REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

FIRST PHILIPPINE INDUSTRIAL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9000

Members:

CASTAÑEDA, JR., *Chairperson,* *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

OCT 09 2020 8:30 Am

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RESOLUTION

CASTAÑEDA, J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision dated on 24 February 2020)**, filed on March 12, 2020, with petitioner's **Comment (on Respondent's Motion for Reconsideration Re: Decision dated 24 February 2020)**, filed on July 27, 2020.

On February 24, 2020, the Court promulgated a Decision cancelling respondent's deficiency tax assessments against petitioner for being issued beyond the prescriptive period provided by law and for having failed to set a definite amount of tax liability, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency tax assessments under the FLD-FAN dated June 27, 2014 for taxable year 2009 in the amount of ₱160,199,415.34 are **CANCELLED** and **SET ASIDE.**

SO ORDERED."

In his Motion, respondent prays that the abpove Decision be reconsidered and set aside based on the following grounds, *viz.*:

I.

With all due respect, the Honorable Court erred when it granted a relief that was not prayed for by petitioner.

II.

With all due respect, the Honorable Court erred in ruling that prescription has set in due to the invalidity of waivers.

III.

With all due respect, the Honorable Court erred in ruling that the FLD and FAN are void because they failed to demand payment thereof within a specific period.

As to the first ground, respondent argues that the issue on the validity of the Formal Letter of Demand-Final Assessment Notice (FLD-FAN) was never raised by petitioner in the Petition for Review, Pre-Trial Brief, and Joint Stipulation of Facts and Issues, or even defined by the Court in the Pre-Trial Order. Thus, respondent claims that his basic right to fair play and due process was violated since the fundamental rule is that the reliefs granted by the courts are limited to only those specifically prayed for.

With regard to the second ground, respondent assails the finding of the Court that the *Waivers of the Defense of Prescription Under the Statue of Limitations of the National Internal Revenue Code* (*"waviers"* hereafter for brevity) executed by petitioner failed to comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90[1]. Respondent cites the ruling made by the Court of Tax Appeals in the case *Liberty Flour Mills, Inc. v. Commissioner of Internal Revenue,*[2] wherein it was stated that an RMO is just an internal issuance and that it cannot grant any vested right to any taxpayer over any particular work procedure, which is internal to the Bureau of Internal Revenue (BIR). As such, the subject waivers need not strictly comply with the foregoing RMO, thereby clearly making the same valid which effectively extended the period of assessment

[1] "SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code", April 4, 1990.

[2] CTA Case No. 9603, March 2, 2020

in accordance with Section 222(b)[3] of the National Internal Revenue Code (NIRC) of 1997, as amended.

Lastly, respondent insists that the FLD-FAN has fixed and definitely set the deficiency tax liabilities of petitioner which consists of the basic tax deficiency due as well as surcharges and interests.

On the other hand, petitioner claims it is within the jurisdiction of this Court to rule on the validity of the waivers and the tax assessments considering that the Petition for Review it filed with the Court, including all of the subsequent pleadings, contains a statement in the prayer "*such other relief just and equitable under the premises.*" As such, petitioner contends that assuming it has failed to raise the said issues, the Court was correct to rule that there are legal bases for it to resolve the same.

Nonetheless, petitioner insists that the waivers are invalid as these do not contain the nature and the amount of the tax due as required under RMO No. 20-90. Petitioner further asserts that faithful compliance with the requirements under the said RMO cannot be brushed aside, citing the Supreme Court's ruling in *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.,*[4] to bloster its assertion.

Accordingly, this Court finds respondent's Motion for Reconsideration bereft of merit.

At the onset, the arguments in the instant Motion is a mere rehash of the same facts and issues which have already been passed upon extensively in the Decision it assails. To reiterate, the FLD-FAN issued by respondent hardly falls under the jurisprudential definition of a tax assessment under the NIRC since it lacks "a due tax liability that is there definitely set and fixed." To stress, in the case of

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[3] "**SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-*

x x x

(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."

[4] G.R. No. 213943, March 22, 2017.

Commissioner of Internal Revenue v. Fitness By Design, Inc.,[5] the Supreme Court held:

> "**The disputed Final Assessment Notice is not a valid assessment.**
>
> First, **it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.'** Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:
>
>> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, however, that the interest and the total amount due will have to be adjusted if paid prior or beyond April 15, 2004. (Emphasis Supplied)'"
>> *(Citations omitted and Emphasis supplied)*

In the above case, the Supreme Court ruled that the Formal Letter of Demand lacks the definite amount of tax liability, taking into consideration the statement therein, "**that the interest and total amount due will have to be adjusted if paid prior or beyond April 15, 2014**." Consequently, the Supreme Court held that the amount of tax due remains indefinite since it is still subject to modification depending on the date of payment.

In the present case, the FLD-FAN also states that "*Please take note that the interest will have to be adjusted if paid beyond the date*

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

specified therein." Applying the ruling in aforequoted Supreme Court case, the amount of tax liability in the present case likewise remains indefinite. Moreover, the subject FLD-FAN also failed to clearly indicate a specific date or prescribed period within which to pay the tax liabilities. Hence, the absence of the specific period in the FLD-FAN negates respondent's demand for payment and renders the assessment void.

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 administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[6]

As to respondent's argument that he was denied his constitutional right to due process given that the validity of the FLD was never questioned by petitioner in its pleadings, this Court finds no merit therein.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,*[7] the Supreme Court already settled the matter that failure to raise an issue pertaining to the defects in the assessment notices does not prevent this Court from examining the same, *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:
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> > SECTION 1. Rendition of judgment. - x x x.
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues

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[6] *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.
[7] G.R. No. 183408, July 12, 2017.

> **necessary to achieve an orderly disposition of the case.**
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis supplied)*

Lastly, respondent argues that an RMO cannot in any case grant any vested right to any taxpayer over any particular work procedure, since it is internal to the BIR. As such, respondent avers that the waiver need not strictly comply with RMO No. 20-90.

The Court does not agree.

Perforce, this Court's reliance on RMO No. 20-90 is not based on the notion that such BIR issuance is a source of a vested right of petitioner, but rather it is because the Court adheres to the principle that administrative issuances, such as the subject RMO, has the force and effect of law; and that they benefit from the same presumption of validity and constitutionality enjoyed by statutes.[8] As stated in the assailed Decision:

> "In *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc. ('La Flor case')*, the Supreme Court held:
>
> > 'In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, the Court had ruled that **waivers extending the prescriptive 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</u>** ℊ

[8] *Chevron Philippines, Inc. v. Bases Conversion and Development Authority, et al.*, G.R. No. 173863, September 15, 2010.

followed. To be sure, in a number of cases, this Court did not hesitate to stike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.

x 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 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 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 tha 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.**'

Based on the foregoing jurisprudential pronouncements, it is required, *inter alia*, that the *Waiver*, to be valid and would extend the three-year prescriptive period to assess, must indicate the nature and and the amount of the tax due. 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* do not indicate the kind and amount of the taxes to be assessed or collected. Such being the case, the same did not effectively extend the prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity.

In any event, even granting that the said *Waivers* are valid, the same is of no consequence. This must be so because all the subject tax assessments are actually void."[9]

Hence, in view of the foregoing disquisitions, the Court finds no new or substantial matter, or compelling reason to justify the reversal or modification of the assailed Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated on 24 February 2020), is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[9] Decision, pp. 40 to 42.