REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

UNITED COCONUT PLANTERS BANK, *Petitioner,*	**CTA CASE NO. 8945**
-versus-	**Members:** **BAUTISTA,** Chairperson; **FABON-VICTORINO,** **RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	**Promulgated:** MAR 20 2018 10:12 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This is a Petition for Review (with Motion/Prayer for Suspension of Collection of Tax) filed on December 15, 2014 by United Coconut Planters Bank (Petitioner) against the Commissioner of Internal Revenue (Respondent) to nullify the Notice of Denial dated October 29, 2014 issued against it, insofar as it is ordered to pay the aggregate amount of One Hundred Thirty-Two Million Seven Hundred Seventy-Three Thousand Eight Hundred Seventy-Six Pesos and 27/100 (Php132,773,876.27), inclusive of surcharge and legal interest, which corresponds to the total tax deficiencies for gross receipts tax (GRT) and final tax (FT) on onshore income of Php140,772,691.60 for 1999 and 2001, net of the amount of Php7,998,815.33 paid as an offer of compromise for the alleged deficiency taxes for the covered period.

The Facts

Petitioner is a local banking corporation duly organized and existing under Philippine laws, with principal office address at UCPB Building, 7907 Makati

Avenue, Makati City.[1] It is authorized to operate as an expanded commercial bank by the *Bangko Sentral ng Pilipinas* (BSP).[2]

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997 or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner was assessed for various deficiency taxes for the years 1997, 1998, 1999[3], 2000[4], and 2001[5].[6]

On May 23, 2006, January 26, 2007 and May 17, 2007, Petitioner submitted to Respondent separate applications/offer for compromise of its supposed deficiency GRT and FT liabilities for the years 1999, 2000, and 2001 in the total amount of Php264,363,652.44 on the ground of financial incapacity, and offering to pay ten percent (10%) of the assessments against it.[7]

On November 13, 2014, Petitioner received a Notice of Denial[8] dated October 29, 2014 from Respondent, stating that the application/offer for compromise settlement for the years 1999, 2000, and 2001 in relation to its deficiency GRT and FT liabilities in the total amount of Php264,363,652.44, has been disapproved for lack of factual basis by the National Evaluation Board (NEB), which was chaired by Respondent.

On November 27, 2014, Petitioner filed with Respondent a Request for Reconsideration of the Notice of Denial dated October 29, 2014, reiterating its financial incapacity that was prevailing at the time the two applications for compromise settlement were filed in 2007, and even at present.[9]

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[1] Exhibit "P-1", docket vol. 5, pp. 2480-2493.
[2] Par. 1.1, Joint Stipulation of Facts and Issues (JSFI), docket vol. 5, p. 2316.
[3] Exhibit "P-3", docket vol. 5, pp. 2495-2500.
[4] Exhibit "P-4", docket vol. 5, pp. 2501-2503.
[5] Exhibit "P-5", docket vol. 5, pp. 2504-2512.
[6] Par. 3, JSFI, docket vol. 5, p. 2317.
[7] Par. 4, JSFI, docket vol. 5, p. 2317; Exhibits "P-6", "P-10", and "P-12", docket vol. 5, pp. 2513-2517, 2524-2538, and 2541-2557.
[8] Par. 5, JSFI, docket vol. 5, p. 2317; Exhibit "P-2", docket vol. 5, p. 2494.
[9] Par. 7, JSFI, docket vol. 5, p. 2318.

Due to Respondent's inaction on its Request for Reconsideration, Petitioner filed the instant Petition for Review[10] (with Motion/Prayer for Suspension of Collection of Tax) on December 15, 2014.[11]

The subject matter of the instant petition is limited to the said notice of denial of the offer of compromise of Petitioner's alleged deficiency GRT in 1999 and 2001 and deficiency FT on onshore income in 2001, in the aggregate amount of Php140,772,691.60, less payments made on the compromise in the amount of Php7,998,815.33, details of which are shown below:[12]

TAX TYPE/ YEAR	AMOUNT			
	BASIC	INTEREST	TOTAL	OFFER OF COMPROMISE (10% OF BASIC TAX)
Gross Receipts Tax - 1999	64,010,540.40	44,940,072.20	108,950,612.60	6,401,054.04
Gross Receipts Tax - 2001	2,170,564.47	2,152,476.43	4,323,040.90	217,056.45
Final Tax – Onshore Income - 2001	13,807,048.42	13,691,989.68	27,499,038.10	1,380,704.84
TOTAL	**79,988,153.29**	**60,784,538.31**	**140,772,691.60**	**7,998,815.33**

On February 11, 2015, Respondent filed a Motion for Leave to Admit Attached Comment with Motion to Dismiss[13]. This was granted by the Court during the hearing on February 16, 2015.[14] Petitioner's Motion/Prayer for Suspension of Collection of Tax was then deemed submitted for resolution.

Within the extended time granted by the Court[15], Respondent filed his Answer[16] through registered mail on February 23, 2015 and received by the Court on March 2, 2015. Respondent interposed the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

[10] Docket vol. 1, pp. 1-32.
[11] Par. 8, JSFI, docket vol. 5, p. 2318
[12] Par. 6, JSFI, docket vol. 5, p. 2317.
[13] Docket vol. 3, pp. 1129-1132.
[14] Minutes of the Hearing dated February 16, 2015, docket vol. 3, p. 1141.
[15] Resolution dated January 28, 2015, docket vol. 3, p. 1127.
[16] Docket vol. 3, pp. 1171-1179.

4. Respondent hereby reiterates and re-pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.

THE PETITION STATES NO CAUSE OF ACTION

5. The petition states no cause of action. As Petitioner admits in paragraph 20 of the petition as well as in its verification, within fifteen (15) days from receipt of the Notice of Denial, it filed a Motion for Reconsideration with the Office of the Commissioner. This motion is allegedly still pending resolution. Hence, the cause of action has not accrued.

6. Also, it is apparent that Petitioner seeks the overturn of the denial of its compromise offer of unprotested assessments and that its payment of Php7,998,815.33 be deemed full payment of its liability for deficiency GRT in 1999 and 2001, and deficiency Final Tax - Onshore Income in 2001. Simply stated, it is seeking a judicial order that would compel Respondent to enter into a compromise agreement with Petitioner.

7. Respondent avers that there is no act or omission that gives right to a cause of action in a person's refusal to enter into a compromise agreement. As held by the Supreme Court:

> 'A compromise is contractual in nature and a party's consent or refusal to give such is entirely discretionary. And it is perfectly within its exclusive right to accept or reject the same.'

As can be seen, there is nothing wrong or right in entering or refusing to enter into a compromise agreement. Any which way one chooses, that person would still be in the correct exercise of his or her rights. Hence, there can never be a cause of action.

8. A person who refuses to enter into a compromise agreement cannot be compelled or coerced to do so. **Article 2028 of the New Civil Code** characterizes a compromise agreement as a contract stating:

> 'Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.'

9. It must be emphasized that, an essential requisite of a contract is consent. <u>To be valid, such consent must be voluntary and not coerced by court action</u>. As held by the Honorable Supreme Court:

> 'Consent is an essential requisite of contracts as it pertains to the meeting of the offer and the acceptance upon the thing and the cause which constitute the contract. To create a valid contract, the meeting of the minds must be free, voluntary, willful and with a reasonable understanding of the various obligations the parties assumed for themselves.'

Since a judicially coerced consent is actually the opposite of true consent, then it is actually impossible to attain this essential voluntary contractual requisite by forcing such via court action. This suffers from the same ridiculous infirmity of suing a person to enter into a marriage contract.

10. Again, there is no actionable wrong in this case. Respondent cannot be forced to enter into a compromise agreement with Petitioner.

THE HONORABLE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER

11. In **City of Dumaguete vs. Philippine Ports Authority, G.R. No. 168973, August 24, 2011**, the Highest Court has stressed:

> 'What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.'

12. Here, Petitioner claims in paragraph 1 of its petition, this is a Petition for Review pursuant to Section 7 of Republic Act (R.A.) No. 1125. It includes a motion for prohibition and/or the suspension of collection of taxes. Verily, the subject matter of the main action is stated in paragraph 7.2 of the petition as follows:

> '7.2 The subject matter of the instant petition will be limited to the notice of denial of the offer of compromise of alleged deficiency GRT in 1999 and 2001, and deficiency Final Tax - Onshore Income in 2001 due from Petitioner, in the aggregate amount of Php140,772,691.60 less payments made on the compromise in the amount of Php7,998,815.33.'

13. And as a factual background for the subject matter, it states in paragraphs 3, 4, and 5 of the petition as follows:

> '3. Petitioner UCPB was assessed for various deficiency taxes for the years, 1997, 1998, 1999, 2000, and 2001.
>
> 4. On various dates, Petitioner, submitted to Respondent applications/offer for compromise of its supposed deficiency gross receipts and final tax liabilities for the years 1999, 2000, and 2001 in the total amount of Php264,363,652.44 on the ground of financial incapacity and offering to pay 10% of the assessments against.
>
> 5. On 13 November 2014, United Coconut Planters Bank ("UCPB") received a Notice of Denial dated 29 October 2014 declaring that the application/offer for compromise settlement of UCPB for the years 1999, 2000, and 2001 in relation to its deficiency gross receipts and final tax liabilities in the total amount of Php264,263,652.44 on the ground of financial incapacity has been disapproved by the National Evaluation Board ("NEB") chaired by Respondent CIR, upon the recommendation of the Technical Working Group ("TWG") of the BIR for lack of factual basis.'

14. Specifically, Petitioner seeks to nullify the refusal of Respondent to accept its offer of compromise on the ground of financial incapacity. This is plainly stated in paragraphs 42 and 43 of the petition as follows:

> '42. It should be noted that despite the change in auditors throughout the years, the qualified opinions issued by UCPB's different auditors are substantially the same in stating that had UCPB booked its assets, liabilities, gains and losses in accordance with PFRS, its networth would have been substantially decreased by said liabilities and losses.
>
> 43. From the foregoing, it is obvious that Respondent CIR committed a grave error, actually a grave abuse of discretion, in denying Petitioner's application/offer of compromise settlement of tax liabilities.'

15. Nullifying Respondent's refusal to accept its offer of compromise is parenthetically obliging Respondent to accept its offer of compromise. With all due respect, this Honorable Court has no jurisdiction to determine whether offers to compromise tax liabilities are acceptable to the State.

16. The authority of the Commissioner of Internal Revenue to enter into compromise agreements is enshrined in **Section 204 of the National Internal Revenue Code of 1997, as amended,** which states:

> **'SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes**
>
> **(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 (Php1,000,000) 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.
>
> xxx xxx xxx
>
> **The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: Provided, That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to determine that said powers are reasonably exercised and that the government is not unduly deprived of revenues.'** (Emphasis Supplied)

17. Now, in consonance with her power to enter into compromise agreements is her duty to render a report to the Chairmen of the Committee on Ways and Means of both Senate and House of Representative every six (6) months.

18. The said Committee determines whether the Commissioner in the exercise of her power to enter into compromise agreements reasonably exercised her duty and that the government is not unduly deprived of revenues.

19. The exercise by the Commissioner of her power to enter into compromise agreements is final and subject only to the oversight of the Committee on Ways and Means.

20. The above quoted provision clearly shows that the power to compromise tax liabilities is a purely executive function delegated by the legislature and cannot in any way be appealed to the Honorable Court. It is an act of mercy extended by way of extreme exception by the legislature. Compassion cannot be obtained by suit. This is not a justiciable issue and clearly outside the jurisdiction of the Honorable Court.

JURISDICTION OF THE COURT OVER THE SUBJECT MATTER OF THE ACTION IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT AND THE CHARACTER OF THE RELIEF SOUGHT

21. In pleadings filed in courts of special jurisdiction, the special facts giving the court jurisdiction must be specially alleged and set out.

22 Verily the causal factor of Petitioner's action is Respondent's refusal to enter into a compromise agreement. Hence, there is no appealable decision to annul collection or a decision on disputed assessment that will give jurisdiction to this Honorable Court to decide the case. As admitted by Petitioner –

> '7.2 **<u>The subject matter of the instant petition will be limited to the notice of denial of the offer of compromise</u>** of alleged deficiency GRT in 1999 and 2001, and deficiency Final Tax - Onshore Income in 2001 due from Petitioner, in the aggregate

> amount of Php140,772,691.60 less payments made on the compromise in the amount of Php7,998,815.33.' (Emphasis supplied)

And as one of its petitory reliefs:

> 'Upon due consideration, the Notice of Denial dated 29 October 2014 issued against UCPB insofar as it orders UCPB to pay the aggregate amount of ONE HUNDRED THIRTY TWO MILLION SEVEN HUNDRED SEVENTY THREE THOUSAND EIGHT HUNDRED SEVENTY SIX AND 27/100 PESOS (Php132,773,876.27) xxx be ANNULED and SET ASIDE.'

23. Also, at the point of being repetitive, there is lack of cause of action here. As Petitioner admits in paragraph 20 of the petition as well as in its verification, within fifteen (15) days from receipt of the Notice of Denial, it filed a Motion for Reconsideration with the Office of the Commissioner. This motion is allegedly still pending resolution. There exists that vice of prematurity

24. In **Zamora vs. CA, 183 SCRA 279, 285, March 19, 1990**, the Highest Tribunal ruled that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action."

On March 9, 2015, Petitioner filed a Motion to Admit Attached Reply[17]. The motion was granted by the Court in the Resolution[18] dated March 16, 2015 and Petitioner's Reply[19] was admitted to form part of the records of the case.

In the Resolution[20] dated April 13, 2015, the Court denied Respondent's Motion to Dismiss for lack of merit. Moreover, the Court granted Petitioner's Motion to Suspend Collection of Taxes, provided that Petitioner files a surety bond equivalent to one and a half (1 ½) times the amount sought to be collected.

[17] Docket vol. 3, pp. 1183-1186.
[18] Docket vol. 3, p. 1200.
[19] Docket vol. 3, pp. 1187-1196.
[20] Docket vol. 3, pp. 1202-1213.

On May 6, 2015, Petitioner submitted the required surety bond and its supporting documents in its Compliance (With Profuse Apologies)[21].

The Pre-Trial Conference was set on August 25, 2015.[22] Consequently, the Pre-Trial Brief for the Respondent[23] and Petitioner's Pre-Trial Brief[24] were both filed on August 20, 2015.

The parties filed their Joint Stipulation of Facts and Issues[25] on September 18, 2015. This was adopted by the Court in the Pre-Trial Order[26] dated October 6, 2015, which also terminated the Pre-Trial.

During trial, Petitioner presented its witnesses: Ms. Cynthia A. Almirez[27], Petitioner's Controller and First Vice President for the Controllership Division; and Ms. Jennifer Anne C. Cabral[28], Petitioner's Head of the Tax Management and Compliance Department.

Petitioner filed its Formal Offer of Documentary Exhibits[29] on July 22, 2016. In the Resolution[30] dated August 9, 2016, the Court admitted Exhibits "P-1", "P-2", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-30-a", "P-31", "P-31-a", "P-32", "P-33", and "P-34". However, the Court denied Exhibits "P-3" and "P-4" for being merely photocopies of the original.

On August 25, 2016, Petitioner filed a Motion for Partial Reconsideration of the Resolution dated 9 August 2016[31], praying for the admission of Exhibits "P-3" and "P-4" as secondary evidence. This was granted by the Court in the Resolution[32] dated October 18, 2016, and Exhibits "P-3" and "P-4" were admitted to form part of Petitioner's evidence.

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[21] Docket vol. 3, pp. 1214-1218.
[22] Notice of Pre-Trial Conference, docket vol. 3, pp. 1250-1251.
[23] Docket vol. 3, pp. 1252-1256.
[24] Docket vol. 3, pp. 1264-1281.
[25] Docket vol. 5, pp. 2316-2327.
[26] Docket vol. 5, pp. 2332-2339.
[27] Minutes of the Hearing dated October 27, 2015, docket vol. 5, p. 2340; Judicial Affidavit of Cynthia Almirez, docket vol. 3, pp. 1282-1297.
[28] Minutes of the Hearing dated November 24, 2015, docket vol. 5, p. 2363; Judicial Affidavit of Jennifer Cabral, docket vol. 8, pp. 3496-3511.
[29] Docket vol. 5, pp. 2468-2477.
[30] Docket vol. 8, pp. 3561-3562.
[31] Docket vol. 8, pp. 3563-3568.
[32] Docket vol. 8, pp. 3575-3578.

During the hearing on February 6, 2017, Respondent, through counsel, manifested that he has no evidence to present.[33]

On March 8, 2017, Respondent filed a Manifestation[34] stating that in lieu of filing a Memorandum, he is adopting his Answer to the Petition for Review dated February 18, 2015 as his Memorandum. Petitioner filed its Memorandum[35] through registered mail on March 8, 2017, which was received by the Court on March 16, 2017. Thus, in the Resolution[36] dated March 22, 2017, the Court declared the instant case submitted for decision.

The Issues

The parties stipulated the following issues to be resolved by this Court:[37]

1. Whether this Honorable Court has jurisdiction to try and hear the case;

2. Whether Petitioner has cause of action against Respondent;

3. Whether Petitioner is liable for the amount of Php132,773,876.27 for GRT and FT for taxable years 1999 and 2001.

4. Whether or not Respondent's right to collect the alleged tax deficiencies of Petitioner for GRT for taxable years 1999 and 2001, and the FT on onshore income for taxable year 2001, has already prescribed.

5. Whether or not Petitioner has provided clear proof that it is suffering from financial incapacity and is thus entitled under the law and pertinent BIR regulations for the approval of its offer of compromise agreement, allowing it to settle its tax obligations by paying only 10% of the amounts assessed by the BIR.

Discussion/Ruling

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[33] Minutes of the Hearing dated February 6, 2017, docket vol. 8, p. 3581.
[34] Docket vol. 8, pp. 3583-3585.
[35] Docket vol. 8, pp. 3588-3623.
[36] Docket vol. 8, p. 3628.
[37] Statement of Issues, JSFI, docket vol. 5, p. 2318.

The Court has jurisdiction over the present case.

Respondent argues that the Court lacks jurisdiction to rule on the instant Petition for Review on the ground that it has no jurisdiction to determine whether offers to compromise tax liabilities are acceptable to the State. He contends that nullifying Respondent's refusal to accept Petitioner's offer of compromise is practically forcing Respondent to accept the same. Respondent asserts that his power to enter into a compromise agreement is final and subject only to the oversight of the Committee on Ways and Means of both houses of Congress.

Contrary to Respondent's argument, Petitioner contends that this Court has jurisdiction. Petitioner alleges that the case is an appeal pursuant to Section 7 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, which grants the Court of Tax Appeals (CTA) exclusive appellate jurisdiction over decisions of the BIR Commissioner in cases involving matters arising under the NIRC of 1997 or other laws administered by the BIR such as the instant case.

We agree with the Petitioner.

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[38] The jurisdiction of the CTA is conferred by R.A. No. 1125, as amended by R.A. No. 9282, the pertinent provision of which states:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;**" *(Emphasis supplied)*

[38] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.

In relation thereto, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

Applying the foregoing provisions, the Supreme Court in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[39] made the following pronouncement:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision [Section 7(1) of Republic Act 1125] covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected."

Further, Section 11 of R.A. No. 1125, as amended by R.A. Nos. 9282 and 9503, expresses that any party adversely affected by a decision or ruling of the Commissioner of Internal Revenue may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.

In the present case, the Notice of Denial dated October 29, 2014 is the decision or ruling of Respondent. Since the said Notice of Denial denied Petitioner's request for compromise settlement, it involves the interpretation and

[39] G.R. No. 162852, December 16, 2004.

application of Section 204 (A) of the NIRC of 1997, as amended, it falls under the phrase "other matters" arising from the NIRC, pursuant to Section 7(a)(1) of R.A. No. 1125, as amended by R.A. Nos. 9282 and 9503.

Records show that Petitioner received the Notice of Denial[40] dated October 29, 2014 from Respondent on November 13, 2014. Counting thirty (30) days therefrom, it had until December 13, 2014 to file a Petition for Review with this Court. However, considering that December 13, 2014 fell on a Saturday, Petitioner had until December 15, 2014 within which to file the same. Thus, the filing of the instant Petition for Review[41] on December 15, 2014 vested this Court the jurisdiction to hear and determine the present action.

Respondent's right to collect Petitioner's alleged tax deficiencies for GRT for taxable years 1999 and 2001, and FT on onshore income for taxable year 2001 had already prescribed.

Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three (3) years after the last day prescribed by law for the filing of the return, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

On the other hand, Section 222 of the NIRC of 1997, provides that internal revenue taxes must be collected within five (5) years following the assessment of the tax, thus:

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[40] Exhibit "P-2", docket vol. 5, p. 2494.
[41] Docket vol. 1, pp. 1-32.

"SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

xxx xxx xxx

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

xxx xxx xxx

As enunciated in these statutory provisions, the BIR generally has three (3) years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax. When the BIR validly issues an assessment, within either the three-year period, then it has another five (5) years after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding.

In the case at bar, there is no controversy on the timeliness of the issuance of the assessment, only on the prescription of the period to collect the deficiency taxes following its assessment.

In the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[42], the Supreme Court held that the period for collection of the assessed tax begins to run on the date the assessment notice has been released, mailed or sent. It was also held therein that if there is no showing when the assessment notice was released, mailed or sent, it can be granted that the latest date the BIR could have released, mailed or sent the assessment is the date when it was received by the taxpayer. The relevant portion of the decision is quoted as follows:

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[42] G.R. No. 139736, October 17, 2005.

"xxx When the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another three years [now five years] after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. **The assessment of the tax is deemed made and the three-year period [now five-year period] for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.**

In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. While Assessment No. FAS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by Petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. **Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to Petitioner BPI was on the same date they were received by the latter,** on 20 October 1989. Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST." (*Emphasis supplied*)

During trial, it was not established when Respondent released or sent the Formal Letters of Demand (FLDs) and Final Assessment Notices (FANs) upon which the above-mentioned deficiency tax assessments were based. However, records show that the subject FLDs and FANs were received by Petitioner on the following dates:

TAX TYPE/YEAR	BASIC	INTEREST	TOTAL	DATE OF RECEIPT OF FLD AND FAN
Gross Receipts Tax - 1999	64,010,540.40	44,940,072.20	108,950,612.60	August 5, 2003[43]
Gross Receipts Tax - 2001	2,170,564.47	2,152,476.43	4,323,040.90	January 2, 2007[44]
Final Tax – Onshore Income - 2001	13,807,048.42	13,691,989.68	27,499,038.10	January 2, 2007
TOTAL	**79,988,153.29**	**60,784,538.31**	**140,772,691.60**	

[43] Exhibit "P-3", docket vol. 5, pp. 2495-2500.
[44] Exhibit "P-5", docket vol. 5, pp. 2504-2512.

Applying the ruling in the *BPI* case, the five-year prescriptive period for collection of taxes is deemed to have begun to run on August 5, 2003 for the GRT assessment for taxable year 1999, and on January 2, 2007 for the GRT and FT assessment for taxable year 2001. Thus, Respondent had until August 5, 2008 and January 2, 2012, respectively, within which to collect the balance of the deficiency taxes.

However, it was only on November 13, 2014 when Petitioner received the Notice of Denial dated October 29, 2014. Respondent failed to act in promptly resolving and denying the application/offer of compromise filed by Petitioner and in enforcing collection on the assessment. Evidently, Respondent's right to collect Petitioner's total tax deficiencies for 1999 and 2001 GRT and 2001 FT on onshore income had already prescribed.

It must be emphasized that said application/offer for compromise did not have the effect of temporarily staying the hands of Respondent. An application for compromise does not impede nor delay or postpone collection. Under the NIRC of 1997, an application for compromise does not affect the power of the BIR to collect. Further, nowhere in Revenue Regulations No. 30-2002[45], as amended, is collection suspended or disallowed by the mere filing of an application for compromise.

The statute on limitations imposed by the NIRC of 1997 precisely intends to protect the taxpayer from prolonged and unreasonable assessment and investigation by the BIR.[46] Thus, the law on prescription, being a remedial measure, is liberally construed against the government in order to afford protection to the taxpayer. Instances of negligence or oversight on the part of the BIR cannot prejudice taxpayers, considering that the prescriptive period was precisely intended to give them peace of mind.[47]

Considering that the right of Respondent to collect from Petitioner the deficiency GRT for taxable years 1999 and 2001 and the deficiency FT for taxable year 2001 had already prescribed, then there is no more need for this Court to make a determination on the validity and correctness of the denial of Petitioner's offer of compromise.

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[45] Revenue Regulations Implementing Sections 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, December 16, 2002.

[46] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

[47] *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc. (now Sime Darby International Tire Co., Inc.) and the Court of Appeals*, G.R. No. 139736, October 17, 2005.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Notice of Denial dated October 29, 2014 is **CANCELLED** and **SET ASIDE** insofar as Petitioner is ordered to pay the aggregate amount of Php132,773,876.27 inclusive of surcharge and legal interest, which corresponds to the total tax deficiencies for 1999 and 2001 gross receipts tax and 2001 final tax on onshore income of Php140,772,691.60, net of the amount of Php7,998,815.33 paid as an offer of compromise for the alleged deficiency taxes for the covered period.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice