REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

# SPECIAL THIRD DIVISION

**PEPSI - COLA PRODUCTS, PHILIPPINES, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 9170**

Members:

**UY,** *Chairperson*,
**RINGPIS-LIBAN,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:

SEP 19 2022
2:28 p.m.

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## RESOLUTION

***UY, J.:***

For resolution is respondent's ***Motion for Reconsideration (re: Decision dated 6 May 2022)***[1] filed on June 15, 2022, with petitioner's ***Comment (Re: Respondent's Motion for Reconsideration dated June 15, 2022)*** filed on July 11, 2022.[2]

In the said *Motion*, respondent prays that this Court's Decision promulgated on May 6, 2022, be reversed and set aside. The dispositive portion thereof reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the assessments for deficiency income tax, VAT, WTC, EWT, DST and compromise penalties for the fiscal year ending June 30, 2010, in the amount of ₱916,988,478.42; and for the period of July 1, 2010 to December 31, 2010 in the amount of

[1] Docket – Vol. 8, pp. 3626 to 3644.
[2] Docket – Vol. 8, pp. 3647 to 3660.

₱581,615,870.52, or the aggregate amount of ₱1,498,604,348.94, inclusive of increments issued against petitioner are hereby **CANCELLED** and **SET ASIDE.**

Moreover, unless reversed by higher courts, respondent is hereby **ORDERED** to **DESIST** from undertaking any collection proceedings of the subject tax deficiencies for taxable year 2010.

**SO ORDERED**."

***Respondent's Motion for Reconsideration***

Respondent argues that her basic right to fair play and due process was violated when the Court ruled on a matter not raised as an issue by petitioner in its Petition for Review or Pre-Trial Brief, not joined by the parties, or even defined in the Pre-Trial Order.

Respondent submits that Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) was intended to allow the Court to resolve the main issue under the proper perspective, that is, by allowing it to resolve key issues related to the main, thus, providing a complete, orderly disposition of the case; that it is not a license to resolve as a main issue a matter not derived from the pleadings and not tried by the parties; and such act is blindsiding a litigant and not considered an "orderly" disposition of the case.

Assuming the Court may decide the case based on an issue that was never raised by petitioner nor joined by the parties in their pleadings, respondent asserts that the assessments are valid.

According to petitioner, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended does not necessitate that the due date for payment of assessed deficiency taxes be indicated in the assessment notices in order for the assessment to be valid.

Citing the case of *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzales, Secretary of Justice, LM Camus Engineering*

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*Corporation,*[3] respondent submits that in order for a Final Assessment Notice (FAN) to be valid, what is essential is that the taxpayer was informed in writing of the findings of respondent and stating therein the facts and law on which the assessment is based. Respondent claims that the Formal Letter of Demand (FLD), FANs and the Final Decision on Disputed Assessment (FDDA) sufficiently complied with the mandatory requirements of Section 228 of the NIRC of 1997, as amended.

Granting for the sake of argument that a FAN should indicate the due date for payment, respondent posits that the assessment is valid as there was a demand for payment within a prescribed period.

Respondent claims that the issue on lack of due date is an undisputed issue and deserves scant consideration because such issue cannot be raised for the first time on appeal.

Allegedly, the doctrine in the case of *Commissioner of Internal Revenue vs. Fitness by Design*[4] *(Fitness by design)* should be revisited because the wordings in the said decision reveal that the *ratio decidendi* is related, if not based mainly on the decision of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Menguito.*[5] *(Menguito).*

Respondent submits that the ruling in *Menguito* was misapplied in the *Fitness by design* case. Allegedly, the issue in the *Menguito* case pertains to the taxpayer's receipt of the post-reporting notice and pre-assessment notice issued by the CIR and not to the existence of a demand for payment of the taxes assessed within a specific period.

Lastly, respondent argues that the Court cannot enjoin respondent from collecting the assessed deficiency taxes. Such order in the assailed Decision is tantamount to a restraining order which is not allowed by Section 218 of the NIRC of 1997, as amended.

***Petitioner's Comment on respondent's Motion for Reconsideration***

Petitioner counter-argues that the Court may rule upon issues not stipulated by the parties pursuant to Section 1, Rule 14 of the RRCTA.

[3] G.R. No. 177279, October 13, 2010.
[4] G.R. No. 215957, November 9, 2016.
[5] 587 Phil. 234 (2008 case).

Likewise, petitioner points out that the parties' stipulated issue was broad enough to cover the disputed issue such that the determination thereof necessarily covers the validity of the assessment, which includes whether the lack of a definite demand for payment of the assessed deficiency taxes renders the assessments invalid.

Furthermore, petitioner contends that the subject deficiency tax assessments remain void for failure of the FLD, Assessment Notices, and Details of Discrepancies, to make a final demand for payment and state a due date for the payment of the assessed tax liabilities.

Petitioner stresses that an assessment is a written notice and demand by the BIR on the taxpayer for the settlement of a due tax liability that is definitely set and fixed. The ultimate purpose of which is to ascertain the amount that each taxpayer is to pay.

Finally, petitioner submits that the Court properly ordered respondent to desist from the collection of the subject tax assessments, consistent with its finding that respondent's issuance of the FLD was infirm for being non-compliant with the requirements of the law.

## THE COURT'S RULING

After careful review of the parties' arguments, the Court finds respondent's *Motion for Reconsideration* bereft of merit.

***The Court is authorized to rule on an issue that is not stipulated by the parties.***

Respondent assails the Court's finding that the FLDs and Assessment Notices are void for failure to state a due date as the same was not raised as an issue. Allegedly, the Court's ruling is in violation of respondent's right to due process.

We do not agree with respondent.

Section 1, Rule 14 of the RRCTA categorically states that, in deciding a 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. Such power to rule on

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related issues was affirmed by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[6] which was cited in the assailed Decision.

It bears stressing that ruling on the validity of the FLDs and Assessment Notices, *albeit* not stipulated by the parties, is necessary and actually related to the parties' stipulated issue in determining "*whether petitioner is liable for deficiency income tax, VAT, WTC, EWT and DST for the long period, in the amount of ₱916,988,478.42 and for the short period, in the amount of ₱581,615,870.52, or in the aggregate amount of ₱1,498,604,348.94, inclusive of increments.*"[7] Indeed, petitioner cannot be found liable for deficiency taxes when the FLDs and Assessment Notices are void.

Hence, this Court appropriately resolved the issue pertaining to the validity of the FLDs and Assessment Notices, despite not being raised or stipulated by the parties in their pleadings or during trial.

***The ruling of the Court that the FLDs and Assessment Notices are not valid for bearing no due date remains.***

Respondent argues that the Court's ruling is misplaced and without legal basis in saying that a "due date" is a mandatory requirement for the validity of the assessment. Respondent claims that pursuant to Section 228 of the NIRC of 1997, as amended, nowhere does it specifically state that a "due date" is required for the validity of an assessment and neither it is provided anywhere in the NIRC that the omission thereof would invalidate the assessment.

Again, We disagree with respondent.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.,*[8] the Supreme Court elucidated on the nature of an assessment, to wit:

> **"An assessment contains not only a computation of tax liabilities, <u>but also a demand for payment within a prescribed period</u>.** It also signals the time when

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[6] G.R. No. 183408, July 12, 2017.
[7] Joint Stipulation of Facts and Issues, Issues, Docket – Vol. 3, pp. 1261 to 1262.
[8] G.R. No. 128315, June 25, 1999.

penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. x x x" (*Emphasis and underscoring added*)

In relation thereto, the *Fitness by design* case emphasized the importance of stating the due date in the FAN, to wit:

"**A final assessment notice provides for the amount of tax due with a demand for payment.** This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence.

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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 assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; <u>it also includes a demand for payment within a period prescribed.</u> Its main purpose is to determine the amount that a taxpayer is liable to pay.** (*Emphasis and underscoring ours*)

The Court is guided by the foregoing pronouncements that an assessment must not only indicate the legal and factual bases of the assessment, but must also state categorically a demand for payment of the computed tax liabilities with a specific period. Indicating a fixed and definite period within which a taxpayer must pay the tax deficiencies is necessary for the validity of an assessment. In the absence thereof, it negates the CIR's demand for payment making the FLDs and Assessment Notices defective and therefore void. As a rule, a void assessment bears no valid fruit.[9]

[9] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et. seq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

Anent respondent's contention that the FLDs contained a demand within a specific period, respondent alleges that the following statement in the Details of Discrepancies attached to the FLDs constitutes demand within the prescribed period, to wit;

> "It is requested that your aforesaid deficiency tax/taxes be paid immediately upon receipt hereof, inclusive of penalties otherwise the Formal Letter of Demand Assessment Notice shall be issued. x x x"

We are not persuaded.

While it can be said that the foregoing statement alleges that payment of deficiency taxes shall be made immediately upon receipt thereof, however, it cannot also be denied that the attached Assessment Notices which are part of the FLDs, do not indicate any due date as they were left blank and unaccomplished. Thus, there is no definite period for the payment of the deficiency tax assessments to speak of, thereby negating respondent's demand for payment.

***The Fitness by design and Menguito cases are applicable to the instant case, while the LM Camus Case is not.***

Moreover, We likewise disagree with respondent's contention that *Fitness by Design* and *Menguito* cases do not apply to the present case.

The doctrine of *stare decisis* enjoins judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[10]

Otherwise stated, when the Supreme Court has laid down a principle of law as applicable to a certain set of facts, it will adhere to

[10] *Carmelo F. Lazatin, et. al. vs. Hon. Aniano A. Desierto as Ombudsman*, G.R. No. 147097, June 5, 2009 citing *Cristinelli S. Fermin vs. People*, G.R. No. 157643, March 28, 2008, 550 SCRA 132.

that principle and apply it to all future cases in which the facts are substantially the same.[11]

Guided by the foregoing pronouncement, the Court finds that the *Menguito* and *Fitness by design* cases both apply to the instant case.

It is noteworthy to mention that in *Menguito*, the Supreme Court discussed what is a valid formal assessment, *i.e.*, an assessment contains not only a computation of tax liabilities but also a demand for payment **within a prescribed period.** The said pronouncement was reiterated in the *Fitness by design* case following previous pronouncements made by the Supreme Court in the cases of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et. al.*,[12] and *Tupaz vs. Ulep.*[13]

Notably, respondent's reliance on the *LM Camus* case is not on all fours with the instant case. In the said case, what was mentioned was the formality of a control number in the assessment notice which is not a requirement for the validity of an assessment. Obviously, lack of control number is not the same as the lack of due date. Hence, it should not be applied to the present case.

***The FLD and Assessment Notices being void, no valid collection could arise therefrom.***

Petitioner's argument that the Court cannot enjoin petitioner from collecting the assessed deficiency taxes which is tantamount to a restraining order or restraining the collection of national internal revenue taxes as it is not allowed by law, deserves scant consideration.

To be clear, the FLD and Assessment Notices in the instant case were declared void *ab initio* for failure to indicate a due date in the assessment notices, perforce no tax collection on such assessment can transpire since, as a rule, a void assessment bears

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[11] *Commissioner of Internal Revenue vs. The Insular Life Assurance Co. Ltd.*, G.R. No. 197192, June 4, 2014, citing *Chinese Yong Men's Christian Association of the Philippine Islands vs. Remington Steel Corporation*, 573 Phil. 320, 337 (2008).
[12] G.R. No. 128315, June 29, 1999.
[13] G.R. No. 127777, October 1, 1999.

no valid fruit.[14] Consequently, petitioner's collection efforts arising out of such tax assessments are also null and void.

Having addressed the aforementioned arguments of respondent, the Court finds no cogent reason to reverse or modify the assailed Decision.

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

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

[14] *Commissioner of Internal Revenue vs. Azucena T. Reyes; Azucena T. Reyes vs. Commissioner of Internal Revenue*, G.R. Nos. 159694 & 163581, January 27, 2006.