

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DONATO C. CRUZ TRADING
CORP.,

Petitioner,

CTA CASE NO. **9721**

Members:

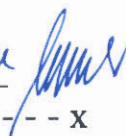
- versus -

CASTAÑEDA, JR., Chairperson,
BACORRO-VILLENA, and
CUI-DAVID, II.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 07 2022

2:20 pm 

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RESOLUTION

BACORRO-VILLENA, J.:

At bar is petitioner's Donato C. Cruz Trading Corp.'s (**petitioner's**) "Motion for Reconsideration"¹ of this Court's Decision² (**assailed Decision**) dated 19 March 2021, without respondent Commissioner of Internal Revenue's (**respondent's**) comment.³

The assailed Decision partially grant petitioner's Petition for Review filed on 23 November 2017. The dispositive portion of the assailed Decision reads: 

¹ Division Docket, pp. 463-468.

² Id., pp. 435-462.

³ Per Records Verification dated 04 October 2021.

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...

WHEREFORE, the foregoing considered, petitioner Donato C. Cruz Trading Corp.'s Petition for Review filed on 23 November 2017 is hereby **PARTIALLY GRANTED**. The Bureau of Internal Revenue's assessment pursuant to Letter of Authority No. 00074813 shall be adjusted as a result. Accordingly, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amounts of ₱20,936,310.18, ₱33,082.23 and ₱80,859.58, representing basic deficiency Expanded Withholding Tax and penalties for late payments of Withholding Tax on Wages and Value-Added Tax, 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 31 December 2017, as determined below:

	EWT	WTW	VAT	TOTAL
Basic Deficiency	3,263,373.09			3,263,373.09
Surcharge (25%)	815,843.27			815,843.27
Deficiency Interest (20%) until January 29, 2009				
EWT - 1/16/07 to 1/29/09 (₱3,263,373.09 x 20% x 726 days/ 365 days)	1,332,171.48			1,332,171.48
Adjustments Plus: Interest on paid undisputed assessment items - 1/16/07 to 1/9/09 (₱33,113.37 x 20% x 725 days/ 365 days)	13,154.62			13,154.62
Interest and surcharge on late payments	737.21	11,877.84	29,031.82	41,646.87
Total Amount Due as of January 29, 2009	5,425,279.67	11,877.84	29,031.82	5,466,189.33
Deficiency Interest (20%) from January 30, 2009 to December 31, 2017				
EWT - 1/30/09 to 12/31/17 (₱3,263,373.09 x 20% x 3,258 days/ 365 days)	5,825,791.52			5,825,791.52
Delinquency Interest (20%) from January 30, 2009 to December 31, 2017				
EWT - 1/30/09 to 12/31/17 (₱5,425,279.67 x 20% x 3,258 days/ 365 days)	9,685,238.99			9,685,238.99
WTW - 1/30/09 to 12/31/17 (₱11,877.84 x 20% x 3,258 days/ 365 days)		21,204.39		21,204.39
VAT - 1/30/09 to 12/31/17 (₱29,031.82 x 20% x 3,258 days/ 365 days)			51,827.76	51,827.76
Total Amount Due as of December 31, 2017	20,936,310.18	33,082.23	80,859.58	21,050,251.99

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from 01 January 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 21-2018, on said deficiency taxes based on the following principal amounts:

Expanded Withholding Tax	₱5,425,279.67
Penalties on Withholding Tax on Wages	11,877.84
Penalties on Value Added Tax	29,031.82

SO ORDERED.

...

In support of its motion, petitioner essentially challenges the Final Assessment Notices⁴ (FANs) validity. It argues that the FAN and the Formal Letter of Demand⁵ (FLD) did not contain a demand to pay as the amount of petitioner’s tax liabilities were uncertain. To support its allegation, petitioner points out that the FLD states that “the interest and total amount due will have to be adjusted if paid beyond January 31, 2009”. According to petitioner, a similar phrase in a FAN led the Supreme Court to invalidate an assessment in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*⁶ (**Fitness**). Petitioner also contends that the FLD merely requested it to pay without stating a due date for the payment of its alleged liabilities.

We resolve.

Although petitioner presents a new issue before the Court, the arguments it raises are completely unsubstantiated. In *Fitness*, the FAN there contained the following demand, as cited by the Supreme Court, to wit:

...

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,**

⁴ BIR Records, pp. 291-294.
⁵ Id., pp. 288-290.
⁶ G.R. No. 215957, 09 November 2016.

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however, that the interest and the total amount due will have to be adjusted if paid prior or beyond April 15, 2004.⁷

...

In the foregoing demand, the taxpayer was notified that interest and the total amount would be adjusted “if paid prior or beyond April 15, 2004”. The vagueness of the phraseology used gave uncertainty as to the amount of the total tax due as it apparently depended whether the same would be paid prior or after 15 April 2004. The same demand also lacked a due date when the tax liabilities would have to be settled. The Supreme Court citing FAN again found the following phrase:

...

In view thereof, you are requested to pay your aforesaid deficiency internal revenue taxes liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.⁸

...

Despite a demand for payment, the Supreme Court affirmed the CTA’s findings that no due date was found in the assessment as it was left unaccomplished.

Unlike in *Fitness*, a perusal of the records would show that the FAN and FLD in this case gave petitioner a definite amount of tax liability due and a due date for its payment. The FAN immediately reveals that it did not contain a similar phrase such as that in *Fitness*. On the contrary, petitioner’s total tax liabilities inclusive of surcharge and interest calculated from the period 10 January 2007 to 31 January 2009 fell due on 29 January 2009 as stated in the FAN under the item “DUE DATE”. Since the calculation given petitioner only contained interest calculated up to 31 January 2009, the FLD obviously merely informed petitioner that the total amount of P5,619,018.97 would have to be adjusted if paid beyond the said due date the accrual of additional interest. Moreover, despite petitioner’s claims that no due date was stated in the FLD, a cursory reading of the FLD reveals the following demand: ↗

⁷ Supra at note 6; Emphasis and underscoring in the original text.

⁸ Supra at note 6; Citation omitted.

...
In view of the foregoing, you are hereby requested to pay the total amount payable on or before January 29, 2009... in order that this case may be closed; otherwise, this office will be constrained to enforce the collection thereof through the remedies provided for by law.
...

In *Fitness*, the Supreme Court explained the function of FAN, to wit:

...
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."⁹
...

Judging by the foregoing principle, it is undeniable that the Bureau of Internal Revenue (BIR) made a clear demand for payment of petitioner's tax liabilities, and that the same was due on 29 January 2009 as provided for both in the FAN and FLD.

WHEREFORE, the foregoing considered, petitioner's Motion for Reconsideration filed on 03 June 2021 is hereby **DENIED** for lack of merit. Accordingly, the Court's Decision dated 19 March 2021 is **AFFIRMED**.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

⁹ Supra at note 6; Citations omitted.

WE CONCUR:

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

Laneé S. Cui-David
LANEE S. CUI-DAVID
Associate Justice