REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

BATANGAS ELECTRIC I COOPERATIVE 1 (BATELEC 1),
Respondent.

CTA *EB* NO. 1939
(CTA Case No. 8423)

Present:

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

Promulgated:
FEB 19 2021 11:25

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RESOLUTION

For resolution is petitioner's *Motion for Partial Reconsideration (Re: Decision promulgated 8 July 2020)* posted on July 27, 2020 and received by the Court on August 26, 2020 with respondent's *Comment* posted on October 19, 2020 and received by the Court on October 27, 2020.

Petitioner seeks partial reconsideration of the Court's Decision promulgated on July 8, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** the Petition for Review is **DENIED**, for lack of merit. Accordingly, the Amended Decision dated June 1, 2018 rendered by the Third Division of this Court in CTA Case No. 8423 and its Resolution dated September 5, 2018, are hereby **AFFIRMED.**
>
> **SO ORDERED."**

Petitioner prays that the Decision dated July 8, 2020 be reconsidered on the sole ground that the Court E*n Banc* allegedly erred in ruling that respondent is not liable to pay the compromise penalty in the amount of Php56,000.00.

Petitioner disagrees with the aforesaid ruling and cites Section 225 of the 1997 National Internal Revenue Code (NIRC), as amended, which supposedly provides that a taxpayer who fails to file its tax return and pay the tax due is liable to pay compromise penalties. He further supports his argument by the provisions of Revenue Memorandum Order (RMO) No. 7-2015 in relation to RMO No. 1-90 which contains the Revised Consolidated Schedule of Compromise Penalties for violations of the 1997 NIRC, as amended.

Petitioner avers that the imposition of surcharge, deficiency and delinquency interest plus compromise penalties has legal and factual basis as affirmed by the Supreme Court in the case of *CIR vs. Filinvest Development Corporation,*[1] which involves a deficiency tax assessment for documentary stamp tax (DST) issued against Filinvest. Petitioner invokes the doctrine of *stare decisis et non quieta movere* to compel the Court to follow the aforesaid ruling in the *Filinvest* case and likewise impose the compromise penalties on respondent.

In its Comment to petitioner's motion, respondent contradicts the reliance of petitioner on Section 225 of the 1997 NIRC, as amended, and asserts that said provision of law does not even mention the word "compromise" and neither does said word appear in Sections 250 and 255 of the 1997 NIRC, as amended, making the allegations of petitioner bereft of any legal basis.

Respondent mentions the fact that the word "compromise" only appears in Sections 6, 7, 204, 216, 282 and 290 of the 1997 NIRC, as amended, all of which implies the existence of an agreement between the taxpayer and the Commissioner of Internal Revenue (CIR). Respondent simplifies its argument by stating that a compromise implies an agreement, hence in the absence of one, there is no basis for the imposition of compromise penalty.

After a careful consideration of the allegations and arguments of petitioner in his *Motion for Partial Reconsideration*, the Court finds that it contains a reiteration of the same issue

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[1] G.R. No. 163653, July 19, 2011.

already resolved in favor of respondent in the assailed Decision. Nonetheless, for emphasis and fresh recollection of the petitioner, the Court reiterates the disquisitions in the assailed Decision relative to the nature of a compromise penalty.

The Amended Decision promulgated by the Third Division of this Court on June 1, 2018 upheld the tax deficiency assessments issued against (then) petitioner Batangas Electric 1 Cooperative 1 (Batelec 1) but ruled that the partial payment of petitioner in the amount of Php17,081,872.47 be deducted from its entire tax liabilities. The CIR, however insisted that a compromise penalty be added to the amount to be paid by Batelec 1 pursuant to the RMO No. 7-2015. The Court in Division disagreed with the CIR on the ground that a compromise penalty may be imposed only if the taxpayer has agreed or consented to such imposition and since taxpayer in the instant case did neither, then there is no legal basis to impose said compromise penalty.

The Court *En Banc* agreed with the Court in Division and elaborated on the nature of a compromise penalty to clarify its position, and we quote:

> More importantly, jurisprudence has also acknowledged the imposition of a compromise penalty for violations of the NIRC **but with a condition that it can only be collected or imposed by agreement between the taxpayer and the tax authorities.** In the case of *Wonder Mechanical Engineering Corporation vs. the Court of Tax Appeals,*[2] the Supreme Court (quoting the decision of respondent CTA) ruled that a "compromise penalty cannot be imposed without an agreement or conformity of a taxpayer." In the cited case of *CIR vs. Lianga Bay Logging Co. Inc.*[3], the Supreme Court again reiterated that the imposition of a compromise penalty "without the conformity of a taxpayer is illegal and unauthorized." The fact that the BIR uses the term "compromise penalty" connotes that there should have been prior conformity by the taxpayer. Compromise implies agreement. One party cannot impose it upon the other.[4]
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> Even the BIR, in RMO No. 19-2007 acknowledges that the compromise penalty is an amount that should not form part of the assessment notice and that the payment thereof should be *suggested* to the taxpayer in order to avoid criminal prosecution which opens up the possibility that the taxpayer

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[2] G.R. Nos. L-22805 and L-27858, June 30, 1975.
[3] G.R. No. L-35266, January 21, 1991.
[4] CIR vs. Armando Abad and the CTA, G.R. No. L-19627, June 27, 1968.

may refuse to pay such an amount. We quote the relevant portions of RMO 19-2007, thus:

"RMO No. 19-2007

III. Guidelines and Instructions

4. Although all amounts of compromise penalties incident to violations shall be itemized in the assessment notice and/or demand letter, **the same should not form part of assessement notice that reflects deficiency basic tax, surcharge and interest but should appear in a separate assessment notice/demand letter as the amount suggested to the taxpayer to pay in lieu of criminal prosecution.** If paid, the compromise penalties shall be collected and accounted for under the usual procedures, as internal revenue collection.

5. Since compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer, the violation shall be referred to the appropriate office for criminal action **in the event that a taxpayer refuses to pay the suggested compromise penalty.** (emphasis supplied)

Based on the above disquisitions on the nature of a compromise penalty, the CIR's argument in its Petition for Review in the instant case must fail. There is no evidence offered by the CIR to prove that the taxpayer Batelec 1 agreed to pay any compromise penalty as correctly ruled by the Court in Division in the assailed Amended Decision, therefore it cannot be made to pay said penalty, and we quote:

"The case of *CIR vs. Lianga Bay Logging Co., Inc., et.al.,* is a case in point where the Supreme Court held that the imposition of compromise penalty without the conformity of the taxpayer is illegal and unauthorized. **It follows that a compromise penalty may be imposed if the taxpayer agreed to it, and there is nothing in the records which would show that petitioner consented to the compromise penalty."** (emphasis supplied)

It bears emphasis that even the Bureau of Internal Revenue (BIR) in the afore-cited RMO No. 19-2007 acknowledges that the compromise penalty should not form part of the assessment notice and that payment thereof should be merely suggested to the taxpayer and that the latter should assent to it as a condition for its imposition.

WHEREFORE, premises considered, the Motion for Partial Reconsideration posted by petitioner CIR on July 27, 2020 is **DENIED** for lack of merit. Accordingly, the Decision promulgated by the Court *En Banc* on July 8, 2020 is **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice