

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

FONTERRA BRANDS
PHILIPPINES, INC.,

Respondent.

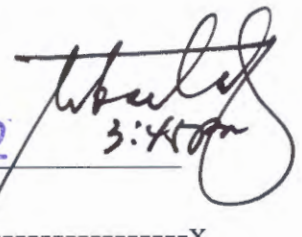
CTA EB NO. 2350
(CTA CASE NO. 9230)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ*.

Promulgated:

APR 11 2022



X-----X

DECISION

CASTAÑEDA, JR., *J*:

In this Petition for Review, petitioner Commissioner of Internal Revenue seeks to reverse and set aside the Decision promulgated on February 14, 2020 and the Resolution promulgated on September 2, 2020, respectively, which cancelled respondent's deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Final Withholding Tax (FWT), Final Withholding Value-Added Tax (FWVAT) and Documentary Stamp Tax (DST) for the Fiscal Year (FY) August 1, 2009 to July 31, 2010.

For easy reference, the dispositive portion of the assailed Decision¹ reads: *gr*

¹ Court *En Banc* Docket, pp. 28-46, penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred by Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro.

“**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in the aggregate amount of ₱1,291,706,904.96, inclusive of interest, issued against petitioner is **CANCELLED** and **WITHDRAWN**.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.”²

On the other hand, the dispositive portion of the assailed Resolution reads:

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

SO ORDERED.”³

THE FACTS

Culled from the records are the following facts as found by the Court in Division:

On November 3, 2011, respondent issued *Letter of Authority* (LOA) No. LOA-116-2011-00000176, authorizing revenue examiners and a group supervisor from the Large Taxpayers Regular Audit Division I (LTRAD I) to examine petitioner's books of accounts and other accounting records for the FY covering August 1, 2009 to July 31, 2010 (FY 2010).

Petitioner signed *Waivers of the Defense of Prescription under the Statute of Limitations* (the *Waivers*), which purportedly extended the period for the assessment of petitioner's alleged deficiency taxes on the following dates and with the following details as indicated in the respective *Waivers*:

Date Signed by Petitioner's Officer	Signatory of Petitioner	Date Signed by Respondent	Signatory of Respondent	Assessment Period Extended up to
January 18, 2013	Marlon P. Magtoto	January 28, 2013	Alfredo V. Misajon	December 31, 2013
September 24, 2013	Dennis D. Vitug	September 26, 2013	Alfredo V. Misajon	June 30, 2014
April 2, 2014	Dennis D. Vitug	April 10, 2014	Alfredo V. Misajon	September 30, 2014

² See Note 1, p. 45.

³ Resolution, Court *En Banc* Docket, p. 52.

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On August 26, 2014, petitioner received a copy of respondent's *Preliminary Assessment Notice* (PAN) with attached *Details of Discrepancies*. In the PAN, respondent, through Mr. Nestor S. Valeroso, the OIC-Assistant Commissioner of the BIR's Large Taxpayers Service (LTS), informed petitioner of the proposed assessment for deficiency income tax, VAT, EWT, FWT, FWVAT, and DST for FY 2010 in the aggregate amount of ₱1,497,875,272.44.

Thereafter, on September 12, 2014, petitioner received a copy of respondent's *Formal Letter of Demand* (FLD) with attached *Details of Discrepancies*. In the FLD, respondent, through Mr. Valeroso, ordered petitioner to pay its alleged deficiency income tax, VAT, EWT, FWT, FWVAT, and DST for FY 2010, amounting to ₱1,497,875,272.44.

On October 10, 2014, petitioner filed with the BIR Large Taxpayers Service (LTS) its protest letter against respondent's FLD, requesting the cancellation and withdrawal of the deficiency income tax, VAT, EWT, FWT, FWVAT, and DST for FY 2010 in the aggregate amount of ₱1,497,875,272.44.

On March 13, 2015, petitioner received a copy of respondent's undated *Final Decision on Disputed Assessment* (FDDA) with attached *Details of Discrepancies*, ordering petitioner to pay alleged deficiency income tax, VAT, EWT, FWT, FWVAT, and DST for FY 2010 in the aggregate amount of ₱1,291,706,904.96.

On April 10, 2015, petitioner filed with respondent a letter, protesting and appealing the FDDA.

On December 7, 2015, petitioner received a copy of respondent's letter dated September 21, 2015, denying its request for reconsideration and reiterating the order to pay the deficiency tax assessments for FY 2010 amounting to ₱1,291,706,904.96.

Petitioner filed before this Court the instant *Petition for Review* on January 6, 2016.

On April 18, 2016, respondent filed his *Answer*, interposing the following special and affirmative defenses: that the waivers executed by petitioner are valid and it effectively extended the period of assessment; that the requirement of due process was *je*

properly complied with in issuing the Formal Letter of Demand/Final Assessment Notice and Final Decision on Disputed Assessment; 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 to pay its deficiency income tax, value-added tax, expanded withholding tax, final withholding VAT and documentary stamp tax for fiscal year covering August 1, 2009 to July 31, 2010 in the aggregate amount of Php1,291,706,904.96.

The pre-trial conference was initially set on October 18, 2016.

Respondent transmitted the *BIR Records* for the instant case on August 4, 2016.

On September 8, 2016, petitioner filed an *Omnibus Motion (I) To Defer Pre-Trial Conference; and (II) To Set Case for Preliminary Hearing to Resolve Issue of Prescription*.

Thereafter, on September 30, 2016, petitioner filed an *Urgent Motion to Defer Pre-Trial Conference*.

In the Resolution dated October 12, 2016, the Court partially granted petitioner's *Omnibus Motion*; granted petitioner's *Motion to Defer Pre-Trial Conference*; and denied for lack of merit *the Motion to Set Case for Preliminary Hearing*. Accordingly, the pre-trial conference previously scheduled was reset to, and was held on, January 31, 2017.

The *Petitioner's Pre-Trial Brief* was filed on January 26, 2017; while the *Respondent's Pre-Trial Brief* was submitted on January 27, 2017.

Thereafter, the parties submitted their *Joint Stipulation of Facts and Issues (JSFI)* on February 27, 2017. On March 22, 2017, the Court issued the Pre-Trial Order.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following witnesses: (1) Ms. Gloria Rodriguez, petitioner's Compliance/Tax Analyst; (2) Mr. Alvin Jay T. Punongbayan, petitioner's Sales Director; (3) Ms. Cynthia David, petitioner's Project Tax Accountant; (4) Ms. Marissa Ben, *rc*

petitioner's Senior Business Analyst; (5) Ms. Richelle Bergonia, petitioner's Finance and Administration Manager; and (6) Ms. Katherine O. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA).

The ICPA Report was submitted on August 2, 2017.

On April 20, 2018, petitioner filed its *Formal Offer of Evidence* (FOE). On April 27, 2018, respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence*.

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At the hearing held on September 4, 2018, respondent manifested that all their documents intended to be presented have been admitted by the parties in the JSFI, and that they will no longer present evidence. In the same hearing, the Court granted the parties thirty (30) days to file their respective memorandum.

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Subsequently, petitioner filed its *Memorandum* on November 5, 2018, while respondent filed his *Memorandum* on November 15, 2018.

In the Resolution dated February 26, 2019, the Court granted petitioner's *Motion for Partial Reconsideration (Re: Resolution dated September 3, 2018)*, and admitted petitioner's Exhibit 'P-24'. In the same Resolution, the present case was submitted for decision."⁴

On February 14, 2020 and September 2, 2020, the Court in Division rendered the assailed Decision and Resolution, respectively.

On November 3, 2020, petitioner filed the instant Petition for Review.⁵ On November 26, 2020,⁶ the Court *En Banc* issued a Resolution requiring respondent to file its comment. On December 21, 2020, respondent filed its Comment (Re: Petitioner's Petition for Review dated October 30, 2020).⁷ *gz*

⁴ See Note 1, pp. 29-33.

⁵ Court *En Banc* Docket, pp. 6-20.

⁶ Resolution, Court *En Banc* Docket, pp. 54-55.

⁷ Court *En Banc* Docket, pp. 56-73.

On January 7, 2021,⁸ the Court *En Banc* issued a Resolution referring the case for Court-Annexed Mediation. On March 3, 2021,⁹ the CTA-Philippine Mediation Center Unit informed the Court *En Banc* that the parties failed to arrive at an agreement. Consequently, on May 26, 2021,¹⁰ the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUES

The following issues were presented in the instant Petition: (1) Whether the Court erred in granting a relief not prayed for by respondent; (2) Whether prescription has set in due to the invalidity of the waivers; and (3) Whether the FLD and FAN are void because they failed to demand payment within a specific period.

THE RULING

The instant Petition is unmeritorious.

Party-litigants must prove every minute aspect of their case

Petitioner asserts that respondent did not raise as an issue the validity of the FLD during the proceedings below. As such, the Court committed an error when it ruled upon an issue which was not raised by the parties.

Section 1, Rule 14 of Revised Rules of the CTA pertinently provides:

“SECTION 1. Rendition of judgment. – xxx

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.”

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,¹¹ the Supreme Court explained the above provision, as follows:

“On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative. *gc*”

⁸ Court *En Banc* Docket, pp. 76-77.

⁹ No Agreement to Mediate, Court *En Banc* Docket, p. 78.

¹⁰ Court *En Banc* Docket, pp. 80-81.

¹¹ G.R. No. 183408, July 12, 2017.

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.* - xxx

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its 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.”

Here, while the validity of the FLD was never raised in the proceedings below, the pronouncement of the Supreme Court in *Lancaster* dictates that the CTA may also rule upon related issues necessary to achieve an orderly disposition of the case. Considering that the case involves deficiency tax assessments, it is imperative for the Court in Division to first determine their validity before it can proceed to determine the merits of the case.

Considering the foregoing, the Court *En Banc* finds petitioner's argument untenable.

The subject Waivers are invalid

In this regard, Section 203 of the 1997 NIRC states the period of limitation upon the assessment of taxes, thus:

“SEC. 203. Period of Limitation upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the *rc*

period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.”

Meanwhile, Section 222 of the 1997 NIRC provides the instances where the same period to assess may be extended. It pertinently provides:

“SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

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
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(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.”

In ruling against petitioner, the Court in Division scrutinized the Waiver executed on April 2, 2014, which is essentially of the same tenor with the other Waivers executed by respondent. It reads:

“I, **Dennis Vitug of Fonterra Brands Phils., Inc.** request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation / re-evaluation / collection enforcement of its **Internal Revenue Taxes for the year 2010**. I/We hereby waive the defense of prescription under the statute of limitations prescribed under Section[s] 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said taxable year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than **September 30, 2014**.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/represented below, by 

the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section[s] 2014 and 229 of the National Internal Revenue Code.

The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue.”¹²

Upon close scrutiny of the above Waiver, the Court *En Banc* agrees with the findings of the Court in Division, citing the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*,¹³ as follows:


“In *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.* (‘*La Flor case*’), the Supreme Court held:

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In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, the Court had ruled that **waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due**, to wit:

These requirements are mandatory and must strictly be followed. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.

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In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence 

¹² See Note 1, p. 38.

¹³ G.R. No. 211289, January 14, 2019.

becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — the assessments had prescribed as there was no valid waiver.”¹⁴

Clearly, the *La Flor* case categorically states that the waivers must indicate the nature and amount of the tax due. A reading of the subject Waivers, however, failed to satisfy this requirement. As such, the Court in Division committed no error when it ruled that the Waivers executed by respondent were invalid and as such, it did not extend the prescriptive period under Section 203 of the 1997 NIRC.


An assessment must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,¹⁵ the Supreme Court said:

“Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

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The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the 

¹⁴ See Note 1, pp. 36-37.

¹⁵ G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. xxx.


‘The use of the word ‘shall’ in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.’ This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.”

The taxpayer’s due process rights involve the right to be informed of the amount of the tax due. This includes the right to know when the payment of the deficiency tax should be made in order to determine when penalties and interests begin to accrue.

In ruling against petitioner, the Court in Division said:

“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. Thus, absent a specific date or period within which the alleged tax deficiencies must be settled or paid by petitioner, the FLD/FAN is fatally infirm. Consequently, the FDDA which rooted from the said FLD/FAN is likewise void, the deficiency tax assessments contained in the former are of no consequence as a void assessment bears no fruit.

In Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

‘An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the same time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process 

requires that it must be served on and received by the taxpayer.
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XXX XXX XXX

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, the Supreme Court emphasized the importance of the issuance of a **valid formal assessment**, *i.e.*, it must demand payment of the taxes described **within a specific period**, as follows:

‘The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a ‘specific definition or form of an assessment.’ However, the National Internal Revenue Code defines its explicit functions and effects.’ **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed.** Its main purpose is to determine the amount that a taxpayer is liable to pay.

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A final assessment is a notice ‘to the effect that the amount therein stated is due as tax and a demand for payment thereof.’ This demand for payment signals the time ‘when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]’ Thus, it must be ‘sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.’¹⁶


The Court *En Banc* agrees with the findings of the Court in Division. Indeed, the FLD’s failure to state when the payment of the deficiency taxes shall become due violates respondent’s right to be informed of the determinable amount for which it is liable to pay. Hence, the Court *En Banc* finds petitioner’s argument unmeritorious.

To end, petitioner failed to raise meritorious arguments to justify the reversal of the assailed Decision and Resolution. As such, the denial of the instant Petition for Review is in order. *je*

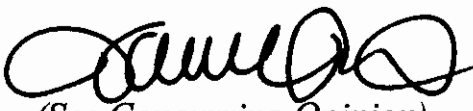
¹⁶ See Note 1, pp. 41-43.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision dated February 14, 2020 and the Resolution dated September 2, 2020 are **AFFIRMED**.


SO ORDERED.

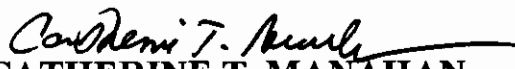

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

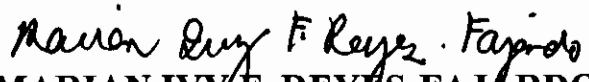

ERLINDA P. UY
Associate Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
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.

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ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

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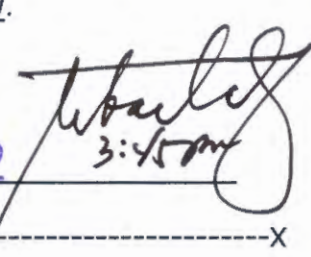
-versus-

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

FONTERRA BRANDS
PHILIPPINES, INC.,
Respondent.

Promulgated:

APR 11 2022



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X-----X

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review and the cancellation of the deficiency tax assessments against respondent for taxable year 2010, **solely** on the ground that the Formal Letter of Demand, Details of Discrepancies and Assessment Notices, issued against respondent, are void for their **failure to demand payment of the tax due within a specific period.**

A final assessment notice must not only indicate the legal and factual bases of the assessment **but must also state a clear and categorical demand for payment of the computed tax liabilities**



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within a specific period.¹ Absent a valid demand, as in this case, the Formal Letter of Demand, Details of Discrepancies and Assessment Notices are fatally infirm. Being void assessments, they bear no fruit² and must be slain at sight.

All told, I CONCUR in the *result*.


ROMAN G. DEL ROSARIO
Presiding Justice

¹ *Commissioner of Internal Revenue vs. Fitness By Design*, G.R. No. 215957, November 9, 2016.

² *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.