REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

BERRINGER MARKETING INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 8978

Members:

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

Promulgated:

JUL 13 2021
4:20 p.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review,[1] filed by Berringer Marketing Inc. on 28 January 2015, pursuant to ***Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***.[2] It prays for the Court to declare null and void the Formal Letter of Demand with attached Final Assessment Notices Nos. IT-2010-00016, VT-2010-00016, WE-2010-00013, and WC-2010-00012, all dated 22 May 2014. The FLD and FANs found petitioner liable for deficiency Income Tax ("IT"), Value-Added Tax ("VAT"), Expanded Withholding Tax ("EWT"), and Withholding Tax on Compensation ("WTC") in the aggregate amount of ₱112,572,390.00, inclusive of interest and penalties, for taxable year ("TY") 2010.

The Parties

Petitioner Berringer Marketing Inc. is a corporation organized and existing under the laws of the Republic of the Philippines. It is engaged in, conducts, and carries on the business of buying, selling, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of goods, commodities, wares, and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisition,

[1] Petition for Review; Division Records Vol. 1-3, pp. 6-1573 with annexes.
[2] A.M. No. 05-11-07-CTA; 22 November 2005.

sale at wholesale or retail, and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise, or products whether natural or artificial. Its principal business address is at Doña Natividad Bldg., Quezon Avenue, Quezon City.

Respondent Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide on disputed assessments, fees or other charges and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (hereinafter referred to as the "Tax Code") or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 26 September 2011, petitioner received Letter of Authority ("LOA") No. eLA201100002852/LOA-121-2011-00000050, dated 19 September 2011. The LOA authorized Revenue Officers ("RO") Arnaldo Ancheta, Ranilo Sy, Mariesol Girang, Dalisay Umlas, and Group Supervisor ("GS") Roberto Castro of the Large Taxpayers Excise Audit Division ("LT Excise") 1 to examine petitioner's books of accounts and other accounting records for TY 2010.[3]

Likewise, the BIR sent the following Notices to petitioner requiring it to present its books of account and other accounting records in relation to its audit for TY 2010.

Notice	Date of Notice	Date Received by Petitioner
First Notice[4]	20 September 2011	26 September 2011
Second Notice[5]	10 April 2012	27 April 2012
Final Notice[6]	12 September 2012	12 September 2012

To toll the running of the prescriptive period for the BIR to make an assessment, petitioner executed two (2) Waivers of the Statute of Limitation under the National Internal Revenue Code ("Waivers"). The Waivers were signed by petitioner's President, Carlos Tumpalan, and were accepted by the Officer in Charge ("OIC")-Assistant Commissioner of the BIR Large Taxpayers Services, Alfredo V. Misajon. The Waivers extended the period to assess petitioner, as follows:

[3] Exhibit "P-15"; Division Records Vol. 5, p. 2381; Exhibit "R-1"; BIR Records Folder 2, p. 671.
[4] Exhibit "P-16"; Division Records Vol. 5, pp. 2382-2383; Exhibit "R-2"; BIR Records Folder 2, pp. 669-670.
[5] Exhibit "R-3"; *id.*, p. 668.
[6] Exhibit "R-4"; *id.*, p. 667

Date Signed by Petitioner's Officer	Signatory of Petitioner	Date Signed by Respondent	Signatory of Respondent	Extended Period for Issuance of Assessment
17 January 2013[7]	Carlos Tumpalan President	4 February 2013	Alfredo V. Misajon OIC Assistant Commissioner Large Taxpayers Service	31 December 2013
13 September 2013[8]		26 September 2013		30 June 2014

On 28 February 2013, the Chief of the LT Excise I, Ms. Sarah B. Mopia issued Memorandum of Assignment ("MOA") No. D-02-13-028 replacing the initially assigned ROs and GS handling petitioner's audit.[9] The MOA was received by the latter on 22 March 2013 with attached letter, dated 4 March 2013. The said letter was issued by OIC-Assistant Commissioner Alfredo V. Misajon, informing petitioner that its audit investigation had been reassigned to RO Rona B. Marcellano, Dalisay C. Umlas, Thelma O. Pilar, and Mariesol R. Girang, and GS Herminia C. Cercado.[10]

Meanwhile, on 5 July 2013, OIC-Assistant Commissioner Alfredo V. Misajon issued a *Subpoena Duces Tecum* against petitioner, which the latter received on 5 July 2013.[11]

On 12 March 2014, petitioner received an undated Preliminary Assessment Notice ("PAN") with attached Details of Discrepancies.[12] In the PAN, petitioner was assessed for deficiency IT, VAT, EWT, and WTC for TY 2010 in the amount of ₱110,238,417.25, inclusive of interests and penalties.

Considering that petitioner did not respond to the PAN,[13] respondent issued the FLD with attached Details of Discrepancies and FANs, which were received by petitioner on 2 June 2014.[14] In the FLD/FANs, petitioner was assessed for deficiency IT, VAT, EWT, and WTC for TY 2010 in the aggregate amount of ₱112,572,390.00, inclusive of interests and penalties, computed as follows:

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[7] Exhibit "R-5"; *id.*, p. 666.
[8] Exhibit "R-9"; *id.*, p. 685.
[9] Exhibit "P-18"; Division Records Vol. 5, p. 2385; Exhibit "R-6", BIR Records Folder 2, p. 672.
[10] Exhibit "P-17"; Division Records Vol. 5, p. 2384.
[11] Exhibit "R-8"; BIR Records Folder 2, p. 680.
[12] Exhibits "P-19" to "P-20"; Division Records Vol. 5, pp. 2386-2394; Exhibit "R-11"; BIR Records Folder 2, pp. 715-723.
[13] Exhibit "R-12"; *id.*, p. 726.
[14] Exhibits "P-3" to "P-8" and "R-13" to "R-14"; *id.*, pp. 728-740.

IT ASSESSMENT		
Net Income per return		₱ 4,805,109.56
Add: adjustments/disallowances		
a. Undeclared Income		
a.1. Summary List of Sales ("SLS") v. Summary List of Purchases ("SLP") of Customers	₱ 3,080,070.88	
a.2. Analysis of Accounts Receivable	95,758,030.36	
b. Disallowed expenses		
b.1. SLP v. SLS of Suppliers	3,560,799.73	
b.2. For Non-withholding of tax	44,995,825.35	
b.3. Unsubstantiated losses	174,330.38	147,569,056.70
Net Income per audit		**₱ 152,374,166.26**
Tax Due		**45,712,249.88**
Less:		
Prior Excess Credit	₱ 824,144.57	
Payments	341,244.24	
Creditable Withholding Tax ("CWT")	125,862.11	
Unexpired excess Minimum Corporate Income Tax ("MCIT")	208,893.99	
Less: Carried Over	(58,612.04)	1,441,532.87
BASIC INCOME TAX DUE		**₱ 44,270,717.01**
INTEREST (16 APRIL 2011 TO 30 APRIL 2014)		27,300,275.49
COMPROMISE PENALTY		50,000.00
DEFICIENCY INCOME TAX PAYABLE		**₱ 71,620,992.50**

VAT ASSESSMENT		
Sales per Return		₱ 724,551,625.83
Add: adjustments/disallowances		
a. Undeclared Income		
a.1. SLS v. SLP of Customers	₱ 3,080,070.88	
a.2. Analysis of Accounts Receivable	95,758,030.36	
a.3. Unsupported sales returns/discount	95,029,636.07	193,867,737.31
Sales subject to VAT per audit		₱ 918,419,363.14
OUTPUT TAX		₱ 110,210,323.58
Less:		
Input Tax	₱ 81,262,703.60	
Less: Disallowed due to overstated purchases	(427,295.96)	80,835,407.64
Should be VAT Payable		₱ 29,374,915.94
Less: Payments Made		5,683,491.50
BASIC DEFICIENCY VAT DUE		₱ 23,691,424.44
INTEREST (26 JANUARY 2011 TO 30 APRIL 2014)		15,662,663.94
COMPROMISE PENALTY		50,000.00
DEFICIENCY VAT PAYABLE		₱ 39,404,088.38

EWT ASSESSMENT		
BASIC DEFICIENCY EWT		₱ 793,984.92

INTEREST (16 JANUARY 2011 TO 30 APRIL 2014)		529,323.28
COMPROMISE PENALTY		16,000.00
DEFICIENCY EWT PAYABLE	₱	1,339,308.20
WTC ASSESSMENT		
BASIC DEFICIENCY WTC	₱	115,200.55
INTEREST (16 JANUARY 2011 TO 30 APRIL 2014)		76,800.37
COMPROMISE PENALTY		16,000.00
DEFICIENCY WTC PAYABLE	₱	208,000.92
TOTAL DEFICIENCY TAX PAYABLE		**₱ 112,572,390.00**

This prompted petitioner to file a Protest to the FLD by way of Request for Reconsideration on 2 July 2014.[15]

The Chief of the LT Excise I, Ms. Sarah B. Mopia issued MOA No. D-07-14-014, assigning the review of petitioner's Protest to the FLD to RO Rona B. Marcellano and GS Herminia C. Cercado.[16]

Claiming inaction on the part of respondent, petitioner filed the instant Petition for Review on 28 January 2015.[17] Respondent filed his Answer[18] on 26 March 2015, which was within the extended period granted by the Court.[19] Thereafter, petitioner and respondent filed their Pre-Trial Briefs on 7 May 2015[20] and 27 August 2015,[21] respectively.

On 1 September 2015, the Pre-Trial Conference for the case ensued.[22] Afterwards, the parties submitted their Joint Stipulation of Facts and Issues on 16 September 2015.[23] On 21 October 2015, the Court issued the Pre-Trial Order, which marked the end of the Pre-Trial Conference.[24]

Thereafter, trial proceeded where petitioner presented the following witnesses:

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[15] Exhibit "P-9"; Division Records Vol. 5, pp. 2294-2342.
[16] Exhibit "R-15"; BIR Records Folder 2, p. 742.
[17] Petition for Review; Division Records Vol. 1-3, pp. 6-1573 with annexes.
[18] Answer; Division Records Vol. 3, pp. 1582-1597.
[19] Resolution dated 27 February 2015; *id.*, p. 1581.
[20] Petitioner's Pre-Trial Brief; *id.*, pp. 1604-1611.
[21] Respondent's Pre-Trial Brief; *id.*, pp. 1645-1651.
[22] Minutes of the Hearing; Division Records Vol. 4, p. 1960.
[23] Joint Stipulation of Facts and Issues; *id.*, pp. 1971-1986.
[24] Pre-Trial Order; *id.*, pp. 2006-2021.

1. Ms. Roseminda D. Deloria, petitioner's Accountant. She testified on the FLD/FANs issued against petitioner. She also explained the company's defenses against the FLD/FANs and identified documents in relation to the instant case; [25] and

2. Mr. Neil U. Sison, the Independent Certified Public Accountant ("ICPA"). His testimony focused on the results of his review of petitioner's pieces of evidence. He also identified relevant documents herein.[26]

Respondent transmitted the BIR Records on 4 November 2016.[27]

Subsequently, petitioner filed its Formal Offer of Evidence ("FOE") on 27 December 2016.[28] Respondent did not interpose any objection to the admission of petitioner's offered exhibits.[29]

In a Resolution, dated 12 October 2017, the Court resolved to admit petitioner's offered exhibits, except for certain documents that were not found in the case records, documents offered that did not correspond with the documents actually marked, or exhibits that were not pre-marked.[30]

Aggrieved, petitioner posted its Motion for Partial Reconsideration [of the Resolution promulgated on October 12, 2017] on 10 November 2017.[31] It explained that the denied exhibits were incorrectly marked by the ICPA due to the sheer volume of documents involved. As such, it prayed for the Court in Division to allow it to re-submit a corrected FOE in order to revise the erroneous markings. The Court allowed petitioner to submit its corrected FOE through a Resolution dated 19 January 2018.[32]

Petitioner then filed its Supplemental FOE on 26 February 2018.[33] Again, respondent did not interpose any objection to the Supplemental FOE.[34]

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[25] Exhibit "P-45"; *id.*, pp. 1654-1668; Exhibit "P-46"; Division Records Vol. 4, pp. 2029-2032; Minutes of Hearing; *id.*, p. 2056.

[26] Exhibit "P-64"; Division Records Vol. 5, pp. 2205-2228; Minutes of Hearing; *id.*, p. 2233.

[27] Compliance (Re: Transmittal of BIR Records; *id.*, pp. 2229-2332.

[28] Formal Offer of Evidence for the Petitioner; *id.*, pp. 2247-2605.

[29] Comment (Re: Formal Offer of Evidence for the Petitioner); *id.*, pp. 2608-2611.

[30] Resolution dated 12 October 2017; *id.*, pp. 2646-2658.

[31] Motion for Partial Reconsideration [of the Resolution promulgated on October 12, 2017]; *id.*, pp. 2664-2673.

[32] Resolution dated 19 January 2018; *id.*, pp. 2678-2680.

[33] Supplemental Formal Offer of Evidence for Petitioner [pursuant to January 19, 2018 Resolution]; Division Records Vol. 6, pp. 2708-2715.

[34] Comment (Re: Petitioner's Supplemental Formal Offer of Evidence); *id.*, pp. 2716-2719.

On 16 May 2019, the Court in Division issued a Resolution partially granting petitioner's Supplemental FOE.[35] The Court in Division denied the following exhibits, to wit:

a. Exhibits "IC-56 GSC-A.468" to "IC-56 GSC-A.470", "IC-56 GSC-A.3774", "IC-56 GSC-A.4770", "IC-56 GSC-B.3769", "IC-56 GSC-B.6566", "IC-56 GSC-C.1645" to "IC-56 GSC-C.1655", "IC-56 GSC-C.2924", "IC-56 GSC-C.3126" to "IC-56 GSC-C.3127", "IC-56 GSC-C.3819" to "IC-56 GSC-C.3826", "IC-56 GSC-C.5758", "IC-56 GSC-D.2272" to "IC-56 GSC-D.2276", "IC-56 GSC-D.2297", "IC-56 GSC-D.2333", "IC-56 GSC-D.2338", "IC-56 GSC-D.2351", "IC-56 GSC-D.2362" to "IC-56 GSC-D.2365", "IC-56 GSC-D.2409" to "IC-56 GSC-D.2410", "IC-56 GSC-D.4380" to "IC-56 GSC-D.4396", "IC-56 GSC-E.438", "IC-56 GSC-E.855", "IC-56 GSC-E.1293", to "IC-56 GSC-E.1295", "IC-56 GSC-E.1967", "IC-56 GSC-E.1969" to "IC-56 GSC-E.2447", "IC-56 GSC-E.2936" to "IC-56 GSC-E.2942", "IC-56 GSC-F.471", "IC-56 GSC-F.851", "IC-56 GSC-F.2201", "IC-56 GSC-G.303", "IC-56 GSC-G.918" to "IC-56 GSC-G.919", "IC-56 GSC-G.1460", "IC-56 GSC-G.2291", "IC-56 GSC-G.2592" to "IC-56 GSC-G.2623", "IC-56 GSC-G.2970" to "IC-56 GSC-G.2971", "IC-56 GSC-G.3294" to "IC-56 GSC-G.3296", "IC-56 CC-A.461", "IC-56 CC-A.2895" to "IC-56 CC-A.2896", "IC-56 CC-B.3600" to "IC-56 CC-B.3609", "IC-56 CC-D.207", "IC-56 CC-D.799", "IC-56 CC-D.933", "IC-56 CC-E.2927" to "IC-56 CC-E.3189", "IC-56 CC-F.3330" to "IC-56 CC-F.3625", "IC-56 CC-G.4260", "IC-56 CC-H.792", "IC-56 CC-H.2340" to "IC-56 CC-H.2353", "IC-56 CC-H.3711" to "IC-56 CC-H.3712", "IC-56 CC-J.443" to "IC-56 CC-J.679", "IC-56 CC-J.860" to "IC-56 CC-J.861", "IC-56 CC-J.1069", "IC-56 CC-J.2643" "IC-56 CC-K.2333" to "IC-56 CC-K.2341", "IC-56 ZC-A.3", "IC-56 ZC-A.1595", "IC-56 ZC-A.2320", "IC-56 ZC-A.2349", "IC-56 ZC-A.2448", "IC-56 ZC-A.2471", "IC-56 ZC-A.2576", "IC-56 ZC-A.2598", "IC-56 ZC-A.2605", "IC-56 ZC-A.2609", "IC-56 ZC-A.2861", "IC-56 ZC-A.3212", "IC-56 ZC-A.6175" to "IC-56 ZC-A.6218", "IC-56 ZC-B.837", "IC-56 ZC-C.1498", "IC-56 ZC-D.1904" to "IC-56 ZC-D.1910", "IC-56 IL-C.2245" to "IC-56 IL-C.2247", "IC-57.6", "IC-57.8", "IC-57.19" to "IC-57.20", "IC-57.22", "IC-57.24", "IC-57.53", "IC-57.60" to "IC-57.67", "IC-57.130", "IC-57.174", "IC-57.232", "IC-57.235" to "IC-57.250", "IC-57.271", "IC-58.104", "IC-58.204" to "IC-58.320", "IC-58.323", "IC-58.333" to "IC-58.341", "IC-60B.84" "IC-61A.266", "IC-61A.640" to "IC-61A.642", "IC-61A.692", "IC-61A.695", "IC-61A.707" to "IC-61A.710", "IC-61B.874" to "IC-61B.891", "IC-61.50", "IC-61.65", "IC-61.172" to "IC-

[35] Resolution dated 16 May 2019; *id.*, pp. 2726-2732.

61.174", "IC-61.270", "IC-63.3" to "IC-63.5", "IC-63.22" to "IC-63.31", "IC-63.50", "IC-63.63" to "IC-63.65", "IC-63.77" to "IC-63.78", "IC-63.88", "IC-63.91", and "IC-63.174" to "IC-63.175" for not being found in the records;

b. Exhibit "IC-56 CC-I.2085", for failure of the exhibit formally offered to correspond with the document actually marked; and

c. Exhibits "P-61B.926" to "P-61B.1412", for failure to pre-mark the exhibits.

Respondent then presented his witness, RO Rona B. Marcellano, on 22 August 2019.[36] She testified on the events that transpired during the audit investigation of petitioner as well as the procedures she performed in coming up with the assessments. She attested as to the veracity of the FLD/FANs issued against the same.[37] She also stated that the BIR issued a Final Decision on Disputed Assessment ("FDDA"),[38] which she alleged was received by petitioner on 7 August 2015.

Respondent filed his FOE on 29 August 2019.[39] Thereafter, petitioner filed its Comment [On the Respondent's Formal Offer of Evidence] on 10 September 2019.[40]

On 27 September 2019, the Court in Division issued a Resolution denying respondent's exhibits for failure to pre-mark the same.[41] Hence, respondent filed his Omnibus Motion for Reconsideration and Motion to Set the Case for a Commissioner's Hearing on 18 October 2019.[42] In the said Omnibus Motion, respondent asked the Court in Division to set the case for Commissioner's Hearing in order to have his exhibits marked and to be allowed to refile his FOE. The Court granted the Omnibus Motion through its Resolution dated 6 December 2019.[43]

Respondent refiled his FOE on 21 January 2020.[44]

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[36] Minutes of Hearing; *id.*, p. 2733.
[37] Exhibit "R-17"; Division Records Vol. 5, 2624-2632.
[38] Exhibit "R-16"; BIR Records Folder 2, pp. 779-785.
[39] Respondent's Formal Offer of Evidence; Division Records Vol. 6, pp. 2736-2742.
[40] Comment [On the Respondent's Formal Offer of Evidence]; *id.*, pp. 2744-2751.
[41] Resolution dated 27 September 2019; *id.*, pp. 2755-2756.
[42] Omnibus Motion for Reconsideration and Motion to Set the Case for a Commissioner's Hearing; *id.*, pp. 2757-2761.
[43] Resolution dated 6 December 2019; *id.*, pp. 2770-2772.
[44] Respondent's Formal Offer of Evidence; *id.*, pp. 2776-2782.

