REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2292** (CTA Case No. 9609)
	Present:
-versus-	**DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
ALPHALAND MAKATI PLACE, INC., *Respondent.*	Promulgated: FEB 08 2024 11:45 a.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For the Court *En Banc*'s resolution is respondent's "Motion for Partial Reconsideration (to the *Decision* dated 14 March 2022)"[1] ("Motion"), filed on 12 April 2022, *sans* any comment from petitioner.[2]

In its Motion, respondent contends that this Court was mistaken in its Decision,[3] dated 14 March 2022 ("Assailed Decision"), when it found petitioner's Formal Letter of Demand[4] ("FLD"), dated 27 October 2015, to be a valid assessment against respondent. It raises the following arguments in support of this:

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1 *EB* Records, pp. 127-136.
2 *See* Records Verification, dated 9 June 2022, *id.*, p. 141.
3 *Id.*, pp. 93-107.
4 BIR Records, pp. 146-147.

(a) The FLD was a *request* for payment, not a demand, and thus fails to comply with the requirements of ***Sec. 228 of the National Internal Revenue Code of 1997, as amended*** (“***NIRC***”), and ***Sec. 3.1.3 of Revenue Regulations*** (“***RR***”) ***No. 12-99, as amended***;[5]

(b) The FLD claimed that respondent had fifteen (15) days to protest it, rather than the thirty (30) days set by ***Sec. 228 of the NIRC***;[6] and

(c) Because the FLD stated that the interest accrued by the assessment would have to be adjusted if respondent paid beyond the due date, the amount demanded is indefinite.[7]

The Motion lacks merit.

The FLD was a demand for payment.

Quoting the Concurring and Dissenting Opinion of (Ret.) Hon. Associate Justice Juanito C. Castañeda, Jr., petitioner insists that the FLD did not *demand* payment but merely *requested* it. The contention centers around the second-to-last paragraph of the FLD:

> "Pursuant to the provision of Section 228 of the [NIRC] and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within fifteen (15) days from receipt hereof. However, **if you are amenable, you <u>may</u> pay the above assessment using the BIR Payment Form (BIR Form 0605) through eFPS**. x x x"

To respondent's eyes, following Hon. Associate Justice Castañeda, the above is not a demand as it gives the taxpayer the option not to pay if it is not amenable to the assessment.

The Court *En Banc* is unconvinced.

A demand can acknowledge alternative options without ceasing to be a demand.

Consider the following statement:

> Settle your liabilities if you are able.

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[5] *See* Motion for Reconsideration, pp. 3-5, *EB* Records, pp. 129-131.
[6] *See* Motion for Reconsideration, pp. 6-7, *id.*, pp. 132-133.
[7] *See* Motion for Reconsideration, pp. 7-9, *id.*, pp. 133-135.

The above is unequivocally a demand. It is a requirement for the recipient of the demand to perform a specified action: "[s]ettle your liabilities" ("*A*"). Its imperative nature is clear. However, it is attached to a conditional: "if you are able" ("*B*"). The imperative, then, is for the recipient of the demand to perform *A* in the event that *B* obtains. This implies, however, that if *B* does not obtain, then the recipient of the demand may forego performing *A*. Indeed, the demand must allow this alternative for it to be reasonable; tautologically, someone cannot settle their liabilities, or perform any action, if they are incapable of doing so. The statement thus implies an alternative option to assent while still being a clear demand, and a reasonable one at that. Generalizing this, a demand can inform its recipient of alternative options while still being a demand.

The above is true even when the demand is accommodating in tone, such as in the statement "We apologize for the inconvenience this may cause, but please settle your liabilities, if you are able". A demand need not be confrontational in tone in order to assert a requirement for the performance of a certain action.

All this applies to the aforequoted passage from the FLD. The same may have countenanced an alternative to payment, but this does not somehow render it a "non-demand" or mere request. The imperative to pay the amount assessed, even if on the condition that respondent agree with the assessment, is still an imperative. A demand, even when hinged on a conditional, is still a demand. That the FLD explicitly states this alternative, rather than merely imply it, does not invalidate the above. That the FLD does not couch its demand in forceful language only shows that it was written in a respectful voice, not that it was made in a manner not compliant with the relevant laws and rules.

The Court would be remiss not to address ***Commissioner of Internal Revenue v. Fitness By Design, Inc.***[8] ("***Fitness***"), invoked by respondent to claim that a FLD without a "demand" for payment is invalid. In said case, the Supreme Court deemed a Final Assessment Notice ("FAN")/FLD invalid for not being a "demand" for payment:

> "**First, <u>it lacks the definite amount of tax liability for which respondent is accountable</u>. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be**. An assessment, in the context of the National Internal Revenue Code, is a '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. x x x"
> (Citations omitted; emphasis and underscoring supplied.)

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

The High Court's reasons for doing so, however, were not merely semantic. Nowhere in this Decision, even outside of the quoted paragraph, do they pounce upon the voice or tone used in the issuance. Rather, reading the entire paragraph, they disputed the assessment's nature as a demand because it left the amount due indefinite and lacked any due date. In other words, the Supreme Court's criteria, in ***Fitness***, for determining whether an issuance is a demand or not was *substantial* and not merely *stylistic*. To focus on the latter would be a piecemeal and incomplete interpretation of the Supreme Court's *dictum*.

Furthermore, the FAN/FLD in ***Fitness*** presented its imperative as "you are requested to pay your aforesaid deficiency internal revenue tax liabilities". The taxpayer in said case even cited this as support for its claim that the FAN/FLD was not a demand. Tellingly, however, the Supreme Court *completely ignored this line of reasoning*, remaining silent on the use of the word "requested" when explaining why the FAN/FLD was not a valid demand and not even claiming that the FLD was a mere "request".[9] This implies that the High Court found such a stylistic argument misplaced or inadequate to determine that the FAN/FLD was not a demand, necessitating the use of more substantial contentions. And even if one denies this implication, it remains that there is nothing in ***Fitness*** *declared by the Supreme Court itself* (*i.e.*, not attributed to or quoted from one of the parties) that justifies using a semantic or stylistic basis to claim that a FLD is a "request" and not a "demand".

Compliance with the due process requirements of ***Section 228 of the NIRC*** is a matter of respecting a taxpayer's right to due process. As has been stressed by the Supreme Court, this means allowing a taxpayer the fullest opportunity to have its case heard, whether that be by exhaustively informing it of the details of its specific case, as in ***Fitness***, by addressing the specific arguments it raises against the assessment, such as in ***Commissioner of Internal Revenue v. Avon Manufacturing Products, Inc.***[10] ("***Avon***"), or by giving it the full fifteen (15)-day period within which to protest a Preliminary Assessment Notice, as in ***Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue.***[11] It should not devolve into fretting over lexical or syntactic trivialities that have no bearing on either a taxpayer's ability to effectively present its case or its right to due process.

A demand for payment in a FLD <u>must</u> allow alternatives to payment.

That respondent's contention here is untenable can be made more evident if one takes its claims seriously by thinking through their consequences. According to respondent, an imperative is not a demand if it allows its recipient to choose other options. An imperative is thus a demand if and only if it does *not* allow any such

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[9] The word "request" only appears five (5) times in the Decision: twice as "requested" in direct quotations of the FLD, twice as "request" in arguments attributed to Fitness By Design, Inc. (*but not actually forwarded by the Supreme Court*), and once in the footnotes, in a quotation of ***Sec. 228 of the NIRC***.

[10] G.R. Nos. 201398-99 & 201418-19, 3 October 2018.

[11] G.R. No. 249153, 12 September 2022.

choice. Accordingly, for a FLD issued by petitioner to be considered a demand, it must deny the taxpayer any other course of action than to pay the amount sought.

The problem here is that ***Section 228 of the NIRC*** mandates that such "other course of action" be made available to taxpayers:

> "Such assessment may be protested administratively, by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. x x x"

From the above, the payment of the assessed amount is not the only option available to a taxpayer who receives an assessment through a FLD. It may protest the assessment if it is not amenable to it, an option granted by law. If petitioner, through a FLD, denied a taxpayer the right to raise an administrative protest, if he insisted that no option other than payment could be taken, then he would be acting contrary to the ***NIRC*** itself.

To agree with respondent's position would thus put petitioner in a situation where he would be unable to issue an assessment in accordance with the law. If he admits that a taxpayer does not necessarily have to pay the amount sought in a FLD and can instead protest the assessment, said FLD is not a demand, and the assessment is void. However, if he demands payment by foreclosing any other course of action, he would be denying the taxpayer its right to have its case heard through an administrative protest, also rendering the assessment void.

This Court *En Banc* cannot, in good faith, burden petitioner with such a situation. To do so would be tantamount to ordering petitioner to disobey the law. Accordingly, we cannot concur with respondent's position on the imperative nature of the FLD. Said issuance must be read as an actual demand, despite its acknowledgement of alternatives, for requiring FLDs to deny any such alternatives would be to obstruct the very possibility of a FLD executed in accordance with the law.

By acknowledging an alternative to payment, petitioner respected respondent's right to due process and thus substantially complied with the procedural requirements of the **NIRC**.

The final point this Court *En Banc* wishes to raise against respondent's first argument concerns compliance with procedural rules. To repeat, we cannot consider petitioner's act of allowing respondent to dispute the assessment against it as an act of non-compliance with said procedural rules. Rather, by informing respondent of the alternative to payment, petitioner's demand is an exemplary act of compliance and of respect for respondent's rights.

Procedural rules and requirements are not merely formal restrictions void of meaning and substance: they are instituted for various reasons and to achieve various goals. The procedural requirements laid down in ***Section 228 of the NIRC*** and ***RR No. 12-99, as amended***, are no different. As held by the Supreme Court in a number of cases such as ***Avon*** and ***Commissioner of Internal Revenue v. Asalus Corporation***,[12] the requirements of the said law and regulation are instituted to protect the taxpayer's right to due process and specifically its right to be able to present its case and have said case heard. This is why said law and regulation require petitioner's issuances, relative to any given assessment, to exhaustively inform the taxpayer of the facts, laws, and details relevant to the assessment against it. This is also, at least partially, why a demand for payment must be made: so that the taxpayer knows that the assessment is no longer preliminary and that it is required to pay the amount sought.

In the assailed FLD, petitioner did not deny respondent its right to dispute the assessment. Neither did he pretend such right did not exist by omitting any mention of it whatsoever. He instead made the effort to inform respondent of said right to administratively protest the assessment. By clearly stating the opportunity granted to respondent to disagree with the assessment, even before explicitly demanding payment, petitioner attempted to ensure that respondent was fully apprised of an important legal aspect of its case.

From this perspective, it is clear that the FLD did not stray from the relevant procedural requirements placed upon assessments. Rather than a form of semantic non-compliance with formal rules, then, petitioner's demand was an act of substantial compliance with procedural due process. To invite a taxpayer to share its side of the story is to respect its right to due process, after all, regardless of any definitional nitpicking.

In brief, the Court *En Banc* still holds that the assailed FLD is a valid demand for payment.

The fifteen (15)-day period mistakenly included in the FLD does not invalidate the assessment.

Respondent's second argument revolves around a mistake in the FLD. To repeat, in the FLD, petitioner erroneously claimed that respondent had fifteen (15) days from receipt of said issuance within which to protest the assessment. This is contrary to ***Section 228***, which gives taxpayers thirty (30) days from receipt of a formal assessment within which to protest it. This contradiction, to respondent's eyes, is sufficient to invalidate the assailed FLD.

The Court does not agree.

[12] G.R. No. 221590, 22 February 2017.

Preliminarily, the Court notes that respondent claims that the FLD is invalid for giving it an opportunity to protest the assessment, as discussed above, while also claiming that the FLD is invalid for allegedly not properly giving it an opportunity to protest the assessment, as to be discussed here.

This inconsistency aside, the Court does not agree with respondent's contention. The inclusion of a fifteen (15)-day rather than thirty (30)-day period is, to the Court's eyes, a mere typographical error not substantial enough to nullify the assessment. It is worth quoting the sentence again here:

> "**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 fifteen (15) days from receipt hereof." (Emphasis supplied.)

The "aforesaid Code" mentioned in this sentence is the ***NIRC***. And it is this reference to the ***NIRC*** that convinces Us that the controverted period was a mere typographical error. Had petitioner not clearly stated, at the outset, that the period for raising an administrative protest was "[p]ursuant to the provision of Section 228" of the ***NIRC***, then his offer of a fifteen (15)-day period would have been violative of respondent's rights. It would be giving respondent a period shorter than what is actually granted to it by law.

However, petitioner did, in fact, identify the specific law, and even the particular section of said law, that stands as the basis for protesting assessments at the administrative level. Even if this does not signify that he had the correct period in mind, it shows that respondent was informed of the exact provision governing the administrative protest graciously offered to it. Any confusion regarding the period could thus have been cleared up by referring to said provision.

Accordingly, the controverted sentence was sufficient for substantially informing respondent of its rights, giving it an opportunity to present its case. To invalidate the assessment because it mistakenly set the period for protesting at fifteen (15) days would be akin to invalidating a FLD where petitioner or one of his authorized representatives accidentally typed "3" instead of "30" when specifying the relevant period. Petitioner *must* take the utmost of care in writing his issuances; the Court cannot stress this enough. However, neither can we invalidate an assessment for what amounts to excusable, if unfortunate, human error.

Regarding Our previous pronouncement that the provisions of the ***NIRC*** are "deemed written" on every assessment, We admit that the same was overly general and poorly worded. We still hold, however, a more reasonable conviction: mere typographical errors are insufficient to render an assessment void.

This is so even in the face of ***Fitness*** because it concerns general information applicable to the assessment process for the vast majority of taxpayers. To review, the assessment in ***Fitness*** was deemed null and void for failure to include (a) a definite amount due; and (b) the dates on which payment was due. Note that these details are *specific* to the taxpayer's case.

Put differently, Fitness By Design, Inc. could not have opened the ***NIRC*** and referred to a section thereof to ascertain the *specific* amount assessed against it for the *specific* taxes assessed for the *specific* taxable year or the *specific* dates on which the payment of such was due. The law does not include a list of all registered taxpayers, the precise amounts of taxes due from each for every calendar year, the specific figures and calculations used to produce said amounts, the extra amount accrued through interest, and the dates, for each and every taxpayer, on which payment of said taxes is due. A failure to include such details, which are *specific to the taxpayer being assessed*, thus effectively prevented Fitness By Design, Inc. from learning all of the details it needed to present its specific case. Its right to due process was accordingly violated, and the assessment against it was rendered void.

By contrast, the period for administratively protesting an assessment is *not* a detail specific to a given taxpayer. Unlike amounts and dates due, which would naturally differ from taxpayer to taxpayer, the period is *general*. It is applicable to and identical for all taxpayers being assessed. The length of said period is also plainly and unequivocally stated in the law. Any taxpayer may thus open a copy of the ***NIRC***, look up ***Section 228*** thereof, and immediately see that they are given thirty (30) days from receipt of an assessment within which to protest it administratively. This is so as long as they know or are informed that (a) they have an opportunity to protest said assessment; (b) said opportunity is only open for a certain number of days; and (c) the opportunity and the period for the same are enshrined in ***Section 228 of the NIRC***. And as petitioner provided all of this information in the FLD, he gave respondent all it needs to fully inform itself of the relevant and accurate details regarding that part of the assessment process.

In any event, the Details of Discrepancies attached to the FLD as "Annex A" correctly invokes the thirty (30)-day period to administratively protest an assessment.[13] As this was included as an integral part of the FLD, the latter successfully included an accurate statement of the relevant law. Had the inconsistency between periods stated in the FLD and the Details of Discrepancy caused any confusion, again, respondent could have referred to ***Section 228 of the NIRC***, identified in both the FLD and the Details of Discrepancies, and immediately see which of the two (2) was correct.

The FLD, in other words, did not obstruct respondent's ability to prepare and present its case. It is thus compliant with the due process requirements of the ***NIRC*** as these have been elucidated by the Supreme Court. It did not withhold or substantially misrepresent important details particular to respondent in a manner that

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[13] *See* Details of Discrepancies, dated 27 October 2015, p. 2, BIR Records, p. 144.

would have made it impossible for respondent to intelligently argue its case. As such, it is a valid assessment.

The amount due was not rendered indefinite by a reminder that the interest, imposed by law, is subject to adjustment.

Respondent's final argument is that the FLD did not identify a definite total amount due, rendering it void. This is so as said letter contained a reminder that the interest would have to be adjusted depending on when respondent paid.

The Court is unconvinced. In raising this argument, respondent merely alleged that the FLD here is similar enough to the one in ***Fitness***. It completely ignores the specific points raised in the Assailed Decision, the comparisons made between the FAN/FLD in ***Fitness*** and the FLD here, and the particular reasons We treated the High Court's ruling on the former as inapplicable to the latter. As such, it failed to properly refute Our ruling.

The Court notes, however, that what is actually at issue here is the supposed indefiniteness of the *interest*. This is the only amount that is open to adjustment depending on when the tax liability is paid. Yet as explained in the Assailed Decision, this is a natural consequence of ***Section 249 of the NIRC*** and integral to the very concept of interest. Accordingly, the amount of interest accrued *must* be open to adjustment and cannot be otherwise, lest it no longer be interest.

It is once again illuminating to think through the consequences of respondent's position here. If the Court *En Banc* agrees with respondent, then any given FLD would be prohibited from stating that the interest accrued would have to be adjusted depending on the actual date of payment. How could this play out in practice? What would petitioner have to do in order to obey such a prohibition? Three (3) possibilities come to mind.

First, as observed in the Assailed Decision, the Bureau of Internal Revenue would not be able to predict the exact date on which a taxpayer would pay its liabilities. Given this, a FLD would have to include a list of every possible amount of interest due for every relevant period. Said list, however, would have to be infinitely long. Typing and printing out such a list would be quite difficult, or at least time-consuming, for petitioner. It would also drain the government's resources, at it would require an infinite amount of ink and paper, not to mention expenses incurred due to electricity bills, computer and printer maintenance, and so on, for an infinite amount of time. Said list would also be inconvenient for a taxpayer, who would have to spend an infinitely long period of time to read the list in full. All of this is arguably impractical and thus cannot be accepted.

Second, petitioner could adjust the amount of interest due without mentioning, in the FLD, such necessary adjustment. A taxpayer, however, could easily insist that such the assessment is still invalid, as it does not fully apprise said taxpayer of the legal and factual bases for the total amount due. This would once again lead to a lose-lose situation for petitioner and must thus be rejected.

Third, petitioner could simply leave the interest unmodified regardless of when a taxpayer settles its liabilities. This, however, would unjustifiably discard an important deterrent to and punishment for deficient and delinquent taxes. It would also be contrary to ***Sec. 249 of the NIRC***, which imposes such interest be applied "from the date prescribed for payment until the amount is fully paid". Accordingly, it must also be rejected.

The only reasonable course of action, then, is to admit that the interest accrued in an assessment is adjustable *by its very nature* and *as mandated by law*. In sum, the FLD presented as definite an amount of taxes due as is reasonable to expect.

At this juncture, the Court *En Banc* sees fit to reiterate the imperative of the Supreme Court in the ***Fitness*** case itself:

> "However, **the mandate of giving the taxpayer a notice of the facts and laws on which the assessments are based should not be mechanically applied.** To emphasize, **the purpose of this requirement is to sufficiently inform the taxpayer of the bases for the assessment to enable him or her to make an intelligent protest**."
> (Emphasis supplied.)

All told, the Court *En Banc* maintains Our ruling in the Assailed Decision that the FLD is a valid assessment.

WHEREFORE, respondent's Motion for Partial Reconsideration, filed on 12 April 2022 is hereby **DENIED** for lack of merit. The Court *En Banc*'s Decision, dated 14 March 2022, is hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(With due respect, I reiterate my Separate Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join the Separate Opinion of Justice Villena.)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I reiterate my Separate Opinion.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

(With due respect, I join the Separate Opinion of Justice Villena.)
CORAZON G. FERRER-FLORES
Associate Justice

(With due respect, I join the Separate Opinion of Justice Villena.)
HENRY S. ANGELES
Associate Justice