REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

APO INTERNATIONAL MARKETING CORPORATION,
Respondent.

CTA EB NO. 2270
(CTA CASE NO. 9071)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, *and*
Cui-David, *JJ*

Promulgated:
MAR 02 2022 2:40 pm

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner[2] Commissioner of Internal Revenue (CIR) under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking nullification of the Decision[3] dated January 7, 2020 (Assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand and Final Assessment Notices issued against

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[1] Rollo, CTA EB Case No. 2270, pp. 7-25.
[2] Respondent in CTA Case No. 9071.
[3] Ibid., 31-50.

petitioner in Assessment No. IT-116-LOA-00021-10-13-191 for deficiency Income Tax in the amount of P78,384,643.51 and the Assessment No. VT-116-LOA-00021-10-13-192 for deficiency Value Added Tax in the amount of P35,891,738.32, are **CANCELLED** and **SET ASIDE** for being void.

SO ORDERED."

and the Resolution[4] dated June 2, 2020 the same Second Division of the Court (Court in Division) denying the CIR's Motion for Reconsideration, the dispositive portion thereof reads:

"**WHEREFORE**, the "Motion for Reconsideration [Re: Decision dated 07 January 2020]" is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner CIR is the head of the Bureau of Internal Revenue, an agency of the Republic of the Philippines under the Department of Finance, and with office address at BIR Building, Agham Road, Diliman, Quezon City. The BIR is tasked to assess and collect national internal revenue taxes, among other things.[5]

Respondent Apo International Marketing Corporation is a corporation organized and existing under the laws of the Philippines, registered with the Securities and Exchange Commission on 06 September 1978 with SEC Registration No. 81787 and with registered office address at 415 Arayat Street, Mandaluyong City. Petitioner is engaged in the business of paper converting.[6]

THE FACTS

The relevant antecedents stated in the assailed Decision[7] are as follows:

"On September 21, 2011, petitioner received a copy of a Letter of Authority (LOA) No. 116-2011-00000021 dated September 20, 2011 for the audit and examination of petitioner's book of accounts for taxable year 2010.

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[4] Rollo, pp. 51-57.
[5] Decision, p. 2.
[6] Ibid., pp. 1-2.
[7] Decision, pp. 2-3. Citations omitted.

On August 27, 2013, petitioner received a Notice of Informal Conference finding petitioner liable for deficiency Income Tax, Value Added Tax (VAT), Improperly Accumulated Earnings Tax and Expanded Withholding Tax, in the aggregate amount of P121,731,325.16.

Thereafter, on October 4, 2013, petitioner received the Preliminary Assessment Notice (PAN).

On September 9, 2013, petitioner executed a waiver of the Defense of Prescription under the Statutes of Limitation and accepted by respondent CIR through Assistant Commissioner Misajon *(sic)* September 13, 2013.

On November 15, 2013, petitioner received the Formal Letter of Demand (FLD) finding petitioner liable for deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax in the amounts of P78,384,643.51, P35,891,738.32 and P346,364.26, respectively.

Petitioner did not contest but paid the assessment on the Expanded Withholding Tax in the amount of P346,364.26. However, on December 9, 2013, petitioner filed a protest contesting the assessment for deficiency Income Tax and Value-Added Tax.

On May 19, 2014, petitioner received the Final Decision on Disputed Assessment (FDDA) denying for lack of merit its protest on the FLD.

On June 18, 2014, petitioner filed a Motion for Reconsideration on the FDDA to respondent Commissioner of Internal Revenue (CIR).

On May 19, 2015, petitioner received from respondent CIR the Letter-Decision dated April 16, 2015 denying with finality its Motion for Reconsideration."

On June 18, 2015, respondent filed a Petition for Review[8] before the Court in Division docketed as CTA Case No. 9071, entitled "*Apo International Marketing Corporation vs. Commissioner of Internal Revenue.*"

[8] Docket, CTA Case No. 9071, pp. 10-41.

On September 8, 2015, the CIR filed his Answer.[9]

In the Joint Stipulation of Facts and Issues filed by the parties on March 4, 2016[10], the parties agreed that the issue to be resolved by the Court in Division is "*Whether Petitioner is liable for deficiency Income Tax, Value Added Tax and Expanded Withholding Tax, inclusive of interest and surcharge, in the aggregate amount of One Hundred Fourteen Million Six Hundred Twenty Two Thousand Seven Hundred Forty Six Pesos and 9/100 (P114,622,746.09) for taxable year 2010.*"

Trial thereafter ensued wherein both parties presented their respective evidence. On February 19, 2019, petitioner CIR filed his Memorandum,[11] while respondent filed its Memorandum[12] on March 25, 2019.

In the Resolution[13] dated April 22, 2019, the Court in Division deemed the case submitted for decision.

On January 7, 2020 and November 3, 2017, the Court in Division rendered the questioned Decision and Resolution respectively.

Aggrieved, the CIR filed before the Court *En Banc* within the allowable period this Petition for Review[14] on July 14, 2020.

In the Resolution[15] dated November 3, 2020, respondent was directed by the Court *En Banc* to file its comment in this case.

On December 14, 2020, respondent filed its "Opposition (To: Petition for Review dated 15 July 2020)".[16]

In the Resolution[17] dated January 8, 2021, the Court noted respondent's "Opposition (To: Petition for Review dated 15 July 2020)" and ordered the parties to personally appear before Mediation Staff Assistant of Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on March 16, 2021 at 1:30 p.m., with or without the presence of their counsels for purposes of deciding whether or not they would agree to enter into mediation.

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[9] Ibid., pp. 315-329.
[10] Ibid., pp. 1034-1045.
[11] Ibid., pp. 2281-2296.
[12] Ibid., pp. 2357-2404.
[13] Ibid. p. 2407.
[14] Rollo CTA EB Case No.2270, pp. 7-25, with Annexes.
[15] Ibid. pp. 77-78.
[16] Ibid. pp. 92-121.
[17] Ibid., pp. 137-138.

On March 19, 2021, the Court *En Banc* received PMC-CTA Form 6- No Agreement to Mediate[18] stating that the parties decided not to have their case mediated by the Philippine Mediation Center Unit-CTA.

On May 26, 2021, the Court *En Banc* issued a Resolution[19] noting PMC-CTA Form No. 6- No Agreement to Mediate. Accordingly, the instant case was deemed submitted for decision.

THE ISSUE

The main issue in this case is whether or not the Court in Division erred in cancelling the Formal Letter of Demand and Final Assessment Notices issued against respondent in Assessment No. IT-116-LOA-00021-10-13-191 for deficiency Income Tax in the amount of P78,384,643.51 and the Assessment No. VT-116-loa-00021-10-13-192 for deficiency Value- Added Tax in the amount of P356,891,738.32 for taxable year 2010.

THE ARGUMENTS

The CIR contends that the Court in Division erred in ruling that the assessments are void and that respondent is not liable for deficiency income tax and VAT; that the FLD sufficiently complied with the mandatory requirements of Section 228 of the NIRC of 1997, as amended; that the FLD has clearly informed respondent of the law and the facts on which the assessment was made; that the law does not require that a due date must be indicated for the assessments to be valid; that the assessments made by the BIR are presumed correct and made in good faith and taxpayers have the duty to prove otherwise; that respondent failed to support with competent evidence the payables it recorded on favor of Kawsek, Inc.; that respondent is liable for Income Tax and VAT due on its unreported assets; that the tax credits being claimed by respondent was properly disallowed; and that petitioner properly subjected respondent for fifty percent (50%) surcharge for the willful filing of a false, misleading and inaccurate returns, statements and schedules.

On the other hand, respondent argues that the case of *Commissioner of Internal Revenue V. Fitness by Design* is squarely applicable in this case and the Supreme Court, pursuant to its constitutional mandate, judiciously interpreted and clarified Section 228 of the NIRC; that the doctrine laid down in *Commissioner of Internal Revenue V. Fitness by Design* case was re-affirmed in the 2017 case of Commissioner of Internal Revenue vs. Transitional Optical Philippines, Inc., that there exists established judicial precedents to support the factual and legal bases of the assailed Decision and Resolution; and that respondent was able to present competent and credible evidence to overwhelmingly overcome the presumption of correctness and its tax

[18] Ibid., p. 139.
[19] Ibid., pp. 85-86.

assessment on the subject deficiency income tax and VAT in the aggregate amount of P114,057,932.40.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

On June 15, 2020, the CIR received the Resolution of the Court in Division denying his Motion for Reconsideration. Hence, the CIR has until June 30, 2020 within which to file the Petition for Review. On June 29, 2020, the CIR filed before this Court a "Motion for Extension of Time to File Petition for Review,"[20] praying for an extension of fifteen (15) days from June 30, 2020 or until July 15, 2020, within which to file the Petition for Review. On July 2, 2020, this Court issued a Minute Resolution[21] granting an extension of fifteen (15) days from June 30, 2020 or until July 15, 2020, within which to file the Petition for Review.

On July 14, 2020, the CIR filed by registered mail the instant Petition for Review.[22] Hence, this Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

The FAN is void because it failed to demand payment within a specific period

The CIR insists that aside from the facts and law in which the assessment was made, the FLD stated respondent's definite tax liability and that a due date is not among the mandatory requirements provided under Section 228 of the NIRC of 1997, as amended. Hence, the FLD sufficiently complied with the mandatory requirements of Section 228 of the NIRC of 1997, as amended.

After consideration, the Court *En Banc* finds the CIR's argument has no merit. The FLD and FAN issued against respondent are void.

The FLD[23] reads as follows:

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[20] Rollo, pp. 1-5.
[21] Ibid. p. 6.
[22] Ibid., pp. 7-25.
[23] Exhibit "P-44."

"FORMAL LETTER OF DEMAND

THE PRESIDENT
APO INTERNATIONAL MARKETING CORP.
415 Arayat St., Mandaluyong City
TIN: 000-050-784

Sir:

This has reference to the Preliminary Assessment Notice (PAN) served on October 4, 2013 covering your deficiency Income Tax, Improperly Accumulated Earning Tax, Value-Added Tax and Expanded Withholding Tax in the amounts of P81,519,690.93, P587,330.35, P37,408,557.71 and P340,836.93, respectively, inclusive of increments for the taxable year 2010.

As of record, no formal protest was filed within the period accorded after the service of the PAN as provided for under Revenue Regulation No. 12-99. However, during discussion and review of the documents submitted, subsequent adjustments were made.

Please be informed that after investigation, there has been found deficiency Income Tax, Value- Added Tax and Expanded Withholding Tax for the year 2010 as shown hereunder:

Assessment No. IT-116-LOA-000021-10-13-191
xxx xxx xxx

Assessment No. VT-116-LOA-000021-10-13-192
xxx xxx xxx

Assessment No. WE-116-LOA-00021-10-13-193
xxx xxx xxx

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex A of this letter.

The fifty percent (50%) surcharge has been imposed pursuant to Section 248 (B) of the National Internal Revenue Code of 1997, as amended, as penalty for filing false, misleading, and inaccurate returns, statements, and schedules required under the provisions of this Code, rules and regulations.

The twenty percent (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay the tax within the time prescribed by law for its payment.

> 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 thirty (30) days from receipt thereof. However, if you are amenable, you may pay the above assessment thru the EFPS facility. Afterwards, submit the proof of payment thereof to the Regular Large Taxpayer Audit Division I at Rm 216 BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records.
>
> We hope that you will give this matter your preferential action.
>
> Very truly yours,
>
> **KIM S. JACINTO-HENARES**
> **COMMISSIONER OF INTERNAL REVENUE**
>
> By:
>
> (Sgd.) ALFREDO V.MISAJON
> OIC-Assistant Commissioner
> Large Taxpayers Service"

A reading of the Audit Result/Assessment Notices (BIR Forms No. 0401) with Assessment Nos. IT-116-LOA-000021-10-13-191, VT-116-LOA-000021-10-13-192 and WE-116-LOA-00021-10-13-193 show that the "DUE DATE" portions for the payment of the assessed tax deficiencies were left blank.

Thus, the FLD, Details of Discrepancy and Audit Result/Assessment Notices failed to indicate the specific period when the payment of deficiency taxes should be made.

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. Thus, absent a specific date or period within which the alleged tax deficiencies must be settled or paid by petitioner, the FLD/FAN is fatally infirm. Consequently, the FDDA which rooted from the said FLD/FAN is likewise void, the deficiency tax assessments contained in the former are of no consequence as a void assessment bears no fruit.[24]

[24] *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. No. 159694 & 163581, January 27, 2006, 480 SCRA 396; *Commissioner of Internal Revenue Vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[25] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

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

[25] G.R. No. 128315, June 29, 1999.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[26], the Supreme Court interpreted and clarified the requirements provided in Section 228 of the NIRC of 1997, as amended, and ruled as follows:

> "The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects.' **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed.** Its main purpose is to determine the amount that a taxpayer is liable to pay.
>
> A pre-assessment notice 'do[es] not bear the gravity of a formal assessment notice.' A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.
>
> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which Respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there: definitely set and fixed.' Although the disputed notice provides for the computations of Respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:
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>> The complete details covering the aforementioned discrepancies established during the investigation of

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

> this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.* (Emphasis Supplied)

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

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

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

Contrary to Petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when Respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (*Emphasis supplied.*)"

To reiterate, an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. The requirement to indicate a fixed and definite period within which a taxpayer must pay the tax deficiencies is vital to the validity of the assessment. Contrary to petitioner's contention that a due date is not among the requirements provided in Section 228 of the NIRC of 1997, as amended, the Court *En Banc* rules that **there can be no demand for payment within a prescribed period if there is no specific date in the assessment notice when the tax is due.**

Hence, the absence of the specific period in the FLD and Assessment Notices negates the CIR's demand for payment and makes the assessment void. It then becomes unnecessary to address the other issue or arguments raised by petitioner.

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[27]

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

WHEREFORE, premises considered, the Petition for Review is **DENIED for lack of merit.** The assailed Decision dated January 7, 2020 and assailed Resolution dated June 2, 2020 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(On Leave)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice