Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

APO INTERNATIONAL MARKETING CORPORATION, Petitioner,	**CTA CASE NO. 9071**
	Members: CASTAÑEDA, JR., *Chairperson*, MINDARO-GRULLA, and BACORRO-VILLENA, *JJ*.
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 02 2020 11:04 AM

x---x

RESOLUTION

MINDARO-GRULLA, J.:

This resolves the respondent's "Motion for Reconsideration [Re: Decision dated 07 January 2020]" assailing the Court's January 7, 2020 Decision, the dispositive portion of which states:

> *"**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED.** Accordingly, the Formal Letter of Demand and Final Assessment Notices issued against petitioner in Assessment No. IT-116-LOA-00021-10-13-191 for deficiency Income Tax in the amount of ₱78,384,643.51 and the Assessment No. VT-116-LOA-00021-10-13-192 for deficiency Value Added Tax in the amount of ₱35,891,738.32, are **CANCELLED** and **SET ASIDE** for being void.*
>
> ***SO ORDERED."***

In assailing this Court's Decision, respondent assert that the assessments were perfectly valid. Respondent submits that the ruling in the case of Commissioner of Internal Revenue vs. Menguito[1] was misapplied in the case of

[1] Commissioner of Internal Revenue vs. Dominador Menguito, G.R. No. 167560, September 17, 2008.

Commissioner of Internal Revenue vs. Fitness by Design, Inc.[2] and should be revisited. Thus, respondent prayed that the Decision dated January 7, 2020 be reconsidered by ordering petitioner to pay the aggregate amount of ₱14,622,746.09 as deficiency Income tax, Value Added Tax and Expanded Withholding Tax for taxable year 2010.

On February 20, 2020, petitioner filed its "Vigorous Opposition (To: Respondent CIR's Motion for Reconsideration)". Petitioner argued that respondent did not attach any proof to controvert the findings of the Court and prove that the Formal Letter of Demand and Final Assessment Notice have due dates and demand for payment within a prescribed period.

We resolve to deny the "Motion for Reconsideration".

After a careful examination of petitioner's "Motion for Reconsideration [Re: Decision dated 07 January 2020]", the Court finds that the argument raised in said motion has no merit.

To reiterate, an examination of the of the FLD[3] and FAN[4] issued against petitioner reveals the absence of due date and demand for payment within a prescribed period in Assessment No. IT-116-LOA-00021-10-13-191 for deficiency Income Tax in the amount of ₱78,384,643.51 and the Assessment No. VT-116-LOA-00021-10-13-192 for deficiency Value Added Tax in the amount of ₱35,891,738.32.

Exhibits "P-44-b"[5] and "P-44-c"[6], BIR Form No. 0401 "Audit Results/ Assessment Notice" or the Final Assessment Notice (FAN) reveals that the due date remains blank or unfilled. Likewise, there is no demand for payment within a prescribed period.

The absence of due dates in the Final Assessment Notice negates demand for payment, the Supreme Court in the case

---

[2] G.R. No. 215957, November 09, 2016.
[3] Exhibit "P-44".
[4] Exhibit "P-44-b" and Exhibit "P-44-c".
[5] Division Docket, p. 568.
[6] Division Docket, p. 569.

ム

of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[7], instructively ruled as follows:

> *An assessment "refers to the determination of amounts due from a person obligated to make payments." "In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997."*
>
> *The assessment process starts with the filing of tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.*
>
> *After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability. The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination. The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability.*
>
> *The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a clear definite requirement. Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99, as amended, transparently outline the procedure in tax assessment.*
>
> *Section 3 of Revenue Regulations No. 12-99, the then prevailing regulation regarding the due process requirement in the issuance of a deficiency tax assessment, requires a notice for informal conference. The revenue officer who audited the taxpayer's records shall state in his or her report whether the taxpayer concurs with his or her findings of liability for deficiency taxes. If the taxpayer does not agree, based on the revenue officer's report, the taxpayer shall be informed in writing of the discrepancies in his or her payment of internal revenue taxes for "Informal Conference." The informal conference gives the taxpayer an opportunity to present his or her side of the case.*

---

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

ʎ

The taxpayer is given 15 days from receipt of the notice of informal conference to respond. If the taxpayer fails to respond, he or she will be considered in default. The revenue officer endorses the case with the least possible delay to the Assessment Division of the Revenue Regional Office or the Commissioner or his or her authorized representative. The Assessment Division of the Revenue Regional Office or the Commissioner or his or her authorized representative is responsible for the "appropriate review and issuance of a deficiency tax assessment, if warranted."

If, after the review conducted, there exists sufficient basis to assess the taxpayer with deficiency taxes, the officer shall issue a preliminary assessment notice showing in detail the facts, jurisprudence, and law on which the assessment is based. The taxpayer is given 15 days from receipt of the pre-assessment notice to respond. If the taxpayer fails to respond, he or she will be considered in default, and a formal letter of demand and assessment notice will be issued.

The formal letter of demand and assessment notice shall state the facts, jurisprudence, and law on which the assessment was based; otherwise, these shall be void. *The taxpayer or the authorized representative may administratively protest the formal letter of demand and assessment notice within 30 days from receipt of the notice.*

II

The word "shall" in Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory. The law requires that the bases be reflected in the formal letter of demand and assessment notice. This cannot be presumed. Otherwise, the express mandate of Section 228 and Revenue Regulations No. 12-99 would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.

The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.

L

The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.

xxx xxx xxx.

Any deficiency to the mandated content of the assessment or its process will not be tolerated. In Commissioner of Internal Revenue v. Enron, an advice of tax deficiency from the Commissioner of Internal Revenue to an employee of Enron, including the preliminary five (5)-day letter, were not considered valid substitutes for the mandatory written notice of the legal and factual basis of the assessment. The required issuance of deficiency tax assessment notice to the taxpayer is different from the required contents of the notice. xxx:

xxx xxx xxx.

IV

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.

L

> *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. xxx:*
>
> *xxx.*
>
> ***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." (Emphases supplied)*

Evidently, the subject tax assessments are void, and thus, bear no valid fruit. As to the qualms on the application of the *Fitness by Design Case,* under the doctrine of *stare decisis,* this Court is required to adhere to the ruling of the Supreme Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court

h

from whose decisions all other courts and everyone else should take their bearings.

In sum, We find that no substantial argument was raised to merit reconsideration of our Decision promulgated on January 7, 2020

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

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice