REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MEGABUCKS MERCHANDISING CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9345

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, JJ.

Promulgated:
NOV 22 2018 8:45 Am

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RESOLUTION

MANAHAN, J.:

For resolution is respondent's **Motion for Reconsideration Re: Decision dated 17 August 2018**, filed on September 4, 2018, with petitioner's **Comment (On Respondent's Motion for Reconsideration)**, filed on September 28, 2018.

Respondent moves for the reconsideration of the Court's Decision promulgated on August 17, 2018 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, Audit Result/Assessment Notice Nos. IT-116-LOA-00000051-10-15-2074, VT-116-LOA-00000051-10-15-2075, WE-116-LOA-00000051-10-15-2076, WC-116-LOA-00000051-10-15-2077, DS-116-LOA-00000051-10-15-2078, and FT-116-LOA-0000012-09-13-253, assessing petitioner for deficiency income tax, value-added tax, expanded

withholding tax, withholding tax on compensation, documentary stamp tax, including interest, surcharge and compromise penalties, in the aggregate amount of ₱46,203,187.83 for taxable year 2010, are **CANCELLED**.

SO ORDERED.

Respondent's motion is based on the following grounds:

1. The Court erred in ruling that the final assessment notice (FAN) against petitioner is void for allegedly not containing a definite due date for payment of the tax liabilities; and

2. The Court erred in ruling that the deficiency tax assessment issued against petitioner for taxable year 2010 has already prescribed.

Respondent argues that contrary to the findings of the Court, the Formal Letter of Demand (FLD) has fixed and definitely set the deficiency tax liabilities of petitioner. Respondent maintains that the basic tax deficiency as well as the surcharge and interest were already fixed in the said FLD; all the applicable interests were computed up to September 25, 2015, but, as provided by law, if petitioner still fails to pay the definitely stated tax liability on or before September 25, 2015, the deficiency interest will have to be adjusted accordingly. Respondent stresses that it is undisputed that petitioner received the FLD on September 10, 2015 and that the FLD, particularly in the payment of compromise penalty, it clearly states that "If you are amenable, please pay the suggested compromise amount within fifteen (15) days from receipt hereof xxx".

Moreover, respondent maintains that the doctrine laid down in the Supreme Court case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* should be revisited. According to respondent, a careful perusal of the wordings of the decision in *Fitness By Design* reveals that the ratio is based mainly on the decision of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Menguito.* However, respondent submits that the ruling in *Menguito* was misapplied in the decision of the Supreme Court in *Fitness By Design*. Respondent claims that the main resolution of the Supreme Court in *Menguito* is only as to whether there were post-reporting notice and pre-assessment notice issued by the Commissioner of Internal

Revenue (CIR) and whether the taxpayer actually received them, which is a dissimilar issue to the case of *Fitness By Design*.

Respondent stresses that the FLD and Assessment Notices issued against petitioner are compliant with the basic requisites provided under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent, citing the case of *Commissioner of Internal Revenue vs. Hon. Raul Gonzales, et al.*, contends that an assessment is valid as long as it states the fact, the law, the rules and regulations or jurisprudence on which it was based; it remains valid irrespective of an additional requirement purportedly being prescribed by a regulation.

Respondent also submits that his right to assess petitioner for deficiency expanded withholding tax (EWT) and withholding tax on compensation (WTC) for taxable year 2010 is not subject to the three (3)-year prescriptive period as the same is imprescriptible.

Respondent contends that withholding tax assessments are not internal revenue tax as a statutory taxpayer but rather such assessments were issued for failure of petitioner to withhold the correct taxes it is duty-bound to collect as agent, hence, assessments issued for deficiency EWT and WTC are imprescriptible. Respondent claims that the liability of petitioner as a taxpayer is different from its liability as a withholding agent; these liabilities arose from a different source of obligation. According to respondent, this is the reason why liabilities arising from withholding taxes were never covered by tax amnesty programs. Moreover, respondent avers that petitioner's legal duty to remit taxes withheld cannot be barred by prescription because the taxes it withheld are only held in trust for the government, hence, petitioner cannot cloak itself under the limitation of Section 203 of the NIRC of 1997, as amended, to allow it to pocket funds held in trust, at the expense of the government, thereby permitting petitioner to unjustly enrich itself.

Moreover, respondent submits that the waivers executed by petitioner validly extended the period to assess; the waivers are in the form prescribed by law, duly notarized, and executed by petitioner's duly authorized representative, therefore, valid and binding upon petitioner. Contrary to the ruling that the Third Waver is defective and did not validly extend the prescriptive period to assess, respondent maintains that the same is valid considering that petitioner executed the fourth and fifth waivers, citing the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly*

Nextel Communications Phils., Inc.), which according to respondent is similar to this case.

In its comment, petitioner asserts that the Court could not have been more correct in holding that the subject FLD and FAN are invalid due to their failure to indicate the definite due date for payment by the taxpayer, consequently, negating the demand for payment which is the very essence of an FLD/FAN. Petitioner avers that settled is the rule that an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period and contrary to respondent's contention, the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* finds application in the present case. Petitioner contends that the Court correctly pointed out that the last paragraph of the subject FLD (Part I) dated September 10, 2015 provides that payment to be made "within the time shown in the enclosed assessment notice. xxx", however, the due dates on the subject Audit Result/Assessment Notices were left blank, thus negating respondent's demand for payment. According to petitioner, this is completely similar to the situation in the case of *Fitness By Design.*

Petitioner points out that the doctrine of *stare decisis* directs that once the court laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same. Moreover, petitioner asserts that the Civil Code provides that judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. Hence, petitioner contends that to ask the Court to decide in the contrary and not to apply the clear pronouncement of the Supreme Court in *Fitness By Design* is tantamount to asking the Court to contravene a law.

Petitioner also contends that the *Menguito* case centers on what a valid formal assessment notice is and what it is not; as the Highest Court said that "a post-reporting notice and pre-assessment notice do not bear the gravity of a formal assessment notice" and in zeroing on the requisites of a valid formal assessment notice, it emphasizes the importance of "a demand for payment within a prescribed period", which is essentially pertaining to the "due date".

Petitioner also points out that it is quite surprising how, all of a sudden, when it became convenient and advantageous to his position, respondent would insist that a minimum reference or compliance with the law, rules and regulations on which the assessment was based would suffice, despite departure from the requirement of demand through the indication of a due date for payment, as well-settled by jurisprudence. The defect in the formal letter of demand in the case of *Commissioner of Internal Revenue vs. Hon. Raul Gonzales, et al.*, cited in respondent's motion, is the lack of a "control number", which is different from the absence of a "due date" for payment; the former may be considered trivial, but the latter has been jurisprudentially established as important and indispensable.

As to respondent's argument that petitioner should be estopped from assailing the validity of the waivers because it is *in pari delicto* with respondent, petitioner counter-argues that the Supreme Court has already ruled that the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the Bureau of Internal Revenue (BIR) must strictly follow; the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, which the BIR itself had issued.

Petitioner asserts that jurisprudence is replete with cases applying the 3-year prescriptive period of the right of the BIR to assess deficiency withholding taxes, hence, respondent's argument that the same is imprescriptible is without merit.

A perusal of respondent's arguments shows that they have already been addressed and thoroughly discussed by the Court in the assailed Decision. Be that as it may, the Court will address these arguments to emphasize certain points.

Considering that the factual circumstances of this case are substantially the same as that in *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[1], and considering further that the said case has not been reversed, the doctrine of *stare decisis* is applicable.

Under the doctrine of *stare decisis et non quieta movere*, which means "to adhere to precedents, and not to unsettle things which are

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

established", when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same.[2] The principle of *stare decisis et non quieta movere* is well entrenched in Article 8 of the New Civil Code which states that judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.[3]

The doctrine of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[4] The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions.[5]

Respondent's argument that the FLD has fixed and definitely set the deficiency tax liabilities of petitioner since the applicable interests were computed up to September 25, 2015 is bereft of merit. As held by the Supreme Court in *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[6], the reckoning date of the accrual of penalties and surcharges is not the due date for payment of tax liabilities, to wit:

> 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:**

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[2] *Ty vs. Banco Filipino Savings and Mortgage Bank,* G.R. No. 188302, June 27, 2012.
[3] *Cabaobas, et al. vs. Pepsi-Cola Products, Philippines, Inc.*, G.R. No. 176908, March 25, 2015.
[4] *Lazatin, et al. vs. Hon. Desierto, et al.*, G.R. No. 147097, June 5, 2009, citing *Fermin vs. People of the Philippines,* G.R. No. 157643, March 28, 2008.
[5] *Chinese Young Mens Christian Association of the Philippine Islands, doing business under the name of Manila Downtown YMCA vs. Remington Steel Corporation,* G.R. No. 159422, March 28, 2008.
[6] G.R. No. 215957, November 9, 2016.

> 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**. (*Emphasis supplied*)

Moreover, as noted by the Court in the assailed Decision, while the due date on the subject FANs was left blank despite the statement in the subject FLD (Part I) that the due date was shown on the enclosed assessment notice, the FLD for the imposition of compromise penalties provides for a due date.[7] Hence, the Court did not invalidate the assessment for the compromise penalties for failure to demand payment of taxes within a prescribed period but rather it was cancelled on the ground that the imposition thereof without the conformity of the taxpayer is illegal and unauthorized.

Further, in the case of *Commissioner of Internal Revenue vs. Menguito*[8], which was cited in *Fitness By Design*, the Supreme Court found that the CIR failed to prove that it served on Menguito a post-reporting notice and a pre-assessment notice. However, the Supreme Court held that while the lack of a post-reporting notice and pre-assessment notice is a deviation from the requirements under Section 1 and Section 2 of Revenue Regulation No. 12-85, the same cannot detract from the fact that formal assessments were issued to and actually received by Menguito in accordance with Section 228 of the NIRC which was in effect at the time of assessment. The pertinent portion of the *Menguito* case is quoted below:

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[7] Decision, pp. 18-19.
[8] G.R. No. 167560, September 17, 2008.

It should be emphasized that the stringent requirement that an assessment notice be satisfactorily proven to have been issued and released or, if receipt thereof is denied, that said assessment notice have been served on the taxpayer, applies only to formal assessments prescribed under Section 228 of the National Internal Revenue Code, but not to post-reporting notices or pre-assessment notices. **The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period**, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor.

A post-reporting notice and **pre-assessment notice do not bear the gravity of a formal assessment notice**. The post-reporting notice and pre-assessment notice merely hint at the initial findings of the BIR against a taxpayer and invites the latter to an informal conference or clarificatory meeting. Neither notice contains a declaration of the tax liability of the taxpayer or a demand for payment thereof. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice. In the case of respondent, a formal assessment notice was received by him as acknowledged in his Petition for Review and Joint Stipulation; and, on the basis thereof, he filed a protest with the BIR, Baguio City and eventually a petition with the CTA. (*Emphasis supplied*)

On the other hand, in *Fitness By Design*, the Supreme Court, citing *Menguito*, held that:

A final assessment notice provides for the amount of tax due with a demand for payment. xxx

xxx xxx xxx

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. xxx An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. xxx

xxx xxx xxx

A pre-assessment notice "do[es] not bear the gravity of a formal assessment notice."

Based on the foregoing, in *Menguito*, a formal assessment notice was being compared to a post-reporting notice and pre-assessment notice. Moreover, it discusses what a formal assessment should contain to be valid, *i.e.*, an assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. This Court finds that the said pronouncement in *Menguito* cited in *Fitness By Design* is in accord with a previous pronouncement found in the cases of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[9] and *Tupaz vs. Ulep*[10]. Hence, it was erroneous for respondent to state that the Supreme Court misapplied the ruling in *Menguito*.

Moreover, respondent's argument that the assessments issued for deficiency EWT and WTC are imprescriptible deserve scant consideration.

Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever comes later.

In this regard, Section 21 of the NIRC of 1997, as amended, enumerates all internal revenue taxes, as follows:

SEC. 21. *Sources of Revenue* - The following taxes, fees and charges are deemed to be **national internal revenue taxes**:

(a) **Income tax**;
(b) Estate and donor's taxes;

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[9] G.R. No. 128315, June 29, 1999.
[10] G.R. No. 127777, October 1, 1999.

(c) Value-added tax;
(d) Other percentage taxes;
(e) Excise taxes;
(f) Documentary stamp taxes; and
(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. (*Emphasis supplied*)

It must be noted that the imposition of withholding tax is found under "Title II – Tax on Income" of the NIRC of 1997, as amended. Thus, the same is considered as internal revenue tax which is required to be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever comes later.

Also, jurisprudence is replete with cases[11] where the Supreme Court applied the prescriptive period under Section 203 of the NIRC of 1997, as amended, to withholding tax assessments.

It is well recognized rule that where the law does not distinguish, courts should not distinguish. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated.[12] Since Section 203 of the NIRC of 1997, as amended, applies to "internal revenue taxes", then, the Court cannot make a distinction and exclude withholding taxes in the application of the prescriptive period provided therein.

Moreover, if We were to subscribe to respondent's argument that withholding tax is not an internal revenue tax, then respondent should not have assessed petitioner for withholding taxes in the first place, not being authorized to do so, considering that the Letter of Authority (LOA) No. LOA-116-2011-00000051[13] dated September 20, 2011 authorized the examination petitioner's books of accounts and

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[11] *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008; and *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[12] *Philippine British Assurance Co., Inc., vs. Honorable Intermediate Appellate Court, et al.*, G.R. No. 72005, May 29, 1987.

[13] Exhibit "P-3", Folder - Judicial Affidavit of Ms. Madge A. Sobrevinas; Exhibit "R-1"; BIR Records, Folder 1, p. 1.

other accounting records for "ALL INTERNAL REVENUE TAXES" and withholding tax was not specifically stated therein.

Hence, respondent cannot exclude withholding tax assessments in the application of the prescriptive period under Section 203 of the NIRC of 1997, as amended.

Respondent also wants to impress upon this Court that petitioner is likewise at fault in the execution of the defective waivers considering that petitioner executed the Fourth and Fifth Waivers despite the Third Waiver being supposedly defective citing as basis the *Next Mobile* case.

However, We find that *Next Mobile* is inapplicable to the present case. It should be noted that due to the *peculiar circumstances* of the *Next Mobile*[14] case, the Supreme Court treated that case as an *exception* to the general rule, to wit:

> The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

The treatment of the Supreme Court of the *Next Mobile* case as an "exception" can be seen in the subsequent cases of *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*[15] and *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc.*[16], where the Supreme Court reiterated that the BIR cannot shift the blame to the taxpayer for failure to comply with RMO 20-90 and RDAO 05-01.

In *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*[17], the Supreme Court invalidated the first and second waivers executed by the taxpayer therein, holding that failure to provide the office accepting the waiver with the third copy violates

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[14] *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*, G.R. No. 212825, December 7, 2015.
[15] G.R. No. 213943, March 22, 2017.
[16] G.R. No. 220835, July 26, 2017.
[17] G.R. No. 213943, March 22, 2017.

RMO No. 20-90 and RDAO No. 05-01, and granting that these waivers were validly executed, still, the third waiver is invalid because it was not executed in three copies. The Supreme Court held that:

> Clearly, the defects in the Waivers resulted to the non-extension of the period to assess or collect taxes, and made the assessments issued by the BIR beyond the three-year prescriptive period void.
>
> The CIR also argues that PDI is estopped from questioning the validity of the Waivers. We do not agree. As stated by the CTA, the BIR cannot shift the blame to the taxpayer for issuing defective waivers. The Court has ruled that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself. A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.

Again, in the case of *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc.*[18], the Supreme Court agreed with the findings of the Court of Tax Appeals that the waivers executed therein were defective because at the time when the first waiver took effect, the period for the CIR to assess deficiency EWT and deficiency value-added tax had already prescribed. Moreover, the signatory to the three waivers had no notarized written authority from the corporation's board of directors and the waivers did not specify the kind of tax and the amount of tax due. The Supreme Court held that the BIR cannot shift the blame to the taxpayer for failure to comply with RMO 20-90 and RDAO 05-01, to wit:

> At this juncture, the Court deems it important to reiterate its ruling in *Commissioner of Internal Revenue* v. *Kudos Metal Corporation,* that the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which

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[18] G.R. No. 220835, July 26, 2017.

the BIR itself had issued. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot simply shift the blame to the taxpayer.

In view of the foregoing, the Court finds no cogent reason to reverse or modify the Court's Decision dated August 17, 2018.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision dated 17 August 2018** is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice