REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

ROBINSONS TOYS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9161

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

Promulgated:
SEP 02 2020
11:00 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Petition for Review prays that the Court rule as follows:

1. The assessments for deficiency 2009 income tax, value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC) be declared void and of no legal effect due to the absence of a valid electronic letter of authority authorizing respondent's revenue officers to audit and assess petitioner for taxable year 2009;

2. The assessments for deficiency 2009 income tax, VAT, EWT and WTC be declared void for being barred by prescription;

3. The assessments for deficiency 2009 income tax, VAT, EWT, WTC, final tax (FT), documentary stamp tax (DST) and compromise penalties in the total amount of ₱286,445,331.48 be declared void for lack of legal and factual bases; and

4. The assessments for deficiency 2009 income tax, VAT, EWT, WTC, FIT and DST in the total amount of ₱286,445,331.48 be cancelled and set aside.[1]

THE PARTIES

Petitioner Robinsons Toys, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 110 E. Rodriguez, JR. Avenue, Libis, Quezon City.[2] It was incorporated on August 19, 2002 to carry on the business of selling general merchandise of all kinds on retail or wholesale basis.[3]

Respondent is the duly appointed Commissioner of Internal Revenue with office address at the Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City.[4]

THE FACTS

On May 20, 2010, Respondent issued the Letter of Authority (LOA) No. LOA-127-2010-00000027, authorizing Revenue Officers Myrna Ramirez, Ma Salud Maddela, Joel Aguila, Zenaida Paza, Cletofel Parungao / Group Supervisor Glorializa Samoy of LT Regular Audit Division 4 to examine the books of accounts of Petitioner for taxable year 2009.[5]

Petitioner, through its representative, executed five (5) Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code,[6] to wit:

a) Waiver dated March 8, 2012, extending the period to assess and/or collect VAT and withholding taxes not later than June 30, 2012;[7]

b) Waiver dated May 9, 2012, extending the period to assess and/or collect VAT and withholding taxes not later than December 31, 2012;[8]

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[1] Summary of the Case, Pre-Trial Order dated May 6, 2016, Docket – Vol. 1, p. 263.

[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 228.

[3] Par. 1, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 228

[4] Par. 1, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 227.

[5] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 227; Exhibit "P-3", Docket – Vol. 2, pp. 705 to 706; Exhibit "R-1", *BIR Records* (F1/F2), p. 6S0.

[6] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 228; Exhibits "P-9" to "P-13", Docket – Vol. 2, pp. 798 to 803.

[7] Exhibit "P-9", Docket – Vol. 2, p. 798; Exhibit "R-7", *BIR Records* (F1/F2), p. 782.

[8] Exhibit "P-10", Docket – Vol. 2, p. 799; Exhibit "R-8", *BIR Records* (F1/F2), p. 784.

c) Waiver dated October 31, 2012, extending the period to assess and/or VAT and withholding taxes not later than June 30, 2013;[9]

d) Waiver dated April 5, 2013, extending the period to assess and/or collect all taxes not later than December 31, 2013;[10] and

e) Waiver dated October 8, 2013, extending the period to assess and/or collect all taxes not later than June 30, 2014.[11]

Petitioner received, on May 26, 2014, a Preliminary Assessment Notice (PAN), finding it liable for deficiency income tax, VAT, WTC, EWT, FT, and DST, in the aggregate amount of ₱252,229,384.74, inclusive of increments, for taxable year ended December 31, 2009.[12]

On June 10, 2014, Petitioner filed its response to the PAN.[13]

Thereafter, Petitioner received, on June 27, 2014, Respondent's Formal Letter of Demand (FLD), reiterating the findings and deficiency tax assessments in the PAN, and assessing Petitioner for deficiency income tax, VAT, WTC, EWT, FT, and DST in the aggregate amount of ₱257,485,552.51, inclusive of increments, for taxable year ended December 31, 2009.[14]

Petitioner then filed its protest to the FLD on July 25, 2014, requesting for a reinvestigation.[15]

On September 3, 2015, Petitioner received Respondent's Final Decision on Disputed Assessment (FDDA), assessing Petitioner for deficiency income tax, VAT, WTC, EWT, FT, and DST for an aggregate amount of ₱286,445,331.49, inclusive of penalties and increments, broken down as follows:[16]

TYPE OF TAX	BASIC TAX	INTEREST	COMPROMISE PENALTIES	TOTAL
Income Tax	₱ 87,506,623.08	₱ 92,685,097.00	₱ 50,000.00	₱ 180,241,720.08
Value Added Tax	43,941,959.51	48,468,583.00	50,000.00	92,460,542.51

[9] Exhibit "P-11", Docket – Vol. 2, p. 800; Exhibit "R-9", *BIR Records* (F1/F2), p. 784-B.

[10] Exhibit "P-12", Docket – Vol. 2, p. 801; Exhibit "R-11", *BIR Records* (F1/F2), p. 784-A.

[11] Exhibit "P-13", Docket – Vol. 2, p. 803; Exhibit "R-12", *BIR Records* (F1/F2), p. 784-C.

[12] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 227 (*N.B.*: The JSFI erroneously states the year "2010"; instead of "2014".); Exhibit "P-4", Docket – Vol. 2, pp. 707 to 720; Exhibit "R-15", *BIR Records* (F1/F2), pp. 941 to 955.

[13] Exhibit "P-5", Vol. 2, pp. 721 to 735.

[14] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. 1, pp. 227 to 228; Exhibit "P-6", Docket – Vol. 2, pp. 736 to 760; Exhibit "R-17", *BIR Records* (F1/F2), pp. 966 to 986.

[15] Exhibit "P-7, Docket – Vol. 2, pp. 761 to 780.

[16] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 228; Exhibit "P-8", Docket – Vol. 2, pp. 781 to 797; Exhibit "R-20", *BIR Records* (F1/F2), pp. 1265 to 1288.

Withholding Tax-Compensation	1,063,906.11	1,179,332.64	50,000.00	2,293,238.75
Expanded Withholding Tax	2,862,014.04	3,172,522.00	50,000.00	6,084,536.04
Final Withholding Tax	1,612,795.05	3,142,240.84	230,000.00	5,255,035.89
Documentary Stamp Tax	48,261.11	53,497.11	8,500.00	110,258.22
TOTAL	**₱137,035,558.90**	**₱148,971,272.59**	**₱ 438,500.40**	**₱ 286,445,331.49**

Petitioner filed the instant Petition for Review on October 2, 2015.[17]

In his Answer,[18] Respondent raised the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

5. On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent alleges as [his] defense that:

The assessments are legal as the letter of authority issued is valid.

5. Contrary to the allegation of petitioner that the assessments are void due to the absence of electronic Letter of Authority (eLA), it is submitted that there was compliance with the requirement of LOA.

6. Petitioner misinterpreted Revenue Memorandum Order No. (RMO) 62-2010 and RMO 69-2010.

7. While RMO 62-2010 state that:

'II. Policies and Procedures

xxx xxx

6. All manually prepared LAs covering 2009 tax returns and TVNs issued shall be retrieved and replaced with eLAs. Thus, taxpayers who are in possession of manually prepared LAs/TVNs shall not entertain any Revenue Officer (RO) relative to the audit of his internal revenue tax liabilities for taxable year 2009 unless the same is replaced with eLA. Accordingly, the Bureau of Internal Revenue

[17] Docket – Vol. 1, pp. 12 to 49.
[18] Docket – Vol. 1, pp. 134 to 150.

shall require the surrender of the manual LA/TVN and service of the replacement eLA even if the taxpayer has already paid his/its deficiency tax liabilities for 2009.'

8. RMO 69-2010 amended RMO 62-2010 as the former specifically states that:

'II. Objectives

1. To supersede RMC No. 61-2010 and amend certain provisions of RMO No. 62-2010, as amended by RMO No. 64-2010, specifically, on the issuance of eLAs, TVNs, and Memoranda of Assignment (MOA);

xxx xxx' (Underscoring supplied)

9. Note that RMO 69-2010 provides that:

'III. Policies and Guidelines

xxx xxx

6. All LAs, whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years, as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, shall be retrieved and replaced with the new eLA form (BIR Form No. 1966).

7. **All revenue officers ordered to conduct investigation/audit through manually issued LAs prior to July 1, 2010 should continue the conduct of audit/investigation,** subject to the retrieval and replacement of LAs as mandated under Item No. III 6 of this Order.xxx xxx'

10. Respondent substantially complied with RMO No 69-2010 on its issuance of Memorandum of Assignment (MOA) on May 2, 2011 and February 18, 2013. As RMO No. 69-2010 provides:

'III. Policies and Guidelines

xxx xxx

8. Manual serially-numbered MOA shall be issued for the following cases:

> 8.1 Reassignment for the continuation of the audit/investigation of a case to another RO due to resignation/retirement/transfer of the original RO;
> xxx xxx'

11. Therefore, with the subject MOA validly issued, respondent substantially complied with the requirement of LOA, and respondent validly assessed petitioner with the subject tax involved.

Acts of petitioner in the course of the audit and investigation constitute an admission and further ratify the validity of the assessments issued by respondent.

12. Petitioner's allegation that the assessments are void due to absence of an electronic Letter of Authority is contrary to its own actions during the course of audit investigation.

> Section 26, Rule 130 of the Rules of Court which states that
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> > Section 26. Admission of a party.-The act declaration or omission of a party as to relevant fact may be given in evidence against the offeror.

13. Under Revenue Memorandum Circular No. 69-10, taxpayers who are in possession of manually prepared LA's/TVns shall not entertain any Revenue Officer relative to the audit of internal revenue tax liabilities for taxable year 2009.

14. However in the present case, petitioner keenly participated in the audit and investigation. It even submitted documents to rebut the findings in the Preliminary Assessment Notice.

15. Further, petitioner executed several waivers. If petitioner truly believed that assessment proceedings was void for lack of electronic Letter of Authority, they should not have entertained the Revenue Officers and immediately assert their right. But, none was made.

16. Active participation in the audit proceedings and execution of several waivers are tantamount to assent to the audit proceedings and further ratified the validity of the Letter of Authority.

The present case squarely falls within exceptions stated under Section 222 of the Tax Code.

17. Section 222 of the NIRC of 1997, as amended, provides for the exceptions from the three year period to assess. It specifically enumerates the circumstances in which the period of limitation under Section 203 of the Tax Code cannot be applied. Section 222 states that:

> SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executor, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof

18. As stated in the Final Decision on Disputed Assessment (Part II), petitioner failed to pay taxes correctly, in accordance with Section 255 of the Tax Code which states that:

> **SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax and Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who wilfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten

Thousand Pesos (₱ 10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

19. Further, instead of instituting criminal action, respondent is amenable to settle the same extrajudicially subject to the condition that petitioner will pay the compromise penalty amounting to P438,500.00.

20. The discussion of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Arturo Tulio*[19] is enlighthening *(sic)* in the instant case, to wit:

> "**Section 223 specifies three (3) instances when the running of the three-year prescriptive period does not apply. These are: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax or (3) failure to file a return.** The period within which to assess tax is ten years from discovery of the fraud, falsification or omission.
>
> **Here, respondent failed to file his tax returns for 1986 and 1987. On September 14, 1989, petitioner found respondent's omission. Hence, the running of the ten-year prescriptive period within which to assess and collect the taxes due from respondent commenced on that date until September 14, 1999.** The two final assessment notices were issued on February 29, 1991, well within the prescriptive period of three (3) years. When respondent failed to question or protest the deficiency assessments thirty (30) days therefrom, or until March 30, 1991, the same became final and executory.
>
> As we held in Marcos II vs. Court of Appeals, **the omission to file an estate tax return**, and the subsequent failure to contest or appeal the assessment made by the BIR is fatal, **considering that under Section 223 of the NIRC, in case of failure to file a return, the tax may be assessed at any time within ten years after the omission, and any tax so assessed may be collected by levy upon real property within three years following the assessment of the tax (as was done here).** Since the estate tax assessment had become final and

[19] G.R. No. 139858. October 25, 2005.

> unappealable, there is now no reason why petitioner should not enforce its authority to collect respondent's deficiency percentage taxes for 1986 and 1987.

21. Clearly, the period of limitations finds no application in the present case.

Withholding tax is not an internal revenue tax but is only a system used to collect income tax in advance, thus, period within which to assess finds no application in the present case.

22. Withholding tax is a system by which taxes are collected at source. The tax is collected in advance even before it reaches the hands of the income recipient. It is a means by which the government can collect the appropriate amount of taxes through payors who are constituted as withholding agents. This ensures that taxes will be paid first, and will be paid on time as the government needs the funding to meet its obligations. The system is used to equal or at least approximate or collect in full the tax due from the payee on certain income payments.

23. Withholding tax assessments are NOT internal revenue taxes but such assessments were issued for failure of petitioner to withhold the correct taxes, which it is duty bound to collect as agent, therefore it is imprescriptible, thus the assessments issued for Deficiency Withholding Tax and Deficiency Expanded Withholding tax will not prescribe.

24. This obligation of petitioner to withhold the correct tax and to remit the proceeds thereof to the BIR from its duty as an agent of the government in the collection of taxes, not as a taxpayer.

25. The fact that the amount of sought to be collected from the withholding agent is not a tax, despite the nomenclature 'deficiency tax', for its failure to withhold and remit the tax on certain income payments, has long been emphasized by the Honorable Supreme Court stating:

> '**<u>The petitioner also forgets that it is not the NDC that is being taxed.</u>** The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic

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of the Philippines that was subject to the tax the NDC did not withhold.

<u>In effect, therefore, the imposition of the deficiency taxes on the NDC is a *penalty* for its failure to withhold the same from the Japanese shipbuilders</u>. Such liability is imposed by Section 53(c) of the Tax Code, thus:

Section 53(c) *Return and Payment.* – Every person required to deduct and withhold any tax under this section shall make return thereof, in duplicate, on or before the fifteenth day of April of each year, and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.'[20] *(Emphasis and underscoring supplied)*

26. By operation of law, the relationship between the Government and the withholding agent is one of agency for which reason the withholding agent only holds the funds withheld by him in trust for the Government.

27. Clearly, the liability of petitioner as taxpayer is different form its liability as withholding agent. The same is for the enforcement of its liability as withholding agent. Petitioner's obligation proceeds from its duty as agent of the government in the collection of taxes not for its failure to pay its income tax.

28. The liability of the withholding tax agent is further established under Section 251, Title X of the NIRC, which provides:

> *Section 251. Failure of a Withholding Agent to Collect and Remit Tax.-* ***Any person required to withhold, account for, and remit any tax imposed by this code or who wilfully fails to withhold such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided***

[20] *National Development Company vs. Commissioner of Internal Revenue*, G.R. No. L-53961 June 30, 1987.

> ***for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.***

29. In the aforecited provision of law, the withholding agent is explicitly made personally liable for the income tax withheld. In *Phil. Guaranty Co., Inc. vs. Commissioner of Internal Revenue*, the Court has ratiocinated:

> ***'The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent both the government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable to law.'***[21]

30. Again, petitioner's liability in the present case is direct and independent from the taxpayer, because the income tax is imposed on and due from the latter, not from petitioner. Petitioner as agent is not liable for the tax, as no wealth flowed in to him. **The Tax Code only makes the petitioner, as withholding agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax, since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 57 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.**

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[21] *Filipinas Synthetic Fiber Corporation vs. Court of Appeals, Court of Appeals and CIR*, G.R. No. 118498 & 124377, October 12, 1999.

31. Further, the tax deducted and withheld by withholding agents under the said provision shall be held as a special fund in trust for the government until paid to the collecting officer.[22] It bears emphasis that petitioner as a withholding agent merely holds in trust the amount of tax it withheld and as trustee, it is duty bound to remit to the government the proper amount of tax withheld and this duty is imprescriptible

32. However, in case of failure to remit this special fund, the agent is penalized and held **liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay a tax since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 58 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.**[23]

33. The difference between the internal revenue tax due from the taxpayer and the penalty due from the withholding agent was elucidated by the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Court of Appeals*[24], to wit:

> In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer – he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. **His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him – he earned no income.** The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:

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[22] *Commissioner of Internal Revenue vs., Bank of Commerce*, G.R. No. 149636. June 8, 2005.
[23] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 1700257, September 7, 2011 citing *CIR vs. CA*, 361 Phil 103, 117-188 (1999) citing *CIR vs. Malayan Insurance*, 129 Phil 165, 170 (1967) citing Jai Alai vs. Republic, L-17462, May 29, 1967; 1967 Phil 460.
[24] 361 Phil 103 as cited in *RCBC vs. CIR*, G.R. No. 170257, September 7, 2011.

> **'the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code,** compliance with which is imposed on the withholding agent and not upon the taxpayer." (Emphasis supplied)

34. From all the foregoing, it is clear that the assessed deficiency withholding tax as a penalty to petitioner does not fall within the ambit of the period of limitation provided in Section 203 of the 1997 NIRC, as amended.

35. To reiterate, petitioner's legal duty to remit taxes withheld cannot be barred by prescription because the taxes it withheld are only held in trust for the government. Petitioner cannot cloak itself under the limitation of Section 203 of the NIRC of 1997 to allow it to pocket funds held in trust, at the expense of the government thereby permitting to unjustly enrich itself. Section 203 of the NIRC of 1997 is a protective shield for taxpayers. It is not a license for irresponsible government agents to legally embezzle government funds after three years or be excused from their negligence.

Petitioner is liable for deficiency income tax, value-added tax, documentary stamp tax, withholding tax on compensation, expanded withholding tax and final tax in the aggregate amount of P286,445,331.49 inclusive of interest and penalties.

DEFICIENCY INCOME TAX

36. Undeclared income-P807,550.90

Comparative analysis of revenue per certificates of creditable tax withheld at source (BIR FORM 2307) as compared with declared revenue per SAWT disclose that the former was higher by P807,550.90. The said amount should form part of your gross income as prescribed under of Sec. 32 of the NIRC of 1997, states that "... gross income means all income derived from whatever source..."

37. Unsubstantiated various income payments (P256,981,329.32), Royalty expense (P6,451,180.18) and compensation payments (P2,777,123.36) and not subjected to withholding tax

Audit of expanded withholding tax liability includes analysis of your income payments per FS/GL accounts and classified to nature of transaction so as to impose the corresponding EWT rate. The total EWT due per ATC codes were then compared with alphalist of annual information return of creditable income taxes withheld.

Based on the above-cited procedure it was found that there were various income payments amounting to P256,981,329.32, that were not properly supported and not subjected or failed to subject in full to expanded withholding tax in violation of Revenue Regulations No. 2-98, as amended.

38. Petitioner failed to substantiate such discrepancies, thus, said income payments were disallowed for failure to comply with Section 34 (A) (a) (1) (b) of the NIRC of the Philippines.

39. Royalty [prior year expense] –P5,479,823.48

Verification of the reconciliation of royalty expense which was submitted by petitioner disclosed that the amount of P5,479,823.48 pertained to December 2008 sales . Said expenses were disallowed pursuant to Section 43 (A) (1) of the Tax Code of 1997, to wit:

> '(A) Expenses
>
> (1) Ordinary and Necessary Trade, Business or Professional Expenses
>
> (a) In General- There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession.'

40. Additional Gross Income –P18,330,033.13

Line-by-line analysis of income payments per Summary List of Purchases (SLP) as compared with date from RELIEF/SLS data of your suppliers, 1604e Alphalist, Annual ITR and date extracted thru Conglomerate Master file database disclosed that the income payments were not reflected in your SLP. Said discrepancies were considered as undeclared purchases and was added back to your taxable income pursuant to Section 32 of the NIRC, as amended.

41. Disallowed creditable tax withheld-P258,510.97

Verification of creditable tax withheld at source disclosed that petitioner failed to substantiate with certificates the tax claimed per Annual ITR. The total amount of unsupported tax credits is P258,510.38, hence, the said amount was disallowed, pursuant to the provision imposed under Revenue Regulation 2-98, as amended.

DEFICIENCY VALUE-ADDED TAX

42. Other Income per FS not subjected to VAT-P1,985,989.00

Verification disclosed that petitioner failed to subject the above-mention *(sic)* income to value-added tax. Hence, the said amount was subjected to value-added tax as prescribed under Section 106/108 of the Tax Code of 1997, as amended.

43. Undeclared Income (P 807,550.90) and Additional Taxable Income (P18,330,033.13)

As discussed above, the following were added to taxable sales subject to VAT pursuant to Sections 106 of the Tax Code:

Undeclared Income	P807,550.90
Additional Taxable Income	P18,330,033.13

Disallowed Input Taxes

44. As discussed above, the corresponding input taxes on the unsubstantiated various income payments amounting to P256,981,329.32 was likewise disallowed pursuant to the provisions imposed under Section 110 of the same code which states that

> 'Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transaction shall be credited against the output tax.'

DEFICIENCY COMPENSATION WITHHOLDING TAX-P1,063,906.11

DEFICIENCY EXPANDED WITHHOLDING TAX-P2,862,014.04
DEFICIENCY FINAL TAX-P1,612,792.05

45. Failure of petitioner to withhold and remit the corresponding basic withholding taxes due on the above disallowed compensation, various income payments and royalty expense, resulted to deficiency compensation, expanded and final withholding taxes, respectively, The same is in accordance with the provisions under Revenue Regulations No. 2-98, as amended.

DEFICIENCY DOCUMENTARY STAMP TAX-P48,261.11 (basic def. DST)

46. Verification disclosed that petitioner failed to file and pay the corresponding documentary stamp tax due on Rental/Lease Agreement and advances to/from affiliates in violation of Sections 194 and 179 of the Tax Code as implemented by RR No. 48-2011.

47. Based on the foregoing discussions, respondent respectfully submits that the subject assessment was issued in accordance with law, rules and regulations, having the presumption of correctness and regularity.

48. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed.

49. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong, but also that the taxpayer is right.[25] The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting.[26] Hence, the assessment contained in the Formal Letter of Demand is imbued with factual and legal bases."

The Pre-Trial Conference was set and held on March 29, 2016.[27]

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[25] *Tan Guon vs. CTA*, 19 SCRA 903

[26] *Sy Po vs. CTA*, 164 SCRA 524

[27] Notice of Pre-Trial Conference dated January 5, 2016, Docket – Vol. 1, pp. 152 to 153; Minutes of the hearing held on March 29, 2016, and Order dated April 6, 2016, Docket – Vol. 1, pp. 213, and 219 to 220, respectively.

In the meantime, Respondent's Pre-Trial Brief was filed on March 22, 2016.[28] Petitioner submitted its Pre-Trial Brief on March 23, 2016.[29]

Thereafter, Respondent submitted the BIR Records for the instant case on March 28, 2016.[30]

On April 21, 2016, the parties filed their Joint Stipulation of Facts and Issues.[31] Subsequently, the Pre-Trial Order dated May 6, 2016 was issued by the Court,[32] deeming the Pre-Trial Conference terminated.

Trial then ensued.

During trial, Petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Lovely V. Palmero,[33] Petitioner's Controller; and (2) Ms. Ria Anne P. Abanto,[34] the Court-commissioned Independent Certified Public Accountant (ICPA).[35]

The Report of the ICPA was filed on October 14, 2016.[36]

Subsequently, the Formal Offer of Evidence for Petitioner was filed on April 7, 2017.[37] Respondent did not file any comment/opposition thereon.[38]

Thereafter, in the Resolution dated February 14, 2018,[39] the Court admitted Petitioner's Exhibits, *except* for Exhibits "P-79.148", "P-79.153", "P-79.155", and "P-104.6.127", for not having been found in the records of the case.

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[28] Docket – Vol. 1, pp. 178 to 182.

[29] Docket – Vol. 1, pp. 197 to 204.

[30] Respondent's *Complionce,* Docket – Vol. 1, pp. 209 to 211.

[31] Docket – Vol. 1, pp. 227 to 232.

[32] Docket – Vol. 1, pp. 263 to 271.

[33] Exhibit "P-121", Docket – Vol. 1, pp. 285 to 307; Minutes of the hearing held on, and Order dated, August 16, 2016, Docket – Vol. 1, pp. 467, and 469 to 470, respectively; Exhibit "P-123", Docket – Vol. 2, pp. 594 to 600; Minutes of the hearing held on, and Order dated, January 24, 2017, Docket – Vol. 2, pp. 624 to 626.

[34] Exhibit "P-122", Docket – Vol. 2, pp. 543 to 552; Minutes of the hearing held on, and Order dated, January 24, 2017, Docket – Vol. 2, pp. 624 to 626.

[35] *Oath of Commission*, Docket – Vol. 1, p. 468; Exhibit "P-120", Docket – Vol. 1, pp. 239 to 243; Minutes of the hearing held on, and Order dated, August 16, 2016, Docket – Vol. 1, pp. 467, and 469 to 470, respectively.

[36] Docket – Vol. 2, pp. 505 to 539.

[37] Docket – Vol. 2, pp. 670 to 693.

[38] Records of Verification dated April 19, 2017 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 851.

[39] Docket – Vol. 2, pp. 875 to 877.

Consequently, on March 8, 2018, Petitioner filed its Motion for Reconsideration (of the Resolution dated 14 February 2018 on Petitioner's Formal Offer of Evidence).[40] Respondent failed to file any comment/opposition thereon.[41]

In the Resolution dated May 22, 2018,[42] the Court granted Petitioner's Motion for Reconsideration, and admitted Exhibits "P-79.148", "P-79.153", "P-79.155", and "P-104.6.127".

Respondent likewise presented his documentary and testimonial evidence. He proffered the testimony of Mr. Joel M. Aguila,[43] a Revenue Officer III of the BIR.

On March 22, 2019, Respondent filed his Formal Offer of Evidence.[44] Petitioner filed its Comment (To Respondent's Formal Offer of Evidence) on April 10, 2019.[45] In the Resolution dated June 13, 2019,[46] the Court admitted Respondent's Exhibits.

Respondent submitted his Memorandum on July 25, 2019,[47] while Petitioner filed its Memorandum on August 30, 2019.[48]

This case was deemed submitted for decision on September 4, 2019.[49]

On January 31, 2020, petitioner filed a Manifestation,[50] stating among others, that on January 14, 2020, the First Division of the Court rendered a decision in *Universal Robina Corporation vs. Commissioner of Internal Revenue*,[51] declaring null and void the disputed tax assessment for failure of the FLD/Assessment Notices therein to state a definite amount payable and due date for payment, citing the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[52] In the Resolution dated March 12, 2020,[53] the Court noted Petitioner's Manifestation.

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[40] Docket – Vol. 2, pp. 878 to 883.
[41] Records Verification Report dated April 4, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 894.
[42] Docket – Vol. 2, pp. 898 to 899.
[43] Exhibit "R-22", Docket – Vol. 2, pp. 906 to 913; Minutes of the hearing held on, and Order dated, March 12, 2019, Docket – Vol. 2, pp. 934 to 936.
[44] Docket – Vol. 2, pp. 937 to 943.
[45] Docket – Vol. 2, pp. 946 to 948.
[46] Docket – Vol. 2, pp. 954 to 955.
[47] Docket – Vol. 2, pp. 956 to 978.
[48] Docket – Vol. 2, pp. 988 to 1036.
[49] Resolution dated September 4, 2019, Docket – Vol. 2, p. 1040.
[50] Docket – Vol. 2, pp. 1041 to 1047.
[51] CTA Case No. 9530.
[52] G.R. No. 215957, November 9, 2016.
[53] Docket – Vol. 2, pp. 1051 to 1052.

THE ISSUE

The parties stipulated this sole issue to be resolved by this Court, to wit:

> "1. Whether Petitioner is liable for deficiency income tax, VAT, EWT, W[T]C, FWT,[54] and DST in the aggregate amount of ₱286,445,331.49, inclusive of increments, for taxable year 2009."[55]

THE ARGUMENTS OF THE PARTIES

Petitioner argues that the FDDA, PAN, and FLD are void due to the absence of an electronic LOA (eLOA) to support the audit investigation, as required under Revenue Memorandum Order (RMO) Nos. 62-2010 and 69-2010; that Respondent failed to prove the existence of a valid LOA to audit Petitioner's 2009 books of accounts; that the PAN, FLD, and FDDA are void due to the lack of authority of the Revenue Officer and Group Supervisor who conducted the examination of Petitioner and issued the disputed assessments against Petitioner; that Respondent's right to assess Petitioner for deficiency income tax for the year 2009, 1st quarter 2009 VAT, as well as deficiency withholding taxes for January, February, and March 2009, has already prescribed; that even assuming for the sake of argument that Respondent's right to assess Petitioner for all internal revenue taxes has not yet prescribed, and the assessments were validly issued, the assessments against Petitioner for deficiency income tax, VAT, EWT, WTC, FT, DST, and compromise penalties in the aggregate amount of ₱286,445,331.49, inclusive of penalties and increments, are bereft of any legal or factual basis.

On the other hand, Respondent argues that the Court's power of judicial review over decisions of Respondent is by nature exclusive and appellate, and Petitioner should not be allowed to raise issues for the first time on appeal; that the assessments are legal as the LOA issued is valid; that acts of Petitioner in the course of the audit and investigation constitute an admission and further ratify the validity of the assessments issued by Respondent; that the present case squarely falls within exceptions stated under Section 222 of the Tax Code; that withholding tax is not an internal revenue tax but is only a system used to collect income tax in advance, thus, the period within which to assess finds no application in the present case; and that petitioner is liable for deficiency income tax, VAT, DST, WTC, EWT, and FT in the aggregate amount of ₱286,445,331.49, inclusive of interest and penalties.

THE RULING OF THE COURT

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[54] That is, Final Tax or "FT".
[55] Stipulation of Issues, JSFI, Docket – Vol.1, p. 229.

The instant Petition for Review is meritorious.

Issues That May Be Raised for the First Time on Appeal

Respondent opines that Petitioner should not be allowed to raise issues for the first time on appeal.

We disagree.

In *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[56] the Supreme Court held:

> "The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
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> x x x　　x x x　　x x x
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> **The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.** Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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>> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties**

[56] G.R. No. 163835, July 7, 2010.

> **failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]
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> x x x x x x x x x
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> **Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance**." *(Emphases and underscoring ours)*

On the basis of the foregoing jurisprudential pronouncements, it is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, and (ii) questions involving *matters of public importance.* Thus, this Court may take up the said matters, at its discretion.

In this case, whether the FDDA, PAN, and FLD are void due to the absence of an eLOA to support the audit investigation are *matters of record*, and *of public importance.* The said issue is a *matter of record*, since the parties submitted their respective evidence, which included the BIR Records of the case, to establish what transpired in the proceedings *a quo*, and thus, could be resolved by simply referring to the same evidence. Furthermore, the same issue can be deemed as *matter of public importance*, simply because a void assessment bears no valid fruit.[57] Taxpayers, including Petitioner, must not be held liable under an invalid tax assessment.

By virtue of the foregoing, We see no legal obstacle to resolve the issue of whether the FDDA, PAN, and FLD are void due to the absence of an eLOA to support the audit investigation.

Absence of an eLOA Invalidates the Subject Tax Assessments

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

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* ("*Medicard* case"),[58] the Supreme Court stated the nature and importance of an LOA, to wit:

> "**An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
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> > SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) Examination of Return and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
> >
> > x x x x (Emphasis and underlining Ours)
>
> Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations <u>without prior authority</u>.**

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[58] G.R. No. 222743, April 5, 2017.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[59] the Court said that:

> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)

xxx xxx xxx

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**

xxx xxx xxx

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" *(Additional emphases and underscoring ours)*

Based on the foregoing doctrinal pronouncements, a revenue officer must be authorized, **through an LOA**, in order that the said officer may validly examine the books of accounts and other accounting records of a taxpayer. In

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[59] 649 Phil. 519 (2010).

the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

It must be noted that respondent himself, through the issuance of Revenue Memorandum Circular No. 75-2018,[60] recognized the ruling in the *Medicard* case, in this wise:

> "The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, <u>through an LOA</u>. The concept of an LOA is therefore clear and unequivocal. <u>Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'</u>**
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> xxx xxx xxx
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." *(Emphasis and underscoring ours)*

It is clear from the foregoing, that any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and therefore void.

Having established the nature and importance of an LOA, We shall proceed to resolve whether the subject tax assessments covering the audit investigation against petitioner for taxable year 2009 are null and void due to the absence of an eLOA.

We rule in the affirmative.

Pertinent portions of RMO No. 69-2010[61] read:

"III. Policies and Guidelines

xxx xxx xxx

[60] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

[61] SUBJECT: Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.

6. **All LAs[62], whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years, as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, shall be retrieved and replaced with the new *e*LA[63] form (BIR Form No. 1966).**

7. **All revenue officers ordered to conduct investigation/audit through manually issued LAs prior to July 1, 2010 should continue the conduct of audit/investigation, subject to the retrieval and replacement of LAs as mandated under Item No. III 6 of this Order.**" *(Emphases and underscoring ours)*

Based on the foregoing provisions, it is clear that all LOAs, whether issued manually or electronically, from March 1, 2010, covering cases for 2009 and other taxable years, are **subject to retrieval, and replacement with the new eLOA form** (BIR Form No. 1966). Furthermore, a plain reading of the same administrative issuance would reveal that all revenue officers, who are ordered to conduct investigation/audit through manually issued LOAs prior to July 1, 2010, should continue the conduct of such audit/investigation. **However, it likewise clear that such directive to continue the audit/investigation is subject to the retrieval of the manually-issued LOA, and replacement of a new eLOA.** In other words, the authority to continue the said audit/investigation shall be done only when such retrieval and replacement have been made.

In this case, however, there is no showing that the present LOA, which was issued after March 1, 2010, but prior to July 1, 2010, specifically, LOA No. LOA-127-2010-00000027 dated May 20, 2010, has been retrieved and replaced by an eLOA. In fact, Respondent failed to present any evidence to prove that it has complied with the above-quoted provisions of RMO No. 69-2010.

Clearly, the Revenue Officers named in LOA No. LOA-127-2010-00000027 dated May 20, 2010, and any other BIR personnel who examined Petitioner, were not authorized through an eLOA to proceed with the BIR's tax audit. Not having the requisite eLOA to continue the examination of Petitioner's records in the first place, the subject tax assessments issued by the BIR are inescapably void.

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[62] That is, "Letters of Authority".
[63] That is, "Electronic Letter of Authority".

In any event, even granting that Petitioner's tax audit and examination for taxable year 2009 is valid, this Court finds another ground to declare the subject tax assessments as void.

Lack of Definite Amount of Tax Liabilities and Failure to State Due Date for Payment Invalidates the Assessments

In its *Manifestation* filed on January 31, 2020,[64] Petitioner manifests that, on the basis of the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* ("*Fitness By Design* case"),[65] the disputed tax assessments subject of the instant case are null and void.

We agree.

In the *Fitness By Design* case, the Supreme Court said:

> "...**the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**
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> x x x x x x x x x
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> **The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provided 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 purpose is to determine the amount that a taxpayer is liable to pay.**
>
> x x x x x x x x x
>
> 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 the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and

64 Docket – Vol. 2, pp. 1041 to 1047.
65 G.R. No. 215957, November 9, 2016.

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.

<u>First</u>, 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 tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation 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.*** (Emphasis Supplied)

<u>Second</u>, 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.* (Emphasis in the original)

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." *(Emphases and underscoring supplied)*

Based on the foregoing, to be valid, a tax assessment must not only contain a computation of tax liabilities, it must also include a demand upon the taxpayer for the settlement of a tax liability that is there definitely set and fixed. It is further required that the due date in the final assessment notice be stated.

A careful scrutiny of the subject FLD dated June 27, 2014,[66] reveals that just as in the *Fitness by Design* case, although the same FLD provides for the computation of Petitioner's tax liabilities, the amount thereof remains indefinite, since the tax due is still subject to modification. Specifically, the said FLD states:

"***Please note that <u>the interest and the total amount due will have to be adjusted if paid beyond July 9, 2014</u>.***" [67] *(Emphasis and underscoring ours)*

It is likewise noteworthy that the same statements are found in the FDDA dated September 3, 2015, with a modification as to the date, which was moved to "July 31, 2015".[68]

Furthermore, it is likewise noteworthy that the accompanying *Audit Result/Assessment Notices* in the said FLD,[69] and in the FDDA,[70] do not contain

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[66] Exhibit "P-6", Docket – Vol. 2, pp. 736 to 760; Exhibit "R-17", *BIR Records* (F1/F2), pp. 966 to 986.

[67] Exhibit "P-6", Docket – Vol. 2, at p. 738; Exhibit "R-17", *BIR Records* (F1/F2), at p. 984.

[68] Exhibit "P-8", Docket – Vol. 2, pp. 781 to 797, at p. 783; Exhibit "R-20", *BIR Records* (F1/F2), pp. 1265 to 1288, at p. 1286.

any due date for the payment of the assessed deficiency taxes. Particularly, the space in the said *Audit Result/Assessment Notices* where the due date is to be stated *"remained unaccomplished"*, just as in the *Fitness By Design* case.

Thus, the subject tax assessments hardly fall under the jurisprudential definition of a tax assessment under the National Internal Revenue Code (NIRC), considering that it lacked *"a due tax liability that is there definitely set and fixed."* They likewise do not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be.

Correspondingly, the subject tax assessments are void.

To reiterate, a void assessment bears no valid fruit.[71] Such being the case, the subject tax assessments cannot be enforced against Petitioner. It then becomes unnecessary to address the issue or arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the subject assessments issued against petitioner for deficiency income tax, VAT, EWT, WTC, FT, DST, and compromise penalties in the total amount of ₱286,445,331.48, for taxable year 2009, as embodied in the FLD dated June 27, 2014 and FDDA dated September 3, 2015, are hereby **ANNULLED, CANCELLED, and SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

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[69] Exhibit "P-6", Docket – Vol. 2, at pp. 744 to 749; Exhibit "R-17", *BIR Records* (F1/F2), at pp. 966 to 971.

[70] Exhibit "P-8", Docket – Vol. 2, at pp. 791 to 797; Exhibit "R-20", *BIR Records* (F1/F2), at pp. 1265 to 1270.

[71] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

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 Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice