REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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NORTHERN TOBACCO REDRYING CO., INC., Petitioner,	**CTA Case No. 8857**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** DEC 14 2017 ; 8:31 am

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RESOLUTION

UY, J.:

For resolution is respondent's **"MOTION FOR RECONSIDERATION"** filed on August 15, 2017, with petitioner's **"COMMENT (To the Respondent's Motion for Reconsideration)"** filed on September 4, 2017, seeking the reconsideration and setting aside of this Court's Decision dated July 25, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the subject assessments for income tax, VAT and DST issued by respondent against petitioner for taxable year 2009 are **CANCELLED** and **SET ASIDE**.
>
> SO ORDERED."

In respondent's *Motion*, respondent argues that the *Formal Letter of Demand* (FLD) issued to petitioner has fixed and definitely set the deficiency tax liabilities of petitioner. According to respondent, the basic tax deficiency as well as the surcharge and interest were already fixed in the FLD.

Respondent likewise argues that this Court erred in granting a relief that was not prayed for by petitioner. He submits that the issue on whether the final assessment notice contains a definite due date for payment of tax liabilities was never raised by petitioner in its *Petition for Review*. Respondent concludes that he was denied procedural and substantive due process as he was neither heard nor given the opportunity to be heard on the said issue.

On the other hand, petitioner argues that this Court did not err in ruling that the FLD issued against petitioner is void. Petitioner submits that the failure of respondent to provide (1) a definite amount of tax liability and (2) the due date when the payment of the alleged deficiency tax liabilities should be made, essentially exhibits the absence of the demand for payment thereby rendering the deficiency tax assessment as contained in the FLD null and void.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

The FLD did not definitely set and fix the due tax liability of petitioner.

Respondent argues that the basic tax deficiency as well as the surcharge and interest were already fixed in the FLD.

We disagree.

As held in the assailed Decision, the FLD issued by respondent hardly falls under the jurisprudential definition of a tax assessment under the NIRC since it lacks *"a due tax liability that is there definitely set and fixed."* To stress, in the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.,*[1] the Supreme Court held:

> **"The disputed Final Assessment Notice is not a valid assessment.**

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

> 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 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 paid prior or beyond April 15, 2004*. (Emphasis Supplied)" *(Emphasis supplied)*

In the foregoing case, the Supreme Court, in ruling that the FLD lacks the definite amount of tax liability, considered the statement shown in the FLD which states "***that the interest and total amount due will have to be adjusted if paid prior or beyond April 15, 2014"***. The Supreme Court held that the amount of tax due remains indefinite since it is still subject to modification depending on the date of payment.

The afore-cited case applies squarely to the present case wherein the subject FLD[2] likewise states that "*the interest and total amount due will have to be adjusted if paid beyond November 30, 2013.*"

Applying the ruling in aforequoted Supreme Court case, the amount of tax liability in the present case remains indefinite.

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[2] Exhibits "P-1", "P-2", "P-3", "P-3-a", and "P-3-b", Docket, pp. 580 to 586; Exhibits "R-11", "R-11-b", "R-11-c", and "R-11-d", BIR Records, pp. 925 to 933.

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In addition to the foregoing defect in the FLD, We also note that the FLD failed to indicate a specific date or prescribed period within which to pay the tax liabilities.

Accordingly, We find no justifiable reason to deviate from Our ruling that the subject tax assessments are void.

This Court's ruling declaring the assessment void is among the reliefs sought by petitioner.

Respondent argues that this Court erred in granting a relief that was not prayed for by petitioner. He submits that he was denied procedural and substantive due process given that the issue on whether the final assessment notice contains a definite due date for payment of tax liabilities was never raised by petitioner in its *Petition for Review*.

We disagree.

Contrary to respondent's argument, Our ruling in the assailed Decision declaring the tax assessments void is among the reliefs sought by petitioner in its *Petition for Review* and is supported by the evidence on record.

In the case of *Philippine Charter Insurance Corporation vs. Philippine National Construction Corporation,*[3] which was cited by respondent in his *Motion for Reconsideration*, the Supreme Court states as follows:

> "The issue before us calls for a discussion of a court's basic appreciation of allegations in a complaint. **The fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint; other reliefs prayed for may be granted only when related to the specific prayer(s) in the pleadings and supported by the evidence on record.** Necessarily, any such relief may be granted only where a cause of action therefor exists, based on the complaint, the pleadings, and the evidence on record."

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[3] G.R. No. 185066, October 2, 2009.

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We agree that based on the foregoing, the reliefs that may be granted to a litigant are limited to those specifically prayed for in the complaint. As to other reliefs prayed for, these may be granted only when related to the specific prayer and supported by evidence on record.

However, in this case, one of the reliefs[4] sought by petitioner in its *Petition for Review* is to declare as null and void the assessment notices issued against it for the year ending December 31, 2009. Clearly, Our ruling in the assailed Decision declaring the assessment void is consistent with the said relief prayed for by petitioner.

Respondent's claim that it was denied procedural and substantial due process since the issue on whether the final assessment notice contains a definite due date for payment of tax liabilities was never raised by petitioner in its *Petition for Review*, deserves scant consideration.

Our ruling that the tax assessments are void for failure of the FLD to meet the jurisprudential definition of a tax assessment under the NIRC is supported by the evidence on record. In fact, the FLD and assessment notices were offered as evidence by respondent himself.[5]

Moreover, the failure to raise the issue pertaining to the defects in the FLD, does not prevent this Court from examining the same since the FLD and assessment notices were offered as evidence by both parties. To sustain respondent's argument despite the glaring nullity of the FLD would result in greater injustice to the taxpayer considering that a void assessment bears no valid fruit.

Lastly, even granting that the Court granted a relief not prayed for by petitioner, the same is allowed.

Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, reads:

> "SECTION 1. *Rendition of judgment.*— x x x
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> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule**

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[4] Prayer, Petition for Review, Docket (Vol. I), p. 42.
[5] Exhibits "R-11", "R-11-b", "R-11-c", and "R-11-d", BIR Records, pp. 925 to 933.

upon related issues necessary to achieve an orderly disposition of the case."

The above section is clearly worded.[6] Based on the said provision, this Court is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[7]

Considering that petitioner prayed for the declaration of the nullity of the subject assessments, the issue as to whether the final assessment notice contains a definite due date for payment of tax liabilities is a related issue. Thus, it behooves upon this Court to look into the said issue and correspondingly rule thereon.

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[6] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017

[7] Supra.