On 3 March 2020, the Court in Division admitted all of respondent's offered exhibits. Likewise, the parties were ordered to file their respective Memoranda.[45] Petitioner filed its Memorandum on 30 June 2020.[46] As for respondent, he posted his Manifestation on 1 July 2020, stating that he would adopt his Answer as his Memorandum.[47]

Thereafter, the case was submitted for decision on 14 July 2020.[48] Hence, this Decision.

The Issue[49]

WHETHER RESPONDENT'S FINDINGS HAVE FACTUAL AND LEGAL BASES PURSUANT TO SECTION 228 OF THE TAX CODE;

WHETHER PETITIONER WAS SUFFICIENTLY INFORMED IN WRITING OF THE LAW AND FACTS ON WHICH THE ALLEGED DEFICIENCY TAX ASSESSMENTS WERE BASED;

WHETHER PETITIONER IS LIABLE FOR COMPROMISE PENALTY;

WHETHER THE RIGHT OF RESPONDENT TO ASSESS PETITIONER FOR DEFICIENCY INTERNAL REVENUE TAXES HAS PRESCRIBED; AND

WHETHER PETITIONER IS LIABLE TO PAY RESPONDENT ₱112,572,390.00 REPRESENTING DEFICIENCY IT, VAT, EWT, AND WTC, INCLUSIVE OF INTERESTS AND COMPROMISE PENALTY FOR TY 2010.

Arguments of the Parties

Petitioner's Arguments[50]

Petitioner argues that the assessments issued against it are void. It explains that the ROs who conducted its audit and recommended the issuance of the FLD/FANs, specifically, RO Rona B. Marcellano and GS Herminia C.

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[45] Resolution dated 3 March 2020; *id.*, pp. 2785-2787.
[46] Memorandum; *id.*, pp. 2788-2829.
[47] Manifestation; *id.*, pp. 2830-2833.
[48] Resolution dated 14 July 2020; *id.*, p. 2837.
[49] *See* Issues in Pre-Trial Order, pp. 2-3; Division Records Vol. 4, pp. 2007-2008.
[50] Memorandum; Division Records Vol. 6, pp. 2788-2829.

Cercado, are not authorized pursuant to an LOA but only through an MOA. It argues that the MOA cannot replace the LOA in conferring authority to the investigating ROs.

Likewise, it posits that the assessments lack factual and legal bases, since the same are only based on presumptions and/or estimates. It opines that the discrepancies are only due to timing differences, errors made in the invoices (*e.g.* incorrect input of TIN, name of customer, or amount recorded on the invoice), differing accounting methods used by the petitioner and its customers, erroneous treatment of its sales discounts as taxable sales, and improper application of the provisions of the Tax Code, among others.

Considering this, it contends that it should not be held liable for deficiency taxes since it can easily explain or reconcile the said findings and that the same do not correspond to a taxable event. It also notes that the third-party information on which the VAT assessment is based was not verified and, therefore, should be declared void.

Petitioner insists that it was not sufficiently informed in writing of the laws and the facts on which the assessments were based. It explains that respondent failed to inform it on how the assessment items were computed and that it was forced to determine by itself the reason for the alleged discrepancies.

Further, petitioner counters the imposition of the compromise penalty against it. It explains that compromise penalty is for settlement of criminal liability which is only paid upon mutual agreement of the taxpayer and respondent. Here, since it refuses to pay the same, it contends that it should not be made liable to pay the said penalty.

Finally, petitioner points out that the assessments issued against it had already prescribed, rendering the same without effect.

Respondents' Counter-Arguments[51]

Respondent argues that he observed both procedural and substantive due process in issuing the assessments. He insists that petitioner was well informed of the factual and legal bases of his findings. He opines that his assessments are a product of the ROs' comprehensive audit of petitioner's books of accounts and other accounting records. He states that the audit conducted is in line with the mandate of the Tax Code, including the matching of petitioner's SLS and SLP with that of its customers and suppliers, respectively. He insists that petitioner failed to present sufficient evidence and valid argument to rebut the discrepancies he had noted.

[51] Answer; Division Records Vol. 3, pp.1582-1597.

Further, respondent contradicts petitioner's claim that the assessments had already prescribed. He explains that petitioner executed 2 Waivers which validly extended the assessment period until 30 June 2014.

Respondent emphasizes that the assessments issued against petitioner are presumed valid and were made in good faith. Thus, absent proof of any irregularities in the performance of the RO's official duties, he argues that the same must be upheld.

The Ruling of the Court

The Court in Division can rule on related issues necessary to achieve an orderly disposition of the case.

Section 1, Rule 14 of the RRCTA is clear that the CTA is empowered to resolve related issues, even those not raised by the parties, in order to achieve an orderly disposition of the case, to wit:

> "SECTION 1. Rendition of judgment. - x xx
>
> **In deciding the 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."**[52]

The said rule was affirmed by the Supreme Court in ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*** (hereinafter referred to as "***Lancaster Case***"),[53] to wit:

> "**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:
>
> SECTION 1. Rendition of judgment. - x xx
>
> In deciding the 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.
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its**

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[52] Emphasis supplied.
[53] G.R. No. 183408, 12 July 2017.

> **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.[54]

Based on the foregoing law and jurisprudence, it is clear that the CTA has the requisite authority to rule upon related issues necessary to achieve an orderly disposition of the case.

Here, the focal point of the issues raised by the parties boils down to the validity of the assessments. In ***Commissioner of Internal Revenue v. Ale Mart Corporation***,[55] the CTA *En Banc* explained that the question as to the propriety of the assessment necessarily includes the resolution on whether the same contains a definite due date/demand for payment. The relevant pronouncement of the Court is hereby quoted, to wit:

> "Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals definitely provides that this "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." This was affirmed in Commissioner of Internal Revenue v. Lancaster Philippines, Inc., where the Supreme Court categorically declared that this Court could resolve an issue not raised by the parties. Consequently, it is well-settled that this Court, in deciding a case, is not limited by the issues raised or agreed upon by the parties in their respective pleadings. It may also consider other related matters to dispose of a case on the merits.
>
> Moreover, we agree with respondent's argument that **since the crux of the controversy in the present case is the validity of the subject deficiency tax assessments, the issue on whether the FAN/FLD contains a definite date of payment of deficiency tax liabilities is a related issue that should be resolved by this Court regardless if the same was particularly raised by the parties in their pleadings or during trial. The rationale for this is that the existence of a definite date of payment in an FLD/FAN complies with the "demand for payment" requirement in deficiency tax assessments. As such, the existence of such definite date of payment in an FLD/FAN is necessary for the validity of a deficiency tax assessment. Hence, this Court is duty bound to find if a definite date of payment is present in an FLD/FAN, a sub-issue requisite to the resolution of the main issue, which is the validity of a deficiency tax assessment.**
>
> **In other words, the factual issue on the presence of a definite date of payment in an FLD/FAN is already subsumed under the general issue in the present case, i.e., the validity of the deficiency tax assessments issued against respondent, such that there is no more need to specifically identify the same in the pleadings filed by the parties or to manifest the same during trial.** On this note, petitioner cannot claim that he was denied due process since by agreeing in the Joint Stipulation of Facts and Issues that the main issue to be tried in the present case is whether respondent is liable for the subject deficiency tax assessments, he impliedly

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[54] Emphasis supplied.
[55] CTA E.B. Case No. 1983, 18 February 2021.

> agreed that other matters that would go into the validity of the deficiency tax assessments, which include the issue on whether the subject FLD/FAN contains a definite date for payment, would be considered by this Court."[56]

Given the foregoing, it is clear that the Court in Division has the necessary authority to resolve the issue pertaining to the validity of the assessments, specifically, on whether the same constitutes a definite demand for payment within the prescribed period.

The FLD and its corresponding FANs issued against petitioner lack a definite date for payment.

Section 3.1.3 of Revenue Regulation ("RR") No. 12-99, as amended by RR No. 18-13[57] defines the FLD/FAN as an issuance "calling for payment of the taxpayer's deficiency tax or taxes" and where "the facts, the law, rules and regulations, or jurisprudence on which the assessment is based" are stated.

The Supreme Court went on further to emphasize in ***Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et. al.***[58] that the assessment must contain "not only a computation of tax liabilities, **but also a demand for payment within a prescribed period**".

Succinctly, in ***Commissioner of Internal Revenue v. Fitness By Design, Inc. (hereinafter referred to as "Fitness Case")***,[59] the High Court ruled that an assessment without a definite demand for payment is considered invalid. It discussed certain instances when the FLD/FAN may be considered defective due to the said reason, 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 disputed Final Assessment Notice is not a valid assessment.**

[56] Emphasis supplied.
[57] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 28 November 2013.
[58] G.R. No. 128315, 29 June 1999.
[59] G.R. No. 215957, 9 November 2016.

> First, it **<u>lacks the definite amount of tax liability for which respondent is accountable</u>**. 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 prior or beyond April 15, 2004.
>
> Second, there **<u>are no due dates in the Final Assessment Notice</u>**. **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.**"

To recapitulate, jurisprudence, the Tax Code, and Tax Regulations all highlight that, in order to be valid, an assessment must, at the very least, contain 1) a computation of the tax liability, 2) an explanation narrating respondent's factual and legal bases, and 3) a definite demand for payment.

As for the third requirement, it is imperative that the assessment contains a definite amount of tax liability for which the taxpayer will be held accountable in paying and a due date.

In this case, a perusal of the FLD/FANs[60] issued to petitioner proves that the same do not constitute a definite demand for payment for lack of due date. The relevant portion of the FLD is hereby quoted, to wit:

> "**FORMAL LETTER OF DEMAND**
>
> **BERRINGER MARKETING, INC.**
> 10 Dona Natividad Bldg.
> Quezon Avenue
> Quezon City
> TIN: 000-078-229
> Gentlemen:
>
> Please be informed that after investigation there has been found due from you deficiency income tax value added tax, expanded withholding tax and withholding tax on compensation for calendar year 2010, as shown hereunder:
>
> xxx xxx xxx
>
> *Please note that the interest and the total amount due will have to be adjusted if paid beyond **April 30, 2014**.
>
> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX A-1.
>
> xxx xxx xxx
>
> **<u>In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice</u>**."[61]

As can be gleaned above, the FLD does not have a due date. The FLD merely states respondent's request for petitioner to pay the deficiency tax liabilities through the authorized agent bank within the time shown in the FANs.

However, the portion of each FAN where the due dates were supposed to be indicated were all left blank. Even the Details of Discrepancies enclosed with the FLD/FANs has no specific period when the payment should be made.

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[60] Exhibits "P-3" to "P-8" and "R-13" to "R-14"; BIR Records Folder 2, pp. 728-740.
[61] Emphasis supplied.

The date found in the FLD, 30 April 2014, cannot be considered as the due date to pay the assessments. Consistent with the Supreme Court's ruling in the ***Fitness Case***, the said date only serves as the end date for respondent's computation of the interest and penalty.

Considering that there are no due dates in the FLD/FANs, it follows that the said assessments do not constitute a valid demand for payment as required under the Tax Code, Tax Regulations, and jurisprudence. As such, petitioner's obligation to pay the subject deficiency taxes did not legally accrue.

Having found the FLD/FANs void, the Court will no longer discuss the other issues raised in the present petition.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**.

Accordingly, the Formal Letter of Demand and Final Assessment Notices Nos. IT-2010-00016, VT-2010-00016, WE-2010-00013, and WC-2010-00012 finding petitioner liable for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation in the aggregate amount of ₱112,572,390.00, inclusive of interest and penalties, for taxable year ("TY") 2010, and the resulting Final Decision on Disputed Assessment, are hereby **CANCELLED** and **SET ASIDE**.

Consequently, respondent is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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