REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TELSTAR MANUFACTURING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1797
(CTA CASE No. 8900)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TELSTAR MANUFACTURING CORPORATION,
Respondent.

CTA EB No. 1879
(CTA CASE No. 8900)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
APR 15 2019
3:43 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision are the Petitions for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005*

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by

Revised Rules of the Court of Tax Appeals (RRCTA), as amended:

a. filed by Telstar Manufacturing Corporation (Telstar), of the Decision dated August 18, 2017[2] and the Resolution dated February 8, 2018;[3] and

b. filed by the Commissioner of Internal (CIR), of the above-mentioned Resolution dated February 8, 2018 and the Resolution dated June 4, 2018;[4]

all rendered by this Court's former Second Division, the dispositive portions of which read as follows:

Decision dated August 18, 2017:

"**WHEREFORE,** the present Petition for Review is **DENIED**. Petitioner is **ORDERED** to pay basic deficiency income tax, value-added tax and expanded withholding tax for the year 2009 in the aggregate amount of ₱18,061,826.06, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, detailed as follows:

Tax Type	Basic Deficiency	Surcharge	Total
Income Tax	₱ 2,891,062.57	₱ 722,765.64	₱ 3,613,828.21
Value-added tax	11,525,666.27	2,881,416.57	14,407,082.84
WT-Expanded	32,732.01	8,183.00	40,915.01
TOTAL	₱ 14,449,460.85	₱ 3,612,365.21	₱ 18,061,826.06

In addition, Petitioner is **ORDERED** to pay:

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petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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[2] Penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Associate Justice Caesar A. Casanova and Associate Justice Catherine T. Manahan, *En Banc No. 1797* Docket, pp. 48-106.
[3] *Ibid., En Banc No. 1879,* pp. 13-33.
[4] *Ibid.*, pp. 34-40.

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, value-added tax and expanded withholding tax, computed from April 15, 2010, January 25, 2010 and January 15, 2010, respectively, until full payment thereof pursuant to Section 249(8) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱18,061,826.06, representing the sum of the basic deficiency income tax, value-added tax and expanded withholding tax in the aggregate amount of ₱14,449,460.85 and 25% surcharge of ₱3,612,365.21, and on the deficiency interest which have accrued as aforestated in (a), computed from August 29, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Resolution dated February 8, 2018:

"**WHEREFORE**, petitioner's *Motion for Partial Reconsideration* is **PARTLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision of this Court dated August 18, 2017 is **MODIFIED** as follows:

"**WHEREFORE,** the present Petition for Review is **PARTLY GRANTED**. Petitioner is **ORDERED** to pay basic deficiency income tax, value-added tax and expanded withholding tax for the year 2009 in the aggregate amount of ₱7,455,067.03, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the 1997NIRC, detailed as follows:

Tax Type	Basic Deficiency	Surcharge	Total
Income Tax	₱ 2,804,113.22	₱ 701,028.30	₱ 3,505,141.52
Value-added tax	3,127,208.39	781,802.10	3,909,010.49
WT-Expanded	32,732.01	8,183.00	40,915.01
TOTAL	₱ 5,964,053.62	₱ 1,491,013.41	₱ 7,455,067.03

In addition, Petitioner is **ORDERED** to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, value-added tax and expanded withholding tax in the amounts of ₱2,804,113.22, ₱3,127,208.39 and ₱32,732.01, respectively, computed from April 15, 2010, January 25, 2010 and January 15, 2010, respectively, until full payment thereof pursuant to Section 249(B) of the 1997 NIRC; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱7,455,067.03, representing the sum of the basic deficiency income tax, value-added tax and expanded withholding tax in the aggregate amount of ₱5,964,053.62 and 25% surcharges of ₱1,491,013.41, and on the deficiency interest which have accrued as aforestated in (a), computed from August 29, 2014 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC."

Petitioner's *Manifestation with Motion for Correction of Dispositive Portion of Decision* is **NOTED**.

SO ORDERED."

<u>Resolution dated June 4, 2018:</u>

"**WHEREFORE**, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit.

SO ORDERED."

Thus, respondent CIR filed the Petition for Review[5] dated June 21, 2018, which is docketed as CTA EB No. 1879.

On July 2, 2018, this Court issued an Order for the consolidation of CTA EB No. 1879 with CTA EB No. 1797.

On January 11, 2019, this Court issued a Resolution stating that the said consolidated cases are now deemed submitted for decision.

The facts of the case, as recited by the former Second Division in its Decision, read as follows:

> "Petitioner (Telstar Manufacturing Corporation) is a corporation organized under Philippine laws with principal place of business located at 103 South Science Avenue, Laguna Technopark, Sta. Rosa, Laguna. It is engaged in the business of manufacturing, distribution, buying and selling of pharmaceutical, veterinary compounds, toilet articles and general merchandise.
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> xxx xxx xxx
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested by law to implement and enforce the provisions of the 1997 NIRC and other tax laws.
>
> On May 27, 2010, petitioner was served with Letter of Authority No. 116-2010-00000096 dated May 14, 2010 for the examination of its internal revenue taxes pursuant to the Conglomerate Audit Program (RMC No. 36-2010) for taxable year ending December 31, 2009.
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> On June 7, 2010, the BIR issued its First Notice for Presentation of Books of Account and Other Accounting Records, copy of which was received by petitioner on June 8, 2010.

