REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KULTURA STORE, INC.
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9315

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
SEP 1 8 2020 9:15 am

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision dated November 11, 2019)** filed on November 27, 2019, with petitioner's **Comment (on the Respondent's Motion for Reconsideration)**, filed on December 18, 2019.

On November 11, 2019, the Court promulgated its Decision, nullifying respondent's deficiency tax assessments against petitioner for failure to indicate a definite due date for payment. The dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent's deficiency assessments for IT, VAT, EWT, WTC, and IAET for taxable year 2010 issued against petitioner in the total amount of ₱516,822,789.32, inclusive of interest and penalties, is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

In his Motion, respondent essentially asserts that he has complied with all of the requirements for a valid assessment, as defined by law and jurisprudence. Respondent insists that the Formal Letter of Demand (FLD) has fixed and definitely set the deficiency tax liabilities of petitioner. He avers that the basic tax deficiency as well as the surcharge and interest were already fixed in said FLD since it states therein that *"due on or before June 27, 2014"*. Respondent claims that petitioner knows when the interest and surcharge will run considering that it has received the FLD with the indication of how much interest it has already incurred as of the date stated therein.

Furthermore, respondent maintains his position that the doctrine laid down in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[1] (*"Fitness by Design case"* hereafter) should be revisited considering that the said doctrine was based on the case *Commissioner of Internal Revenue v. Dominador Menguito*[2] (*"Menguito case"* hereafter) which was misapplied by the Supreme Court in the *Fitness by Design case*. He claims that the main issue for resolution in *Menguito case* is only 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.

Lastly, respondent contends that considering a demand to pay for a definite period of time was already established in the FLD and Assessment Notices, the only issue to be resolved is whether there was a validly issued FLD and Assessment Notices. In this regard, respondent avers that the assessment is valid as long as it states the fact, the law, the rules and regulations or jurisprudence on which it was based, and that it remains to be valid irrespective of an additional requirement purportedly being prescribed by a regulation.

On the other hand, in its comment, petitioner claims that jurisdiction has already settled that an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. Petitioner argues that respondent failed to consider that when Section 249(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, speaks of "date prescribed for its payment", it does not pertain to the date prescribed in the FAN but

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[1] G.R. No. 21597, November 9, 2016
[2] G.R. No. 167560, September 17, 2008.

the definite date prescribed for payment of certain taxes under the law. According to petitioner, the requirement of a "demand for payment" of the tax liability in the Final Assessment Notice (FAN) could only be complied with when the actual due date for payment is indicated therein, and not merely inferred from a vague statement of when an *"adjustment of the interest and the total amount due"* will be made.

More so, petitioner avers that the "due date" to indicate the "demand for payment" in the FAN is also important in order to determine when the running of the prescriptive period to collect starts. Petitioner also maintains that the *Fitness by Design case* finds perfect application herein, and that the *Menguito case* centers on what a valid FAN is and what it is not. Petitioner argues 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 due date for payment, as well-settled by jurisprudence.

Lastly, petitioner asserts that, in arguing his position, respondent overlooked the doctrine of *stare decisis* which states that, once the Court laid down a principle 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.[3] Petitioner also reminds respondent the Civil Code provision which provides that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."[4]

After due consideration, respondent's Motion for Reconsideration is bereft of merit. At the outset, the arguments raised in the present Motion have already been passed upon and resolved in the Decision assailed. Nonetheless, the Court will address these arguments to emphasize certain points.

Respondent's argument that the basic tax deficiency as well as the surcharge and interest were already fixed in said FLD as that due on or before June 27, 2014 deserves scant consideration. As held by

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[3] *Chinese Young Men's Christian Association of the Philippine Islands doing business under the name of Manila Downtown YMCA v. Remington Steel Corporation*, G.R. No. 159422, September 8, 2008.

[4] Article 8, Civil Code of the Philippines.

the Supreme Court in the *Fitness by Design case* 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:**
>
> > 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)*

Considering that the factual circumstances of this case are substantially the same as that in *Fitness by Design case* and, considering further, that the said case has not been reversed, the doctrine of *Stare decisis et non quieta movere*[5] applies. Simply stated, the doctrine means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be

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[5] "To stand by decisions and disturb not what is settled."

decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[6] 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.[7] The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions.

As for respondent's argument that the *Menguito case* was misapplied in the *Fitness by Design case* because the main issue for resolution in *Menguito* is only as to whether there were post-reporting notice and pre-assessment notice issued and whether the taxpayer actually received them, the same is also bereft of merit.

In the *Menguito case,* the Supreme Court found that the CIR failed to prove that it served on petitioner Menguito a post-reporting notice and a pre-assessment notice. Nonetheless, 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 Regulations (RR) No. 12-85, the same cannot detract from the fact that formal assessments were issued to and actually received by petitioner Menguito in accordance with Section 228 of the NIRC, which was in effect at the time of assessment, thus:

> "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** ℊ

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[6] *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; citing *Nancy L. Ty v. Banco Filipino Savings & Mortgage Bank,* G.R. No. 144705 November 15, 2005.

[7] *Purisimo M. Cabaobas, et al. v. Pepsi-Cola Products, Philippines, Inc.,* G.R. No. 176908, March 25, 2015.

> **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. *(Emphases Supplied)*

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

> "A final assessment notice provides for the amount of tax due with a demand for payment. x x x
>
> x x x
>
> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. x x x An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. x x x
>
> x x x
>
> A pre-assessment notice 'do[es] not bear the gravity of a formal assessment notice.'"

Based on the foregoing, in the *Menguito case*, 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. Accordingly, the said pronouncement in the *Menguito cases*, as cited in the *Fitness by Design case* is consistent with Supreme Court's ruling in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*[8] and *Petronila C. Tupaz v. Honorable Benedicto B. Ulep.*[9]

With regard to respondent's claim that the assessment is valid as long as it states the fact, the law, the rules and regulations or jurisprudence on which it was based, and that it remains to be valid irrespective of an additional requirement purportedly being prescribed by a regulation, we reiterate our ruling in the assailed Decision, to wit:

> "Apparently, the Supreme Court ruled that the date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest begin to accrue thereon. Accordingly, the Supreme Court held that the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.
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> Applying the foregoing pronouncement by the Supreme Court, the subject FLD/FANs in the present case are likewise invalid for failure to demand payment of taxes within a prescribed period. Consequently, the Court deems it unnecessary to pass upon the remaining issues raised in this Petition."[10]

In sum, this Court finds that no substantial argument was raised to merit reconsideration of the Decision promulgated on November 11, 2019.

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[8] G.R. No. 128315, June 29, 1999.
[9] G.R. No. 127777, October 1, 1999.
[10] Decision, p. 32.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated November 11, 2019) is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice