REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

JAMES ALEKHINE YAP TAN, Petitioner,	**CTA EB CRIM. NO. 167**
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.*, **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: MAY 25 2026 10:39a.m.

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is petitioner James Alekhine Yap Tan's (**petitioner**'s/**Tan**'s) "Motion for Reconsideration (of the Decision dated 22 January 2026)" (**MR**) filed and emailed on 12 February 2026, with respondent People of the Philippines' (**respondent**'s) "Comment/Opposition (to the Motion for Reconsideration dated 12 February 2026)" (**Comment**) filed and emailed on 26 February 2026.

The MR assails the *En Banc* Decision of 22 January 2026 (**assailed Decision**) which denied petitioner's Petition for Review thereby affirming the determinations of the Regional Trial Court (**RTC**) and the Municipal Trial Court in Cities (**MTCC**) that Tan is guilty of violating

Section 5(c)[1] in relation to Section 266[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

In support of his MR, petitioner forwards two (2) arguments: (1) respondent failed to prove the first essential element of Section 266 of the NIRC of 1997, as amended; and (2) payment of the compromise penalty is a sufficient ground to dismiss the case.

As to the first ground, petitioner avers that the first essential element of the criminal tax violation of 'Failure to Obey Summons' is lacking as the prosecution failed to prove that the *Subpoena Duces Tecum* (**SDT**) was duly served upon him. Invoking interest of substantial justice, he implores this Court to consider this argument although it was not raised in the petition.

Petitioner continues to explain that while the MTCC declared that the SDT was validly served upon petitioner through substituted service, the assigned Revenue Officer (**RO**), Nizalani A. Arnoco (**Arnoco**), did not proffer any reason why personal service was impracticable. Moreso, the records of the case show that the SDT, RO Arnoco's Affidavit of Service and her Judicial Affidavit are bereft of any showing that prior attempts at personal service were made or that such service failed. Hence, as there is no justifiable reason to resort to substituted service as required under Revenue Memorandum Order (**RMO**) No. 10-2013,[3] as amended by RMO No. 08-2014,[4] the substituted service of SDT upon

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1 **SEC. 5.** ***Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.*** - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

...

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony[.]

2 **SEC. 266.** ***Failure to Obey Summons.*** - Any person who, being duly summoned to appear to testify, or to appear and produce books of accounts, records, memoranda or other papers, or to furnish information as required under the pertinent provisions of this Code, neglects to appear or to produce such books of accounts, records, memoranda or other papers, or to furnish such information, shall, upon conviction, be punished by a fine of not less than Five thousand pesos (P5,000) but not more than ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years.

3 Revised Guidelines and Procedures in the Issuance and Enforcement of Subpoenas Duces Tecum and the Prosecution of Cases for Non-Compliance Therewith.

4 Amendments to Revenue Memorandum Order No. 10-2013 Dated April 17, 2013 on Revised Guidelines and Procedures in the Issuance and Enforcement of Subpoenas Duces Tecum and the Prosecution of Cases for Non-Compliance Therewith.

Josephine Garay (**Garay**), then Accounting Head of Pump N' Go Power Fuel, Inc. (**Pump N' Go**), is invalid.

As to the second ground, petitioner maintains that the case should have been dismissed upon his payment of the compromise penalty amounting to ₱10,000.00. He points out that prior to the filing of Information on 31 January 2017, the Bureau of Internal Revenue (**BIR**) had already accepted his payment on 08 November 2016 and has even retained the same. Evidently, there is a perfected compromise agreement as between them that serves as a justification to dismiss the case. He adds that there is nothing under RMO No. 07-2015[5] which would require the BIR to execute a separate document to signify its acceptance of the compromise payment.

In a final bid to plead his case, petitioner alleges that he exerted earnest efforts to exhaust all possible remedies to secure the dismissal of the criminal charge against him. In particular, he claims that he manifested his intention to avail the benefits of Republic Act (**RA**) No. 11213[6] or the Tax Amnesty Act, through a letter dated 28 August 2019 addressed to Regional Director Atty. Eduardo L. Pagulayan, Jr. (**RD Pagulayan**). Unfortunately, in a letter dated 02 December 2020, RD Pagulayan informed petitioner that he was not eligible to avail of the tax amnesty. Notwithstanding such denial, petitioner contends that there is Memorandum (dated 20 November 2020) issued by Atty. Marissa O. Cabreros, then Deputy Commissioner for the Legal Group, stating that he may avail himself of the said tax amnesty.

In its Comment, respondent counters that resort to substituted service was proper since petitioner was not present at his known (or business) address when the SDT was supposed to be served personally to him. Moreso, apart from accomplishing the SDT's bottom portion, RO Arnoco executed an Affidavit of Service explaining in detail that petitioner was not present at the business address, thus service was made upon Garay, as Pump N Go's (then) Accounting Head.

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5 The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

6 AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2017 AND PRIOR YEARS WITH RESPECT TO ESTATE TAX, OTHER INTERNAL REVENUE TAXES, AND TAX ON DELINQUENCIES.

With respect to petitioner's payment of an amount equivalent to a compromise penalty, it may be inferred from the provisions of RMO No. 07-2015 that payment thereof should be undertaken prior to the institution of the criminal case. However, once the Complaint-Affidavit is filed before the Office of the City Prosecutor, the BIR cannot automatically cause the withdrawal of the charge. RMO No. 10-2013 provides that the BIR cannot seek the dismissal of the criminal case even if the erring taxpayer subsequently complies with the SDT by submitting the requested documents. By analogy, a criminal action is not necessarily dismissed by the mere payment of a compromise penalty.

We resolve.

At the outset, it is noted that the instant MR was timely filed within the fifteen (15)-day reglementary period pursuant to Section 1,[7] Rule 15 of the Revised Rules of the Court of Tax Appeals[8] (**RRCTA**). However, it did not escape the Court *En Banc*'s attention that petitioner belatedly invoked, **for the first time in this MR**, the alleged absence of an essential element of the crime charged. More significantly, **it was not raised in the Petition for Review** which the Court *En Banc* had already exhaustively discussed and resolved in the assailed Decision.

In *Fernando Pante y Rangasa v. People of the Philippines*,[9] the Supreme Court also precluded itself from ruling on the issue of conspiracy since it was raised for the first time on appeal. The relevant parts state –

> ...
> **It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below**. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel.

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7 SECTION 1. *Who May and When to File Motion.* — Any aggrieved party may seek a reconsideration or new trial of any decision: resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.

8 A.M. No. 05-11-07-CTA.

9 G.R. No. 218969, 18 January 2021. Citations omitted and emphasis supplied.

> Clearly, issues raised for the first time on appeal will not be entertained because to do so would be contrary to the principles of fairness and due process. As such, we agree with the findings of the RTC and the CA in finding petitioner guilty beyond reasonable doubt of the crime of Theft.
>
> ...

Fundamentally, issues raised for the first time on appeal will not be accepted for it would contravene the principle of fair play, justice, and due process. Arbitrariness would lie if the opposing party cannot present new evidence to depose the new theory presented against him or her.[10]

As for the second and third arguments, at the risk of being repetitive, We have already addressed this in the assailed Decision, to wit –

> ...
>
> The nature of a compromise penalty is explained in the case of *Commissioner of Internal Revenue v. Armando L. Abad, et al.*:
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> > ...
> > [A] compromise implies **agreement**. One party cannot impose it upon the other. If an offer of compromise is rejected by the taxpayer, as in this case, the Commissioner of Internal Revenue should file a criminal action if he believes that the taxpayer is criminally liable for violation of the tax law as the only way to enforce a penalty. As penalty can be imposed only on a finding of criminal liability.
> > ...
>
> Clearly, there can be no compromise if there is no agreement between the parties. A compromise penalty *cannot* be imposed or collected without the agreement or conformity of the taxpayer.[11] A compromise, after all, by its nature, is *mutual* in essence.[12] It cannot be imposed in the absence of a preceding agreement. Thus, the fact that the taxpayer protested the assessment only signifies that there was no agreement to speak of.
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> In the same vein, applying the foregoing, **a compromise settlement could not be imposed on the taxing authority in the absence of any actual agreement.**

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[10] *People of the Philippines v. Arvi Villa y Garcia*, G.R. No. 256468, 11 October 2023.
[11] *Wonder Mechanical Engineering Corporation v. The Hon. Court of Tax Appeals, et al.*, G.R. No. L-22805 & L-27858, 30 June 1975.
[12] See *Dr. Felisa L. Vda. De San Agustin, et al. v. Commissioner of Internal Revenue*, G.R. No. 138485, 10 September 2001.

In the present case, **petitioner has not been able to demonstrate any such agreement with the BIR.** While the invocation of the table of compromise penalties in RMO No. 07-2015 admits commonplace in administrative proceedings with the BIR, the mere fact of payment could not, by itself, operate as the consummation of a compromise settlement.

While petitioner has vehemently maintained its position that the BIR had accepted its payment, the RTC found otherwise:

> ...
>
> However, in the Manifestation filed by the BIR, dated August 1, 2022, they stressed that in a previous Manifestation made by the BIR, Pump N' Go Power Fuel Inc. only had until June 30, 2021 to avail of the tax amnesty on delinquencies pursuant to the Memorandum dated November 20, 2020 issued by Deputy Commissioner for the Legal Group Atty. Marissa O. Cabreros, and per Section 2 of Revenue Regulations No. 32-2020.
>
> **The records of the BIR showed no application or approval of application for tax amnesty on delinquencies was made by the accused.**
>
> Here, the accused-appellant merely relied on the issuance of BIR Form 0605, when they paid the compromise penalty on November 7, 2016. They failed to comply with the necessary steps required by R.A. 11213 and the relevant aforementioned BIR issuances. Thus, the instant case cannot be dismissed due to the payment of the compromise penalty.
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> ...

Relatedly, the **MTCC and RTC mutually found that petitioner botched his opportunity to avail of the provisions of [RA] 11213 or the *Tax Amnesty Act*.** While an extensive dissection of the said Act is superfluous to Our instant verdict, the clear conclusion unraveled by the prior courts' findings is that petitioner had fallen short of availing any remedies that would have discharged his criminal liability.

Moreover, as respondent pointed out, the lack of agreement is further exhibited by the BIR's willingness to pursue the prosecution of the present case.

...

[T]here was no showing of approval of any compromise agreement, and consequently, no compliance with any such terms thereof.[13]

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[13] Italics in the original text, emphasis supplied and citations omitted.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed and emailed by petitioner James Alekhine Yap Tan on 12 February 2026 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice