REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2999** (CTA Case No. 10177)
- versus -	*Present:* **RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
IBMS TECHNOLOGY PHILS., CORPORATION, *Respondent.*	Promulgated: DEC 15 2025 4:20

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) *via* private courier on October 7, 2024, assailing the *Decision*[2] dated March 15, 2024 (assailed *Decision*) and the *Resolution*[3] dated August 29, 2024 (assailed *Resolution*), both rendered by this Court's *Special Third Division* (Court in Division) in CTA Case No. 10177, entitled "*IBMS Technology Phils. Corporation v. Commissioner of Internal Revenue.*"

The dispositive portions of the assailed *Decision* and *Resolution* read as follows:

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[1] *En Banc (EB)* Docket, pp.8–19.
[2] *Id.* at 26–45.
[3] *Id.* at 47–50.

Assailed Decision:

> **WHEREFORE**, in view of the foregoing considerations, the present *Petition for Review* is **GRANTED**. The Formal Assessment Notice (Parts I and II), dated December 7, 2018, issued against [respondent] covering deficiency Income Tax of ₱3,036,576.84, Value-Added Tax of ₱27,463,392.05, Expanded Withholding Tax of ₱513,979.54, Withholding Tax on Compensation of ₱15,449.44, Documentary Stamp Tax of ₱45,702.75, Improperly Accumulated Earnings Tax of ₱4,496,007.03, Final Withholding Tax of ₱706,378.09, and Compromise Penalty of ₱70,000.00, inclusive of interests and penalties, for taxable year 2015, is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE**, in view of the foregoing, [petitioner's] *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Petitioner prays that the aforesaid *Decision* and *Resolution* be reversed and set aside, and that a new judgment be rendered ordering respondent to pay the assessed deficiency taxes and compromise penalty for taxable year 2015, together with the accrued 25% surcharge for late payment and 20% annual interest from January 13, 2017 until fully paid, pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

THE PARTIES[4]

Petitioner is the duly appointed Commissioner of Internal Revenue, with principal office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

Respondent IBMS Technology Phils. Corporation is a domestic corporation with principal office located at Unit 29-C, Chatham House Condominium, 116 Valero corner V. A. Rufino Streets, Salcedo Village, Makati City.

[4] *Id.* at 9, *Petition for Review, The Parties.*

THE FACTS AND PROCEEDINGS

The relevant facts, as found by the Court in Division in the assailed *Decision*, are as follows:

> [Petitioner] issued LOA No. eLA201200035915 dated October 24, 2016, authorizing Revenue Officer (RO) Marife Mactal and Group Supervisor (GS) Bernadette Redimano to examine [respondent's] books of accounts and other accounting records for all internal revenue taxes for taxable year (TY) 2015, covering the period January 1 to December 31, 2015.
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> On October 30, 2018, [petitioner] issued the *Preliminary Assessment Notice* (PAN) Parts 1 and 2 with *Details of Discrepancies*, assessing for deficiency taxes, inclusive of interests, for TY 2015 as follows:

Tax Type	Amount
Income Tax (IT)	₱2,997,762.77
Value-Added Tax (VAT)	27,122,665.07
Expanded Withholding Tax (EWT)	507,625.85
Withholding Tax on Compensation (WTC)	15,258.46
Documentary Stamp Tax (DST)	45,219.27
Improperly Accumulated Earnings Tax (IAET)	4,442,372.05
Final Withholding Tax (FWT)	698,882.19
Compromise Penalty	70,000.00
TOTAL	₱35,899,785.66

> On December 13, 2018, [respondent] received FAN Parts 1 and 2 with *Details of Discrepancies* dated December 7, 2018, assessing it for deficiency IT, VAT, EWT, WTC, DST, IAET, FWT, and compromise penalty, inclusive of interests and penalties, for TY 2015, summarized below:

Tax Type	Amount
Income Tax (IT)	₱3,036,576.84
Value-Added Tax (VAT)	27,463,392.05
Expanded Withholding Tax (EWT)	513,979.54
Withholding Tax on Compensation (WTC)	15,449.44
Documentary Stamp Tax (DST)	45,702.75
Improperly Accumulated Earnings Tax (IAET)	4,496,007.03
Final Withholding Tax (FWT)	706,378.09
Compromise Penalty	70,000.00
TOTAL	₱36,347,485.74

