REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

SAN MIGUEL FOODS, INC., Petitioner,	**CTA Case No. 9241**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** OCT 02 2019 10:00 a.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on January 14, 2016 by San Miguel Foods, Inc. against the Commissioner of Internal Revenue, praying for: (1) the declaration of the former as not liable for deficiency income tax and value-added tax (VAT) for the taxable year ending December 31, 2010 in the aggregate amount of ₱959,892,339.44; and (2) the withdrawal and cancellation of the subject deficiency tax assessments.

THE FACTS

Petitioner San Miguel Foods, Inc. is a corporation organized and existing under the laws of the Philippines with office address at 23rd Floor, JMT Corporate Condominium, ADB, Avenue, Pasig City.[1] It is a large taxpayer pursuant to Revenue Regulations No. 1-98.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. III, p. 1197.
[2] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1197.

Internal Revenue (BIR), National Office Building located at Agham Road, Diliman, Quezon City.[3]

Petitioner filed its Income Tax Return and Quarterly VAT Returns for the year 2010 on the following dates:

Date of Filing	Tax Return
April 13, 2011	Income Tax Return (Original)[4]
May 12, 2011	Income Tax Return (Amended)[5]
October 10, 2011	Income Tax Return (Amended)[6]
April 23, 2010	Quarterly VAT Return (for the 1st Quarter)[7]
July 23, 2010	Quarterly VAT Return (for the 2nd Quarter)[8]
October 25, 2010	Quarterly VAT Return (for the 3rd Quarter)[9]
January 24, 2011	Quarterly VAT Return (for the 4th Quarter)[10]

On September 28, 2011, petitioner received the Letter of Authority dated September 23, 2011 from the BIR,[11] authorizing the examination of its books of accounts and other financial records for all internal revenue taxes for the period January 1 to December 31, 2010.[12]

Petitioner successively executed three (3) *Waivers of the Statute of Limitations under the National Internal Revenue Code*[13] on September 30, 2013, August 11, 2014, and January 20, 2015.[14]

Thereafter, on February 2, 2015, petitioner received a *Preliminary Assessment Notice* (PAN) from OIC-Assistant Commissioner Nestor S. Valeroso of the Large Taxpayers Service (LTS) of the BIR[15], proposing to assess petitioner deficiency income

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[3] Par. 2, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 10 and 165, respectively.
[4] Exhibit "P-12", Docket – Vol. III, pp. 1462 to 1470.
[5] Exhibit "P-12-1", Docket – Vol. III, pp. 1471 to 1479.
[6] Exhibit "P-12-2", Docket – Vol. III, pp. 1480 to 1489.
[7] Exhibit "P-15", Docket – Vol. III, pp. 1490 to 1495.
[8] Exhibit "P-18", Docket – Vol. III, pp. 1496 to 1501.
[9] Exhibit "P-21", Docket – Vol. III, pp. 1502 to 1507.
[10] Exhibit "P-24", Docket – Vol. III, pp. 1508 to 1513.
[11] Exhibit "P-4", Docket – Vol. III, p. 1391; and Exhibit "R-1", BIR Records (Folder 1), p. 1.
[12] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1197.
[13] Exhibits "P-5" to "P-7", Docket – Vol. III, pp. 1392 to 1394; and Exhibits "R-8", "R-5" and "R-4", BIR Records (Folder 1), pp. 608 to 610.
[14] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1197
[15] Exhibit "P-8", Docket – Vol. III, pp. 1395 to 1406; and Exhibit "R-7", BIR Records (Folder 1), pp. 670 to 681.

tax, improperly accumulated earnings tax (IAET), value added tax (VAT), withholding tax on compensation (WTC), final withholding tax (FWT), final withholding VAT (FWV), expanded withholding tax (EWT), and documentary stamp tax (DST) in the aggregate amount of ₱25,957,785,913.31, inclusive of interest, surcharge and penalties, for taxable year ending December 31, 2010.[16]

In response to the PAN, petitioner filed with the BIR, the letter dated February 16, 2015,[17] wherein petitioner made clarifications for each of the assessment findings for the BIR's further evaluation.

On March 9, 2015, petitioner received a *Formal Letter of Demand* (FLD) with Assessment Notice No. IT-116-LOA-00000130-10-15-1488, Assessment Notice No. IAET-116-LOA-00000130-10-15-1489, Assessment Notice No. VT-116-LOA-00000130-10-15-1490, Assessment Notice No. WC-116-LOA-00000130-10-15-1491, Assessment Notice No. WV-116-LOA-00000130-10-15-1492, Assessment Notice No. WE-116-LOA-00000130-10-15-1493, Assessment Notice No. DS-116-LOA-00000130-10-15-1494, and *Details of Discrepancies*,[18] assessing petitioner of alleged deficiency income tax, IAET, VAT, WTC, FWV, EWT and DST, respectively, in the aggregate amount of ₱25,782,322,508.31, inclusive of surcharge, interest, interest on late remittance and compromise penalties.[19]

Petitioner filed the letter dated April 8, 2015 with the BIR,[20] requesting for a reinvestigation of the proposed tax assessments, and stating petitioner's explanations and bases of objections on the merits of the deficiency tax assessments.

Subsequently, on December 16, 2015, respondent, acting through Nestor S. Valeroso of the LTS, issued a *Final Decision on Disputed Assessment* (FDDA),[21] upholding the remaining deficiency income tax assessment of ₱880,422,523.43 and deficiency VAT assessment of ₱79,469,816.01, or in the aggregate amount of

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[16] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. III, pp. 1197 to 1198.
[17] Exhibit "P-9", Docket – Vol. III, pp. 1407 to 1423; and BIR Records (Folder 3), pp. 572 to 588.
[18] Exhibit "P-10", Docket – Vol. III, pp. 1424 to 1441; Exhibit "R-12", BIR Records (Folder 1), pp. 699 to 716.
[19] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1198.
[20] Exhibit "P-11", Docket – Vol. III, pp. 1442 to 1461, and BIR Records (Folder 4), pp. 701 to 720.
[21] Exhibit "P-3", Docket – Vol. III, pp. 1381 to 1390.

₱959,892,339.44, inclusive of interest, for taxable year 2010, computed as follows:[22]

Assessment No. IT-116-LOA-00000130-10-15-2287

Income Tax			
Net Income per ITR			₱1,296,913,839.35
Add: Adjustments			
Comparative analysis	Discrepancy	Gross Profit	
tpi_sawt_sls Unreported Sales	₱95,340,723.61	₱10,514,175.00	
tpi_sawt_slp Unreported Purchases	41,141,524.53	5,099,455.25	
Total		₱15,613,630.25	
Unsupported bad debts		5,642,947.04	
Disallowed tax credits – NOLCO		1,524,161,549.30	1,545,418,126.59
Net Income per investigation			₱2,842,331,965.94
Rate			30%
Income Tax due per investigation			₱ 852,699,589.78
Les s: Tax credits/payments			
Prior Year Excess Credits		₱ 74,647,186.88	
Tax Payments (3 Quarters)		109,041,990.29	
CWT	₱554,511,225.48		
Less: Unsupported/disallowed CWT	-	554,511,225.48	
Total		₱738,200,402.65	
Less: Carried over		349,126,250.84	389,074,151.81
Basic Tax			₱ 463,625,437.97
Less: Deficiency IT paid on 11.27.2015			6,376,973.19
Balance			₱ 457,248,464.79
Add: Increments			
Interest 04.16.2014 to 11.30.15			423,174,058.64
DEFICIENCY INCOME TAX			**₱ 880,422,523.43**

Assessment No. VT-116-LOA-00000130-10-15-2288

Value Added Tax			
Net Income per ITR			₱24,069,906,554.01
Add: Adjustments			
Comparative analysis	Discrepancy	Gross Profit	
tpi_sawt_sls Unreported Sales		₱95,340,723.61	
tpi_sawt_slp Unreported Purchases	₱41,141,524.53	46,240,979.78	141,581,703.39
Total taxable revenue per audit			₱24,211,488,257.40
Rate			12%
Total output tax due per investigation			₱2,905,378,590.89
Less: Tax Credits			
Carried-over excess			
Deferred	₱6,391,440.30	₱6,391,440.30	
Tax Credits – Current Period			
Input Tax	₱2,831,678,298.30		
Less: Disallowed Input	5,821.22	₱2,831,672,477.08	
Others – TCC	-		
Less: Unsupported	-		
Others input tax credits	₱ 40,354,038.48		
Less: Unsupported	40,354,038.48		
Total		₱2,836,063,917.38	
Add: Tax Payments		604,416,736.58	
Balance		₱3,442,480,653.96	
Less: Deductions from input			
Deferred	₱ 5,720,555.80		
Closed to expense ₱ 0.0			

[22] Par. 7, Stipulation of Facts, JSFI, Docket – Vol. III, pp. 1198 to 1199.

Add: Add'l Adj	-		
Exempt Allocation	588,731,171.36	594,451,727.16	2,848,028,926.80
Net Output tax due			₱ 57,549,664.09
Less: Deficiency VT paid on 11.30.2015			16,995,625.63
Balance			₱ 40,354,038.46
Add: Increments			
Interest 01.26.2011 to 11.30.15			39,115,777.55
DEFICIENCY VALUE ADDED TAX			**₱ 79,469,816.01**

Thus, on January 14, 2016, petitioner filed the instant *Petition for Review* with this Court.[23]

On June 6, 2016, respondent filed his *Answer*,[24] interposing the certain special and affirmative defenses, to wit: (1) the Waivers of the Defense of Prescription executed by petitioner are valid and binding between the parties, hence, the waivers validly extended the period to assess petitioner; (2) petitioner failed to comply with Section 52(c) of the National Internal Revenue Code (NIRC) of 1997, thus, respondent cannot in any case determine whether the claimed Net Operating Loss Carry Over (NOLCO) and input tax credit are within the limits prescribed by law; (3) the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that respondent is wrong, but also that the taxpayer is right; (4) the presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting; (5) in the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner, and approved by his superior officers will not be disturbed.

On June 21, 2016, the Court directed respondent to forward the BIR records pertaining to the case.[25] In compliance, respondent forwarded the said BIR Records on September 23, 2016.[26]

The Pre-Trial Conference was set on September 8, 2016.[27] However, on September 5, 2016, respondent filed an *Urgent Motion to Reset Pre-Trial Conference Scheduled on September 8, 2016*,[28] which was granted by this Court, thereby re-scheduling the *Pre-trial Conference* to February 2, 2017.[29]

[23] Docket – Vol. I, pp. 10 to 37.
[24] Docket – Vol. I, pp. 165 to 182.
[25] Docket – Vol. I, p. 191.
[26] *Compliance* dated September 20, 2016, Docket – Vol. II, pp. 1168 to 1170.
[27] Notice of Pre-Trial Conference dated June 8, 2016, Docket – Vol. I, pp. 187 to 188.
[28] Docket – Vol. II, pp. 959 to 961.
[29] Order dated September 7, 2016, Docket – Vol. II, p. 1165 to 1166.

As directed by the Court during the Pre-trial conference held on February 2, 2017,[30] the parties submitted their *Joint Stipulation of Facts and Issues* on February 22, 2017.[31] The same was approved in the Resolution dated March 1, 2017,[32] thereby terminating Pre-Trial. Subsequently, the Court issued the Pre-Trial Order dated March 21, 2017.[33]

During trial, petitioner presented its witnesses, namely, Atty. Ma. Celeste Legaspi-Ramos,[34] Julie Fe A. Del Rosario,[35] and Rachel D. Sison.[36] On October 18, 2017, petitioner filed its *Formal Offer of Evidence,*[37] offering in evidence Exhibits "P-1" to "P-12", "P-15", "P-18", "P-21", "P-24" to "P-38", "P-40", "P-44-2", "P-45" to "P-49", including sub-markings. The said Exhibits were all admitted by the Court, per its Resolution dated January 18, 2018.[38]

For his part, respondent presented Revenue Officer Aurelio Augustin T. Zamora, as his lone witness.[39] Respondent filed its *Formal Offer of Evidence* on May 21, 2018,[40] formally offering in evidence Exhibits "R-1" to "R-12". In its *Comment [On Respondent's Formal Offer of Evidence dated May 21, 2018]* filed on May 31, 2018,[41] petitioner raises its objections to the said Exhibits. Despite these objections, however, the Court admitted all of respondent's evidence in the Resolution dated July 30, 2018.[42]

As directed by the Court, petitioner filed its *Memorandum* on August 24, 2018,[43] while respondent filed his *Memorandum* on September 25, 2018.[44]

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[30] Order dated February 2, 2017, Docket – Vol. III, pp. 1179 to 1181.
[31] JSFI, Docket – Vol. III, pp. 1197 to 1226.
[32] Docket – Vol. III, p. 1229.
[33] Docket – Vol. III, pp. 1232 to 1245.
[34] Exhibit "P-46", Docket – Vol. I, pp. 203 to 214; Minutes of hearing held on, and Order dated, July 25, 2017, Docket – Vol. III, pp. 1275 to 1280.
[35] Exhibit "P-47", Docket – Vol. II, pp. 971 to 979; Minutes of hearing held on, and Order dated, July 25, 2017, *supra*.
[36] Exhibits "P-48" and "P-49", Docket – Vol. II, pp. 643 to 660 and Vol. III, pp. 1286 to 1289, respectively; Minutes of hearing held on, and Order dated, August 22, 2017, Docket – Vol. III, pp. 1300 to 1305.
[37] Docket – Vol. III, pp. 1335 to 1358.
[38] Docket – Vol. IV, pp. 1941 to 1942.
[39] Exhibit "R-13", Docket – Vol. II, pp. 1158 to 1164; Minutes of hearing held on, and Order dated, May 10, 2018, Docket – Vol. IV, pp. 1948 to 1951.
[40] Docket – Vol. IV, pp. 1955 to 1960.
[41] Docket – Vol. IV, pp. 1962 to 1967.
[42] Docket – Vol. IV, pp. 1972 to 1973.
[43] Docket – Vol. IV, 1974 to 2013.
[44] Docket – Vol. IV, pp. 2021 to 2042.

In the Resolution dated October 12, 2018,[45] this case was deemed submitted for decision.

Hence, this Decision.

THE ISSUES

The parties submitted the following issues for this Court's resolution, to wit:

> "A. WHETHER OR NOT THE RIGHT OF THE GOVERNMENT TO ASSESS PETITIONER FOR DEFICIENCY INCOME TAX AND VAT FOR TAXABLE YEAR ENDING DECEMBER 31, 2010 HAS PRESCRIBED.
>
> B. WHETHER OR NOT PETITIONER IS LIABLE TO PAY ITS DEFICIENCY INCOME TAX AND VALUE ADDED TAX FOR TAXABLE YEAR ENDING DECEMBER 31, 2010 IN THE TOTAL AMOUNT OF ₱959,892,339.44 INCLUSIVE OF INTEREST."[46]

Petitioner's arguments:

Petitioner contends that the FAN for deficiency income tax and VAT for the taxable year ending December 31, 2010 was received by the petitioner only on March 9, 2015, that is, beyond the three-year period prescribed by law for the assessment of taxes. Therefore, the income tax and VAT assessments are barred by prescription.

Moreover, the waivers it executed are allegedly not valid as said waivers did not comply with the requisites and formalities of a valid waiver. Hence, petitioner insists that the said waivers did not have the effect of extending the three-year prescriptive period to assess deficiency taxes.

Assuming that the waivers are valid, petitioner submits that the right of the respondent to assess deficiency VAT for the year ending December 31, 2010 has partially prescribed. Allegedly, respondent had until April 25, 2013 and July 25, 2013, within which to assess

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[45] Docket – Vol. IV, p. 2049.
[46] Stipulation of Issue, JSFI, Docket – Vol. III, p. 1199.

deficiency VAT for the first and second quarters of the taxable year 2010. Petitioner stresses that since the first waiver was executed on September 30, 2013, the subject deficiency VAT assessments for the first and second quarters of 2010 has already prescribed.

Furthermore, petitioner asserts that the FLD and FDDA are void for having been issued beyond the period of validity of the LOA thereby stripping the Revenue Officer who conducted the audit of any authority to investigate and consequently issue an assessment. Additionally, the FLD and FDDA failed to state a definite demand for payment, which makes it inherently null and void.

Petitioner also contends that assuming solely for the sake of argument that the assessments are valid, it is entitled to the NOLCO and input VAT transferred to it by MFC pursuant to a tax-free merger.

Finally, petitioner believes that the deficiency income tax and VAT assessments are bereft of any factual and legal bases.

Respondent's counter-arguments:

Respondent counter-argues that the *Waivers of the Defense of Prescription* executed by the petitioner are valid and binding between the parties. Hence, the *Waivers* validly extended the period to assess petitioner. Furthermore, to require the *Waivers* to specify the kind of tax and corresponding amount would be impossible since these waivers were executed in the course of the conduct of the audit investigation before the issuance of preliminary assessment notice.

According to respondent, petitioner failed to comply with Section 52(c) of the NIRC of 1997, thus, respondent cannot in any case determine whether the claimed NOLCO and input tax credit are within the limits prescribed by law. Respondent asserts that a corporation contemplating merger or dissolution must comply with the provisions of the NIRC of 1997, as amended; and that compliance with the provisions of the NIRC is necessary to ensure settlement of any outstanding tax liability.

Finally, respondent contends dereliction on the part of the petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of the said assessment notices.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

Petitioner is estopped from questioning the validity of the subject Waivers.

It is the contention of petitioner that the subject *Waivers* are invalid because these did not comply with the requisites and formalities of a valid waiver, as set forth in Revenue Memorandum Order No. 20-90. According to petitioner, since the said *Waivers* suffer from serious defects and infirmities, they are void and failed to validly extend the prescriptive period given the Government to assess deficiency taxes.

Petitioner, however, is estopped from questioning the validity of the said *Waivers* because it has undisputedly *"voluntarily settled the deficiency taxes due on the other issues"*[47].

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*,[48] the Supreme Court ruled:

> "*Petitioner is estopped from questioning the validity of the waivers.*
>
> RCBC assails the validity of the waivers of the statute of limitations on the ground that the said waivers were merely attested to by Sixto Esquivias, then Coordinator for the CIR, and that he failed to indicate acceptance or agreement of the CIR, as required under Section 223 (b) of the 1977 Tax Code. RCBC further argues that the principle of estoppel cannot be applied against it because its payment of the other tax assessments does not signify a clear intention on its part to give up its right to question the validity of the waivers.
>
> The Court disagrees.
>
> Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that 'an admission or

[47] Exhibit "P-3", Docket – Vol. III, p. 1381; Exhibit "R-11", BIR Records (Docket 5).
[48] G.R. No. 170257, September 7, 2011.

> representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.' A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.
>
> **Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. <u>Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid.</u>** The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. **To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.**" *(Emphasis and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, a taxpayer, who pays an assessed tax, shall be held in estoppel to question the waiver it executed prior to the issuance of the assessment.

In this case, if petitioner truly believed that the subject *Waivers* were invalid, then it should not have partially paid the deficiency tax assessments on November 27, 2015.[49] The fact that it had done so is an indication that petitioner recognized the validity thereof. Thus, petitioner is in estoppel from questioning the subject *Waiver*'s validity.

Nevertheless however, the validity of the said *Waivers* is one thing; the validity of the subject tax assessments is quite another matter.

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[49] BIR Records (Docket 5), pp. 1257 to 1290.

The subject deficiency tax assessments are invalid for failure of the FLD, Assessment Notices, and Details of Discrepancies, to state a definite time for the payment of the supposed tax liabilities.

In the context in which it is used in the NIRC, an assessment is a written notice and demand by the BIR on the taxpayer for the settlement of a due tax liability **that is there definitely set and fixed**.[50] Thus, for a tax assessment to stand the test of validity, it must contain not only a computation of tax liabilities but also a demand for payment **within a prescribed period**.

In *Commissioner of Internal Revenue vs. Menguito*,[51] the Supreme Court ruled that:

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

Furthermore, in *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep and People of the Philippines*,[52] the Supreme Court held that:

> "...an assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period**. The ultimate purpose of assessment is to ascertain the amount that each taxpayer is to pay. An assessment is a notice to the effect that the

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[50] *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.

[51] G.R. No. 167560, September 17, 2008, citing *Commissioner of Internal Revenue vs. Reyes*, G..R. No. 159694, January 27, 2006, *Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006, and *Commissioner of Internal Revenue vs. Pascor Realty & Devt. Corp.*, 368 Phil. 714 (1999).

[52] G.R. No. 127777, October 1, 1999, citing *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*, G. R. No. 128315, June 29, 1999 and *Commissioner vs. Ayala Securities Corporation*, 70 SCRA 204 (1976).

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amount therein stated is due as tax and a demand for payment thereof." *(Emphasis supplied)*

To be clear, 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 <u>within a specific period</u>**.[53]

Taking the foregoing jurisprudential pronouncements into consideration, the Court finds that, in the instant case, there is no showing that the subject FLD, *Details of Discrepancies*, and Assessment Notices[54] issued against petitioner, contain a prescribed period for the payment of the supposed deficiency taxes. For easy reference, the pertinent portions of the said FLD,[55] and *Details of Discrepancies* attached thereto,[56] are reproduced as follows:

" **<u>FORMAL LETTER OF DEMAND</u>**

THE PRESIDENT
SAN MIGUEL FOODS, INC.
JMT Tower Condominium Bldg.,
ADB Avenue, Pasig City
TIN: 000-275-554

Sir:

This has reference to the Preliminary Assessment Notice (PAN) served on 02 February 2015 covering your deficiency Income Tax, Improperly Accumulated Earnings Tax, Value-Added Tax, Withholding Tax on Compensation, Final Withholding Tax, Final Withholding VAT, Expanded Withholding Tax, and Documentary Stamp Tax for the taxable year 2010.

Pursuant to Revenue Regulations No. 18-2013, a Formal Letter of Demand is hereby issued on the deficiency Income Tax, Improperly Accumulated Earnings Tax, Value-Added Tax, Withholding Tax on Compensation, Final Withholding VAT, Expanded Withholding Tax, and Documentary Stamp Tax as shown hereunder:

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[53] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

[54] Exhibit "P-10", Docket – Vol. III, pp. 1424 to 1441; Exhibit "R-12", BIR Records (Folder 1), pp. 699 to 716.

[55] Refer to Exhibit "P-10", Docket – Vol. III, pp. 1424 and 1428; and Exhibit "R-12", BIR Records (Folder 1), pp. 716 and 712.

[56] Refer to Exhibit "P-10", Docket – Vol. III, pp. 1436 and 1441; and Exhibit "R-12", BIR Records (Folder 1), pp. 706 and 711.

xxx xxx xxx

Pursuant to the provision of Section 228 of the aforesaid Code and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within thirty (30) days from receipt hereof. However, if you are amenable, you may pay the above assessment thru the EFPS facility. Afterwards, submit the proof of payment thereof to the Regular Large Taxpayers Audit Division I at Rm 216 BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records.

We hope that you will give this matter your preferential action.

Very truly yours,

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

By:

(signed)
NESTOR S. VALEROSO
OIC- Assistant Commissioner
Large Taxpayers Service"

"**THE PRESIDENT**
SAN MIGUEL FOODS, INC.
JMT Tower Cond. Bldg., ADB Ave., Pasig City
TIN: 000-275-554

DETAILS OF DISCREPANCY
Taxable Year 2010

xxx xxx xxx

In case you disagree to the assessment, you or your duly authorized representative or your duly authorized BIR accredited Tax Agent, may protest administratively against the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) within thirty (30) days from date of receipt thereof, and submit the same to the Office of the Assistant Commissioner, Large Taxpayers Service at Rm 307 BIR National Office Building, BIR Road, Diliman, Quezon City, stating the nature of the protest whether for **reconsideration** or **reinvestigation**, specifying the newly discovered or additional evidence you intend to present, the date of assessment notice, and the applicable law, rules and regulations or jurisprudence from which your protest is based pursuant to Revenue Regulations No. 18-2013, otherwise your protest shall be considered void and without force and effect. However, if you are amenable, whether in whole or in part, it is requested that you settle first the tax attributable to the undisputed issue and furnish this office a photocopy of the proof of payment thereof, otherwise a collection letter shall be issued calling for the payment of the said deficiency tax or attributable thereto, inclusive of the applicable surcharge and/or interest.

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In case of failure to file a valid protest 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 No. 18-2013.

Very truly yours,

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

By:

(signed)
NESTOR S. VALEROSO
OIC- Assistant Commissioner
Large Taxpayers Service"

Contrary to the settled principle that an assessment should indicate the specific period to pay the assessed tax, a perusal of the foregoing FLD and *Details of Discrepancies* shows that there is no fixed date when payment of the subject tax assessments should be made. In the same vein, an examination of the subject Assessment Notices would reveal that the respective "DUE DATE" portion thereof are all left blank.[57]

Correspondingly, the subject tax assessments cannot be considered as valid, since the same do not contain a demand for payment within a prescribed period. Thus, the same bear no valid fruit.[58] Relative thereto, it must be emphasized that the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.[59] In other words, tax collection should be premised on a valid assessment.[60]

In view of the invalidity of the subject tax assessments, the latter must already be struck down. Such being the case, it becomes unnecessary to address the remaining arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the deficiency

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[57] Refer to Exhibit "P-10", Docket – Vol. III, pp. 1429 and 1435; and Exhibit "R-12", BIR Records (Folder 1), pp. 699 and 705.
[58] Refer to *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.
[59] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, supra.
[60] Supra.

income tax assessment of ₱880,422,523.43 and deficiency VAT assessment amounting to ₱79,469,816.01, in the aggregate amount of ₱959,892,339.44, inclusive of interests, for taxable year 2010, issued against petitioner, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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.

ROMAN G. DEL ROSARIO
Presiding Justice