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[5] *CTA EB No. 1879 Docket*, pp. 1-12.

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On August 5, 2010, the BIR issued its Second Notice for Presentation of Books of Account and Other Accounting Records, copy of which was received by petitioner on August 19, 2010.

Petitioner submitted the documents to the BIR as evidenced by its transmittal letters with the following dates:

- June 11, 2010
- July 7, 2010
- September 30, 2010
- February 17, 2011
- March 3, 2011
- March 13, 2013

On June 13, 2013, petitioner received from the BIR a Preliminary Assessment Notice (PAN) with attached Details of Discrepancy, assessing the company for deficiency income tax, improperly accumulated earnings tax, VAT, EWT, and documentary stamp tax.

On July 3, 2013, petitioner filed with the Large Taxpayers Audit Division 1 its Response to the abovementioned PAN.

On October 16, 2013, the BIR issued a Formal Letter of Demand (FLD) with Details of Discrepancy and Final Assessment Notices (FAN), which were received by petitioner on the same date.

On November 13, 2013, which is within thirty (30) days from receipt of the FLD/FAN, petitioner filed its Protest to the Final Assessment Notice together with supporting documents.

On August 29, 2014, petitioner received a copy of respondent's Final Decision on Disputed Assessment (FDDA) with Details of Discrepancy.

On September 26, 2014, petitioner filed the present Petition for Review.

xxx xxx xxx"

The former Second Division ruled in the assailed Decision herein that while the assessment was made beyond the three-year period prescribed in Section 203[6] of the 1997 National Internal Revenue Code (NIRC), as amended, the Waivers[7] executed by Telstar's President and General Manager validly extended the period within which the government may assess it of its deficiency tax liabilities for taxable year 2009, as provided for under Section 222(b)[8] of the 1997 NIRC from three (3) to ten (10) years.

The former Second Division ruled that the said Waivers were defective in line with the Supreme Court case of *Commissioner of Internal Revenue vs. Next Mobile Inc. (formerly Nextel Communications Phils. Inc.) (the "Next Mobile Case");*[9] that both parties are *in pari delicto* and that Telstar is likewise estopped from challenging the validity of the said waivers.

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[6] SEC. 203. Period of limitation upon assessment and collection. - Except as provided in the Section 222,internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided* That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[7] *CTA EB No. 1797 Dockets,* Vol. I, pp. 338-338.

[8] SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

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> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

[9] G.R. No. 212825, December 7, 2015.

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Further, the former Second Division ruled that while Telstar is not liable for compromise penalties, it is liable for deficiency income tax (IT), valued-added tax (VAT), and expanded withholding tax (EWT).

As to deficiency income tax, the CIR based Telstar's deficiency IT on the following:

Discrepancy on Sales	₱ 230,574.03
Discrepancies on purchases - undeclared	203,547.27
Overclaimed/underdeclared expenses	26,082,570.24
Disallowed expenses for non-withholding	2,326,691.88

However, the former Second Division cancelled the undeclared discrepancies on purchases and decreased the amount of overclaimed/undeclared expenses from ₱26,082,570.24 to ₱7,020,352.18.

The CIR also deducted the following available creditable withholding taxes (CWT) of Telstar:

Disallowed CWT - from 2008 sales	₱ 17,777.14
Overclaimed CWT	1,291.25
Total	**₱ 19,068.39**

However, the former Second Division cancelled the above-mentioned overclaimed CWT, leaving the amount of deficiency IT of Telstar to ₱2,891,062.57, computed as follows:

Taxable Income per ITR		₱ 84,383,759.00
Add (Deduct): Audit adjustments per Investigation		
Discrepancy on Sales	₱ 230,574.03	
Overclaimed/underdeclared expenses	7,020,352.18	
Disallowed expenses for non-withholding	2,326,691.88	
Total adjustments per audit		9,577,618.09
Taxable income per audit		₱ 93,961,377.09
Income tax due thereon		₱ 28,188,413.13
Less: Creditable Withholding Tax/Tax paid per audit		
Tax Paid	₱17,722,778.85	
Add: Creditable Tax	7,592,348.85	

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Total creditable tax	₱25,315,127.70	
Less: Adjustments per audit in creditable withholding tax		
Disallowed CWT - from 2008 sales	17,777.14	25,297,350.56
Basic income tax deficiency		**₱2,891,062.57**

As to deficiency VAT, the CIR based Telstar's liability on the following:

Discrepancy on sales	₱ 230,574.03
Discrepancy on purchases	203,547.27
Overclaimed/Underdeclared expenses	26,082,570.24
Proceeds from sale of property per cash flow	5,610.71

Since the Court in Division upheld the discrepancy of sales in the amount of ₱230,574.03, such was also subjected to VAT by the Court. On the other hand, the former Second Division cancelled the discrepancies on purchases and expenses amounting to ₱203,547.27 and ₱26,082,570.24, respectively, since the imposition thereof has no basis, and there was no proof that there were sales or receipts coming from the said purchases and expenses.

On the other hand, the Court in Division upheld the creditable input tax carried from the previous period in the amount of ₱3,465,303.49, while increasing the input tax on purchases from ₱58,920,863.99 to ₱65,038,027.67 as per quarterly VAT returns for the year 2009 of Telstar. The assessed deduction of the input taxes carried over to the succeeding period in the amount of ₱1,316,192.04, was reduced to ₱973,603.37, by cancelling the amount of ₱342,588.67 excess input taxes since this amount was not explained in the FLD or FDDA.

The disallowed input taxes of ₱2,918,401.80 was scrutinized since out of the total input taxes examined in the amount of ₱65,038,027.78, ₱20,855.82 are without proper supporting documents, thus:[10]

Particulars	Amount
With proper supporting documents	₱ 54,376,653.96

[10] Exhibit "P-75", p. 12, *Docket Vol. II*, p. 436.

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Input VAT from importation	10,640,518.00
Without proper supporting documents	20,855.82
TOTAL	**₱65,038,027.78**

However, the amount of ₱10,640,518.00 for input VAT from importation was further disallowed for failure of Telstar to submit evidence to refute the CIR's findings that the purchases pertaining to such amount are unsupported, leaving only ₱54,376,653.96. From the remaining, ₱627,816.97 was disallowed for the following reasons:

Particulars	**Amount**
Supported by Statement of Charges	₱ 8,598.21
Supported by invoices/ORs dated outside the period	534,025.25
Supported by undated invoices/ORs	83,594.55
Supported by an OR issued not in the name of petitioner	1,598.96
TOTAL	**₱ 627,816.97**

Thus, petitioner's deficiency VAT liability amounting to ₱11,525,666.27, was computed as follows:

Net sales per VAT returns			₱ 733,791,481.66
Add (Deduct): Audit adjustments per investigation			
Discrepancy on sales		₱ 230,574.03	
Proceeds from sale of property per cash flow		5,610.71	236,184.74
Taxable sales per audit			₱ 734,027,666.40
Tax rate			12%
Output tax per audit			₱ 88,083,319.97
Less: Creditable input tax			
Carried from previous period, including input taxes on capital goods exceeding P1Million		₱ 3,465,303.49	
Input tax on purchases		65,038,027.67	
Total		68,503,331.16	
Less: Audit adjustments per investigation			
Disallowed IT on unsupported expenses:			
a) Per ICPA findings	₱ (20,855.82)		
b) Per Court's findings:			
1) Unsupported input taxes on importation	(10,640,518.00)		
2) Input taxes not properly substantiated	(627,816.97)	(11,289,190.79)	
Total available input taxes		₱57,214,140.37	
Less: Input taxes on capital goods		(973,603.37)	

exceeding P1Million deferred to succeeding period			
Total allowable input tax			56,240,537.00
VAT Payable			₱ 31,842,782.97
Less: VAT paid per returns			20,317,116.70
Basic VAT deficiency			**₱11,525,666.27**

As to deficiency EWT, since the Court in Division upheld the disallowed expenses for non-withholding in the amount of ₱2,326,491.88, the Court ruled that Telstar should be held liable to pay deficiency EWT in the amount of ₱32,732.01, computed as follows:

	Income Payments	Tax Rate	EWT
Payments to supplier of goods	₱ 1,386,808.90	1%	₱ 13,868.09
Service contractors	939,142.53	2%	18,782.85
Professional fees	540.45	15%	81.07
Total	**₱2,326,491.88**		**₱32,732.01**

In sum, Telstar was made liable to pay the basic deficiency tax, computed as follows:

Tax Type	Basic Deficiency
Income tax	₱ 2,891,062.57
Value-added tax	11,525,666.27
WT-Expanded	32,732.01
TOTAL	**₱ 14,449,460.85**

In its February 8, 2018 Resolution, the Court in Division upheld the validity of the Waivers. However, the Court in Division cancelled the discrepancies on sales in the amount of ₱230,574.03, consequently cancelling the IT and VAT therein.

Telstar also contested the reduced overclaimed/ underdeclared expenses in the amount of ₱7,020,352.18. Telstar admitted that an incorrect name and TIN of Mercury Group of Companies, Inc. were reported in the alpha list, when as *per* finding in the independent certified public accountant (ICPA) report that the payment was actually made to Cash-Vivian Que-Azcona for the year 2008 profit sharing. However, the Court in Division sustained such findings since Telstar, aside from the admission of error in reporting the correct name and TIN in the alphalist, did not submit additional documents to clarify the nature of the claimed expense.

The Court in Division likewise upheld the Deficiency EWT of ₱32,732.01 and deficiency IT on related disallowed expense of ₱2,326,691.88. However, the Court cancelled the deficiency IT on disallowed 2008 CWT of ₱17,777.44, since, according to the former Second Division, the FDDA did not provide a breakdown of the disallowed CWT, and thus said item of assessment was declared void.

In sum, Telstar's deficiency IT was reduced, computed as follows:

Taxable Income per ITR		₱ 84,383,759.00
Add (Deduct): Audit adjustments per Investigation		
Overclaimed/underdeclared expenses	7,020,352.18	
Disallowed expenses for non-withholding	2,326,691.88	
Total adjustments per audit		9,347,044.06
Taxable income per audit		₱ 93,730,803.06
Income tax due thereon		₱28,119,240.92
Less: Creditable Withholding Tax/Tax paid per audit		
Tax Paid	₱17,722,778.85	
Add: Creditable Tax	7,592,348.85	
Total creditable tax	₱25,315,127.70	₱25,315,127.70
Basic income tax deficiency		**₱2,804,113.22**

