal assessment notice.' A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.

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 prior or beyond April 15, 2004.*** (Emphasis Supplied)

Second, there are no due dates in the Final Assessment Notice. This negates Petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

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

To reiterate, **an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. The requirement to indicate a fixed and definite period within which a taxpayer must pay the tax deficiencies is vital to the validity of the assessment.**

Hence, the absence of the specific period in the FLD and Assessment Notices negates the CIR's demand for payment and makes the assessment void.

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[37]

μ

---

[37] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

There being no new matters or issues raised in the Petition for Review before this Court and there being no reversible error committed by the Court in Division, this Court finds no cogent reason to disturb the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED for lack of merit.** The Decision dated February 12, 2018 and Resolution dated June 4, 2018 are **AFFIRMED**.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice