

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

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE**

Petitioner,

CTA EB NO. 2524
(CTA Case No. 9164)

Present:

-versus-

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

ALTUS ANGELES, INC.,
Respondent.

Promulgated:

AUG 14 2023

X- - - - - X

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*¹ filed by petitioner Commissioner of Internal Revenue (CIR) assailing the Amended Decision dated September 30, 2020² (assailed Amended Decision) and the Resolution dated July 8, 2021³ (assailed Resolution) promulgated by the Court's Third Division (Court in Division) in CTA Case No. 9164, cancelling and setting aside the assessments issued by petitioner against respondent Altus Angeles, Inc. for the fiscal year ending September 30, 2009.

The dispositive portions of the assailed Amended Decision and assailed Resolution are as follows:

¹ *En Banc (EB)* Docket, pp. 1-22.

² *EB* Docket, pp. 23-36; Division Docket – Vol. III, pp. 1917-1930.

³ *EB* Docket, pp. 37-41; Division Docket – Vol. III, pp. 1966-1971.

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Assailed Amended Decision dated September 30, 2020:

WHEREFORE, petitioner's Motion for Partial Reconsideration (of the Decision dated 8 October 2019) and Supplemental Motion for Partial Reconsideration are **GRANTED**, while respondent's Motion for Reconsideration Re: Decision dated 08 October 2019 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated October 8, 2019 is hereby amended to read as follows:

"WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, the assessments issued by respondent against petitioner for the fiscal year ending September 30, 2009 covering deficiency income tax, VAT, EWT, WTC, DST, increments for late remittance of WE and compromise penalties are **CANCELLED** and **SET ASIDE**.

SO ORDERED."

SO ORDERED.

Assailed Resolution dated July 8, 2021:

WHEREFORE, in light of the foregoing considerations, respondent's Motion for Reconsideration (Re: Decision dated 30 September 2020) is **DENIED** for lack of merit.

SO ORDERED.

THE FACTS AND THE PROCEEDINGS

The facts,⁴ as narrated by the Court in Division, are as follows:

[Respondent] is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at Mezzanine Floor, Galleria Condominium Corp. Center, Edsa corner Ortigas Ave., Quezon City.

[Respondent] was incorporated on October 30, 2002 to establish, manage and maintain a commercial complex, offer such services and merchandise to the public in connection with the operation of a commercial complex and to make and enter into all kinds of contracts, agreements and obligations with any person, partnership, corporation or association for the leasing of commercial space or the disposition, sale,

⁴ Decision dated October 8, 2019, Division Docket – Vol. III, pp. 1785-1825.



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acquisition of goods, wares and merchandise of all kinds, among other things.

On the other hand, [petitioner] is the duly appointed Commissioner of Internal Revenue (CIR) with office address at Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City where he may be served with summons and other legal processes.

On May 14, 2010, [petitioner] issued Letter of Authority No. LOA-127-2010-0000006 authorizing the examination of the books of accounts of [respondent] for the taxable year 2009.

[Respondent] alleges that it executed several Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (Waivers) extending the period to assess until June 30, 2014.

On December 6, 2012, [respondent] received a copy of the Notice of Informal Conference (NIC) which proposed to assess [respondent] for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT) withholding tax on compensation (WC), documentary stamp tax (DST), increments for late remittance of WE and penalty for non-submission of schedule of taxes and licenses, in the aggregate amount of P7,445,494.05 for the fiscal year ending September 30, 2009.

On May 26, 2010, [respondent] received the Preliminary Assessment Notice (PAN) finding [respondent] liable for deficiency income tax, VAT, EWT, WC, DST and increments for late remittance of WE, in the aggregate amount of P4,761,596.05 for the fiscal year ending September 30, 2009.

[Respondent] claims that on June 10, 2014, it filed its protest letter against the findings of [petitioner] as stated in the PAN.

On June 30, 2014, [respondent] received the Formal Letter of Demand (FLD) reiterating the findings and deficiency tax assessments in the PAN and assessing [respondent] for deficiency income tax, VAT, EWT, WC, DST and increments for late remittance of WE, in the aggregate amount of P4,830,555.56 for the fiscal year ending September 30, 2009.

According to [respondent], it filed its protest letter against the FLD on July 30, 2015, with request for reinvestigation, and submitted supporting documents. Subsequently, [respondent] submitted additional supporting documents on September 26, 2014.



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On September 3, 2015, [respondent] received the Final Decision on Disputed Assessment (FDDA), which substantially reiterated the assessment in the FLD for deficiency income tax, VAT, EWT, WC, DST and increments for late remittance of WE, in the aggregate amount of P5,352,161.05, broken down as follows:

... ..

On February 1, 2016, [petitioner] filed his Answer.

A Notice of Pre-Trial Conference was issued by the Court, setting the case for pre-trial conference on April 28, 2016, which was cancelled and reset to September 27, 2016. Accordingly, [petitioner]'s Pre-Trial Brief was filed on April 22, 2016 while [respondent]'s Pre-Trial Brief was filed on April 25, 2016.

The Pre-Trial Conference ensued. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues (JSFI) on October 17, 2016. Consequently, the Court issued a Pre-Trial Order on November 16, 2016 and the pre-trial was deemed terminated.

During the trial, [respondent] presented the testimony of its witness, Ms. Anne E. Mangaser by way of Judicial Affidavits in lieu of direct examination.

The Formal Offer of Evidence for the [respondent] was filed on July 3, 2017. On August 23, 2017, the FOE was resolved by the Court[.] ...

... ..

[Petitioner] presented his witnesses [sic], Revenue Officers [sic] Joel M. Aguila, who testified by way of Judicial Affidavit in lieu of direct examination.

[Petitioner] filed its [sic] FOE on June 1, 2018. In Resolution dated July 30, 2018, the Court admitted [petitioner's] Exhibits[.] ...

This case was deemed submitted for decision on October 16, 2018, considering the Memorandum for [respondent] was filed on September 3, 2018, while [petitioner] filed his Memorandum on October 4, 2018.

On October 8, 2019, the Court in Division promulgated its Decision,⁵ the *fallo* of which reads:



⁵ Division Docket – Vol. III, pp. 1785-1825.

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WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for the fiscal year ending September 30, 2009 covering deficiency VAT, EWT, increments for late remittance of WE and compromise penalties are **CANCELLED** and **SET ASIDE**.

On the other hand, the deficiency income tax, WTC and DST assessments are **AFFIRMED but with MODIFICATION**. Accordingly, petitioner is ordered to pay respondent the amount of ₱1,213,034.03, ₱671,378.26 and ₱17,997.05, representing basic deficiency IT, EWT and DST, respectively, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248 (A) (3), 249 (B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as determined below: ...

In addition, petitioner is liable to pay delinquency interest at the rate of 12% computed from January 1, 2018 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

IT	₱730,002.41
WTC	405,047.52
DST	10,860.02

SO ORDERED.

On November 28, 2019, respondent filed a *Motion for Partial Reconsideration (of the Decision dated 8 October 2019)*,⁶ while petitioner filed his *Motion for Reconsideration RE: Decision dated 08 October 2019*⁷ on December 4, 2019.

Petitioner filed his *Comment/Opposition Re: [Respondent]'s Motion for Reconsideration*⁸ on January 2, 2020. Meanwhile, respondent filed its *Comment/Opposition (To [Petitioner]'s Motion for Reconsideration dated 2 December 2019)*.⁹

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⁶ Division Docket – Vol. III, pp. 1826-1843.

⁷ Division Docket – Vol. III, pp. 1846-1864.

⁸ Division Docket – Vol. III, pp. 1867-1883.

⁹ Division Docket – Vol. III, pp. 1884-1901.

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On February 3, 2020, respondent filed a *Motion to Admit Supplemental Motion for Partial Reconsideration (of the Decision dated 8 October 2019)*¹⁰ with the attached *Supplemental Motion for Partial Reconsideration (of the Decision dated 8 October 2019)*.¹¹

On September 30, 2020, the Court in Division promulgated the assailed Amended Decision, which petitioner received on October 14, 2020.

On October 29, 2020, petitioner filed through registered mail his *Motion for Reconsideration Re: Decision dated 30 September 2020*,¹² to which respondent filed its *Comment/Opposition (To Respondent's Motion for Reconsideration Re: Decision dated 30 September 2020)*¹³ on January 28, 2021.

On July 8, 2021, the Court in Division issued the assailed Resolution denying the motion for reconsideration, which petitioner received on July 22, 2021.¹⁴

PROCEEDINGS BEFORE THE COURT *EN BANC*

On October 26, 2021, petitioner filed his *Petition for Review*¹⁵ with the Court *En Banc*.

On December 14, 2021, the Court *En Banc* directed petitioner's counsel to submit an updated IBP Number within (5) days from receipt thereof.¹⁶

On February 17, 2022, the Court *En Banc* received petitioner's *Compliance with Manifestation*,¹⁷ which the Court noted on April 6, 2022.¹⁸ The Court *En Banc* also ordered respondent to file a comment, not a motion to dismiss, within ten (10) days from receipt thereof.¹⁹



¹⁰ Division Docket – Vol. III, pp. 1902-1904.

¹¹ Division Docket – Vol. III, pp. 1905-1915.

¹² Division Docket – Vol. III, pp. 1931-1946.

¹³ Division Docket – Vol. III, pp. 1950-1964.

¹⁴ Division Docket – Vol. III, p. 1965.

¹⁵ *Supra*, note 1.

¹⁶ Resolution, *EB* Docket, pp. 43-44.

¹⁷ Resolution, *EB* Docket, pp. 45-49.

¹⁸ Resolution, *EB* Docket, pp. 52-53.

¹⁹ *Id.*

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On April 28, 2022, respondent filed its *Comment (To Petition for Review dated 11 September 2021)*,²⁰ attaching a Verification and Certification of Non-Forum Shopping to comply with the Resolution dated June 30, 2022.

On July 20, 2022, the Court *En Banc* issued a Resolution²¹ noting petitioner's *Compliance* and ordering respondent to file its comment/opposition to petitioner's *Petition for Review* within ten (10) days from receipt thereof.

On July 26, 2022, respondent filed its *Comment on the Petition for Review*,²² which the Court *En Banc* noted on June 1, 2022.²³ The Court *En Banc* referred the case to mediation.²⁴

On July 13, 2022, the Court *En Banc* received the "No Agreement to Mediate" Report from the Philippine Mediation Center Unit²⁵ and noted the same.²⁶

On August 23, 2022, the case was submitted for decision.²⁷

ISSUES

Petitioner assigns the following errors²⁸ for the Court's resolution:

THE HONORABLE COURT ERRED IN APPLYING RMO 69-10 IN REQUIRING THE RETRIEVAL OF A MANUAL LOA AND ISSUANCE OF A NEW ELOA.

THE HONORABLE COURT ERRED IN GRANTING A RELIEF NOT PRAYED FOR BY RESPONDENT IN ITS PETITION FOR REVIEW. PETITIONER'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED.

THE HONORABLE COURT ERRED IN RULING THAT THE DEFICIENCY TAX ASSESSMENT IS VOID FOR ALLEGEDLY NOT CONTAINING A DEFINITE DUE DATE FOR PAYMENT.



²⁰ *EB* Docket, pp. 54-101, with annexes.

²¹ *EB* Docket, pp. 107-108.

²² *EB* Docket, pp. 109-135.

²³ Resolution, *EB* Docket, pp. 103-104.

²⁴ *Id.*

²⁵ *EB* Docket, p. 105.

²⁶ Resolution dated August 23, 2022, *EB* Docket, pp. 107-108.

²⁷ *Id.*

²⁸ Grounds of the Petition, *Petition for Review*, *EB* Docket, pp. 14-15.

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Petitioner's arguments

Petitioner submits that the Court in Division erred in invalidating the assessment on the ground that petitioner failed to replace the LOA with an eLOA under Revenue Memorandum Order (RMO) No. 69-2010, which requires the issuance of a new eLOA in place of the manual LOA. Petitioner argues that a valid LOA was issued and served to respondent; an RMO is merely an internal issuance and does not give vested rights to taxpayers.²⁹

Petitioner maintains that his basic right to fair play and due process was violated when the Court in Division ruled upon an issue that was never raised in respondent's Petition for Review, *i.e.*, the authority of the revenue officer to investigate respondent's tax liabilities.³⁰

Petitioner insists that the Formal Letter of Demand (FLD) and assessment notices are valid as they fixed and set the deficiency tax liabilities, surcharge, and interest. The FLD and assessment notices also comply with the requisites provided in Section 228 of the NIRC of 1997, as they state the facts, the law, the rules and regulations, or the jurisprudence on which it was based.³¹

Respondent's arguments³²

Respondent contends that the subject tax assessment is void due to the absence of an eLOA pursuant to RMO No. 62-2010, and the Final Assessment Notice (FAN) lacks a definite amount payable and due date.

Respondent posits that petitioner's basic right to fair play and due process was not violated as both parties agreed in the Joint Stipulation of Facts and Issues that the issue to be resolved by the Court is whether the taxpayer is liable for the tax assessment; such stipulation is general enough to include the issue on the validity of the FLD and assessment notices.

Finally, respondent avers that petitioner has not raised any valid issue that would warrant the reversal of the assailed Amended Decision.



²⁹ *Petition for Review*, EB Docket, pp. 3-6.

³⁰ *Petition for Review*, EB Docket, pp. 6-9.

³¹ *Petition for Review*, EB Docket, pp. 9-13.

³² Pars. 4-50, EB Docket, pp. 55-70.

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THE COURT'S RULING

The instant *Petition for Review* is not impressed with merit.

The Court En Banc has jurisdiction over the instant Petition.

Before proceeding to the merits of the case, We shall first determine whether the Court *En Banc* has jurisdiction over the instant petition.

On July 8, 2021, the Court in Division denied respondent's *Motion for Reconsideration (Re: Decision dated 30 September 2020)* through the assailed Resolution, a copy of which was received by petitioner on July 22, 2021.³³

As provided under Section 3(b), Rule 8³⁴ of the RRCTA, petitioner had fifteen (15) days from receipt of the assailed *Resolution*, or until August 6, 2021, to file a *Petition for Review* with the Court *En Banc*.

However, the Supreme Court issued Administrative Circular No. 56-2021,³⁵ suspending the time for filing and service of pleadings and motions from August 2 to 20, 2021, due to the COVID-19 surge, and shall resume after seven (7) calendar days from the first day of the physical reopening of the relevant court.

On October 18, 2021, given the lowered restrictions within the National Capital Region, the Supreme Court issued Administrative Circular No. 83-2021,³⁶ lifting the suspension for filing and service of pleadings and motions in the appellate collegial courts within the NCR, which resumed seven (7) calendar days from October 20, 2021.

On October 25, 2021, petitioner filed the instant *Petition for Review*. Hence, it is timely filed.

³³ Division Docket – Vol. III, p. 1965.

³⁴ SEC. 3. *Who may appeal; period to file petition.* – ... (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

³⁵ Re: Court Operations on 2-20 August 2021.

³⁶ Re: Court Operations Beginning October 20, 2021 until October 29, 2021.

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Having settled that the *Petition* was timely filed, We likewise rule that the Court *En Banc* has validly acquired jurisdiction to take cognizance of this *Petition* under Section 2(a)(1), Rule 4³⁷ of the Revised Rules of the Court of Tax Appeals (RRCTA).

We now discuss the merits.

At the outset, the Court notes that the issues and arguments raised in this *Petition for Review* are mere rehash of matters raised in petitioner's *Motion for Reconsideration (Re: Decision dated 30 September 2020)*³⁸ filed before the Court in Division, which have been duly considered, weighed, and resolved in the assailed Resolution. Nonetheless, We shall take time to address the same.

The absence of an electronic Letter of Authority does not invalidate the assessment.

Petitioner asserts that the absence of an eLOA does not invalidate the assessment because a valid LOA was issued.

On the other hand, respondent contends that the assessment must be nullified under RMO No. 69-2010, which required the replacement of LOAs with eLOAs.

We find for petitioner.

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 a taxpayer's books of account and other accounting records to collect the correct amount of tax.³⁹ The issuance of 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.⁴⁰

³⁷ SEC. 2. *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

³⁸ Division Docket, pp. 1931-1646.

³⁹ *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

⁴⁰ *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, G.R. No. 242670, May 10, 2021.

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The Supreme Court explains in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation (McDonald's)*⁴¹ the important relation of the receipt of LOA by the taxpayer to the due process requirement, *viz.*:

xxx Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

Accordingly, the purpose of an LOA is to comply with due process so that the taxpayer is informed that the revenue officer concerned has the proper authority to examine the former's books of accounts.

Respondent cites RMO No. 69-2010,⁴² where the BIR mandates the replacement of existing LOAs with eLOAs. According to the said RMO, "[a]ll [LOAs], whether manual or electronic, issued from March 1, 2010, covering cases for 2009 and other taxable years, as well as [LOAs] issued by the Commissioner pursuant to RMC No. 61-2010, shall be retrieved and replaced with the new [eLOA] form (BIR Form No. 1966)." ⁴³

Respondent does not deny its receipt of the manual LOA. In fact, respondent received from petitioner LOA No. LOA-127-2010-00000006 dated May 14, 2010 on May 24, 2010.⁴⁴ What is being assailed here is the fact that the manual LOA was not replaced by an eLOA.

To this Court, this is merely a matter of form of the LOA and shall not affect respondent's right to due process. In line with the government's digitization and for the audit process' expediency, an LOA shall be replaced by an eLOA as provided under RMO No. 69-2010. However, RMO No. 69-2010 does not state that the conduct of the audit would be invalidated if a new eLOA is not issued. Neither does it provide a blanket revocation of the manual LOA if the said manual LOA is not replaced with an eLOA.



⁴¹ *Id.*

⁴² Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment, August 11, 2010.

⁴³ Part III, Item 6, RMO No. 69-2010.

⁴⁴ Exhibit "P-3", Division Docket – Vol. II, p. 1075.

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The fact that an LOA was issued already satisfies the due process requirement of the Supreme Court in the *McDonald's* case.

Thus, We rule that the non-issuance of the eLOA when an LOA has been issued does not violate respondent's right to due process.

The Court can resolve issues even if not specifically raised by the parties.

Petitioner argues that his basic right to fair play and due process was violated when the Court in Division ruled on the authority of the revenue officers, which was never raised as an issue in respondent's petition for review.

Petitioner is mistaken.

The Court's prerogative to rule upon related issues, notwithstanding that they were not taken up during trial is *not* novel. By now, petitioner must have already mastered the RRCTA's provisions, particularly Section 1, Rule 14, which empowers the Court to rule on matters even if not raised by the parties. Instead, petitioner opted to demonstrate an ingenuousness of the CTA rules.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,⁴⁵ the Supreme Court emphatically ruled that the CTA can resolve an issue that was not specifically raised by the parties, *viz.*:

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.* - xxx

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may

⁴⁵ G.R. No. 183408, July 12, 2017.



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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. [*Emphasis supplied*]

Likewise, in *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,⁴⁶ the Supreme Court sustained the authority of this Court to raise and resolve an issue that was not raised in a petition for review, *viz.*:

As the CTA *En Banc* held, the CTA Division was justified in ruling on the issue that respondent was denied due process even though it was not expressly raised by respondent in its petition for review. Sec. 1, Rule 14 of the RRCTA provides that '[i]n 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.' Herein, **the issue of the validity of the assessment against respondent also necessarily requires the determination of the matter of the proper issuance of said assessment in accordance with the requirements of due process.** xxx [*Emphasis supplied*]

Recently, in *Commissioner of Internal Revenue v. Philplans First, Inc.*,⁴⁷ the Supreme Court reiterated this Court's authority to consider in its decision the question of the revenue officers' authority even though the parties had not raised the same as an issue, like the instant case, thus:

Jurisprudence provides that the CTA is well within its authority to resolve related issues even though the parties had not raised the same in their pleadings or memoranda, thus:

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:

⁴⁶ G.R. No. 222476, May 5, 2021.

⁴⁷ G.R. No. 259960 (Notice), January 23, 2023.



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SECTION 1. *Rendition of judgment.* – x x x

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. [*Emphasis supplied*]

Given the foregoing jurisprudential pronouncements, the Court *En Banc* finds no error in the Court in Division's ruling on the authority of the revenue officers who conducted the audit/investigation under a manually-issued LOA, although not raised in the petition for review.

The FLD and FANs are void because they failed to indicate a definite due date for payment.

The Court *En Banc* agrees with the Court in Division that the assessment for deficiency taxes for the period ended September 30, 2009, is void due to failure to state a period for payment. The Audit Results/Assessment Notices (FANs) attached to the FLD and the FDDA contain the phrase "DUE DATE" but fail to indicate a specific date in the space provided after the word, negating respondent's compliance with the requisite demand for payment within the prescribed period.

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation et al.*,⁴⁸ the Supreme Court held that:

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the 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. ... [*Emphasis supplied*]



⁴⁸ G.R. No. 128315, June 29, 1999.

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In *Commissioner of Internal Revenue v. Fitness by Design, Inc. (Fitness by Design)*,⁴⁹ the Supreme Court concluded that the disputed FAN was not a valid assessment because it did not set a specific due date, negating the demand for payment. Thus, the Supreme Court held:

... **[T]here 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.**

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. *[Emphasis supplied]*

Similarly, in this case, the last paragraph of the FLD states that respondent is requested to pay its deficiency tax liabilities "within the time shown in the enclosed assessment notice."⁵⁰ However, a perusal of the enclosed FANs ⁵¹ reveals that the due date for payment was left blank, *viz.:*



⁴⁹ G.R. No. 215957, November 9, 2016.

⁵⁰ Exhibit "P-7", Division Docket – Vol. II, p. 1142.

⁵¹ Exhibit "R-7", BIR Records, pp. 631-636.

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BIR FORM NO. 0401 REVISED June, 1996		OCN
RETURN PERIOD FY Ended Sep. 30, 2009	TAUX/RESULTA/PAIDMENT NOTICE	ASSESSMENT NUMBER IT-118-LOA-0000008-09-14-984 DATE ISSUED:
TIN: 220-936-678 NAME: Altus Angeles, Inc. ADDRESS: Mezzanine Flr. Galleria Condo Corp. Center, QC		
PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:		
TAX TYPE Income Tax BASED ON REASON Sections 32, 34(A) and (K) of NIRC of 1997 and RR 2-88, as amended Interest: Sec. 249 of the 1997 Tax Code Compromise Pen. - Sections 250 & 255 - RR 1-90 as amended by	PARTICULARS Basic _____ Surcharge _____ Interest _____ Compromise penalty _____ Total Amount Due _____	AMOUNT P 1,117,641.73 _____ 1,001,284.51 _____ 25,000.00 _____ P 2,143,926.24
DUE DATE		
IMPORTANT PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS	KIM S. JACINTO-HENARES COMMISSIONER OF INTERNAL REVENUE	

BIR FORM NO. 0401 REVISED June, 1996		OCN
RETURN PERIOD FY Ended Sep. 30, 2009	TAUX/RESULTA/PAIDMENT NOTICE	ASSESSMENT NUMBER VT-118-LOA-0000008-09-14-985 DATE ISSUED:
TIN: 220-936-678 NAME: Altus Angeles, Inc. ADDRESS: Mezzanine Flr. Galleria Condo Corp. Center, QC		
PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:		
TAX TYPE Value-Added Tax BASED ON REASON Sections 106 and 108 of 1997 NIRC, as amended RR No. 18-2005, as amended Interest: Sec. 249 of the 1997 Tax Code Compromise Pen. - Sections 250 & 255 - RR 1-90 as amended by	PARTICULARS Basic _____ Surcharge _____ Interest _____ Compromise penalty _____ Total Amount Due _____	AMOUNT P 334,678.70 _____ 314,873.00 _____ 16,000.00 _____ P 665,551.70
DUE DATE		
IMPORTANT PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS	KIM S. JACINTO-HENARES COMMISSIONER OF INTERNAL REVENUE	

BIR FORM NO. 0401 REVISED June, 1996		OCN
RETURN PERIOD TY 2009	TAUX/RESULTA/PAIDMENT NOTICE	ASSESSMENT NUMBER WE-118-LOA-0000008-09-14-986 DATE ISSUED:
TIN: 220-936-678 NAME: Altus Angeles, Inc. ADDRESS: Mezzanine Flr. Galleria Condo Corp. Center, QC		
PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:		
TAX TYPE Expanded Withholding Tax BASED ON REASON RR No. 2-88, as amended Interest: Sec. 249, NIRC Compromise Pen. - Sections 250 & 255 - RR 1-90 as amended by RMO No. 19-2007	PARTICULARS Basic _____ Surcharge _____ Interest _____ Compromise penalty _____ Total Amount Due _____	AMOUNT P 39,941.39 _____ 37,578.00 _____ 8,500.00 _____ P 86,019.39
DUE DATE		
IMPORTANT PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS	KIM S. JACINTO-HENARES COMMISSIONER OF INTERNAL REVENUE	

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DECISION

CTA EB No. 2524 (CTA Case No. 9164)
Commissioner of Internal Revenue v. Altus Angeles, Inc.
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BIR FORM NO REVISED June, 1996		0401		OCN	
RETURN PERIOD TY 2009				ASSESSMENT NUMBER WC-116-LOA-0000006-09-14-987	
TIN NAME ADDRESS		220-936-678 Altus Angeles, Inc. Mezzanine Flr. Galleria Condo Corp. Center, QC			
PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS					
TAX TYPE Expanded Withholding Tax BASED ON REASON RR No 2-98, as amended Interest - Sec 249 NIRC Compromise Pen - Sections 250 & 255, RR 1-90 as amended by RMO No 19-2007		PARTICULARS		AMOUNT	
DUE DATE		Basic		P	102,408.31
		Surcharge			
		Interest			678.46
		Compromise penalty			8,500.00
		Total Amount Due		P	9,178.46
IMPORTANT PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS		KIM S. JACINTO-HENARES COMMISSIONER OF INTERNAL REVENUE			

BIR FORM NO REVISED June, 1996		0401		OCN	
RETURN PERIOD FY Ended Sep 30, 2009				ASSESSMENT NUMBER WC-116-LOA-0000006-09-14-988	
TIN NAME ADDRESS		220-936-678 Altus Angeles, Inc. Mezzanine Flr. Galleria Condo Corp. Center, QC			
PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS					
TAX TYPE Compensation Withholding Tax BASED ON REASON Compromise Pen - Sections 250 & 255, RR 1-90 as amended by RMO No 19-2007 Interest - Sec 249 of the 1997 Tax Code		PARTICULARS		AMOUNT	
DUE DATE		Basic		P	166,780.24
		Surcharge			
		Interest			158,281.00
		Compromise penalty			16,000.00
		Total Amount Due		P	341,061.24
IMPORTANT PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS		KIM S. JACINTO-HENARES COMMISSIONER OF INTERNAL REVENUE			

Petitioner's failure to indicate the due date negates its demand for payment. We see no reason to depart from *Fitness by Design* for judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines,⁵² and the principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by the Supreme Court in its final decisions.⁵³

Thus, We rule against petitioner on the ground of invalidity of the assessment for failure to indicate a due date.

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⁵² Article 8, Civil Code of the Philippines.
⁵³ *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009.

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Due process is the very essence of justice itself.⁵⁴ While taxes are the lifeblood of the government, the power to tax has its limits in spite of all its plenitude.⁵⁵ Even as We concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.⁵⁶

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Amended Decision dated September 30, 2020, and the Resolution dated July 8, 2021, of the Court's Third Division in CTA Case No. 9164 are **AFFIRMED**.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

⁵⁴ *Macias v. Macias*, G.R. No. 149617, September 3, 2003.

⁵⁵ *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

⁵⁶ *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988.

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JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice

ON LEAVE

MARIAN IVY F. REYES-FAJARDO

Associate Justice



CORAZON G. FERRER-FLORES

Associate Justice



DECISION

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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.

A stylized, handwritten signature in black ink, consisting of a large initial 'R' followed by several loops and a final flourish.

ROMAN G. DEL ROSARIO

Presiding Justice

A small, handwritten mark or signature in the bottom right corner of the page, consisting of a few quick, sweeping strokes.