With respect to deficiency VAT, as mentioned earlier, the assailed Decision disregarded the disallowed input taxes of ₱2,918,401.80 and instead deducted ₱20,855.82 that are without proper supporting documents, the amount of ₱10,640,518.00 for input VAT from importation and the amount of ₱627,816.97 for improper substantiation. However, upon reconsideration of the Court in Division, it ruled that when these amounts are put together, they exceed the disallowance made by the CIR in the amount of ₱2,918,401.80. Hence, the Court in Division was compelled to uphold the amount as computed by the CIR, adjusting the amount of VAT, to wit:

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Net sales per VAT returns			₱ 733,791,481.66
Add (Deduct): Audit adjustments per investigation			
Proceeds from sale of property per cash flow		5,610.71	236,184.74
Taxable sales per audit			₱ 733,797,092.37
Tax rate			12%
Output tax per audit			₱ 88,055,651.08
Less: Creditable input tax			
Carried from previous period, including input taxes on capital goods exceeding P1Million		₱ 3,465,303.49	
Input tax on purchases		65,038,027.67	
Total		68,503,331.16	
Less: Audit adjustments per investigation			
Disallowed IT on unsupported expenses:		(2,918,401.80)	
Total available input taxes		₱65,584,929.36	
Less: Input taxes on capital goods exceeding P1Million deferred to succeeding period		(973,603.37)	
Total allowable input tax			64,611,325.99
VAT Payable			₱ 23,444,325.09
Less: VAT paid per returns			20,317,116.70
Basic VAT deficiency			**₱3,127,208.39**

To summarize, Telstar's total basic deficiency tax liability was reduced in the amount of ₱5,964,053.62, broken down as follows:

Tax Type	Basic Deficiency
Income tax	₱ 2,804,113.22
Value-added tax	3,127,208.39
WT-Expanded	32,732.01
TOTAL	**₱ 5,964,053.62**

Aggrieved, the CIR filed his Motion for Reconsideration on the February 8, 2018 Resolution. On June 4, 2018, the Court in Division denied CIR's Motion for Reconsideration for lack of merit.

Meanwhile, Telstar filed a Petition for Review[11] of the February 8, 2018 Resolution on March 1, 2018, while the CIR filed his Petition for Review[12] of the June 4, 2018 Resolution on June 22, 2018.

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[11] *CTA EB No. 1797 Dockets,* Vol. I, pp. 1-47.
[12] *Supra*, note 5.

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In its Petition for Review, Telstar reiterates its argument that it cannot be in *pari delicto* with the CIR in the execution of the Waivers and that it did not benefit from its execution; that there was no estoppel in assailing the validity of the Waivers; that the extension of time to assess was only for the benefit of the CIR as it had submitted all the required documents on time; and that the case of *Next Mobile* should not apply in this case.

It also insists that it is not liable for deficiency tax on overclaimed salaries of ₱9,266,846.88 since the ICPA confirmed that payment thereof was made to Vivian-Que Azcona and the corresponding withholding tax therein was paid to the government. It also pointed out that it is not liable for the deficiency EWT of ₱32,732.01 and deficiency IT on related disallowed expense of ₱2,326,691.88, as well as for deficiency VAT on property per cash flow of ₱5,610.71 and on disallowed input VAT of ₱2,918,401.80. Lastly, it contends that it is not liable for deficiency interest on the assessment for deficiency VAT and EWT.

The CIR comments[13] thereto, asserting that the Waivers validly extended the assessment; that Telstar is estopped in questioning the said Waivers; that Telstar is liable for the IT and VAT on discrepancies on sales, IT on overclaimed salaries, IT and EWT on related disallowed expense IT on disallowed 2008 CWT, VAT on property per cash flow and on disallowed input VAT. Lastly, the CIR contends that Telstar is liable for deficiency interest on the assessment for deficiency VAT and EWT.

On the other hand, the CIR in his Petition for Review contends that the Court in Division erred in cancelling the deficiency IT and VAT arising from discrepancies on sales and the deficiency IT on the disallowed CWT on the sole ground that this only came out on the FDDA.

Telstar comments[14] thereto, stating that the PAN, FAN and FDDA issued against Telstar are all void for failure to comply with the BIR's Revenue Memorandum Circular No.

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[13] *Dockets CTA EB 1797,* Vol. II, pp. 812-823.
[14] *Ibid.,* pp. 831-870.

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36-99, which allows revenue officers only 120 days from date of receipt of the LOA to conduct audit and submit report of investigation.

Telstar also claims that the FAN reveals no due date to pay the assessed amounts and no final demand was made at all. It adds that the Court in Division was correct in cancelling the assessment against it with respect to the IT and VAT on discrepancies on sales and IT on disallowed 2008 CWT.

CIR filed a Manifestation[15] adopting his arguments raised in his Comment, while Telstar filed its Memorandum[16] on November 29, 2018.

This Court rules to deny both petitions.

Telstar basically argues that the *Next Mobile Case* does not apply on all fours in this case.

This Court is not persuaded.

Telstar asserts the alleged misplaced application of the *Next Mobile* Ruling in the case at bar. Nonetheless, it is noted that Telstar never raised the validity of Waivers when it filed its protest[17] to the PAN and protest[18] to the FAN during the administrative claim. Telstar never questioned the validity of the Waivers before the BIR, as well as the prescription of the CIR's right to assess it for deficiency taxes. Only upon its frustration after the administrative claim did it realize to raise the said matter before this Court. Telstar should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.[19] Telstar voluntarily executed and submitted the subject Waivers, one after the other and never raised a single objection thereto,

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[15] *Ibid.*, pp. 882-883.
[16] *Ibid.*, pp. 887-933.
[17] *Ibid.*, pp. 363-366.
[18] *Ibid.*, pp. 380-383.
[19] *Next Mobile, supra* note 8.

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only to impugn their validity after the issuance of the assessment on the ground that its own representative had no authority to sign the Waivers.[20] Significantly, the signatories in the said Waivers were not mere employees but responsible ranking officers of Telstar.[21]

For obvious reason, Telstar should not be allowed to benefit from its own wrongdoing and should be deemed estopped from questioning the validity of the Waivers only after the assessment against it was issued."[22]

Although the Waivers executed failed to present the authorities of the signatories therein, later on, the authorities of the representatives who signed the Waivers were questioned by Telstar itself, the very same entity that caused said representatives to sign such in the first place.[23] Thus, it is clear that Telstar violated RMO 20-90, which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials.[24] Telstar actually executed defective Waivers, delivered to the BIR one after the other. Following the ruling in the case of *Next Mobile*, Telstar allowed the CIR to rely on them and did not raise any objection against their validity until the CIR assessed taxes and penalties against it. Thus, Telstar is estopped from questioning the validity of its Waivers.

Hence, Telstar cannot now invoke its above-mentioned arguments in order to benefit from its wrongdoing.[25] It is upon this omission subsequent to the execution of Waivers that constitute estoppel on its part in claiming that the Waivers are invalid.

On the other hand, BIR has its own faults too, *viz*:

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[20] *Hoya Glass Disk Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 8115, March 8, 2016.
[21] *Ibid.*
[22] *Ibid.*
[23] *Next Mobile, supra* note 9.
[24] *Ibid.*
[25] *Commissioner of Internal Revenue vs. Universal Weavers Corporation*, CTA EB No. 1348 (CTA Case No. 8566), February 9, 2017.

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> "On the other hand, respondent also utterly failed to perform its duty of faithfully complying with its own issuances. She ought to ensure that all of the requirements for the execution of a valid waiver are strictly followed. Far from doing so, respondent allowed the execution of the subject Waivers without carefully verifying the authority of petitioner's President and General Manager."[26] (Emphasis omitted.)

Vis-a-vis the Waivers it received from Telstar, the BIR has failed twice to perform its duties in relation thereto. The BIR allowed Telstar to submit, and it duly received, two defective Waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein.[27]

Records also show that there was a reduction in Telstar's tax liabilities contained in the assessment issued by the CIR within the extended period provided in the assailed Waivers. The FAN[28] indicated a total amount of ₱255,371,069.77 as alleged deficiency IT, ₱341,327.08 as alleged deficiency improperly accumulated earnings tax, ₱114,939,336.31 as alleged deficiency VAT, ₱2,861,287.15 as alleged deficiency EWT, and ₱420,276.22 as deficiency documentary stamp tax. From the said amount, it was substantially reduced[29] to ₱15,883,085.99 as alleged deficiency IT, ₱1179584.68 as alleged deficiency VAT, and ₱78,800.27 as alleged deficiency EWT. Upon receiving benefit from the extension of the statute of limitations, Telstar is deemed to have impliedly admitted the validity of the subject Waivers. Since it actually benefited from the extended period, thus, the doctrine of estoppel clearly finds application in the instant case.

As to Telstar's contention that the LOA is invalid for failure of the revenue officer to submit a progress report of investigation after 120 days from its date of receipt by the taxpayer, to his Head of Office and surrender the LOA for

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[26] *Supra* note 2.
[27] *Next Mobile,* Supra note 9.
[28] *CTA EB No. 1797 Dockets*, Vol. I, pp. 369-371.
[29] Final Decision on Disputed Assessment, *Ibid.,* pp.384-385.

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revalidation, a plethora[30] of cases promulgated by this Court is in order. RMC No. 23-09 which provides that failure of the revenue officer to request for revalidation of LOA or the expiration of the revalidation period does not nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued, to wit:

> "I. Revalidation of LAs
>
> The revalidation of LA shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. <u>Failure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.</u> However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO if the Regional Director, upon the recommendation of the Revenue District Officer, deems it necessary." (Underlining supplied.)

It is noteworthy that RMC No. 23-09 was issued on April 16, 2009 and the subject LOA was issued on May 14, 2010 and received by petitioner on May 27, 2010.

As to the contention of Telstar that the FAN reveals no due date to pay the assessed amounts and no final demand

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[30] *Commissioner of Internal Revenue vs. Total (Philippines) Corporation,* CTA EB 1616 and 1621, November 6, 2018; *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 1223 (CTA Case No. 8191), January 4, 2016; *Bissaza Philippines, Inc., vs. Commissioner of Internal Revenue,* CTA Case No. 9372, March 7, 2018; *Ritegroup Incorporated vs. Commissioner of Internal Revenue,* CTA Case No. 8651, January 25, 2017.

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was made at all, making it invalid, a cursory reading of the FDDA, which constitutes the final demand of the CIR reads:

> "It is requested that your aforesaid deficiency tax be paid immediately upon receipt hereof, inclusive of penalties. This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals or to the Commissioner of Internal Revenue through request for reconsideration within thirty (30) days from receipt hereof.
>
> Failure to file an appeal for reconsideration or pay the tax within the time prescribed, the assessment shall become final, executory and demandable and therefore subject to delinquency penalties pursuant to RR 18-2013."

It is clear as daylight that the due date is indicated, as the deficiency tax must be paid immediately upon receipt of the FDDA. The final demand was also clear as it was stated above that such was the final decision of the CIR, *i.e.*, to pay the deficiency tax immediately upon receipt of the FDDA.

It is worthy to note that a number of CTA cases involving assessments with the same tenor of demand as what is mentioned above were not declared invalid by this Court. Thus, in the case of *Composite Materials Inc. vs. Commissioner of Internal Revenue,*[31] the demand was made through a request to pay the tax liability immediately with the authorized agent bank. Even in the Supreme Court case of *Allied Banking Corporation vs. Commissioner of Internal Revenue,*[32] the tenor of the demand was made through a request to pay the tax liability immediately, and the Supreme Court did not strike the assessment as invalid.

In the case of *Staedtler (Philippines) Inc., vs. Commissioner of Internal Revenue,*[33] the pronouncement therein with respect to the validity of an assessment having such tenor of demand is clear, thus:

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[31] CTA Case No. 8365, May 2, 2016.
[32] G.R. No. 175097, February 5, 2010, 611 SCRA 692.
[33] CTA Case No. 8431, January 20, 2015.

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> "Section 3.1.6 of Revenue Regulations No. 12-1999 provides that the decision of the BIR Commissioner or her duly authorized representative shall state the (1) facts applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void, and (2) that the same is her final decision.
>
> Records confirm that the Final Decision conforms to the procedural requirements provided in Revenue Regulations No. 12-1999.
>
> In the Final Decision, petitioner was requested to pay immediately its tax liability xxx and the same was respondent's final decision. It has also a statement that if petitioner disagrees, it may appeal with this Court within thirty (30) days from receipt thereof, otherwise the deficiency tax liabilities shall become final, executory and demandable. xxx" (Underlining supplied.)

Thus, this Court is constrained to uphold the validity of the assessment.

As to Telstar's deficiency IT on overclaimed salaries in the amount of ₱7,020,352.18, which pertains to the payment to Mercury Group of Companies, Inc., the Court *a quo* correctly ruled that there was an error in reporting the correct name and TIN in the alphalist, which, as Telstar claims, should be under the name of Vivian Que-Azcona. Telstar also did not submit additional documents to clarify the nature of the claimed expense. Whether or not Vivian Que-Azcona indeed received the purported profit share is likewise not clear. Hence, the Court must uphold the said findings.

With respect to Telstar's deficiency EWT of ₱32,732.01 and deficiency IT on related disallowed expense of ₱2,326,691.88, Telstar avers that the Court *a quo* erred in ruling that it cannot claim the related expenses as deduction from gross income pursuant to Section 2.58.5 of Revenue

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Regulations (RR) No. 2-98, as amended by RR No. 12-2013, since the taxable year involved in this case is 2009 and administrative rules and regulations must operate prospectively.

However, the February 8, 2018 assailed Resolution had already expounded that Section 2.58.5 of RR No. 2-98 was likewise amended by RR No. 14-2002 dated September 9, 2002, which clearly covers the taxable year in this case. In RR No. 14-2002, the Court in Division explained clearly that such RR requires withholding of tax and payment of such at the time of the audit investigation or reinvestigation/ reconsideration and since there was non-compliance therein, Telstar cannot claim the disallowed expenses as deduction from its gross income.

Telstar also argues that it is not liable for VAT on sale of property cash flow of ₱5,610.71 since the sale of property and equipment is not considered as part of its ordinary course of trade or business. However, aside from relying on the mere statement of ICPA that such sale of property and equipment is not considered as part of its ordinary course of trade or business, Telstar did not submit any evidence to prove or even allege that the subject property and equipment was not used in the ordinary course of its trade or business.

Section 3 of Rule 13 of the Revised Rules of the Court of Tax Appeals ("RRCTA"), as amended, provides that:

> "xxx. The findings and conclusions of the ICPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusion subject to verification."

The Court is not bound by the findings of the ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court, it is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[34]

Thus, the sale of property and equipment is considered to have been made by Telstar in its ordinary course of trade or business and should be subject to VAT.

Telstar likewise contends that it is not liable for VAT on disallowed input VAT of ₱2,918,401.80 since such was based on the CIR's assessment on unsupported expenses of ₱42,886,053.63 that was lifted from income payments of the same amount that was not subjected to EWT. Telstar claims that such method of auditing is void since the deficiency VAT is based on unsupported evidence, while the EWT was based on non-withholding of tax.

However, the Court in Division, in its Decision, actually found out that the total input taxes examined should be in the amount of ₱65,038,027.78, and ₱20,855.82 thereof are without proper supporting documents as stated in the ICPA report, while the amount of ₱10,640,518.00 for input VAT from importation was further disallowed by the Court, upon examination of Telstar's submitted various sales invoices and official receipts,[35] for failure of Telstar to submit evidence to refute the CIR's findings that the purchases pertaining to such amount are unsupported, leaving only ₱54,376,653.96. From the remaining amount, ₱627,816.97 was further disallowed by the Court upon examination, due to being unsupported. The Court in Division, in its February 8, 2018, however, upheld the amount of ₱2,918,401.80 as computed by the CIR since the previous amount for VAT in the assailed Decision exceeded the disallowance made by the CIR.

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[34] *Stateland, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 1148, July 4, 2016, citing *First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue,* CTA EB No. 563, March 1, 2011; further cited in *Phil. Gold Processing & Refining Corp. vs.* Commissioner of Internal Revenue, CTA Case No. 8763, May 25, 2017.
[35] *Assailed Decision,* p. 53.

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It is likewise noted that the findings mentioned above were based on Telstar's submitted various sales invoices and official receipts before the Court. Based on the foregoing, it is unfathomable to agree with Telstar when the Court in Division had explained thoroughly that the claimed input taxes were based on unsupported expenses. Thus, this Court upholds the VAT on disallowed input taxes on unsupported expenses.

As to deficiency interest, this issue has already been put to rest by this Court in the case of *Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue,*[36] as regards the imposition of deficiency interest, thus:

> "The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation Philippines (PICOP) v. Court of Tax Appeals, et al.*[37] The Supreme Court held that Section247(a) of the NIRC of 1997, as amended [now Section247(a) of the NIRC of 1997, as amended] 'very clearly embraces *failure to pay all taxes imposed in the Tax Code,* without any regard to the Title of the Code where provisions imposing particular taxes are textually located.' xxx
>
> XXX XXX XXX
>
> Thus, xxx the imposition of deficiency interest under Section 249(8) of the NIRC of 1997, as amended, clearly applies to all internal revenue taxes imposed by the present Tax Code xxx" (Italics in the original.)

Therefore, the deficiency interest is correctly imposed not only on the deficiency IT but also on the deficiency VAT and EWT.

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[36] CTA EB No. 745, September 4, 2012, cited in *E.E. Black Ltd. – Philippine Branch vs. Commissioner of Internal Revenue,* CTA EB No. 1611, January 22, 2019 and *3M Philippines Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 9213 & 9214, January 30, 2019.
[37] G.R. Nos. 106949-50, December 1, 1995.

As to the contention of the CIR that the Court in Division erred in cancelling the deficiency IT and VAT arising from discrepancies on sales, the said Court in Division had already resolved the matter in the assailed Decision, that there was a difference between the assessed amount of ₱230,574.03 and ₱231,645.48 as *per* Telstar's own books of accounts, specifically its sales ledger, and its Summary List of Sales, that was unaccounted for. However, the notes to the financial statements disclose that net sales for the year 2009 amounted to ₱702,247,009.00 and when this amount is compared to the amount recorded in Telstar's sales ledger, the resulting difference is ₱231,645.74, leaving a discrepancy of less than ₱1.00 from the amount of ₱231,645.48 as *per* Telstar's own books of accounts, specifically its sales ledger. Thus, the cancellation of the IT and VAT therein is in order.

As to the deficiency income tax on disallowed 2008 CWT of ₱17,777.44 that was subsequently cancelled by the Court in Division, it is but proper since the said CWT only reflected in the FDDA and not in the FLD. In the FLD, what were assessed were only deficiency IT and VAT with respect to the discrepancies on sales and no pronouncement was made by the CIR as to the disallowed CWT. Moreover, it must be noted that the Court in Division cancelled the said amount due to absence of breakdown of the disallowed CWT in the FDDA. Thus, the Court *a quo*[38] correctly ruled that:

> "In the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation and Liquigaz Philippines Corporation v. Commissioner of Internal Revenue*,[39] xxx [i]t clearly explains:
>
>> "xxx Again, Section 3.1.4 of RR No. 12-99 requires that the FLD must state the facts and law on which it is based, otherwise, the FLD/FAN itself shall be void. Meanwhile, Section 3.1.6 of RR No. 12-99 specifically requires that the decision of the CIR or his duly authorized representative on a disputed assessment shall state the

[38] February 8, 2018 assailed Resolution.
[39] G.R. Nos. 215534 & 215557, April18, 2016, 790 SCRA 79, 93-97.

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facts, law and rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the FDDA.

The use of the word "shall" in Section 228 of the NIRC and in RR No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him is mandatory. The requirement of providing the taxpayer with written notice of the factual and legal bases applies <u>both to the FLD/FAN and the FDDA</u>.

xxx xxx xxx

To rule otherwise would tolerate abuse and prejudice. Taxpayers will be unable to file an intelligent appeal before the CTA as they would be unaware on how the CIR or his authorized representative appreciated the defense raised in connection with the assessment. <u>On the other hand, it raises the possibility that the amounts reflected in the FDDA were arbitrarily made if the factual and legal bases thereof are not shown.</u>

xxx xxx xxx

Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with *[sic]* regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which it is based will make the decision void. It, however, does not extend to the

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> nullification of the entire assessment."" (Underlining supplied.)

Thus, the absence of the disallowed CWT in the FAN and its subsequent inclusion in the FDDA without breakdown of such computation calls for the cancellation of such amount in the assessment.

WHEREFORE, premises considered, the Petitions for Review are hereby **DENIED** for lack of merit.

Accordingly, the Resolution dated February 8, 2018 is hereby **AFFIRMED with MODIFICATIONS** in the computation of deficiency interest and delinquency interest in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulation No. 21-2018[40] and shall read as follows:

> "**WHEREFORE**, petitioner's *Motion for Partial Reconsideration* is **PARTLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision of this Court dated August 18, 2017 is **MODIFIED** as follows:
>
> > "**WHEREFORE,** the present Petition for Review is **PARTLY GRANTED**. Petitioner is **ORDERED** to pay basic deficiency income tax, value-added tax and expanded withholding tax for the year 2009 in the aggregate amount of ₱25,348,408.53, inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017 as follows:[41]

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[40] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No.10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".
[41] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.

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	Income Tax	Value-Added Tax	Expanded Withholding Tax	Total Due
Basic Tax	2,804,113.22	3,127,208.39	32,732.01	5,964,053.62
25% surcharge	701,028.31	781,802.10	8,183.00	1,491,013.41
20% Deficiency Interest				
April 16, 2010 to August 29, 2014 (1596 days) (basic tax x .20 x 4.372 years)	2451916.6			2,451,916.60
January 26, 2010 to August 29, 2014 (1676 days) (basic tax x .20 x 4.5917 years)		2871840.553		2,871,840.55
January 16, 2010 to August 29, 2014 (1687 days) (basic tax x .20 x 4.6219 years)			30256.8154	30,256.82
Total Amount due as of August 29, 2014	**5,957,058.12**	**6,780,851.04**	**71,171.83**	**12,809,080.99**
Add:				
20% Deficiency Interest				
August 30, 2014 to December 31, 2017 (1219 days) (basic tax x .20 x 3.3397 years)	1872979.384	2088787.572	21863.01876	3983629.975
20% Delinquency Interest				
August 30, 2014 to December 31, 2017 (1219 days) (total amount due as of August 29, 2014 x .20 x 3.3397 years)	3978957.404	4529201.644	47538.51073	8555697.558
Total Amount due as of December 31, 2017	**11,808,994.91**	**13,398,840.26**	**140,573.36**	**25,348,408.53**

In addition, Telstar Manufacturing Corporation is liable to pay delinquency interest at the rate of 12% on the total unpaid basic deficiency tax, surcharge and deficiency interest as of August 29, 2014 amounting to ₱5,957,058.12 for Income Tax, ₱6,780,851.04 for VAT, and ₱71,171.83 for Expanded Withholding Tax, or in the aggregate amount of ₱12,809,080.99, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

Petitioner's *Manifestation with Motion for Correction of Dispositive Portion of Decision* is **NOTED**."

SO ORDERED.

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

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

TELSTAR MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1797
(CTA Case No. 8900)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus –

TELSTAR MANUFACTURING CORPORATION,
Respondent,

CTA EB NO. 1879
(CTA Case No. 8900)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

APR 15 2019 3:43 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit.

I am, however, constrained to withhold my assent to the denial of the Petition for Review filed by Telstar Manufacturing Corporation

(TMC). It is my humble view that the Formal Letter of Demand[1] (FLD) and the Final Assessment Notices[2] (FAN), all dated October 16, 2013 are void for their **failure to demand payment of the taxes due within a specific period**.

A perusal of the FLD[3] and the FAN[4] enclosed thereto issued against TMC reveals that they failed to demand payment of the taxes due within a specific period. Notably, **the <u>spaces for the due dates</u> in the FAN were conspicuously left blank**.

Since there was no assessment notice which properly indicated the due date when the deficiency taxes must be paid, no proper demand thereof within a specific period was made.

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***[5] and ***Commissioner of Internal Revenue vs. Fitness By Design,***[6] the Supreme Court emphasized that a FAN without a definite due date for payment is not valid because it negates the demand for payment. Pertinent parts of the Supreme Court's ruling in ***Fitness By Design*** are quoted hereunder:

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

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[1] Exhibits R-10.
[2] Exhibits R-10-a to R-10-e.
[3] Exhibit R-10.
[4] Exhibits R-10-a to R-10-e.
[5] G.R. No. 128315, June 29, 1999.
[6] G.R. No. 215947, November 9, 2016.

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> 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."

In other words, a FAN must not only indicate the legal and factual bases of the assessment **but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period**. Absent such demand, as in this case, the FAN is fatally infirm. Being a void assessment, the FAN bears no fruit[7] and must be slain at sight.

While the issue on the invalidity of the FAN was not raised by the parties, the CTA has the authority to rule on the same. In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,***[8] the Supreme Court, citing Section 1, Rule 4 of A.M. No. 05-11-07- CTA, or the Revised Rules of the Court of Tax Appeals, categorically declared that the CTA can resolve an issue which was not raised by the parties, *viz.*:

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA 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.** The text of the provision reads:
>
>> SECTION 1. *Rendition of judgment.* - x xx
>>
>> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

Based on the foregoing, this Court is well within its authority to consider in its decision the issue on the invalidity of the FAN for failure to demand payment of the deficiency taxes within a specified

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[7] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[8] G.R. No. 183408, July 12, 2017.

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period albeit the parties had not raised the same in their pleadings or memoranda.

All told, I vote to: (i) **DENY** the Petition for Review filed by the Commissioner of Internal Revenue; and, (ii) **GRANT** the Petition for Review filed by Telstar Manufacturing Corporation thereby ultimately **CANCELLING** the Formal Letter of Demand and the Final Assessment Notices, all dated October 16, 2013, assessing it for deficiency taxes for the year 2009 for being void.

ROMAN G. DEL ROSARIO
Presiding Justice