REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

CAPITOL STEEL CORPORATION, *Petitioner,*

CTA Case No. 9815

Members:

-versus-

DEL ROSARIO, *P.J.*, *Chairperson*
and
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Promulgated:
JUN 30 2021 8:20 am

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DECISION

MANAHAN, *J.*:

The *Petition for Review* filed on April 16, 2018 prays for the cancellation and withdrawal of the tax assessments issued against petitioner under the *Amended Final Decision on Disputed Assessment* (AFDDA) covering the year 2011.[1]

THE PARTIES

Petitioner Capitol Steel Corporation is a corporation organized and existing under the laws of the Philippines, with principal office address at No. 300 Quirino Highway, Baesa, Quezon City.[2]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), the governmental agency official responsible for, among others, the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties and fines in connection therewith, with

[1] Docket, CTA Case No. 9815, Summary of the Case, Pre-Trial Order dated August 31, 2018, p. 153.
[2] *Id.*, Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 149.

principal address at the BIR National Office Building, Diliman, Quezon City.[3]

THE FACTS

On June 25, 2013, petitioner received the *Letter of Authority* (LOA) No. 116-2013-00000131 dated June 18, 2013 issued by Mr. Alfredo V. Misajon, Officer-in-Charge, Assistant Commissioner of Internal Revenue (OIC-ACIR) of the Large Taxpayer's Service, in favor of Revenue Officers Aurelio Zamora, Jan Andre Abellera, Johnro Galicia, Ruby Anne Oradia and Group Supervisor Gilquin Tolentino of LT Regular Audit Division 1 (RLTAD1),[4] to examine petitioner's books of accounts and other accounting records for January 1, 2011 to December 31, 2011.[5] Together with the LOA, petitioner received the letter-notice dated June 20, 2013 from Mr. Cesar D. Escalada, Chief of RLTAD1, which listed the documents he was requiring petitioner to submit for audit.[6]

A *Second Notice for Presentation of Books of Accounts and Other Accounting Records* dated September 3, 2014 was issued by Mr. Escalada, and received by petitioner on September 9, 2014.[7]

Thereafter, on October 29, 2014, representatives of petitioner executed a *Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code*,[8] for the purpose of extending the period granted to respondent to conduct his examination of petitioner until December 31, 2015.[9]

On June 15, 2015, petitioner received the *Preliminary Assessment Notice* (PAN) signed by Large Taxpayers Service OIC-ACIR Nestor S. Valeroso,[10] and with attached *Details of Discrepancy*,[11] finding petitioner liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT),

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[3] Docket, Par. 2, Stipulated Facts, JSFI, p. 149.
[4] *Id.*, Par. 3, Stipulated Facts, JSFI, p. 149.
[5] *Id.*, Exhibit "P-32", p. 237; BIR Records, Exhibit "R-1", p. 3.
[6] *Id.*, Par. 4, Stipulated Facts, JSFI, p. 149.
[7] *Id.*, Par. 5, Stipulated Facts, JSFI, pp. 149 to 150.
[8] *Id.*, Par. 6, Stipulated Facts, JSFI, p. 150.
[9] *Id.*, Exhibit "P-38", p. 243; BIR Records, Exhibit "R-4", p. 1012.
[10] *Id.*, Par. 7, Stipulated Facts, JSFI, p. 150; Docket, Exhibit "P-39", pp. 244 to 246; BIR Records, Exhibit "R-6", pp. 1032 to 1034.
[11] *Id.*, Exhibit "P-40", pp. 247 to 251; BIR Records, Exhibit "R-6-a", pp. 1031D to 1031D.

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and documentary stamp tax (DST), for taxable year 2011, in the aggregate amount of ₱357,521,267.23, inclusive of interests and compromise penalties. Petitioner then filed with the BIR on June 30, 2015 a letter evenly dated, responding to the said PAN.[12]

Subsequently, petitioner received an undated *Formal Letter of Demand* (FLD),[13] with *Details of Discrepancies*,[14] and undated *Audit Result/Assessment Notices*[15] from the BIR, assessing petitioner for: (i) deficiency income tax in the amount of ₱149,196,421.16, (ii) deficiency VAT amounting to ₱184,458,752.30, (iii) deficiency EWT in the amount of ₱118,537.30, and (iv) deficiency DST amounting to ₱5,622,140.19, for taxable year 2011, in the aggregate amount of ₱339,550,850.95, inclusive of interests, plus compromise penalties. On October 30, 2015, petitioner filed with the BIR its protest letter evenly dated.[16]

Subsequently, petitioner received, on June 29, 2016,[17] an undated *Final Decision on Disputed Assessment* (FDDA),[18] with attached *Details of Discrepancy*[19] and undated *Audit Results/ Assessment Notices*,[20] finding petitioner liable for deficiency income tax, VAT, and EWT, for taxable year 2011, in the aggregate amount of ₱206,841,223.73, inclusive of interests and compromise penalties, broken down as follows:

Type of Tax	**Basic Tax**	**Interest**	**Compromise Penalties**	**Total**
Income tax	₱30,512,204.17	₱26,198,698.05	₱50,000.00	₱ 56,760,902.22
VAT	78,762,747.85	71,123,840.25	50,000.00	149,936,588.10
EWT	61,009.57	67,723.84	15,000.00	143,733.41
Total	**₱109,335,961.59**	**₱97,390,262.14**	**₱115,000.00**	**₱206,841,223.73**

In the FDDA, the BIR lowered the assessment for deficiency income tax (from ₱149,196,421.16 to

[12] Docket, Exhibit "P-41", pp. 252 to 258.
[13] *Id.*, Par. 8, Stipulated Facts, JSFI, p. 150; Docket, Exhibits "P-42" and "P-44", pp. 259 to 261, and 274 to 275, respectively; BIR Records, "Exhibit "R-7"; pp. 1742 to 1746.
[14] *Id.*, Exhibit "P-43", pp. 262 to 267; BIR Records, Exhibit "R-7-a", pp. 1736 to 1741.
[15] *Id.*, Exhibit "P-43", pp. 268 to 273; BIR Records, Exhibit "R-7-b", pp. 1731 to 1735.
[16] *Id.*, Exhibit "P-45", pp. 276 to 291.
[17] BIR Records, Exhibit "R-9-a", at p. 1615; Docket, Par. 12, *Petition for Review* vis-à-vis Par. 1, *Answer*, pp. 13 and 125, respectively.
[18] Docket, Par. 9, Stipulated Facts, JSFI, p. 150; BIR Records, Exhibit "R-9-a", pp. 1615 to 1618; BIR Records, Exhibit "R-9", pp. 1608 to 1609.
[19] BIR Records, Exhibit "R-9-b", pp. 1610 to 1614.
[20] Docket, Exhibit "P-48", pp. 294 to 297; BIR Records, Exhibit "R-9-c", pp. 1604 to 1607.

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₱56,710,902.22) and deficiency VAT (from ₱184,458,752.30 to ₱149,886,588.11), while slightly increasing the deficiency EWT (from ₱118,537.30 to ₱128,733.42). In any event, the assessment for DST was deleted.[21]

Petitioner then filed with the BIR on July 28, 2016 a letter evenly dated, requesting for the reconsideration of the FDDA.[22]

On March 15, 2018, petitioner received the assailed undated AFDDA issued by respondent,[23] with attached *Details of Discrepancy,*[24]and undated *Audit Results/Assessment Notices,*[25] recalculating the deficiency tax assessments to an aggregate amount of ₱194,602,339.32, inclusive of interests and compromise penalties, the details of which are as follows:

Type of Tax	Basic Tax	Interest	Compromise Penalties	Total
Income tax	₱28,542,054.75	₱27,384,733.07	₱50,000.00	₱55,976,787.82
VAT	69,149,096.08	69,414,325.50	50,000.00	138,613,421.58
EWT		12,129.92		12,129.92
Total	**₱97,691,150.83**	**₱96,811,188.49**	**₱100,000.00**	**₱194,602,339.32**

Notably, the AFDDA further lowered the assessment for deficiency income tax to ₱55,926,787.82; and the deficiency VAT to ₱138,563,421.58. The AFDDA also assessed interest on delayed remittance of EWT in the amount of ₱12,129.92.[26]

Petitioner filed the present *Petition for Review* on April 16, 2018.[27] The case was initially raffled to this Court's Second Division.

On July 3, 2018, respondent filed his *Answer,*[28] raising the following special and affirmative defenses, to wit:

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[21] Docket, Par. 12, *Petition for Review* vis-à-vis Par. 1, *Answer*, pp. 13 and 125, respectively.
[22] *Id.*, Exhibit "P-49", pp. 298 to 304.
[23] *Id.*, Par. 10, Stipulated Facts, JSFI, p. 150; BIR Records, Exhibit "R-10", pp. 1934 to 1938; Docket, Exhibit "P-50", pp. 305 to 306.
[24] BIR Records, Exhibit "R-10-a", pp. 1931 to 1933.
[25] *Id.*, Exhibit "R-10-b", pp. 1927 to 1930.
[26] Docket, Par. 14, *Petition for Review* vis-à-vis Par. 1, *Answer*, pp. 13 and 125, respectively.
[27] *Id.*, pp. 10 to 26; Since April 14, 2018—the last day for the filing of the instant *Petition for Review*, fell on a Saturday, petitioner had until the next working day or until April 16, 2018 to file the same, pursuant to Section 1, Rule 22 of the Rules of Court.

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1. Petitioner is liable for the assessed deficiency income tax;

2. Petitioner is liable for the assessed deficiency value-added tax;

3. Petitioner is liable for the assessed interest on late remittance of expanded withholding tax;

4. Petitioner is liable for the assessed compromise penalties.

The Pre-Trial Conference was set and held on August 2, 2018.[29] *Respondent's Pre-Trial Brief* was filed on July 30, 2018,[30] while petitioner submitted its *Pre-Trial Brief* on August 1, 2018.[31]

On August 24, 2018, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[32] Subsequently, the Court issued the Pre-Trial Order dated August 31, 2018,[33] approving and adopting the said JSFI, as well as deeming the termination of the Pre-Trial.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Dorothy Vallesteros,[34] petitioner's Chief Accountant; and (2) Ms. Mae Cristina M. Galanza,[35] the Court-commissioned Independent Certified Public Accountant (ICPA).[36]

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[28] Docket, pp. 125 to 130; cf: Docket, *Motion for Extension of Time to File Answer*, pp. 115 to 117; Docket, Order dated May 21, 2018, p. 119; Docket, *Urgent Motion for Extension of Time to File Answer*, pp. 120 to 122; Docket, Order dated June 21, 2018, p. 124.

[29] *Id.*, *Notice of Pre-Trial Conference* dated July 5, 2018, pp. 132 to 133; Docket, Minutes of the hearing held on, and Order dated, August 2, 2018, pp. 143 to 144.

[30] *Id.*, pp. 134 to 137.

[31] *Id.*, pp. 139 to 142.

[32] *Id.*, pp. 149 to 151.

[33] *Id.*, pp. 153 to 157.

[34] *Id.*, Exhibit "P-51", pp. 179 to 183; Docket, Minutes of the hearing held on, and Order dated, March 5, 2019, pp. 185 to 191.

[35] *Id.*, Exhibit "P-52", pp. 175 to 178; Docket, Minutes of the hearing held on, and Order dated, March 5, 2019, pp. 185 to 191.

[36] *Id.*, *Oath of Commission* dated September 3, 2018, p. 158; Docket, Minutes of the hearing held on, and Order dated, September 3, 2018, pp. 159 to 161.

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On September 24, 2018, the present case was transferred to the First Division of this Court.[37]

The *Report* of the ICPA was submitted on October 3, 2018.[38]

Respondent transmitted the *BIR Records* for this case on March 22, 2019.[39]

On April 16, 2019, the *Petitioner's Formal Offer of Evidence* was filed.[40] Respondent then submitted his *Comment (on Petitioner's Formal Offer of Evidence)* on April 24, 2019.[41] Thereafter, on May 10, 2019, petitioner filed its *Reply (To Comment on Petitioner's Formal Offer of Evidence) and Urgent Motion*,[42] wherein it moved for a certification or declaration that:

(1) there is no need to present the originals of Exhibits "P-2" to "P-31" inclusive because these were already marked and made part of the report of the ICPA; and
(2) petitioner is allowed to present the original of Exhibit "P-49" at the initial hearing for the reception of respondent's evidence.

In the same *Urgent Motion*, petitioner prayed that another Commissioner's Hearing be set on May 16, 2019 for the presentation or comparison of originals of Exhibits "P-2" to "P-31" inclusive, or Exhibit "P-49" prior to the initial hearing date for the reception of respondent's evidence, if the Court deems it best for petitioner to do so.

In the Resolution dated June 6, 2019,[43] the Court granted petitioner's *Urgent Motion*; set the case for a Commissioner's Hearing on July 23, 2019, for the marking and comparison of Exhibit "P-49"; gave petitioner a period of five (5) days within which to submit the CD containing the readable/accessible version of Exhibits "P-5" and "P-9" and the soft copy of the ICPA Report in Microsoft Word and/or

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[37] Docket, Order dated September 24, 2018, p. 168.
[38] *Id.*, refer to the letter dated October 3, 2018 of the ICPA, pp. 165 to 170.
[39] *Id.*, *Compliance* dated March 22, 2019, pp. 193 to 195.
[40] *Id.*, pp. 221 to 236.
[41] *Id.*, pp. 311 to 313.
[42] *Id.*, pp. 319 to 321.
[43] *Id.*, pp. 331 to 334.

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Excel format; held in abeyance the resolution of *Petitioner's Formal Offer of Evidence*; and cancelled the initial presentation of respondent's evidence until further orders from the Court.

On June 28, 2019, petitioner submitted the CD containing the readable/accessible version of Exhibits "P-5" and "P-9" and the soft copy of the ICPA Report in Microsoft Word and/or Excel format.[44]

Subsequently, in the Resolution dated October 8, 2019,[45] the Court admitted petitioner's exhibits.

Respondent likewise presented his documentary and testimonial evidence. He offered the testimony of his lone witness, Mr. Aurelio T. Zamora,[46] a Revenue Officer IV of the BIR.

On December 16, 2019, respondent filed his *Formal Offer of Evidence*.[47] Petitioner filed its *Comments on Respondent's Formal Offer of Evidence* on January 17, 2020.[48] In the Resolution dated March 2, 2020,[49] respondent's exhibits were all admitted by this Court.

On June 29, 2020, respondent submitted his *Memorandum*;[50] while petitioner failed to file its memorandum.[51]

The present case was submitted for decision on July 24, 2020.[52]

ISSUES

The sole issue stipulated by the parties for this Court's resolution is the following:

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[44] Docket, *Compliance* dated June 28, 2019, pp. 335 to 336.
[45] *Id.*, pp. 353 to 356.
[46] *Id.*, Exhibit "R-13", pp. 201 to 211; Docket, Order dated December 3, 2019, pp. 358 to 359.
[47] *Id.*, pp. 368 to 375.
[48] *Id.*, pp. 380 to 381; Docket, *Manifestation* dated January 17, 2020, pp. 377 to 378.
[49] *Id.*, pp. 389 to 390.
[50] *Id.*, pp. 391 to 401.
[51] *Id.*, Records Verification dated July 7, 2020 issued by the Judicial Records Division of this Court, p. 404.
[52] *Id.*, Resolution dated July 24, 2020, p. 406.

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> "Whether or not [petitioner] Capitol Steel is liable to pay the deficiency income tax, value added tax, and expanded withholding tax assessed in Assessment Nos. IT-116-LOA-00000131-11-16-1409, IT-116-LOA-00000131-11-16-1410, and IT-116-LOA-00000131-11-16-1411, plus interest and surcharges."[53]

Petitioner's Arguments

Petitioner argues that it is not liable for deficiency income tax and VAT for 2011 in the amounts of ₱55,926,787.82 and ₱138,563,421.58, respectively, plus surcharges and interest; and for interest on late remittance of EWT for 2011 in the amount of ₱12,129.92.

Respondent's Arguments

Respondent counters that petitioner is mistaken in asserting that it is not liable for deficiency taxes and that the findings of the BIR are unfounded; that petitioner is liable for the assessed deficiency VAT and interest on late remittance of EWT; that petitioner was not able to submit documentation sufficient to justify its position that it is not liable to pay the assessed deficiency taxes; and that petitioner is liable for the assessed compromise penalties.

RULING OF THE COURT

The instant *Petition for Review* is meritorious.

This Court resolves to rule on the following related issue, which it deems as necessary to achieve an orderly disposition of the instant case, before looking into the issue raised by the parties, if it is still necessary, to wit:

> **"Whether or not the subject tax assessments are valid."**

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[53] Docket, Submitted Issue/s for Trial, JSFI, p. 150.

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Legal basis to resolve the 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
>
> 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 added)*

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.[54] 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.,*[55] *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:
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> > **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.**
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> **The above section is clearly worded.** xxx." *(Emphases and underscoring added)*

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

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Relative thereto, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[56] the Supreme Court held:

> "The general rule is 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. 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
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> **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:
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>> **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.** 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.]
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> xxx xxx xxx
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> **Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance**." *(Emphases and underscoring ours)*

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

On the basis of the foregoing pronouncements, this Court may relax the rule against raising new issues on appeal, when compelling reasons so warrant or when justice requires it. Moreover, 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 assessments are 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 issue submitted by the parties. Furthermore, the same issue can be deemed as *matter of public importance,* simply because a void assessment bears no valid fruit.[57] More importantly, taxpayers, including petitioner, must not be held liable under an invalid tax assessment.

In view thereof, this Court sees no legal hindrance to resolve the above-stated issue.

The absence of due dates on the subject FLD, FDDA, AFDDA and the Assessment Notices attached thereto, rendered the subject tax assessments void.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,*[58] 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 <u>within a</u>**

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[57] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue,* G.R. No. 193100, December 10, 2014.
[58] G.R. No. 128315, June 29, 1999.

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.

xxx 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." *(Emphases added)*

Furthermore, in *Commissioner of Internal Revenue vs. Fitness by Design, Inc.,*[59] the Supreme Court again emphasized the importance of the issuance of a valid formal assessment, *i.e.*, that it must be a demand for payment of the taxes described, within a specific period, and that the amount of tax liability for which the taxpayer is accountable must be definite, *viz.*:

"...**the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**

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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 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.**

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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**.'

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[59] G.R. No. 215957, November 9, 2016.

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.**

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> 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 added)*

Based on the foregoing doctrinal pronouncements, a tax assessment must not only contain a computation of tax liabilities, but must also include a demand for the settlement of a tax liability that is definite and fixed. The absence thereof renders the assessment invalid.

In this case, no date was indicated in the FLD.[60] In addition, a perusal of the *Audit Result/Assessment Notices*[61] attached to the said FLD as well as the FDDA[62] and the assailed AFDDA[63], respectively, shows that the spaces for the due dates were conspicuously left blank, similar to the *Fitness by Design* case. Considering that the said *Assessment Notices* did not respectively indicate the due dates when the subject deficiency taxes must be paid, no proper demand thereof within a specific period was validly made.

Thus, given that respondent failed to state the respective due dates for the payment of the subject tax assessments, petitioner's obligation for such deficiency taxes may not be deemed to have legally accrued. Simply put, petitioner may not be adjudged to be held liable for deficiency taxes which in the first place are not legally demandable.

With the said lapses of the BIR, the subject tax assessments hardly fall under the jurisprudential definition of a tax assessment under the National Internal Revenue Code, considering that they lacked "*a due tax liability that is there definitely set and fixed.*" They likewise do not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be.

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[60] Docket, Exhibit "P-42", pp. 259 to 261, at p. 261; BIR Records, "Exhibit "R-7", pp. 1742 to 1746, at p. 1744.

[61] *Id.*, Exhibit "P-43", pp. 268 to 273; BIR Records, Exhibit "R-7-b", pp. 1731 to 1735; Docket, Exhibit "P-48", pp. 294 to 297; BIR Records, Exhibit "R-9-c", pp. 1604 to 1607; BIR Records, Exhibit "R-10-b", pp. 1927 to 1930.

[62] BIR Records, Exhibit "R-9-a", pp. 1615 to 1618, at p. 1616.

[63] *Id.*, Exhibit "R-10", pp. 1934 to 1938, at p. 1937.

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Correspondingly, the inevitable conclusion is that the subject tax assessments are void, and thus, bear no valid fruit.[64]

In view of the finding that the subject tax assessments are invalid, it becomes unnecessary for this Court to address the issue and other ancillary matters raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject undated FLD and *Audit Result/Assessment Notices* attached thereto, are hereby **CANCELLED and SET ASIDE**.

Moreover, the subject FDDA, and the assailed AFDDA, including the *Audit Result/Assessment Notices* attached thereto, assessing petitioner for deficiency income tax, VAT, and EWT, inclusive of interests and compromise penalties, for taxable year 2011, in the aggregate amount of ₱194,602,339.32, are hereby **REVERSED and SET ASIDE**.

Respondent, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner arising from the undated FLD, Audit Result/Assessment Notices, FDDA and AFDDA.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[64] *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

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