REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- **versus** -

SOUTH LUZON TOLLWAY CORPORATION,
Respondent.

CTA EB NO. 2004
(CTA CASE NO. 9272)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and,
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 28 2019
4:11 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1], pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals

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[1] Dated 14 February 2019, *Rollo*, pp. 7-20.

[2] **SEC. 3.** *Who may appeal; period to file petition.* –

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for

(RRCTA), filed by the Commissioner of Internal Revenue **(CIR/petitioner)**. It seeks the reversal of the 27 July 2018[3] Decision and the 14 January 2019[4] Resolution of this Court's First Division in CTA Case No. 9272, entitled *South Luzon Tollway Corporation v. Commissioner of Internal Revenue.*

FACTS

Antecedent to the filing of CTA Case No. 9272, petitioner CIR issued to respondent South Luzon Tollway Corporation **(SLTC/respondent)** a Preliminary Assessment Notice **(PAN)**[5] for deficiency taxes in the total amount of ₱55,762,086.62. Based on the breakdown of discrepancies attached to the PAN, the following deficiency taxes were found to be due from petitioner: (1) Value-Added Tax for ₱4,524,305.04; (2) Expanded Withholding Tax for ₱150, 160.23; (3) Withholding Tax on Compensation of ₱1,109,485.43; (4) Final Withholding Tax of ₱200,421.64; and, (5) Documentary Stamp Tax **(DST)** of ₱49,777,714.28 or in the total amount of ₱55,762,086.62.

In the same breakdown of discrepancy in the PAN, the DST was shown to have been assessed pursuant to Section 179[6] of the National Internal Revenue Code **(NIRC)**, as amended, in relation to Revenue Memorandum Circular **(RMC)** No. 48-2011 circularizing the *En Banc* Supreme Court Decision on the imposition of DST on inter-office memo on advances from affiliates.[7]

Another PAN was later on issued to respondent and pertained to the imposition of a Compromise Penalty in the amount of ₱12,000.00 for failure to file BIR Form No. 1600 on time.

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costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 Joint Stipulation of Fact, Documents, Issues, and Other Matters, Division Docket, p. 321.

4 Id., pp. 589-594.

5 Exhibit "P", id., pp. 165-171.

6 **Sec. 179.** *Stamp Tax on Bank Checks, Drafts, Certificates of Deposit not Bearing Interest, and Other Instruments.* - On each bank check, draft, or certificate of deposit not drawing interest, or order for the payment of any sum of money drawn upon or issued by any bank, trust company, or any person or persons, companies or corporations, at sight or on demand, there shall be collected a documentary stamp tax of One peso and fifty centavos.

7 Division Docket, p. 322.

Respondent thereafter paid the amounts under protest.[8] However, in a letter dated 13 October 2015[9], it informed the Bureau of Internal Revenue (**BIR**) that it would be filing an administrative claim for tax refund of the DST payment. Notwithstanding, the BIR issued to respondent a Final Letter of Demand (**FLD**)[10] with Assessment Notice[11] demanding the payment of ₱25,540,865.00, with an additional ₱25,048,558.86 in penalties.

On 03 December 2015, respondent filed with the BIR a Request for Reconsideration/Protest and Claim for Refund[12], assailing the BIR's assessment and claiming a tax refund in the amount of ₱49,777,714.23 (representing erroneously paid deficiency DST). On 26 January 2016, petitioner CIR, through Assistant CIR Nestor Valeroso (**Valeroso**), denied respondent's protest.[13]

On 24 February 2016, respondent filed this Petition for Review[14] seeking the following reliefs:

> ...
>
> WHEREFORE, based on all the above, it is most respectfully prayed that judgment be rendered-
>
> (1) cancelling and setting aside the deficiency DST assessment (Assessment Number DS-125-00000018-11-15-57700, dated October 22, 2015) issued by the BIR against the Petitioner;
> (2) declaring that petitioner South Luzon Tollway Corporation is entitled to a refund of the amount of P49,777,714.23, representing erroneous and/or illegal collection from SLTC by the Bureau of Internal Revenue of documentary stamp tax on September 30, 2015; [and,]
> (3) ordering Respondent, with legal interest, or issue to petitioner a Tax Credit Certificate for said amount.[15]
>
> ...

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8 EFPS Payment Details, Exhibits "P-2" to "P-2-d", Division Docket, pp. 173-178.
9 Exhibit "P-4", id., p. 180.
10 Exhibit "P-5", id., pp. 181-185.
11 Id.
12 Exhibit "P-6", id., p. 186.
13 Exhibit "P-9", id., pp. 261-264.
14 Id., pp. 10-44.
15 Id., pp. 43-44.

PROCEEDINGS BEFORE THE FIRST DIVISION

The petition was raffled to this Court's First Division which proceeded to hear the case thereafter. As part of the pre-trial, the parties submitted their Joint Stipulation of Facts, Documents, Issues, and Other Matters[16] wherein, among others, they also agreed that the Court should resolve the following issues, to wit:

> ...
>
> 3.01 The main issues for the resolution of the Court are:
>
> 3.0.1.a. [Whether] or not the Honorable Court has jurisdiction to rule on the validity of the assessment.
>
> 3.01.b. Whether or not SLTC is entitled to a cancellation of the disputed Documentary Stamp Tax assessment.
>
> 3.0.1.c. Whether or not Petitioner is entitled to a refund in the amount of P49,777,714.23 allegedly representing DST for the fiscal year ending March 31, 2012.[17]
>
> ...

After trial on the merits, the First Division, on 27 July 2018[18], acted favorably on respondent's petition and cancelled petitioner's assessment against it. The dispositive portion of the Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**, the Formal Letter of Demand and Assessment Notice No. DS-125-00000018-11-15-57700, dated October 22, 2015 assessing petitioner South Luzon Tollway Corporation of basic Documentary Stamp Tax, surcharge, and interest in the total amount of ₱50, 589,423.96 for fiscal year ending Marching 31, 2012, are hereby **CANCELLED** and **SET ASIDE.**
>
> Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate to petitioner South Luzon Tollway Corporation in the total amount of ₱49,777,714,28

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16 Dated 04 August 2019, id., pp. 320-330.
17 Id. p. 25.
18 Id. pp. 534-557.

> representing the basic deficiency Documentary Stamp Tax, surcharge, interest and compromise penalty that it paid on September 30, 2015, without legal interest.[19]
>
> ...

The First Division's decision to cancel the FLD/FAN was based on its finding that the FLD/FAN failed to demand payment of the basic deficiency DST, surcharge, interest and compromise penalty mentioned therein within a specified period.[20] We quote:

> ...
>
> While the FLD specifically states that the petitioner is requested to pay its aforesaid deficiency tax liabilities through EFPS within the time shown in the enclosed assessment notice, the **due date in the left-hand portion of the enclosed FAN was conspicuously left blank...**[21]
>
> ...

In arriving at above conclusion, the First Division relied on the Supreme Court's decision in *Commissioner of Internal Revenue v. Fitness by Design*[22] **(Fitness by Design)** where it invalidated a FAN that was without a specified amount and due date for payment.[23]

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19 Id. p. 557.

20 Id. p. 548.

21 Id.

22 G.R. No. 215957, 09 November 2016.

23 Id.

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 prior or beyond April 15, 2004.

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.

Unsatisfied with the First Division's 27 July 2018 Decision, petitioner filed a Motion for Reconsideration (**MR**) on 17 August 2018.[24] In a Resolution dated 14 January 2019, petitioner's MR was denied.[25]

Hence, the present petition.

ISSUES

In his bid to reverse the 27 July 2018 Decision and the 14 January 2019 Resolution, both frustrating his assessment of deficiency taxes against respondent, petitioner ascribes the following errors to the First Division -

I.

THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE FINAL ASSESSMENT NOTICE AGAINST RESPONDENT WAS VOID FOR ALLEGEDLY NOT INDICATING A DEFINITE DUE DATE FOR THE PAYMENT OF TAX LIABILITIES.

II.

THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR BY RESPONDENT. PETITIONER'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED.

In support of the above-assigned errors, petitioner argues that the BIR's failure to include a due date for the payment of tax liabilities in the FLD/FAN issued against respondent is not fatal to its assessment and collection of tax liabilities. He maintains that the Supreme Court misapplied the case of *Commissioner of Internal Revenue v. Menguito*[26] (**Menguito**) in *Fitness by Design* which held that, "a final assessment notice provides for the amount of tax due with a demand for payment."[27] In his petition, petitioner maintains:

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

24 Division Docket, pp. 561-572.

25 Id.

26 Id.

27 G.R. No. 167560, 17 September 2008.

> ...
>
> Further and with all due respect, petitioner maintains his position that the doctrine laid down in the decision of the Honorable Supreme Court in *Fitness by Design* should be revisited. Careful perusal of the wordings of the decision in *Fitness by* reveals that the ratio is based mainly on the decision of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue (CIR) vs. Menguito.*
>
> Notwithstanding the foregoing, with all due respect, petitioner submits that the ruling in *Menguito* was misapplied in the decision of the Honorable Supreme Court in *Fitness by Design.* The main issue for resolution of the Honorable Supreme Court in *Menguito* is only as to whether there were post-reporting notice and pre-assessment notice issued by the CIR and whether the taxpayer actually received them...
>
> ...
>
> To reiterate, Fitness uses *Menguito* as legal basis for this new postulate that to be valid a FAN must contain a singular definite amount and period. It is not difficult to see that the above highlighted portion lifted by *Fitness* from *Menguito* is actually a snippet from a resolution of a very dissimilar issue pertaining to the post reporting notice and preliminary assessment notice.[28]
>
> ...

Petitioner contends further that respondent did not raise the issue of lack of the due date on the FLD/FAN in its Petition for Review filed in CTA Case No. 9272 or during trial, barring thus the First Division from basing its decision thereon. Instead, he invokes the decision of the Supreme Court in *Philippine Charter Insurance Corporation v. Philippine Construction Corporation*[29] **(PCIC)** which holds that, "reliefs granted a litigant are limited to those prayed for in the complaint..."[30]

On the other hand, respondent could only agree with the First Division that decided in its favor. According to it, since the due date of payment was conspicuously blank in petitioner's FLD/FAN, the assessment was void. Moreover, it claimed that "it is **audacious** on the part of [petitioner] **to presume** that the Supreme Court based its ruling in *Fitness by Design* on its earlier decision in *Menguito*, and

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28 Petition, *Rollo*, pp. 12-13.
29 G.R. No. 185066, 02 October 2009.
30 Id.

more **audacious to assert** that the Supreme Court misapplied in *Fitness by Design* its decision in *Menguito*."[31]

RULING OF THE COURT *EN BANC*

After a careful review of the parties' contrasting arguments in support of their respective stances, the Court *En Banc* is constrained to dismiss this Petition for Review. The reasons are essayed below, *in seriatim*.

THE FINAL ASSESSMENT NOTICE (FAN) ISSUED AGAINST RESPONDENT IS VOID

The First Division's decision to nullify and void the assessment against the respondent is correct. The First Division was also correct in applying the relevant doctrine in *Fitness by Design* which declared assessment notices without a fixed date of demand invalid.[32] There, the same petitioner in the case at bar argued that the FAN it issued was valid on the grounds that it was received by respondent and that the FAN constituted written notice in accordance with Section 228 of the National Internal Revenue Code (**NIRC**).[33] Despite his insistence, the Supreme Court still invalidated the FAN for stating an indefinite amount and not having a due date for payment. Petitioner raises virtually the same arguments in his present petition.[34]

To the mind of the Court, petitioner does not really challenge the applicability of *Fitness by Design* to his present case but merely criticizes the decision as bad precedent. Unfortunately for petitioner, it is neither the function of this Court nor it is within its power to review and abandon jurisprudence established by the Supreme Court. As correctly held by the First Division in the assailed Resolution of 14 January 2019, "doctrines laid down by the Supreme Court, as the final

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31 Comment, *Rollo*, p. 83.

32 Id.

33 SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings...

34 Petition for Review dated 14 February 2019, *Rollo*, p. 10.

arbiter of any justiciable controversy, are binding on all lower courts."[35] Petitioner must be reminded that, "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines,"[36] and we are duty-bound to adhere to the Supreme Court's decisions by virtue of the principle of *stare decisis et non quieta movere* - to adhere to precedents and not to unsettle things which are established.[37]

With the above disquisition, the ruling of the Supreme Court in *Fitness by Design* shall remain controlling and the First Division could not be faulted for applying the same in its 27 July 2018 Decision.

THERE WAS NO VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS

Contrary to petitioner's claim, the reliefs granted to respondent (the cancellation of its deficiency DST assessment, declaration of its entitlement to a tax refund and order for petitioner to issue respondent a tax refund or tax credit certificate in the adjudged amount)[38] were all pled for (by respondent) in the case appealed from.[39] Therefore, petitioner's reliance on the case of *PCIC* is unfounded and that his right to due process was never violated or jeopardized.

Petitioner appears to be confusing the reliefs prayed for with the issues of the case. Although it is true that the FLD's/FAN's lack of due date was never put in issue, respondent nonetheless prayed for the FLD's/FAN's cancellation in CTA Case No. 9272. The Joint Stipulation of Facts and Issues also reflects that both parties agreed that the propriety of the FLD's/FAN's cancellation should be one of the issues resolved by the First Division.[40]

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35 Division Docket, p. 590.
36 New Civil Code of the Philippines, Article 8.
37 *Lazatin v. Desierto*, G.R. No. 147097, 05 June 2009.
38 Supra at note 9.
39 Supra at note 5.
40 Supra at note 7.

At any rate, this Court remains to have jurisdiction to hear and decide the issues not raised before it in accordance with Rule 14, Section 1 of the RRCTA[41], which states:

> ...
> SECTION 1. Rendition of judgment. -
> ...
> 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.
> ...

This authority of the CTA in this respect was already affirmed in the case of *Commissioner of Internal Revenue v. Lancaster*[42], where the Supreme Court held that the CTA could validly consider in its decision the authority of revenue officers although the issue was never raised in the parties' pleadings or memoranda.[43]

Petitioner's contention that the above-quoted provision interpreted in the manner suggested by the Supreme Court is violative of his due process right has no basis in law or jurisprudence. The Supreme Court, citing the late Justice Isagani Cruz in *Secretary of Justice v. Hon. Lantion*[44], explained due process in this wise:

> ...
> Due process is comprised of two components — substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.
> ...

While in the older case of *Banco Español v. Palanca*[45], the Supreme Court enumerated the requisites of procedural process as particularly applied to judicial proceedings, namely:

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[41] A.M. No. 05-11-07-CTA.
[42] G.R. No. 183408, 12 July 2017.
[43] Id.
[44] G.R. No. 139465, 18 January 2000 citing Isagani Cruz, Constitutional Law, 1993 Edition., pp. 102- 106.
[45] G.R. No. L-11390, 26 March 1918.

> ...
>
> (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings; (3) the defendant must be given the opportunity to be heard; and (4) judgment must be rendered upon lawful hearing.
>
> ...

Unfortunately, petitioner fails to specify which tenet of due process did the First Division violate in rendering its decision. In reviewing the case's history, the Court *En Banc* is unconvinced that petitioner was given an unfair trial. It appears that all the necessities of due process were met: (1) respondent's Petition for Review in CTA Case No. 9272 was filed within the reglementary period and the issues it raised could be properly taken cognizance by the CTA; (2) jurisdiction was duly acquired over petitioner after it was served with summons; (3) petitioner was likewise given ample opportunity to present his evidence and witnesses; and, (4) judgment in the case was rendered only after a full-blown trial.

WHEREFORE, the foregoing considered, this Petition for Review is **DISMISSED** for lack of merit. The questioned Decision of the Court's First Division in CTA Case No. 9272, entitled *South Luzon Tollway Corporation v. Commissioner of Internal Revenue,* dated 27 July 2018 and its 14 January 2019 Resolution are **AFFIRMED** accordingly.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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