REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GRAND PLAZA CORPORATION, Petitioner,	**CTA CASE NO. 8992**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 29 2018 9:45 a.m.

x- -x

AMENDED DECISION

CASTAÑEDA, JR., *J*.:

For resolution is petitioner's **Motion for Reconsideration (of the *Decision* dated 4 July 2018)**, filed on July 19, 2018, with respondent's **Comment/Opposition Re: Petitioner's Motion for Reconsideration**, filed on August 10, 2018.

Petitioner seeks reconsideration of the Court's Decision (assailed Decision)[1] promulgated on July 4, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, the present Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."[2]

---

[1] Docket, vol. II, pp. 898-922.
[2] Docket, vol. II, p. 921.

In the assailed Decision, the Court held that it has no jurisdiction to entertain the present petition since the assessment in question has become final, executory and demandable for failure of petitioner to file a protest to the Formal Letter of Demand with Audit Result/Assessment Notices within the reglementary period.

Petitioner moves for reconsideration of the assailed Decision on the following grounds:

1. The CTA has jurisdiction to review collection proceedings initiated by the CIR pursuant to its powers under Section 7(a)(1) of the Tax Code, in particular, "Other Matters" arising under the National Internal Revenue Code (NIRC); and

2. When a tax deficiency assessment is void for failure to (1) indicate a due date for payment and (2) specify the facts and law on which it is based, the absence of a protest does no render the assessment final and executory because no rights can emanate from a void assessment.

Respondent opposes petitioner's motion for utter lack of merit and contends that the assailed Decision should be upheld. According to respondent, a taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals, may be waived or lost as in this case. Respondent alleges that petitioner has already lost its right to appeal the instant assessment as it was only able to file the instant case on February 20, 2015, or after the lapse of 489 days. Thus, the subject assessment has long become final, executory, and demandable and therefore not subject to judicial scrutiny and beyond the jurisdiction of this Court.

The Court finds merit in petitioner's motion for reconsideration.

Petitioner argues that the Court has jurisdiction over the case under the term "other matters", pursuant to Section 7(a)(1) of RA No. 1125 and Section 3(a)(1), Rule 4 of the RRCTA. It contends that the instant Petition for Review was filed in order to preserve its rights against the collection proceedings.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[3] The jurisdiction of the CTA regarding internal revenue tax assessments is provided under Section 7(a)(1) of Republic Act (R.A.) No. 1125, as amended by R.A. Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue Code in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue**;" (*Emphasis supplied*)

This provision is further implemented by Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals, as follows:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases** involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" (*Emphasis supplied*) *fr*

---

[3] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

It is settled that for the CTA to acquire jurisdiction over a "disputed assessment", the assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision from which a petition for review may be taken to the CTA.[4]

On the other hand, the term "other matters" has been ruled to include, but not limited to: review of the BIR's authority and decision to compromise;[5] prescription of the CIR's right to collect taxes;[6] determination of the validity of a warrant of distraint and levy issued by the CIR and the validity of a waiver of the statute of limitations.[7]

In the assailed Decision, the Court found that there was no disputed assessment for failure of petitioner to file its protest within the reglementary period, thus, the case was dismissed for lack of jurisdiction.

However, upon revisiting the matter, the Court finds that while there is no disputed assessment, it can assume jurisdiction over the instant Petition for Review under "other matters".

Similar to the previously ruled cases, the BIR's right to collect upon an assessment may be reviewed by the Court. In determining the BIR's right to collect, the validity or invalidity of an assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed and are properly included as "other matters". The failure to protest, or to raise said issues in a protest, should not result to a waiver of said defenses, for the reason that "[a] void assessment bears no fruit".[8]

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[9], the Supreme Court held that it "need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit." Based on the

---

[4] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005.

[5] *Consolidated cases of Philippine National Oil Company vs. Court of Appeals, et al., and Philippine National Bank vs. Court of Appeals, et al.*, G.R. Nos. 109976 and 112800, April 26, 2005.

[6] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[7] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[8] *Lanao del Norte Electric Cooperative [LANECO] vs. Bureau of Internal Revenue represented by Commissioner Kim S. Jacinto-Henares*, CTA EB No. 1452 (CTA Case No. 8769), April 5, 2017.

[9] G.R. No. 185371, December 8, 2010.

foregoing, it can be concluded then that once there is a finding of a void assessment, the absence or presence of a protest ceases to be relevant.

Petitioner questions the validity of the tax deficiency assessment in this case, for failure to indicate a due date for payment and to specify the facts and law on which it is based. There being no valid assessment, petitioner challenges respondent's right to collect.

Since there is a question as to whether respondent can collect on said assessment, the Court may also look into the validity of said assessment including respondent's compliance with due process in order to determine whether the assessment was validly issued, whether the assessment became final and executory upon petitioner's failure to file its protest, and whether the waivers were executed in accordance with the rules.

Records show that petitioner received the Final Notice[10] requesting it to pay the deficiency taxes for fiscal year 2008, amounting to ₱506,028,228.24, on February 16, 2015. Counting thirty (30) days therefrom, petitioner had until March 18, 2015 within which to file its petition. Thus, the instant Petition for Review[11] was timely filed on February 20, 2015. The Court, therefore, has jurisdiction over the Petition for Review.

The Court will now determine the validity of the tax assessment issued respondent.

Petitioner contends that the absence of a due date for payment in the Formal Letter of Demand and the relevant Assessment Notices violates its right to due process. It alleges that the only date that appears to be a due date is "January 00, 1900", which is clearly erroneous and inexistent.

After a careful scrutiny of the subject FLD and FANs, the Court finds that the same is not a valid assessment for failure to indicate a definite due date for payment by the taxpayer, which negates respondent's demand for payment.

---

[10] Exhibit "P-47", docket vol. I, p. 529.
[11] Docket vol. I, pp. 6-32.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[12], 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.** It also signals the time when 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." (*Emphasis supplied*)

In relation thereto, the Supreme Court emphasized, in the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[13] (*Fitness* case), 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.'
>
> xxx xxx xxx
>
> 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 an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main**

[12] G.R. No. 128315, June 29, 1999.
[13] G.R. No. 215957, November 9, 2016.

purpose is to determine the amount that a taxpayer is liable to pay.

xxx xxx xxx

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 within a specific period.**

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.*

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.**
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (*Emphasis supplied, citations omitted*)

In this case, the last paragraph of the Formal Letter of Demand[14] (FLD) received by petitioner on September 19, 2013. states that:

> "In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through the duly authorized agent bank in which you enrolled using the BPR Payment Form (BIR Form 0605) within the time shown in the enclosed assessment notice. Afterwards, submit copy thereof to Large Taxpayers Regular Audit Division 1, located at Rm. 216 National Office Building, BIR Road, Diliman, Quezon City for updating of your records and cancellation of the herein Formal Letter of Demand, if warranted."

However, the due date on the subject FANs, *i.e.*, Audit Result/Assessment Notice Nos. IT-116-LOA-00033741-08-13-132[15], WC-116-LOA-00033741-08-13-133[16], WT-116-LOA-00033741-08-13-134[17], DST-116-LOA-00033741-08-13-135[18], and VT-116-LOA-00033741-08-13-136[19] was "January 00, 1900", which is not a valid date. This negates respondent's demand for payment as it does not indicate the specific period when should the payment be made. ga

[14] Exhibit "P-34", docket vol. I, pp. 462-468.
[15] Exhibit "P-34-1", docket, vol. I, p. 469.
[16] Exhibit "P-34-2", docket, vol. I, p. 470.
[17] Exhibit "P-34-3", docket, vol. I, p. 471.
[18] Exhibit "P-34-4", docket, vol. I, p. 472.
[19] Exhibit "P-34-5", docket, vol. I, p. 473.

To stress, an assessment contains not only a computation of tax liabilities, but also a **demand for payment within a prescribed period**. The requirement to indicate a fixed and definite period within which a taxpayer must pay the tax deficiencies is vital to the validity of the assessment.

Therefore, the invalid date in the Formal Letter of Demand and Assessment Notices negates respondent's demand for payment and makes the assessment void. Thus, the deficiency tax assessments for Income Tax, Withholding Tax on Compensation, Expanded Withholding Tax, Documentary Stamp Tax, and Value-Added Tax for taxable year 2008 are invalid.

A void 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.[20]

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[21] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. [22]

In light of the foregoing, the Court deems it unnecessary to discuss the other issues raised by the parties.

---

[20] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

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

[22] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated 4 July 2018)**, is **GRANTED**.

Accordingly, the dispositive portion of this Court's Decision dated July 4, 2018, is hereby amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for deficiency income tax, withholding tax on compensation, expanded withholding tax, documentary stamp tax, and value-added tax, in the total amount of ₱508,101,387.12 for taxable year 2008, are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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