REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

ROXAS HOLDINGS, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10321

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
MAR 3 0 2022 2:34 pm

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JUDGMENT BY COMPROMISE AGREEMENT

MANAHAN, J.:

This resolves the parties' **Motion for Approval of Compromise Agreement**[1] filed on September 6, 2021 via email and personally filed on October 28, 2021.

In support of the *Motion for Approval of Compromise Agreement*, the parties attached the original copy of the Compromise Agreement[2] which reads as follows:

> **COMPROMISE AGREEMENT**
>
> KNOW ALL MEN BY THESE PRESENTS:
>
> This COMPROMISE AGREEMENT ("Agreement), made and executed this 13th day of July 2021 in Quezon City, by and between:
>
> **ROXAS HOLDINGS, INC. ("RHI")**, a corporation organized and existing under the

[1] Docket, CTA Case No. 10321, *Joint Manifestation with Motion for Approval of Compromise Agreement* dated September 6, 2021, unpaginated.
[2] *Id.*, Annex "A", *Joint Manifestation with Motion for Approval of Compromise Agreement,* unpaginated.

laws of the Philippines with office address at 14/F, Net One Center, 26th street corner 3rd Avenue, Bonifacio Global City, Taguig, Metro Manila, as represented by its VICE PRESIDENT - HEAD OF FINANCE AND ADMINISTRATION, **VERONICA C. CORTEZ**, as evidenced by the Secretary's Certificate dated April 26, 2021 which is hereto attached as Annex "A";

- and -

BUREAU OF INTERNAL REVENUE ("BIR"), with principal office address at BIR National Office Building, Agham Road, Diliman, Quezon City, as represented by the Commissioner of Internal Revenue, **HON. CAESAR R. DULAY**;

RHI and BIR shall also hereinafter be referred to individually as a PARTY or collectively as the PARTIES.

-Witnesseth that-

WHEREAS, on June 16, 2014, **RHI** received an undated Preliminary Assessment Notice ("PAN") from the **BIR** informing the former of its alleged deficiency income tax ("IT"), Value-Added Tax ("VAT"), Withholding Tax on Compensation ("WTC"), Expanded Withholding Tax ("EWT"), Final Withholding Tax ("FWT"), and Documentary Stamp Tax ("DST") liabilities amounting to P145,220,031.33, inclusive of interest, surcharge, and compromise penalty.

WHEREAS, on June 26, 2014, RHI received a Formal Letter of Demand ("FLD") with attached Details of Discrepancies and Assessment Notices requiring **RHI** to pay the aforementioned amount.

WHEREAS, on June 30, 2014 and July 25, 2014, **RHI** filed its Reply to PAN and Protest to FLD, respectively.

WHEREAS, on July 1, 2016, **RHI** received a Final Decision on Disputed Assessment ("FDDA") requiring it to pay the aggregate amount of P163,036,238.70 for alleged deficiency taxes, inclusive of interest, surcharge, and compromise penalty.

WHEREAS, on July 29, 2016, **RHI** filed a Request for Reconsideration ("Request for Reconsideration") of the FDDA with the **BIR**.

WHEREAS, on July 16, 2020, **RHI** received via registered mail a letter, issued by the **BIR** denying the Request for Reconsideration ("Denial Letter").

WHEREAS, on August 3, 2020, **RHI** filed a Petition for Review with the Honorable Court of Tax Appeals ("CTA"), docketed as CTA Case No. 10321, appealing the Denial Letter and seeking the cancellation of the FAN and FDDA for lack of factual legal basis.

WHEREAS, in a letter dated February 17, 2021, **RHI** submitted an Offer for Compromise signifying its intention to enter into an amicable settlement with the **BIR** pursuant to the provision of the Civil Code of the Philippines, jurisprudence and relevant provisions on compromise agreements under the National Internal Revenue Code ("NIRC"), as amended, particularly Section 204(A) thereof.

WHEREAS, **BIR** has evaluated **RHI**'s proposal for amicable settlement and offer of compromise and believes that a judicial compromise to allow immediate tax collection and put an end to protracted, expensive and mutually prejudicial litigation will serve the interest of the Government.

WHEREAS, the **PARTIES** have agreed to enter into an amicable settlement pursuant to the provisions of the Civil Code of the Philippines, jurisprudence, relevant decisions of the Honorable CTA, relevant laws on judicial compromise, and the provisions of the NIRC, as amended, particularly Section 204(A) thereof, without contravening law, morals, public order, and public policy.

WHEREAS, the Honorable CTA has issued rulings allowing judicial compromises similar to the instant case.

NOW, THEREFORE, for and in consideration of the foregoing premises, the PARTIES hereto have agreed as follows:

Section 1. Compromise Amount. In order to settle the abovementioned case, **RHI** has offered, and the **BIR** has accepted, the total compromise amount of **Twenty-Nine Million Four Hundred Twenty-Six Thousand One Hundred Twenty-Six and 58/100 Pesos** (P29,426,126.58) comprising 40% of the basic assessed tax for IT, VAT, DST, and 100% of the basic tax assessed for WTC, EWT, and FWT ("Judicial Compromise Amount").

Section 2. Submission to the Honorable CTA. This Agreement fully signed by the **PARTIES** shall be submitted to the Honorable CTA in CTA Case No. 10321 entitled "Roxas Holdings, Inc. v. Commissioner of Internal Revenue" and the **PARTIES** undertake to perform any and all acts, and to submit any and all documents required by the Honorable CTA to render a Judgment by Compromise Agreement in the said case.

Section 3. Effectivity of the Agreement. This Agreement shall take effect and bind the **PARTIES** upon approval by the Honorable CTA. This Agreement shall thereafter remain in force and effect until completion and fulfillment of the covenants and undertaking of the **PARTIES** thereto.

Section 4. Deliverables of the PARTIES upon Approval of this Agreement. Upon final approval by the Honorable CTA, of the terms of this Agreement, **BIR** undertakes to execute and deliver to **RHI** any and all documents as may be required to effectively and fully implement the provisions of this Agreement, withdrawing and cancelling the FLD and FDDA.

Section 5. Authority to Enter Compromise Agreement. The BIR, through **Commissioner Caesar R. Dulay**, warrants that he has the necessary authority and capacity under the law to enter into, sign, and execute this Agreement, and to deliver its implementing documents upon its approval by the Honorable CTA.

RHI warrants that Veronica C. Cortez is duly authorized by its Board of Directors and has full legal capacity to enter into, sign, and execute this Agreement, and to deliver payment of the Compromise Amount.

Section 6. Full and Final Settlement. This Agreement is executed by the **PARTIES** for the purpose of amicably settling and ending CTA Case No. 10321. Upon approval by the Honorable CTA, the **BIR** recognizes the full satisfaction of the alleged tax liabilities of **RHI**, including any alleged deficiency interest, surcharge, and other penalties thereon, in connection with CTA Case No. 10321 and acknowledges that **RHI** no longer has any tax liability whatsoever based upon, arising from, or in connection with the particular subject of CTA Case No. 10321.

Section 7. Defects in this Agreement. In the event that the Agreement is disapproved by the Honorable CTA, the **PARTIES** agree to a curing period of sixty (60) days from receipt of the Order/Resolution disapproving this Agreement. During such curing period, the **PARTIES** mutually agree to perform all acts necessary to rectify or correct the deficiency, defect or imperfection. However, in case the deficiency, defect or imperfection is not or cannot be rectified or corrected:

1. The amount insofar already paid by **RHI** to the **BIR** shall be deemed a tax credit which may be applied against internal revenue taxes for which **RHI** may be directly liable, as allowed under existing rules and regulations; and

2. The proceedings of CTA Case No. 10321 shall continue and the discussions pursuant to the

> disapproved Agreement cannot be used by the PARTIES in said proceeding unless consent of the other party is obtained.
>
> **Section 8. No Admission of Liability**. The execution of this Agreement shall not constitute or be interpreted in any way as an admission or acknowledgment of error or liability by the **PARTIES**.
>
> **Section 9**. **Non-Performance**. The **PARTIES** agree that the failure of any **PARTY** to comply with any of the terms and conditions of this Agreement shall entitle the aggrieved **PARTY** to file an appropriate motion/action with the Honorable CTA for the immediate implementation and execution of the terms and conditions of this Agreement or the judgment or order of the Honorable CTA approving the same.
>
> **Section 10**. **Signatures and Counterparts**. This Agreement may be signed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which shall be taken together as a single instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, the Agreement shall have no effect and no party shall have any right or obligation hereunder.
>
> **IN WITNESS WHEREOF**, the **PARTIES** have hereto signed these presents on the date and at the place indicated hereunder.

ROXAS HOLDINGS, INC.	**BUREAU OF INTERNAL REVENUE**
By:	By:
(Signed) **VERONICA C. CORTEZ** Authorized Representative	(Signed) **HON. CAESAR R. DULAY** Commissioner of Internal Revenue

However, the other mandatory supporting documents attached to the Application for Compromise were mere photocopies, hence, under the Court's Resolution dated November 4, 2021, the parties were required to submit the proof of the approval of the National Evaluation Board (NEB) of said compromise agreement including the original or certified true copies of the following;

1. Application for Compromise citing the factual and legal compliance with the provisions of Section 204(A) of the 1997 National Internal Revenue Code (NIRC) as implemented by relevant Bureau of Internal Revenue (BIR) rules and regulations; *cm*

2. Certificate of Availment (BIR Form No. 2342) signed by the Commissioner of Internal Revenue (CIR) pursuant to Revenue Memorandum Order No. 03-17 dated February 1, 2017; and

3. Original copy or certified true copy of BIR Form No. 0605 with its eFPS Payment Details for deficiency Income Tax (IT), Value-Added Tax (VAT), Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), Final Withholding Tax (FWT), and Documentary Stamp Tax (DST).

On February 3, 2022, the parties submitted the original copy of the Certificate of Availment (Compromise Settlement) dated October 19, 2021[3] and the certified true copy of the Application for Judicial Compromise dated February 17, 2021[4].

The parties submitted also the original computer printout of BIR Form No. 0605[5] with attached eFPS Payment Details and Filing Reference Number Page for IT, VAT, WTC, EWT, FWT, and DST, to wit:

Type of Tax	**Compromise Amount**
Income Tax[6]	Php 18,009,080.40
Value-Added Tax[7]	3,692,601.92
Withholding Tax on Compensation[8]	744,813.88
Expanded Withholding Tax[9]	148,813.81
Final Withholding Tax[10]	802,298.17
Documentary Stamp Tax[11]	6,029,518.40
Total	**Php 29,427,126.58**

The Court noted the difference of the computed amount in Section 1 of the Compromise Agreement and the aggregate compromise amount immediately preceding which is higher by One Thousand Pesos (Php1,000.00). Records of the case disclosed that petitioner made an overpayment of Php1,000.00 for the EWT assessment.

[3] Docket, *Joint Compliance* dated February 3, 2022, unpaginated.
[4] *Id.*
[5] *Id.*
[6] Reference No. 292100042429188 filed on June 28, 2021.
[7] Reference No. 292100042429209 filed on June 28, 2021.
[8] Reference No. 292100042429239 filed on June 28, 2021.
[9] Reference No. 292100042429264 filed on June 28, 2021.
[10] Reference No. 292100042429289 filed on June 28, 2021.
[11] Reference No. 292100042429317 filed on June 28, 2021.

Thus, the *Motion for Approval of Compromise Agreement* was submitted for resolution.[12]

Section 204(A) of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* -
>
> The Commissioner may -
>
> (A) Compromise the payment of any internal revenue tax, when:
>
> > (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
> >
> > (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
>
> > For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
> >
> > For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
>
> Where the basic tax involved exceeds One million pesos (P1,000.000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners.

As culled from the above-cited provision, the following are the requisites for a valid compromise agreement:

1. The application for compromise is based on either the doubtful validity of respondent's assessment or taxpayer's financial incapacity to pay such assessment;

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[12] Docket, Resolution dated March 3, 2022, unpaginated.

2. In case the basis of the compromise offer is doubtful validity, the minimum payment of compromise settlement shall be at the rate equivalent to forty percent (40%) of the basic assessed tax, while if the ground is financial incapacity, the minimum payment should be at the rate equivalent to ten percent (10%) of the basic assessed tax; and

3. The approval of the NEB which is composed of the respondent and his four (4) Deputy Commissioners if the subject assessment exceeds One Million pesos (P1,000.000) or where the settlement offered is less than the prescribed minimum rates.

Implementing the foregoing section of the NIRC, **Revenue Regulations (RR) No. 30-2002** dated December 16, 2002, as amended by **RR No. 8-2004**, or the **"Revenue Regulations Implementing Section 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001**," provides for those cases that can be compromised or not, to wit:

> SEC. 2. CASES WHICH MAY BE COMPROMISED. - The following cases may, upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations, be the subject matter of compromise settlement, viz:
>
> 1. Delinquent accounts;
>
> 2. Cases under administrative protest after issuance of the Final Assessment Notice to the taxpayer which are still pending in the Regional Offices, Revenue District Offices, Legal Service, Large Taxpayer Service (LTS), Collection Service, Enforcement Service and other offices in the National Office;
>
> 3. **Civil tax cases being disputed before the courts**;
>
> 4. Collection cases filed in courts;
>
> 5. Criminal violations, other than those already filed in court or those involving criminal tax fraud.
>
> **EXCEPTIONS:**
>
> 1. Withholding tax cases, **unless the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold;**

xxx xxx xxx (*Emphasis supplied*)

As stated in the parties' Compromise Agreement and in the instant petition, petitioner is assailing the assessment for lack of factual and legal basis, hence, raising an issue of doubtful validity of assessment.

Section 3 of RR No. 30-2002, as amended, provides the instances when the ground of doubtful validity of assessment exists which include, *inter alia*, when "**the assessment seems to be arbitrary in nature, appearing to be based on presumptions and there is reason to believe that it is lacking in legal and/or factual basis" or "assessments made based on the best evidence obtainable rule and there is reason to believe that the same can be disputed by sufficient and competent evidence**."

Among the arguments raised in the petition, petitioner alleges that respondent based his alleged deficiency IT assessment on alleged discrepancy of sales/receipts per Summary List of Sales as compared to the Official Receipts and Letter Notice, while the alleged deficiency VAT assessment was based on the alleged understatement found by respondent without providing any empirical breakdown of the same.[13]

It is in this aspect that the doubtful validity of respondent's tax assessments is circumscribed considering that the latter failed to show evidence that indeed petitioner received a taxable income from any property, activity, or service equivalent to such alleged deficiency taxes. Absent any empirical evidence that the alleged differences in the data matching were indeed taxable income received by the petitioner, said deficiency assessments were mere presumptions.

In the case of *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*,[14] the Supreme Court ruled that the presumption of the correctness of an assessment, being a mere presumption, cannot be based on another presumption, to wit:

> The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such

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[13] Docket, CTA Case No. 10321, Vol. I, Petition for Review dated August 3, 2020.
[14] G.R. No. 136975, March 31, 2005.

> tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.
>
> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*

In the case of *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation et al.*[15], citing the case of *Collector of Internal Revenue v. Alberto D. Benipayo*[16], the Supreme Court likewise ruled that:

> An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be ...

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[15] G.R. No. L-46644, September 11, 1987.
[16] G.R. No. L-13656. January 31, 1962. om

> In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption ...

Thus, the first requisite under Section 204(A) of the 1997 NIRC, as amended, pertaining to the ground of doubtful validity is complied with.

As to the second requisite pertaining to the amount of compromise payment, the undated Final Decision on Disputed Assessment (FDDA)[17] shows that petitioner was assessed on the alleged deficiency IT, VAT, WTC, EWT, FWT, DST and administrative penalty in the total amount of One Hundred Sixty-Three Million Thirty-Six Thousand Two Hundred Thirty-Eight Pesos and 70/100 Pesos (Php163,036,238.70) inclusive of penalties and surcharges, to wit:

Tax Type	Basic Tax	Interest	Surcharge	Total Amount
IT	Php45,022,701.00	Php52,201,663.19		Php97,224,364.19
VAT	9,231,504.80	11,118,272.63		20,349,777.43
WTC	744,813.88	901,122.77		1,645,936.65
EWT	147,813.81	178,834.46		326,648.27
FWT	802,298.17	970,670.88	200,574.54	1,973,543.59
DST	15,073,796.00	22,467,723.57	3,768,449.00	41,309,968.57
Admin. Penalty			206,000.00	206,000.00
Total				Php163,036,238.70

Section 4(2) of RR No. 30-2002 provides that in cases of doubtful validity of assessment, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax should be assessed.

Applying the compromise formula under Section 204(A) of the 1997 NIRC, as amended, and implemented by Section 2 of RR No. 30-2002 on the IT, VAT, and DST assessments, the amount of compromise settlement should not be lower than Twenty-Seven Million Seven Hundred Thirty-One Thousand Two Hundred and 72/100 Pesos (Php27,731,200.72), broken down as follows:

Tax Type	Basic Tax	Compromise Rate	Compromise Amount
IT	Php45,022,701.00	40%	Php18,009,080.40

[17] Docket, Annex "I", Petition for Review, unpaginated.

VAT	9,231,504.80	40%	3,692,601.92
DST	15,073,796.00	40%	6,029,518.40
Total			Php27,731,200.72

Based on the foregoing, petitioner paid a total amount of Twenty-Seven Million Seven Hundred Thirty-One Thousand Two Hundred and 72/100 Pesos (Php27,731,200.72) for the alleged deficiency IT, VAT, and DST.

Thus, the compromise amounts paid for the alleged deficiency IT, VAT, and DST are equal to the minimum compromise rate of 40% and as such, payment by petitioner constitutes compliance with the second requisite.

Now as to the withholding tax (WHT) assessments of the FDDA, Section 2 of RR No. 30-2002 provides that withholding tax cases are exempted from the cases which may be compromised unless the applicant-taxpayer invokes provisions of law that cast doubt on its obligation to withhold.

Based on the records of the case, petitioner merely argued that it properly withheld taxes on compensation and that there is no underpayment of EWT. It also insisted that it has properly applied the applicable FWT for dividend payments to stockholders during the fiscal period ending June 30, 2010 and the same was remitted to the Bureau of Internal Revenue.

These are factual defenses and not a legal defense which invokes a provision of law that casts doubt on its obligation to withhold. Thus, failing to substantiate that it falls under the exception under Section 2 of RR No. 30-2002, the compromise of the withholding taxes is denied.

As to the last requisite, the approval of the NEB was necessary considering that the amount involved in this case was more than one million pesos. Section 6, first paragraph, of RR No. 30-2002 provides:

> **SEC. 6. APPROVAL OF OFFER OF COMPROMISE.** – Except for offers of compromise where the approval is delegated to the REB pursuant to the succeeding paragraph, all compromise settlements within the jurisdiction of the National Office (NO) shall be approved by **a majority of all the members of the NEB** composed of the Commissioner and the four (4) Deputy Commissioners. All decisions of the NEB, **granting the request of the taxpayer or favorable to**

> **the taxpayer**, shall have the concurrence of the Commissioner. xxx xxx xxx

In the instant case, the Certificate of Availment dated October 19, 2021 reveals that the compromise settlement has been approved by the NEB. Thus, the third requisite was properly complied.

In *Felipe O. Magbanua, et al. v. Rizalino Uy,*[18] the Supreme Court explains the nature of a compromise agreement, to wit:

> A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences and thus avoid or put an end to a lawsuit. They adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing.
>
> A compromise must not be contrary to law, morals, good customs and public policy; and must have been freely and intelligently executed by and between the parties. To have the force of law between the parties, it must comply with the requisites and principles of contracts. Upon the parties, it has the effect and the authority of res judicata, once entered into.
>
> When a compromise agreement is given judicial approval, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment.

Since it has the force and effect of a judgment, the Court is expected to examine the terms and conditions of a compromise agreement and affix its imprimatur that the same is in compliance with tax law and its implementing rules and regulations.

In *Philippine National Oil Company v. The Honorable Court of Appeals et al.*[19], the Supreme Court ruled that this Court has the jurisdiction to inquire whether the compromise agreement, being in the form of a contract, is in accordance with law, morals, good customs, public order, or public policy, to wit:

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[18] G.R. No. 161003, May 06, 2005.
[19] G.R. Nos. 109976 and 112800, April 26, 2005.

> D. *The BIR Commissioner's discretionary authority to enter into a compromise agreement is not absolute and the CTA may inquire into allegations of abuse thereof.*
>
> The foregoing discussion supports the CTA's conclusion that the compromise agreement between PNOC and the BIR was indeed without legal basis. Despite this lack of legal support for the execution of the said compromise agreement, PNB argues that the CTA still had no jurisdiction to review and set aside the compromise agreement. It contends that the authority to compromise is purely discretionary on the BIR Commissioner and the courts cannot interfere with his exercise thereof.
>
> It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with this Court having the last say on the matter.
>
> The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of "grave abuse of discretion and/or whimsical exercise of jurisdiction." The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.
>
> **The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained**. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246 of the NIRC of 1977, as amended, can only be exercised under certain circumstances specifically identified in said statutes. The BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them. (*Emphasis supplied*)

In *Strategic Alliance Development Corporation v. Radstock Securities Limited et al.*[20], the Court likewise stated that:

> "This Court is not, and should never be, a rubber stamp for litigants hankering to pocket public funds for their selfish private gain. This Court is the ultimate guardian of the public interest, the last bulwark against those who seek

[20] G.R. Nos. 178158 and 180428, December 04, 2009.

> to plunder the public coffers. This Court cannot, and must never, bring itself down to the level of legitimizer of violations of the Constitution, existing laws or public policy."

WHEREFORE, in the light of the foregoing, the parties' *Motion for Approval of Compromise Agreement* is hereby **PARTIALLY GRANTED**.

Accordingly, the **Compromise Agreement** dated July 13, 2021 entered into by the parties, as far as the IT, VAT, and DST assessments are concerned, is hereby **APPROVED**. The parties are hereby enjoined to faithfully comply with all the terms and conditions of the aforesaid Compromise Agreement.

As regards the amount of Php1,695,925.86 that has been paid by the petitioner for the WTC, EWT, and FWT assessments, the same can be credited against the subsisting WHT assessments in the amount of Three Million Nine Hundred Forty-Six Thousand One Hundred Twenty-Eight Pesos and 51/100 (Php3,946,128.51), computed as follows:

Tax Type	Basic Tax	Interest	Surcharge	Total Amount
WTC	Php744,813.88	Php901,122.77		Php1,645,936.65
EWT	147,813.81	178,834.46		326,648.27
FWT	802,298.17	970,670.88	200,574.54	1,973,543.59
Total				Php3,946,128.51
Less: Payment				
WTC			744,813.88	
EWT			148,813.81	
FWT			802,298.17	1,695,925.86
Amount Still Payable				**Php2,250,202.65**

This computation is without prejudice to any adjustment by respondent of any deficiency interest pursuant to Section 249(B) of the 1997 NIRC, as amended.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Judgment by Compromise Agreement were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

am

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

ROXAS HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10321

MEMBERS:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO, JJ.

PROMULGATED:

MAR 30 2022 2:34 pm

x - x

DISSENTING OPINION

DEL ROSARIO, P.J.:

I submit that the Motion for Approval of Compromise Agreement must be granted and that the Compromise Agreement must be approved in its entirety.

After a careful scrutiny of the records, I submit that the undated Formal Letter of Demand (FLD), Details of Discrepancies and Assessment Notices dated June 25, 2014 issued against petitioner, assessing it for deficiency income tax, value-added tax (VAT), documentary stamp tax (DST), withholding tax on compensation (WTC), expanded withholding tax (EWT) and final withholding tax (FWT) for the fiscal year (FY) ending June 30, 2010 are patently of doubtful validity.

The FLD, Details of Discrepancies and Assessment Notices were issued before the lapse of the fifteen (15)-day period within which petitioner may reply to the Preliminary Assessment Notice (PAN). The undated PAN was received by petitioner on June 16, 2014.[1] Petitioner

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[1] First Whereas Clause, Compromise Agreement.

had fifteen (15) days or until July 1, 2014 within which to file its reply thereto. On June 26, 2014 or even before petitioner could file its reply to the PAN, petitioner received the FLD, Details of Discrepancies and Assessment Notices.[2]

The FLD and its Details of Discrepancies *vis-à-vis* the PAN and its Details of Discrepancies are verbatim reproductions of the wordings of the PAN and its Details of Discrepancies. This circumstance alone casts doubt on the validity of the FLD and Assessment Notices as so decreed in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* and *Avon Products Manufacturing Inc. vs. Commissioner of Internal Revenue.*[3]

Compromise settlement of income tax, value-added tax (VAT) and documentary stamp tax (DST)

Considering that the *(i)* FLD and Assessment Notices are manifestly of doubtful validity, *(ii)* petitioner paid 40% of the basic deficiency income tax, VAT and DST assessments, and *(iii)* the compromise was approved by respondent and the National Evaluation Board, I submit that the Compromise Agreement involving the subject deficiency income tax, VAT and DST must be approved.

Compromise settlement of withholding tax on compensation (WTC), expanded withholding tax (EWT) and final withholding tax (FWT)

With regard to the compromise of the deficiency WTC, EWT and FWT, the *ponencia* denies the same on the ground that petitioner failed to prove that it falls under the exception provided in Section 2 of Revenue Regulations (RR) No. 30-2002, as amended, that is, withholding tax cases may be compromised only when the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold.

With due respect, I am constrained to withhold my assent.

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[2] Second Whereas Clause, Compromise Agreement.
[3] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Records show that petitioner paid 100% of the basic deficiency WTC, EWT and FWT, and applied for a compromise which was approved by respondent and the National Evaluation Board.

While petitioner applied for compromise under Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, I find the provisions of Section 204(B) of the NIRC of 1997, as amended, and as implemented by RR No. 13-2001, with regard to the abatement or cancellation of tax liability applicable.

Section 204(B) of the NIRC of 1997, as amended, states:

> "Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* -
>
> The Commissioner may –
>
> xxx xxx xxx.
>
> (B) Abate or cancel tax liability, when:
>
> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or
>
> (2) The administration and collection costs involved do not justify the collection of the amount due."

Sections 2, 3 and 4 of RR No. 13-2001 provide:

> SECTION 2. Instances When the Penalties and/or Interest Imposed on the Taxpayer May Be Abated or Cancelled on the Ground That the Imposition Thereof is Unjust or Excessive. —
>
> 2.1 When the filing of the return/payment of the tax is made at the wrong venue;
>
> 2.2 When taxpayer's mistake in payment of his tax is due to erroneous written official advice of a revenue officer;
>
> 2.3 When taxpayer fails to file the return and pay the tax on time due to substantial losses from prolonged labor dispute, force majeure, legitimate business reverses such as in the following instances, provided, however, that the abatement shall only cover the surcharge and the compromise penalty and not the interest imposed under Section 249 of the Code:
>
> 2.3.1 Labor strike for more than six (6) months which has caused the temporary shutdown of business;
>
> 2.3.2 Public turmoil;

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2.3.3 Natural calamity such as lightning, earthquake, storm, flood and the like;

2.3.4 Armed conflicts such as war or insurgency;

2.3.5 Substantial losses sustained due to fire, robbery, theft, embezzlement;

2.3.6 Continuous heavy losses incurred by the taxpayer for the last two (2) years;

2 3.7 Liquidity problem of the taxpayer for the last three (3) years; or

2.3.8 Such other instances which the Commissioner may deem analogous to the enumeration above.

2.4 When the assessment is brought about or the result of taxpayer's non-compliance with the law due to a difficult interpretation of said law;

2.5 When taxpayer fails to file the return and pay the correct tax on time due to circumstances beyond his control, provided, however, that abatement shall cover only the surcharge and the compromise penalty and not the interest;

2.6 Late payment of the tax under meritorious circumstances such as those provided hereunder:

2.6.1 One day late filing and remittance due to failure to beat bank cut-off time:

2.6.2 Use of wrong tax form but correct amount of tax was remitted;

2.6.3 Filing an amended return under meritorious circumstances, provided, however, that abatement shall cover only the penalties and not the interest;

2.6.4 Surcharge erroneously imposed;

2.6.5 Late filing of return due to unresolved issue on classification/valuation of real property (for capital gains tax cases, etc.);

2.6.6 Offsetting of taxes of the same kind, i.e., overpayment in one quarter/month is offset against underpayment in another quarter/month;

2.6.7 Automatic offsetting of overpayment of one kind of withholding tax against the underpayment in another kind;

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2.6.8 Late remittance of withholding tax on compensation of expatriates for services rendered in the Philippines pending the issuance by the Securities and Exchange Commission of the license to the Philippine branch office or subsidiary, provided, however, that the abatement shall only cover the surcharge and the compromise penalty and not the interest;

2.6.9 Wrong use of Tax Credit Certificate (TCC) where Tax Debit Memo (TDM) was not properly applied for; and

2.6.10 Such other instances which the Commissioner may deem analogous to the enumeration above.

2.7 Other cases similar or synonymous thereto.

SECTION 3. Instances When the Tax Liabilities, Penalties and/or Interest Imposed on Taxpayer May Be Abated or Cancelled on the Ground that the Administration and Collection Costs Are More Than the Amount Sought to be Collected. — When the administrative and collection costs, including cost of litigation, are much more than the amount that may be collected from the taxpayer, the assessment may be reduced through abatement, or entirely cancelled pursuant to Section 204(B) of the Code. The instances that may fall under this category are the following:

3.1 Abatement of penalties on assessment confirmed by lower court but appealed by the taxpayer to a higher court;

3.2 Abatement of penalties on withholding tax assessment under meritorious circumstances;

3.3 Abatement of penalties on delayed installment payment under meritorious circumstances;

3.4 Abatement of penalties on assessment reduced after reinvestigation but taxpayer is still contesting reduced assessment; and

3.5 Such other instances which the Commissioner may deem analogous to the enumeration above.

For items 3.1 to 3.4 above, the abatement of the surcharge and compromise penalty shall be allowed only **upon written application by the taxpayer signifying his willingness to pay the basic tax and interest or <u>basic tax only</u>, whichever is applicable under the prevailing circumstance**.

SECTION 4. The Commissioner Has the Sole Authority to Abate or Cancel Tax, Penalties and/or Interest. — The Commissioner has the sole authority to abate or cancel internal revenue taxes, penalties and/or interest pursuant to Section 204(B), in relation to Section 7(c), both of the Code. **This authority is generally applicable to <u>surcharge and compromise penalties</u> only, however, <u>in meritorious instances</u>, the Commissioner may likewise <u>abate the interest</u> as well as basic tax assessed,**

> **provided, however, that cases for abatement or cancellation of tax, penalties and/or interest by the Commissioner shall be coursed through the following officials**:
>
> 4.1 The Deputy Commissioner (Operations Group), who shall constitute a Technical Working Committee (TWC) for the evaluation and review of any application for abatement or cancellation of tax, penalties and/or interest processed by the Revenue District Office (RDO) as reviewed by the Regional Office (RO), or by the Large Taxpayers' Service's Collection or Audit Division and Large Taxpayers District Office (LTDO) as reviewed by the Large Taxpayers Service (LTS), or by Collection Enforcement Division/Withholding Agent and Monitoring Division as reviewed by the Collection Service, or by the Legal Service, or any other office that has jurisdiction over the case; and
>
> 4.2 The Deputy Commissioner (Legal and Inspection Group), who shall evaluate the legal issue involved in the case.
>
> The application for abatement or cancellation of tax, penalties and/or interest should state the reasons and causes for such request. Documentary proofs for the underlying reasons and causes aforestated should be appended to the 'Application for Abatement or Cancellation of Tax, Penalties and/or Interest' (Annex 'A'). On the other hand, denial of the application for abatement or cancellation of tax, penalties and/or interest should state the reasons therefor." *(Boldfacing and underscoring supplied)*

In meritorious cases, respondent may abate or cancel internal revenue taxes, interest, penalties and surcharge pursuant to Sections 7(c) and 204(B) of the NIRC of 1997, as amended, as implemented by RR No. 13-2001. In my view, the patently doubtful validity of the deficiency WTC, EWT and FWT assessments is sufficient to justify the abatement or cancellation of the surcharges, interests and penalties imposed thereon.

Considering petitioner's payment of the 100% basic WTC, EWT and FWT, and the approval thereof by respondent and the National Evaluation Board, I submit that respondent has effectively abated or cancelled the interest, penalties and surcharge arising from the WTC, EWT and FWT assessments. Thus, I find it unnecessary to require petitioner to further prove that in paying 100% of the basic deficiency WTC, EWT and FWT assessments, it is invoking as a defense a provision of law that casts doubt on its obligation to withhold under Section 2 of RR No. 30-2002, as amended. Such requirement is not present in abatement or cancellation of surcharges, interests and penalties by respondent.

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All told, I VOTE to GRANT the Motion for Approval of Compromise Agreement and APPROVE the Compromise Agreement in its entirety.

ROMAN G. DEL ROSARIO
Presiding Justice