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> [Respondent] then filed with [petitioner] its *Request for Reinvestigation* (Protest), dated January 4, 2019, against the FAN on January 7, 2019. Within sixty (60) days therefrom, or on March 7, 2019, [respondent] submitted to the BIR the documents in support of its protest. This was acknowledged by [petitioner] in the letter dated March 29, 2019.
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> Pending decision on its protest, [respondent] received on July 8, 2019 a *Notice of Reassignment of case/docket of IBMS Technology Phils. Corporation for Taxable Year 2015.*
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> Pursuant thereto, [petitioner] issued a new LOA No. eLA201600069316, dated October 23, 2019, authorizing RO Precious P. Viray and GS (then RO) Mactal to examine [respondent's] books of accounts and other accounting records for all internal revenue taxes for TY 2015, covering the period January 1 to December 31, 2015. This new LOA is a replacement for LOA No. eLA201200035915, dated October 24, 2016, for the continuation of audit of [respondent's] tax liabilities for the same period.

Due to the alleged inaction on its *Request for Reinvestigation*, respondent filed a *Petition for Review* before the Court in Division on October 2, 2019.

On October 30, 2019, petitioner filed a *Motion for Extension of Time to File Answer*,[5] which the Court in Division granted in a Resolution[6] promulgated on November 13, 2019. Petitioner was given until November 30, 2019 to file his *Answer*.

However, on November 29, 2019, petitioner instead filed an *Omnibus Motion to Dismiss or in the Alternative, to Direct Petitioner to Comply with Rule 7, Section 2 (A) of the 1997 Rules of Court, and to Extend Time to File Answer (Omnibus Motion)*,[7] to which respondent filed its *Comment/Opposition with Motion*[8] on December 20, 2019.

Thereafter, on January 21, 2020, petitioner filed a *Motion to Admit Answer*[9] with the attached *Answer*.[10] In compliance with the Court's directive in the November 13, 2019 Resolution, petitioner transmitted the *BIR Records* for the case on January 31, 2020.[11]

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[5] *Id.* at 56–59.
[6] *Id.* at 62.
[7] *Id.* at 63–66.
[8] *Id.* at 70–73.
[9] *Id.* at 76–78.
[10] *Id.* at 79–85.
[11] *Id.* at 88.

In a Resolution[12] promulgated on February 5, 2020, the Court in Division partially granted petitioner's *Omnibus Motion*, and directed respondent to file an *Amended Petition for Review* with each paragraph duly numbered in accordance with Section 2 (a), Rule 7 of the Rules of Court. In the same Resolution, the Court granted petitioner a fresh period of fifteen (15) days from receipt of the *Amended Petition for Review* to file his *Answer.*

On March 6, 2020, respondent filed an *Amended Petition for Review,*[13] to which petitioner filed a *Supplemental Answer (On the Amended Petition for Review dated March 5, 2020)* on June 24, 2020,[14] interposing essentially the same special and affirmative defenses raised in his original *Answer* dated January 21, 2020.

Following the *Pre-Trial Conference*, the parties submitted a *Joint Stipulation of Facts and Issues*[15] on November 11, 2021, based on which a *Pre-Trial Order*[16] was issued on February 17, 2022.

Trial ensued, during which both parties presented evidence in support of their respective claims.

On March 15, 2024, the Court in Division rendered the assailed *Decision* granting respondent's *Petition for Review*. The Court ruled in favor of respondent and ordered the cancellation and setting aside of the tax assessments issued against it, on the following grounds:

1. The period to assess and collect deficiency taxes had prescribed in part;
2. The Formal Assessment Notice (FAN) was void for failure to state the definite amount of tax liability for which respondent is accountable as well as the due date for payment; and
3. Respondent was not liable for the compromise penalty.

Aggrieved, petitioner filed a *Motion for Reconsideration*[17] on April 16, 2024, which was denied in the equally assailed *Resolution* dated August 29, 2024.

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[12] *Id.* at 91–94.
[13] *Id.* at 95–107.
[14] *Id.* at 168–182.
[15] *Id.* at 264–266.
[16] *Id.* at 292–299.
[17] Division Docket – Vol. III, pp. 1318–1327.

Hence, petitioner elevated the case before the Court *En Banc via* the instant *Petition for Review* filed through an accredited private courier on October 7, 2024.

On November 26, 2024, the Court *En Banc* issued a *Minute Resolution*[18] directing respondent to file its *Comment* to the *Petition for Review* within ten (10) days from notice.

In compliance, respondent filed its *Comment/Opposition (To petitioner's Petition for Review dated October 7, 2024)*[19] *via* private courier on December 9, 2024.

In a *Minute Resolution*[20] issued on January 20, 2025, the Court *En Banc* noted respondent's *Comment/Opposition (To petitioner's Petition for Review dated October 7, 2024)* and referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation, pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.

On March 24, 2025, the instant case was submitted for decision, considering the *Report*[21] of the PMC-CTA dated August 27, 2024, stating that the parties decided not to have their case mediated.[22]

Hence, this Decision.

ASSIGNMENT OF ERRORS

In the present *Petition for Review*, petitioner assigns the following errors for resolution by the Court *En Banc*:

1. IN RESOLVING THAT THE FAN IS VOID FOR FAILURE TO STATE THE DEFINITE AMOUNT OF TAX LIABILITY FOR WHICH RESPONDENT IS ACCOUNTABLE AS WELL AS THE DUE DATE FOR PAYMENT; and

2. IN RESOLVING THAT THE PERIOD TO ASSESS HAD PRESCRIBED IN PART.

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18 *EB* Docket, p. 55.
19 *Id.* at 57-66.
20 *Id.* at 69.
21 *Id.* at 70.
22 *Id.* at 71, Minute Resolution.

***Petitioner's Arguments*:**

In support of the *Petition*, petitioner maintains that the FAN stated both the definite amount of tax liability for which respondent is accountable and the due date for payment.

According to petitioner, a perusal of the FAN shows that the tax was stated to be due on "January 7, 2018." However, petitioner points out that it would be impossible for the due date to precede the issuance of the FAN itself. Thus, petitioner contends that the date indicated in the FAN is merely a typographical error and that the correct date should be "January 7, 2019," or thirty (30) days from the date of issuance of the FAN.

Moreover, petitioner asserts that the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[23] (*Fitness by Design*), is not in all fours with the instant case. In that case, the Supreme Court noted that the amount stated in the FAN was indefinite, as it remained subject to modification depending on the date of the taxpayer's payment. In the instant case, however, there is an exact date by which the tax liability is due, which is January 7, 2019.

Additionally, petitioner cites *BASF Philippines, Inc. v. Commissioner of Internal Revenue*,[24] where this Court's Special Second Division ruled that "*in determining the validity of the assessment, what is crucial is the definiteness of the amount due indicated in the FAN with respect to the deadline or due date provided.*" Petitioner submits that the FAN in this case indicated a definite date when the tax is due. There is also a definite amount that respondent is liable to pay. Similarly, the interest shall only be adjusted if the taxpayer fails to pay the stated amount on the due date.

Likewise, petitioner argues that respondent failed to specifically identify the transactions that have already prescribed. According to petitioner, even assuming that a portion of the assessed taxes has indeed prescribed [*i.e.*, the first three (3) quarters of the VAT assessment; January to June and August to October of taxable year 2015 for EWT; and January to October 2015 for WTC], it is incumbent upon respondent to specifically identify the particular transactions

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[23] G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].
[24] CTA Case No. 10221, November 3, 2022.

falling within the months or quarters allegedly covered by prescription. This is because the burden of proving any irregularity in the assessment lies with the taxpayer who contests the assessment.[25]

Finally, petitioner asserts that the Court in Division cannot grant relief that was never prayed for by the taxpayer. In the instant case, respondent never alleged or raised in its *Petition for Review* and/or *Memorandum* that: (i) the first three quarters of the VAT assessment; (ii) the periods of January to June and August to October of taxable year 2015 for EWT; and (iii) the period of January to October 2015 for WTC, had already prescribed.

Respondent's Arguments:

At the outset, respondent claims that the filing of the instant *Petition for Review* was not duly authorized.

Respondent contends that petitioner's *Petition for Review* was filed under the purported delegated authority of Renato N. Molina, the newly appointed Regional Director of Revenue Region No. 8A, Makati City. As proof of such authority, petitioner attached the Revenue Delegation Authority Order (RDAO) No. 2-2007[26] dated March 2007, issued by then Commissioner Jose Mario C. Buñag.

However, respondent claims that petitioner should have submitted a delegation of authority issued by the **current** Commissioner, Hon. Romeo D. Lumagui, Jr. According to respondent, the "*Commissioner*" being referred to under Section 7[27] of the NIRC of 1997, as amended, refers to the current Commissioner of the BIR. Without a delegation from Hon. Romeo D. Lumagui, Jr., Renato N. Molina lacked the authority to file the instant *Petition for Review*.

Respondent adds that RDAO No. 2-2007, issued by then Commissioner Jose Mario C. Buñag, was effective only during

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[25] *Liquigaz Philippines Corporation v. Commissioner of Internal Revenue*, CTA EB No. 1117 & 1119, September 21, 2015.

[26] SUBJECT: Delegation of Authority with Regard to Institution of Civil and Criminal Actions/Cases to Effect Recovery of Taxes or the Enforcement of Any Fine, Penalty or Forfeiture Under the Tax Code, with Regard to the Defense/s of the Bureau of Internal Revenue in Cases/Actions Instituted Against it, and with Regard to Other Cases.

[27] 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: xxx

his term as Commissioner of the BIR and does not extend to the term of his successor, who has the sole prerogative to delegate authority. Since no *Petition for Review* was validly filed, respondent submits that the assailed *Decision* and *Resolution* have become final and executory.

Nonetheless, in rejecting petitioner's contentions, respondent asserts that the Court in Division correctly ruled that: (i) the FAN is void for failure to state a definite amount of tax liability for which respondent is accountable and the due date for payment; and (ii) the period to assess had prescribed in part.

Anent petitioner's contention that the Court in Division cannot grant relief that was never prayed for by the taxpayer, respondent submits that such contention was already addressed and found wanting by the Court in Division.

THE COURT *EN BANC'S* RULING

The present Petition for Review was seasonably filed; hence, the Court En Banc has jurisdiction over the same.

Before addressing the merits of the case, the Court *En Banc* shall first determine whether the present *Petition for Review* was timely filed.

The Court finds that the *Petition for Review* was seasonably filed. Accordingly, the Court En Banc has jurisdiction to take cognizance of the same.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> **SEC. 3**. *Who may appeal; period to file petition.* — ...
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> ... ...
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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful

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> fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Records show that petitioner received the assailed *Resolution* denying his *Motion for Reconsideration* on September 6, 2024.[28] Thus, petitioner had 15 days from September 6, 2024, or until September 21, 2024, to file the *Petition for Review* before the Court *En Banc.*

On September 20, 2024, petitioner filed a *Motion for Extension to File Petition for Review,*[29] seeking an additional period of 15 days from September 21, 2024, or until October 6, 2024, to file the *Petition for Review*. The said *Motion* was granted by the Court *En Banc* in a *Minute Resolution*[30] dated September 24, 2024.

Since October 6, 2024 fell on a Sunday, the filing of petitioner's *Petition for Review via* accredited courier on the next business day, October 7, 2024, was on time. Accordingly, the Court *En Banc* has jurisdiction to take cognizance of the instant *Petition for Review.*

At this juncture, the Court deems it proper to address respondent's contention that Regional Director Renato N. Molina lacked authority to file the instant *Petition for Review,* arguing that his authority under RDAO No. 2-2007 was effective only during the term of then Commissioner Jose Mario C. Buñag.

The Court finds this assertion without merit.

Section 4 of Revenue Administrative Order (RAO) No. 02-01,[31] dated October 22, 2001, provides:

> SECTION 4. *Validity of Rulings and Issuances.* — **All** rulings and **issuances of the Commissioner of Internal Revenue that pertain to the implementation** and interpretation **of the Tax Code and other tax laws are valid, unless revoked, reversed, modified, or superseded** by the Secretary of Finance pursuant to Department Order No. 23-01. (*Boldfacing supplied*)

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[28] *EB* Docket, p. 46, *Notice of Resolution.*
[29] *Id.* at 1–3.
[30] *Id.* at 7.
[31] SUBJECT: Implementing the Provisions of Department Order No. 23-01.

Here, RDAO No. 2-2007 remains effective, as there has been no subsequent issuance revoking, reversing, modifying, or suspending it.

Now, on the merits.

After a judicious review of petitioner's arguments and the records of the case, the Court *En Banc* finds no cogent reason to modify, much less reverse, the assailed *Decision* and *Resolution* of the Court in Division.

The records reveal that the arguments proffered by petitioner have already been thoroughly addressed and passed upon by the Court in Division in its assailed *Decision* and *Resolution*. Nevertheless, and only to lay petitioner's concerns to rest, the Court *En Banc* shall discuss anew the issues raised in the present *Petition for Review*.

The Court in Division committed no error.

The Court in Division committed no error in holding that the FAN is void for failure to state both a **definite amount of tax liability** and a **specific due date for payment.**

It bears emphasizing that the ruling of the Supreme Court in *Fitness by Design* is unequivocal: for a tax assessment to be valid, it must contain a demand for payment and a definite due date, *viz.*:

> **[T]he 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 <u>valid</u> 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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> . . . .

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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.**'

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:

. . . .

<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: ...

. . . .

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 and underscoring supplied*)

Following *Fitness by Design*, the Supreme Court has consistently nullified assessments that fail to indicate a definite due date, since such omission renders the demand for payment legally ineffective.

The importance of a due date is underscored in Section 249(C) of the NIRC of 1997, as amended, which governs the computation of delinquency interest. Without a due date, delinquency interest cannot be properly computed. Section 249(C) provides, in part:

> SEC. 249. *Interest.* —
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> ... ...
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> (C) Delinquency Interest. — In case of failure to pay:
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> ... ...
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> (3) A deficiency tax, or any surcharge or interest thereon **on the due date appearing in the notice and demand of the Commissioner**, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. (*Emphasis and underscoring supplied*)

Under the NIRC, an assessment is a "written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed."[32] In *Fitness by Design*, the Supreme Court emphasized that a final assessment must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period." This "specific period" must necessarily refer to a prospective or future due date that affords the taxpayer a fair opportunity to comply. A due date that has already lapsed at the time of receipt deprives the taxpayer of that opportunity and violates due process.

In the instant case, records reveal that the FAN (Parts I and II) was issued on **December 7, 2018**. While it did not state a due date for payment, it referred to enclosed Assessment Notices (**ANs**) for the payment due date. However, a perusal of said ANs shows that the due date for payment was **January 7, 2018**, eleven (11) months **before** the issuance of the FAN.

Requiring payment on a date that has already lapsed at the time of receipt renders compliance **legally impossible.** A valid demand for payment presupposes that the taxpayer is afforded a fair opportunity to pay within a prescribed **future period**. When the due date has already expired before the notice is received, such opportunity is effectively denied, violating the

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[32] *Adamson v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009 [Per C.J. Puno, First Division].

taxpayer's right to due process. Accordingly, a past due date is invalid and negates compliance with the requirement that an assessment must contain a demand for payment within a prescribed period, which must necessarily refer to a future date.

Here, the ANs attached to the FAN clearly indicated a due date of **January 7, 2018**, even though respondent received them only on **December 13, 2018.** To the mind of the Court, this cannot constitute a valid demand for payment.

Even assuming, *arguendo,* that the due date indicated in the ANs was merely a typographical error, the FAN remains void for **failure to indicate a definite amount of tax liability** for which respondent is accountable.

As categorically declared in *Fitness by Design*, a final assessment notice must contain **both** a definite amount of tax liability **and** a clear demand for payment within a specific period. The absence of **either** requirement renders the assessmen**t null and void**.

In this case, as reflected in the FAN and ANs, the interests were uniformly computed as follows:

Tax Type	Basic Deficiency Tax	Surcharge	20% Interest [04.16.2016-12.31.2017]	12% Interest [01.01.2018-01.11.19]	Amount
Income Tax	₱2,071,218.69	-	₱709,321.47	₱256,036.68	₱3,036,576.84
Value-Added Tax	18,182,068.67	-	7,033,720.81	2,247,602.57	27,463,392.05
Expanded Withholding Tax	339,048.89	-	133,018.63	41,912.02	513,979.54
Withholding Tax on Compensation	10,191.29	-	3,998.34	1,259.81	15,449.44
Documentary Stamp Tax	25,800.00	₱6,450.00	10,263.45	3,189.30	45,702.75
Improperly Accumulated Earnings Tax	2,862,100.50	715,525.13	564,578.73	353,802.67	4,496,007.03
Final Withholding Tax	400,000.00	100,000.00	156,931.51	49,446.58	706,378.09
Compromise Penalty	-	-	-	-	70,000.00
TOTAL	**₱23,890,428.04**	**₱821,975.13**			**₱36,347,485.74**

Assuming the correct due date was **January 7, 2019**, as petitioner claims it to be, the discrepancy between the computation of the interest (up to January 11, 2019) and the supposed due date (January 7, 2019) undermines the definiteness of the total amount due.

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The Court explains.

Petitioner asserts that the due date for payment should have been **January 7, 2019**, arguing that the due date **January 7, 2018**, as stamped on the ANs, was a mere typographical error. Following this assertion, if **January 7, 2019** were indeed the intended due date, then the twelve percent (12%) interest should have been computed only up to that date. However, as reflected in the FAN and ANs, the 12% interest was calculated up to **January 11, 2019**, which is four (4) days beyond the alleged due date.

To the mind of the Court, this discrepancy creates the impression that respondent may settle the tax liability until **January 11, 2019**, as the interest computation extends to that date. On the other hand, if respondent were to pay on the purported due date of **January 7, 2019**, it would be paying interest that had not yet accrued.

This ambiguity is further compounded by the statement in the FAN that "*the interest and the total amount due will have to be adjusted if paid after the date specified herein.*" As the Court in Division pointed out, it is unclear to which specific date petitioner refers.

Hence, the Court *En Banc* concurs with the Court in Division in ruling as follows:

> Despite the validity of the LOA and the conduct of audit, the FAN suffers an incurable defect as it lacks the definite amount for which petitioner is accountable for as well as the due date for payment. Without a valid FAN, the assessment that sprung from it is inescapably void.
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> In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.* (*Fitness by Design* case), the Supreme Court ruled as follows:
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>> "**The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue 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. <u>Its main purpose is to determine the amount that a taxpayer is liable to pay</u>**.

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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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> xxx xxx xxx
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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.

In this case, the FAN itself did not contain due date. The last paragraph in the FAN (Part I) mentioned of the due date in the enclosed assessment notice, to wit:

> In view thereof, you **are requested that you pay your aforesaid deficiency tax liabilities through the duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0605) within the time shown in the enclosed assessment notice**.

Likewise, the last paragraph of Part II of the FAN assessing petitioner for compromise penalty states:

> If you are amenable, please pay the above suggested compromise amount within the time shown in the enclosed Assessment Notice through the duly authorized agent bank in which your company is enrolled and where it pays its internal revenue taxes.

Hence, the FAN (Part I and II) refers to the due date indicated in the Assessment Notices.

A careful perusal of the Assessment Notices enclosed in the FAN shows that the due date for payment of the deficiency taxes were all stamped **January 7, 2018**. Noteworthy is the fact that the FAN was issued on **December 7, 2018**. Glaringly, the supposed deadline for payment was eleven (11) months *before* the issuance date of the Assessment Notices. It is well settled that, the FAN, to be valid, must contain a definite due date for payment by the taxpayer.

Even considering that the correct due date for payment is January 7, 2019, giving petitioner thirty (30) days from December 7, 2018 within which to settle its tax obligation, the Court still cannot accord validity to the FAN as the total amount due cannot be ascertained. In the Assessment Notices, the interests were uniformly computed as follows: 20% (04.16.16 to 12.31.17) and, 12% (01.01.18 to 01.11.19). The 12% interest was computed up to January 11, 2019, or four days *beyond* January 7, 2019. The computation of the assessed amounts in the FAN is shown below:

xxx xxx xxx

Citing again the *Fitness by Design* case, the Supreme Court elucidated, *viz.*:

> **The disputed Final Assessment Notice is not a valid assessment.**
>
> **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. <u>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</u>**. It only provides that the tax due is still subject to modification, depending on the date of payment.
>
> xxx xxx xxx
>
> 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. <u>The notice, therefore, did not contain a definite and actual demand to pay</u>.**

The discord in the computation of the interest vis-à-vis the deadline for payment negates the definiteness of the total amount due. Petitioner has until January 7, 2019 (assuming that the stamped year 2018 was a mere clerical error), yet it was assessed interest until January 11, 2019, the basis of which date was not explained. This gives the impression that petitioner can settle payment until January 11, 2019, as the interest is due up to the date of payment. Conversely, if

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> petitioner opts to pay within the period prescribed (on or before January 7, 2019), it would be paying for interest that should not have accrued.
>
> Further, the FAN contains a statement that "the interest and the total amount due will have to be adjusted if paid after the date specified herein." It is, however, unclear to which date respondent pertains. (*Emphasis and underscoring in the original; citations omitted*)

In view of the nullity of the subject tax assessments, and considering that a void assessment bears no valid fruit,[33] the Court *En Banc* finds it unnecessary to address the remaining assigned error raised by petitioner.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit. The assailed *Decision* dated March 15, 2024, and *Resolution* dated August 29, 2024, both issued by the Special Third Division in CTA Case No. 10177, are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[33] *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014 [Per J. Villarama, Jr., Third Division]; *Commissioner of Internal Revenue v. BASF Coating+Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014 [Per J. Peralta, Third Division]; *Commissioner of Internal Revenue v. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per C.J. Panganiban, First Division].

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice