**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**THIRD DIVISION**

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| **FONTERRA BRANDS PHILIPPINES, INC.** | **CTA CASE NO. 9230** |
| Petitioner, | Members: |
| - versus - | **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** | Promulgated: |
| Respondent. | SEP 0 2 2020 3:34 p.m. |

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# RESOLUTION

***RINGPIS-LIBAN, J.:***

Submitted before this Court are the following:

1. respondent's **Motion for Reconsideration Re: Decision dated 14 February 2020** filed on March 12, 2020, with petitioner's **Comment (Re: Respondent's Motion for Reconsideration dated March 9, 2020)**, filed on July 7, 2020; and,

2. petitioner's **Clarification to the Manifestation and Motion (dated June 25, 2020)**, filed on July 1, 2020.

This Court shall first address petitioner's Clarification to the Manifestation and Motion.

To recall, a Resolution was promulgated by this Court on June 8, 2020, ordering petitioner to comment on the instant Motion for Reconsideration filed on March 12, 2020, within fifteen (15) days from notice.

Thereafter, on June 25, 2020, petitioner filed a Manifestation and Motion, stating that it has only received respondent's Motion for Reconsideration on July 22, 2020 and, therefore, prays that this Court grants an additional period of 15 days from June 22, 2020, or until July 7, 2020, within which to file its Comment. Finding merit thereon, this Court noted and granted petitioner's Manifestation and Motion in the Resolution dated July 7, 2020, which gave petitioner a period of 15 days from June 22, 2020, or until July 7, 2020, within which to file its comment.

Subsequently, petitioner filed the present Clarification to the Manifestation and Motion, explaining that it is not asking for "an additional period of 15 days from June 22, 2020, or until July 7, 2020, within which to file its Comment" as prayed for in its Manifestation and Motion, but is rather requesting that the 15-day period given in the Resolution dated June 8, 2020, commence from petitioner's actual receipt of the Motion for Reconsideration on June 22, 2020. As such, there is no additional period to speak of in the first place since the reckoning date of the period within which to file a comment is the date of actual receipt of respondent's Motion. Thus, petitioner's pray that the 15-day period granted in the Court's Resolution dated June 8, 2020 commence from its actual receipt of respondent's Motion for Reconsideration on June 22, 2020, or until July 7, 2020, within which to file its comment to the said Motion for Reconsideration

This Court notes the above Clarification.

Furthermore, considering that in the Resolution dated July 7, 2020, petitioner was already given a period of 15 days from June 22, 2020, or until July 7, 2020, within which to file its comment, petitioner's prayer in the present Clarification, that the 15-day period within which to file its comment commence from its receipt of respondent's Motion for Reconsideration, or until July 7, 2020, is rendered **MOOT**.

That having been settled, this Court shall now resolve respondent's Motion.

On February 14, 2020, a Decision was promulgated by this Court, cancelling respondent's deficiency assessments due to an ineffectual Formal Letter of Demand (FLD) and invalid Waiver of the Defense of Prescription, the dispositive portion of which reads as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent's assessments for deficiency Income Tax, VAT, EWT, FWT, FWVAT, and DST, issued against petitioner, for the FY covering August 1, 2009 to July 31, 2010, in the aggregate amount of ₱1,291,706,904.96, inclusive of interest, issued against petitioner is **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"

In assailing the above Decision, respondent raises the following grounds in support of his Motion, *viz.*:

I. The Court erred in granting a relief that was not prayed for by petitioner;

II. The Court erred in ruling that prescription has set in due to the invalidity of the waivers; and,

III. The Court erred in ruling that the deficiency tax assessment is void for allegedly not containing a definite due date for payment;

As to the first ground, respondent argues that the validity of the FLD was never questioned in petitioner's Petition for Review, Pre-Trial Brief, and Joint Stipulation of Facts and Issues, nor was it even raised as an issue in the Pre-Trial Order. As such, this Court should not have considered the same in resolving the case since it would violate respondent's constitutional right to due process of law and would further sanction disorder by violating the very rules this Court seeks to implement.

With regard to the second ground, respondent contends that the Waiver of the Statute of Limitations Under the National Internal Revenue Code ("Waiver" hereinafter) need not strictly comply with Revenue Memorandum Order (RMO) No. 20-90[1], considering that under the assessment stage, the BIR is still in the process of determining the tax liability of the taxpayer.

Lastly, respondent avers that the FLD, as well as the other assessment notices are valid. Respondent also asserts that the doctrine laid down in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[2] which this Court relied on, should be revisited.

On the other hand, in its Comment, petitioner maintains that it already has been settled in a long line of cases that RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 [3], contain mandatory provisions and failure to strictly adhere to these provisions will invalidate a waiver of prescription. Consequently, the subject waivers did not validly extend respondent's right to assess petitioner's alleged tax liabilities beyond the three-year prescriptive period.

Moreover, petitioner contends that the FLD served upon petitioner is fatally defective since an assessment should contain not only a computation of

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[1] "SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code", dated April 4, 1990.
[2] G.R. No. 215957, November 09, 2016.
[3] "SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations", dated August 2, 2001.

tax liabilities, but also a demand for payment within a prescribed period.[4] It continues that this Court did not err in applying the doctrine established in the *Fitness by Design* case, as the facts and circumstances therein are similar to the present case. And, as correctly pointed out in the Decision, the FLD, Details of Discrepancy, and Audit Result/Assessment Notices all failed to indicate the specific date when payment should be made by petitioner.

In addition, petitioner also maintains that even assuming that the doctrine laid down by the Supreme Court in the *Fitness by Design* case needs to be revisited, it is well settled that all courts must be cognizant of the decisions of the Supreme Court pursuant to the doctrine of adherence to judicial precedents and as embodied in Article 8 of the Civil Code of the Philippines. Finally, petitioner alleges that this Court appropriately resolved the issue of the validity of the assessment as the same was necessary for an orderly disposition of the case.

After due consideration, this Court finds respondent's Motion for Reconsideration bereft of merit.

As held in the Decision assailed, this Court is well within its authority to consider the issue on the invalidity of the FAN and FLD, albeit the parties have not raised the same in their pleadings or memoranda. As held in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[5] the question of whether the CTA can resolve an issue that was not raised by the parties was already settled by the Supreme Court, as follows:

> "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 x x.
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>> 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**.

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[4] *Commissioner of Internal Revenue v. Pascor Realty Development Corporation, et al.*, G.R. No. 128315, June 29, 1999.
[5] G.R. No. 183408, July 12, 2017.

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

Based on the above, the Supreme Court affirmed this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case. Clearly, this Court is authorized to resolve the validity of the FLD notwithstanding that such issue was never raised in petitioner's Petition for Review, Pre-Trial Brief, Joint Stipulation of Facts and Issues, as well as in the Court's Pre-Trial Order.

With regard to the second assigned error, this Court does not agree with respondent in claiming that the waiver need not strictly comply with RMO No. 20-90 considering that in the assessment stage, the Bureau of Internal Revenue (BIR) is still in the process of determining the tax liability of the taxpayer. As held in the assailed Decision, the subject waivers, which failed to indicate the kind and amount of the taxes to be assessed or collected, are void, and therefore did not effectively extend the prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity. To reiterate, the subject waivers must faithfully comply with the provisions of RMO No. 20-90 and RDAO No. 05-01 in order to be valid and binding.[6]

As to respondent's last argument that the Court erred in ruling that the deficiency tax assessment is void for allegedly not containing a definite due date for payment, this Court maintains that settled is the rule that an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.[7] Absent a specific date or period within which the tax deficiencies must be settled or paid by a taxpayer, the FLD is necessarily fatally infirmed. Consequently, the Final Decision on Disputed Assessment (FDDA) which rooted from the said FLD is likewise inescapably void, and the deficiency tax assessments contained in the former are of no consequence since a void assessment bears no valid fruit.[8] To sustain respondent's argument despite the glaring nullity of the FLD would result in greater injustice to petitioner.

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[6] Citing *Commissioner of Internal Revenue v. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

[7] *Lucas G. Adamson, et al. v. Court of Appeals, et al., et seq.*, G.R. Nos. 120935 and 124557, May 21, 2009; *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*, G.R. No. 128315, June 29, 1999.

[8] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

In the same vein, even assuming that the doctrine laid down by the Supreme Court in *Fitness by Design* needs to be revisited, it is well settled that all courts must be cognizant of the decisions of the Supreme Court pursuant to the doctrine of adherence to judicial precedents and as embodied in Article 8 of the Civil Code of the Philippines, to wit:

> "**Article 8.** Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

In view of the foregoing discussions, there is no cogent reason to disturb or modify the Decision assailed by respondent.

**WHEREFORE**, premises considered, respondent's Motion for Reconsideration Re: Decision dated 14 February 2020 is **DENIED** for lack of merit.

**SO ORDERED**.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

We Concur:

**ERLINDA P. UY**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice