REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PANAY ELECTRIC COMPANY, INC.,	**CTA CASE NO. 9523**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondents.	OCT 16 2020 4:00 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration**, filed on June 18, 2020, with petitioner's **Comment and Opposition (to the Motion for Reconsideration dated June 18, 2020)**, filed on July 20, 2020.

On June 1, 2020, this Court promulgated a Decision nullifying respondent's deficiency tax assessments against petitioner for being issued in contravention of law, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FDDA dated December 20, 2016 issued by respondent, and the assessments for deficiency income tax, VAT, EWT, WTC, and DST, in the aggregate amount of ₱890,996,459.00, inclusive of interest and penalties, for taxable year 2009, are **CANCELLED and SET ASIDE**.
>
> **SO ORDERED.**"

In assailing the above Decision, respondent raises the following grounds in support of his Motion for Reconsideration, to wit:

I. The honorable Court erred in ruling that the assailed waivers were invalid; and,

II. The honorable Court erred in ruling that the subject assessment did not indicate a definite due tax.

As to the first ground, respondent argues that a cursory reading of Revenue Delegation Authority Orders (RDAO) No. 05-01 shows that the prescribed form of a *Waiver of the Defense of Prescription Under the Statue of Limitations of the National Internal Revenue Code* (*"waiver"* hereafter for brevity) under Annex "A" thereof, does not require the indication of the nature and amount of tax. Also, respondent insists that at the time of the execution of the subject *waivers*, the deficiency assessment was still at the investigatory stage of audit investigation and no Preliminary Assessment Notice (PAN) had yet been issued by respondent. He claims that during this stage, it would have been impossible for respondent to identify specifically the nature of petitioner's tax liabilities nor the exact amounts pertaining thereto. Thus, respondent maintains that the inclusion of the phrase "all internal revenue tax liabilities for the year 2009" is sufficient and substantial compliance of the requirement that the *waivers* should indicate the nature and amount of tax due.

With regard to the second ground, respondent argues that the amount to be paid is definite and is indicated in the Formal Letter of Demand-Final Assessment Notice (FLD-FAN). He further avers that the statement "[p]lease take note that the interest will have to be adjusted if paid beyond the date specified therein" in FLD-FAN merely reiterated to petitioner the consequences of paying the taxes beyond the date specified. As such, the Court should not invalidate the assessment merely because he reminded petitioner of the consequences of not paying its taxes at date specified in the FLD-FAN. Lastly, respondent points out that a cursory reading of the FAN shows that the due date "15 July 2014" is clearly indicated and specified therein.

On the other hand, in its Comment, petitioner claims that respondent's Motion for Reconsideration was filed out of time. It claims that respondent received the Notice of Decision on June 2, 2020, thus, the latter had until June 17, 2020 within which to file the instant Motion.

Nonetheless, petitioner claims that the arguments raised by respondent in his Motion were already ruled upon by this Court as the same are mere rehashes of the same facts and issues which have already been passed upon extensively in the Decision he assails. Petitioner also reiterates that the subject *waivers* are invalid, thereby, failing to extend the prescriptive period within which to assess. Lastly, petitioner argues that the *waivers* were executed in violation not only of RDAO No. 05-01 but Revenue Memorandum Order (RMO) No. 20-90 as well.

Accordingly, respondent's Motion for Reconsideration is bereft of merit.

To address the issue of timeliness of the instant Motion, Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals, as amended, provides for the period within which to file a motion for reconsideration of a decision promulgated by the Court, *viz.*:

> "**SECTION 1.** *Who may and when to file motion.*– Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial **within fifteen days from the date of receipt of notice of the decision**, resolution or order of the Court in question." *(Emphasis supplied)*

Clearly, an aggrieved party is given fifteen (15) days from receipt of the Court's decision within which to seek reconsideration of the said ruling.

Upon verification of the *Notice of Decision,*[1] respondent received the copy of the assailed Decision on **June 2, 2020**. Counting the fifteen (15)-day period, the last day for the filing of the Motion for Reconsideration was on June 17, 2020. As correctly pointed out by petitioner, respondent's Motion for Reconsideration was belatedly filed. *ge*

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[1] Docket – Vol. III, p. 1415.

Nevertheless, assuming *arguendo* that the instant Motion was timely filed, the Court still finds no merit in respondent's arguments.

As for respondent's first ground, the Court reiterates the ruling made in the Decision assailed that the subject *waivers*[2] reveal that they do not indicate the kind and amount of the taxes to be assessed or collected, to wit:

> "In Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc. *('La Florcase')*, the Supreme Court held:
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>> 'In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.,* the Court had ruled that **waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and <u>must indicate the nature and amount of the tax due</u>**, to wit:
>>
>>> **<u>These requirements are mandatory and must strictly be followed</u>**. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
>>>
>>> x x x
>>>
>>> The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*, because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for

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[2] Exhibits "P-45" and "P-46", and Exhibits "R-8" and "R-11", BIR Records, pp. 519 and 524, respectively.

reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.

Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:

x x x

> 3. Similar to Standard Chartered Bank, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated**. Hence, specific information in the waiver is necessary for its validity. (Emphasis supplied)

In the present case, <u>the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected</u>. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not

> **effectively extend the prescriptive period under Section 203 on account of their invalidity**. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached – **the assessments had prescribed as there was no valid waiver**.' *(Emphases and underscoring ours)*

> Based on the foregoing jurisprudential pronouncements, it is required *inter alia* that **the Waiver, must indicate the nature and the amount of the tax due, to be valid, and would have the effect of extending the three-year prescriptive period to assess. These details are material as there can be no true and valid agreement between the taxpayer and respondent absent these information.**

> In this case, a careful reading of the subject *Waivers* would reveal that they do not indicate the kind and amount of the taxes to be assessed or collected. Thus, the said *Waivers* are invalid. Correspondingly, the same did not effectively extend the three-year prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity."[3] *(Citations omitted)*

With regard to the second ground raised by respondent, the Court already discussed that the subject FLD and the assessments made in the Final Decision on Disputed Assessment (FDDA) hardly fall within the jurisprudential definition of a tax assessment under the National Internal Revenue Code (NIRC), considering that they lack *a due tax liability that is there definitely set and fixed*, to wit:

> "A careful scrutiny of the subject FLD dated June 27, 2014 reveals that just as in the *Fitness by Design* case, although the same FLD provides for the computations of petitioner's supposed tax liabilities, the amounts thereof remain indefinite, since the tax dues are still subject to modification. Specifically, the subject FLD-FAN states: ℊ

[3] Decision, pp. 17 to 19, Docket – Vol. III, pp. 1432 to 1434.

> ***'Please take note that the interest <u>will have to be adjusted</u> if paid beyond the date specified therein.'***

Furthermore, the same statements are found in the assailed FDDA dated December 20, 2016 issued by respondent.

Hence, it is clear that the amounts assessed are still indefinite, since the same are subject to further adjustment after the payment thereof. In addition, it is not clear as to which does the phrase *'the date specified therein'* refer. In view of this vagueness, the indefiniteness in the amounts being assessed becomes more apparent.

In the case of *Commissioner of Internal Revenue vs. Northern Tobacco Redrying Co., Inc.,* the Court of Tax Appeals *En Banc* ruled that the mutability or changeableness of the amount due constitutes failure to comply with the mandatory requirement of stating a definite amount of liability and that the there must be a clear demand to pay, to wit:

> *"[F]or a formal assessment to be valid, it must contain not only a computation of tax liabilities but also a demand for payment within a prescribed period, to wit:*
>
> > *The issuance of a valid formal assessment is a substantive prerequisite to tax collection,* ***for it contains not only a computation of tax liabilities 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. Due process requires that it must be served on and received by the taxpayer. (Emphasis supplied)*
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> *Thus, to be valid, an assessment must contain not only the computation of tax* jr

> *liabilities, but must also indicate a definite amount of the tax due, and categorical demand for payment within a prescribed period.*
>
> *Evidently, the subject FLD utterly failed to comply with the requirement of the law to state a definite amount of liability, and a period or date certain for the payment of the tax assessed.*
>
> *For emphasis, the FLO states, as follows:*
>
>> *Please note that the interest and the total amount due will have to be adjusted if paid beyond November 30, 2013.*
>
> *Undeniably, the amount of tax liability subject of the questioned assessment is not yet certain, as the total amount due will change depending on the date of payment by respondent. The amount of the tax liability will necessarily change once the deficiency and delinquency interests are adjusted.*
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> *The mutability or changeableness of the amount due constitutes failure to comply with the mandatory requirement of stating a definite amount of liability. It has been consistently held that an assessment must state the tax due which is definitely set and fixed, to wit:*
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>> *In the context in which it is used in the NIRC, **an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. A written communication** containing a computation by a revenue officer of the tax liability of a taxpayer and giving him an opportunity to contest or disprove the BIR examiner's findings*

> > ***is not an assessment since it is yet indefinite.*** *(Emphasis supplied)*
>
> > *As earlier noted, the FLD as well failed to state a definite due date for payment of the tax due, and a clear demand for payment of the assessed tax deficiencies on such due date as shown below:*
> >
> > > *In view thereof, you are* ***requested*** *to pay your aforesaid deficiency income tax, value added tax and documentary stamp tax through the duly authorized agent bank in which you are enrolled, within the time shown in this assessment notice.' (Boldfacing ours)*
> >
> > *In other words, the subject FLD is vague and cannot be legally deemed as a valid formal assessment notice since petitioner did not indicate therein a demand for payment of the alleged tax liabilities on a specific date or period.'*
>
> Suffice it to say, a request to pay is not a demand to pay. To demand means to 'require (a person) to do' and is also defined as 'the assertion of a legal right', 'an imperative request preferred by one person to another under a claim of right, requiring the latter to do or yield something or to abstain from some act. An examination of the Formal Letter of Demand (FLD) would reveal that there is no demand or requirement for the taxpayer to pay the taxes due. The phrase '*you are requested to pay your aforesaid deficiency tax liabilities xxx'* negates the imperative nature and assertion of a legal right of an assessment."[4] *(Citations omitted)*

Verily, an invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in

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[4] Decision, pp. 21 to 24, Docket – Vol. III, pp. 1436 to 1439.

administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[5]

In view of the foregoing discussion, this Court finds no cogent reason to disturb or modify the Decision assailed.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

(I concur that the Motion for Reconsideration should be denied for being filed out of time but I maintain my Dissenting Opinion.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[5] *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.