REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

THE ARISTOCRAT FRANCHISE CORPORATION,
Petitioner,

- versus –

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8731

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 2 8 2016 10:15 a.m.

x---x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

Before this Court is a Petition for Review[1] filed by The Aristocrat Franchise Corporation on November 15, 2013, praying that judgment be rendered declaring the Commissioner of Internal Revenue's Letter of Denial of its offer of compromise as void and cancelling the deficiency income tax assessment for the taxable year 2006 in the amount of Eleven Million Sixteen Thousand Five Hundred Thirty-Five Pesos and 09/100 (₱11,016,535.09).

[1] Docket, pp. 14-22.

THE FACTS

The Aristocrat Franchise Corporation (hereinafter referred to as "petitioner") is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at 432 San Andres St., Malate, Manila.[2]

On the other hand, the Commissioner of Internal Revenue (hereinafter referred to as "respondent") is the head of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code of 1997, as amended (1997 NIRC) and other tax laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 16, 2007, petitioner filed its Annual Income Tax Return (ITR)[3] for taxable year 2006.[4]

On July 20, 2007, Letter of Authority (LOA) No. 2001-00061306 was issued, authorizing Revenue Officer Romel Morente and Group Supervisor Mario Natividad to examine the books of accounts and other accounting records of petitioner for taxable year 2006. It was duly received by petitioner on August 9, 2007. Thereafter, a Notice of Informal Conference was served to petitioner. [5]

As a result of the audit investigation, a Preliminary Assessment Notice (PAN) for deficiency income tax for taxable year 2006, amounting to Ten Million Nine Hundred Fifty-Nine Thousand Three Hundred Seventy-Two Pesos and 03/100 (₱10,959,372.03), including increments, was issued on March 24, 2010 and received by petitioner on April 5, 2010.[6]

On April 13, 2010, respondent, through the Office of the Regional Director of Revenue Region No. 6 – Manila, received a letter dated April 12, 2010 from petitioner, through its Certified Public

---

[2] Par. 1.1, Stipulations/Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 104.
[3] Exhibit "P-1", Docket, pp. 151-153.
[4] Par. 1.3, Stipulations/Admitted Facts, JSFI, Docket, p. 104.
[5] Pars. 1.4 and 1.5, Stipulations/Admitted Facts, JSFI, Docket, p. 105.
[6] Par. 1.6, Stipulations/Admitted Facts, JSFI, Docket, p. 105.

Accountant (CPA), Joaquin P. Tolentino, acknowledging receipt of and protesting the PAN.[7]

Thereafter, Final Assessment Notice (FAN) No. 33-06-IT-0024, Formal Letter of Demand (FLD), and Details of Discrepancies, all dated April 14, 2010, were issued against petitioner, demanding payment of the amount of Eleven Million Sixteen Thousand Five Hundred Thirty-Five Pesos and 09/100 (₱11,016,535.09), including increments.[8]

In a letter dated April 19, 2010, petitioner protested the FAN and acknowledged the receipt of the FLD and the FAN on April 16, 2010.[9]

On February 11, 2011, petitioner received a Final Notice Before Seizure (FNBS) dated February 10, 2011 from respondent, through Revenue District Officer (RDO) Josephine Virtucio, seeking to collect the alleged final and executory deficiency assessments of the 2006 income tax liabilities of petitioner in the amount of ₱11,016,535.09, inclusive of surcharge, interest and penalties.[10]

Thereafter, a Warrant of Distraint and/or Levy dated March 1, 2011 was issued against petitioner.[11]

On March 14, 2011, respondent received petitioner's letter dated March 11, 2011, applying for a compromise settlement of its liability, representing ten percent (10%) of the basic tax assessment. Then, on March 31, 2011, petitioner filed an offer of compromise, which was denied by RDO Virtucio in her letter received by petitioner on June 29, 2011.[12]

On July 26, 2011, petitioner again filed an offer of compromise in the amount of ₱2,741,634.00, representing forty percent (40%) of the basic deficiency income tax. Thereafter, on October 26, 2011, petitioner paid respondent ₱2,741,634.00, representing the offer of compromise.[13]

---

[7] Par. 1.7, Stipulations/Admitted Facts, JSFI, Docket, p. 105.
[8] Par. 1.8, Stipulations/Admitted Facts, JSFI, Docket, p. 105.
[9] Par. 1.9, Stipulations/Admitted Facts, JSFI, Docket, p. 105.
[10] Par. 1.10, Stipulations/Admitted Facts, JSFI, Docket, p. 105.
[11] Par. 1.11, Stipulations/Admitted Facts, JSFI, Docket, p. 105.
[12] Pars. 1.12 and 1.13, Stipulations/Admitted Facts, JSFI, Docket, p. 106.
[13] Par. 1.14, Stipulations/Admitted Facts, JSFI, Docket, p. 106.

On April 22, 2013, petitioner's application or offer for compromise settlement of its 2006 tax liability on the ground of doubtful validity was disapproved by the National Evaluation Board via Notice of Denial. Petitioner received the Notice of Denial on July 12, 2013.[14]

A request for reconsideration was filed by petitioner, through its counsel, Atty. Maria Elena C. Ramiro, on July 24, 2013.[15]

On October 16, 2013, petitioner received a letter dated September 20, 2013 from the Regional Director of BIR Manila, informing it that the denial of its application for compromise settlement was affirmed by respondent.[16]

Accordingly, petitioner filed the present Petition for Review[17] before this Court on November 15, 2013.

In his Answer[18] filed on December 20, 2013, respondent interposed the following special and affirmative defenses:

> "7. Respondent hereby adopts by way of reference all of the allegations in the foregoing paragraphs is (sic) so far as the same are material and relevant, and alleges that:
>
> > 7.1. The instant petition is primarily anchored on the petitioner's claim of the denial of its offer of compromise for its tax deficiency for taxable year 2006 that the same is devoid of factual and legal basis under Section 204 of National Internal Revenue Code (NIRC) and Revenue Regulation (RR) No. 30-2002. Je

---

[14] Pars. 1.15 and 1.16, Stipulations/Admitted Facts, JSFI, Docket, p. 106.
[15] Par. 1.16, Stipulations/Admitted Facts, JSFI, Docket, p. 106.
[16] Par. 1.17, Stipulations/Admitted Facts, JSFI, Docket, p. 106.
[17] Docket, pp. 14-22.
[18] Docket, pp. 73-80.

7.2. In support thereof, petitioner averred that it was not accorded complete audit. However, despite such allegations, petitioner offered for compromise and paid 40% amounting to Php2,741,634.77 of the assessed deficiency income for taxable year 2006. Such payment of petitioner though not full payment of the entire tax deficiency, amounts to acceptance of the tax deficiency assessment for the said taxable year. Other than this bare allegation, however, petitioner has nothing to show to prove that it did not receive the notice requirements from the BIR;

7.3. BIR records clearly show that petitioner has duly received the aforesaid document and all notices prior to issuance the questioned assessment. In fact, petitioner admitted in sub-paragraph 22.2 that it even executed a waiver of the defense of prescription on April 12, 2010 extending the period to assess its 2006 tax case.

7.4. Section 228 of the NIRC, as amended, and Revenue Regulation No. 12-99 merely require that the taxpayer must be informed in writing of the law and the facts on which the assessment was made. Thus, there was compliance with the mandate of the law when the FAN is accompanied with complete details, such as the computations, schedules and applicable laws, which are the factual and legal bases covering the aforementioned discrepancies established during the investigation. *[Irene C. Salud vs. CIR, CTA EB Case No. 412 (CTA Case No. 6954), 30 April 2009]*

7.5. Moreover, it should be pointed out that petitioner has submitted with the BIR several correspondence questioning the basis of the deficiency tax assessment; thus, the same strengthen the fact that petitioner has been properly informed of the said factual and legal bases of the assessment;

7.6. Finally, contrary to the claim of the petitioner, the subject assessment is not based on mere assumptions but based on the audit investigations conducted pursuant to a Letter of Authority LOA 200100061306 dated July 20, 2007;

7.7. The subject assessment is valid and correct and the petitioner has the burden of proof to impugn its validity *(Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil. 647)*. Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise *(Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671)*; and assessments duly made by the BIR examiner and approved by her superior officers will not be disturbed *(Gutierrez vs. Villegas, 8 SCRA 547)*;

7.8. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right *(Tan Guan vs. Court of Tax Appeals, et. al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil. 967 [1960])*;

7.9. All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue; the taxpayer must prove the contrary *(Commissioner of Internal Revenue vs. Antonio Tuason, Inc. 173 SCRA 397; Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671)*; gr

> 7.10. The assessments were issued in the regular course and within the reglementary period to assess provided by law.

8. The Honorable Court of Tax Appeals (CTA) has no jurisdiction to entertain the instant petition for review.

Section 3 Rule 4, Jurisdiction of the Court, Revised Rules of the Rules of Court (A.M. No. 05-11-07-CTA, November 22, 2005) provides:

> ***'Section 3. Cases within the jurisdiction of the Court in Divisions.*** – *The Court in Division shall exercise:*
>
> *(a) Exclusive original 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****; x x x x x' (Emphasis supplied)*

The instant petition does not fall within the jurisdiction of the Honorable CTA to hear and decide. The petition for review seeks for the confirmation of the validity of the petitioner's offer of compromise to the BIR

> in the amount of Php2,741,634.77 representing 40% of its basic income tax deficiency for taxable year 2006. Given the nature of the petition, it is not covered by the phrase '*other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue*' which contemplates on matters germane or related to disputed assessments and refund cases."

The case was set for a pre-trial conference on March 27, 2014.[19] Thus, petitioner[20] and respondent[21] filed their respective Pre-Trial Briefs on March 24, 2014.

On April 11, 2014, the parties filed their Joint Stipulation of Facts and Issues[22], which was adopted by the Court in the Pre-Trial Order[23] dated May 6, 2014.

During trial, petitioner presented the following witnesses: (1) Ms. Maria Nelly T. Altoveros[24] – petitioner's OIC-Chief Accountant; and (2) Atty. Maria Elena C. Ramiro[25] – petitioner's counsel. It likewise formally offered its documentary evidence on October 15, 2014.[26]

The Court issued a Resolution[27] on November 6, 2014, admitting, as petitioner's evidence, Exhibits "P-1", "P-2", "P-4", "P-5", "P-6", "P-7", "P-7-A", "P-8", "P-9", "P-10", "P-11", "P-11A", "P-11B", "P-11C", "P-12", "P-13", "P-13A", "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-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", and "P-39". However, the Court denied the admission of Exhibit "P-3" for failure of the exhibit formally offered to correspond with the document actually marked.

---

[19] Docket, p. 82.
[20] Docket, pp. 87-90.
[21] Docket, pp. 91-99.
[22] Docket, pp. 104-109.
[23] Docket, pp. 123-135.
[24] Minutes of the Hearing dated June 4, 2014, Docket, p. 212.
[25] Minutes of the Hearing dated August 4, 2014, Docket, p. 264.
[26] Formal Offer of Exhibits, Docket, pp. 275-279.
[27] Docket, pp. 296-297.

On the other hand, respondent presented Revenue Officer Gil C. Quintos as his lone witness.[28]

On February 2, 2015, respondent filed a Motion to Dismiss[29], arguing that the Court has no jurisdiction to entertain the appeal because the assessment in the present case was not disputed by petitioner and instead was even recognized and accepted by offering compromise and making payment thereon. Respondent contended that it is not the decision of respondent that was protested, or a decision on any disputed assessment which was appealed to this Court, but the denial of petitioner's offer of compromise.

According to respondent, the assessment in this case was not disputed and petitioner recognized and accepted its finality by offering compromise and making payment thereon. Moreover, he pointed out that a compromise is consensual in nature, and the approval of the same is discretionary. As such, respondent argued that the Court has no jurisdiction over the present Petition, pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, and Section 3(a)(1) of Rule 4 and Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).

In the Resolution[30] dated March 20, 2015, the Court denied respondent's Motion to Dismiss, holding that the allegations in the present Petition for Review are considered as matters arising from the NIRC of 1997, as amended, and other laws being administered by the BIR. Hence, it is appealable to this Court, pursuant to Section 7(a)(1) of RA No. 1125, as amended by RA Nos. 9282 and 9503 and Section 3(a)(1) of Rule 4 of the RRCTA.

On May 4, 2015, respondent formally offered its documentary evidence.[31] The Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-8", "R-9", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-18", "R-19", "R-20", "R-22", "R-24", "R-25", "R-27", "R-32", "R-33", "R-37", "R-38", "R-39", "R-40", and "R-42".[32] Upon respondent's filing of a motion for reconsideration and motion to re-offer

---

[28] Minutes of the Hearing dated December 3, 2014, Docket, p. 344.
[29] Docket, pp. 345-356.
[30] Docket, pp. 363-371.
[31] Respondent's Formal Offer of Evidence, Docket, pp. 375-384.
[32] Resolution dated June 23, 2015, Docket, pp. 389-390.

exhibits,[33] the Court also admitted Exhibits "R-6", "R-7", "R-10", and "R-66".[34]

As directed by the Court,[35] petitioner filed its Memorandum[36] on October 26, 2015; while respondent filed his Memorandum[37] on November 9, 2015. Consequently, the case was declared submitted for decision on November 26, 2015.[38]

THE ISSUES

The parties submitted the following issues[39] for this Court's disposition:

1. Whether or not the assessment of the 2006 income tax liabilities of the petitioner has prescribed;

2. Whether there was a valid offer of compromise under Sec. 204 of the NIRC of 1997, as amended, on the ground of doubtful validity of the assessment;

3. Whether the waiver executed by petitioner was valid;

4. Whether or not the deficiency assessment on income tax under Assessment Notice No. 33-06-IT-0024 dated April 14, 2010 issued against the petitioner has become final, executory, and demandable.

5. Whether or not petitioner is liable for the assessed deficiency income tax for the year 2006;

6. Whether or not the denial of the offer of compromise had legal and factual bases; and

---

[33] Omnibus Motion (Motion for Partial Reconsideration of the Resolution dated June 23, 2015 and Motion to Re-Offer Exhibits "R-6", "R-7", "R-10", and Exhibit "R-44" as "Exhibit "R-66"), Docket, pp. 391-394.
[34] Resolution dated September 14, 2015, Docket, pp. 399-400.
[35] Resolution dated September 22, 2015, Docket, p. 402.
[36] Memorandum for the Petitioner, Docket, pp. 408-418.
[37] Memorandum for the Respondent, Docket, pp. 424-438.
[38] Resolution dated November 26, 2015, Docket, p. 422.
[39] Issues To Be Tried/Resolved, JSFI, Docket, p. 108.

7. Whether or not the Court has jurisdiction over the case.

The above-enumerated issues can be summarized into one main issue:

"Whether or not petitioner is liable for the assessed deficiency income tax for taxable year 2006."

THE COURT'S RULING

The Petition lacks merit.

Jurisdiction

In the Resolution[40] dated March 20, 2015, the Court has already settled that it has jurisdiction over the present case. The pertinent parts of the Resolution are quoted hereunder for ready reference:

> "The Court finds that it has jurisdiction over the instant case.
>
> Section 7(a)(1) of RA No. 1125, as amended, by RA Nos. 9282 and 9503 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

[40] Docket, pp. 363-371.

> thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.** (*Emphasis supplied.*)

Likewise, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals, as amended, 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.*)

In the consolidated cases of *Philippine National Oil Company v. Court of Appeals, et al.* and *Philippine National Bank v. Court of Appeals, et al.*, the Supreme Court held that the Court of Tax Appeals has jurisdiction over the decision of the Bureau of Internal Revenue to enter into a compromise agreement with the taxpayer, *viz*:

> 'B. The CTA correctly retained jurisdiction over CTA Case No. 4249 by virtue of Republic Act No. 1125. *Jr*

xxx xxx xxx

The CTA assumed jurisdiction over the Petition for Review filed by private respondent Savellano based on the following provision of Rep. Act. No. 1125, the Act creating the Court of Tax Appeals:

> SEC. 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise 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 imposed in relation thereto, <u>or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue</u>; ... (Underscoring ours.)

In his Petition before the CTA, private respondent Savellano requested a review of the decisions of then BIR Commissioner Tan to enter into a compromise agreement with PNOC and to reject his claim for additional informer's reward. He submitted before the CTA questions of law involving the interpretation and application of (1) E.O. No. 44, and its implementing rules and regulations, which authorized the BIR Commissioner to compromise delinquent accounts and disputed assessments pending as of 31 December 1985; and (2) Section 316(1) of the National Internal Revenue Code of 1977 (NIRC of 1977), as amended, which

> granted to the informer a reward equivalent to 15% of the actual amount recovered or collected by the BIR. **These should undoubtedly be considered as matters arising from the NIRC and other laws being administered by the BIR, thus, appealable to the CTA under Section 7(1) of Rep. Act No. 1125.**' (*Emphasis supplied.*)

The Court emphasizes that the consolidated cases originated from the Petition for Review in CTA Case No. 4249 filed by Mr. Tirso B. Savellano, an informer to the non-withholding of Philippine National Bank of the 15% final tax on interest earnings and/or yields from the money placements of the Philippine National Oil Company (PNOC) with the said bank. In the said cases, Mr. Savellano claims that the then BIR Commissioner Tan acted with grave abuse of discretion and/or whimsical exercise of jurisdiction in entering into a compromise agreement that resulted in a gross and unconscionable diminution of his reward. Accordingly, one of the issues in the said cases concerns the BIR Commissioner's action relating to the compromise of PNOC's assessment which the High Court considered as appealable to this Court.

Similarly, the allegations in the instant Petition for Review clearly show that petitioner is disputing the action of respondent in denying the former's offer of compromise of its tax assessment.

Therefore, applying the ruling of the High Court in the above cited case, **the allegations in the instant Petition for Review are considered as matters arising from the NIRC and other laws being administered by the BIR. Being so, it is appealable to this Court, pursuant to Section 7 (a) (1) of RA No. 1125, as amended by RA Nos. 9282 and 9503 and Section 3 (a) (1) of Rule 4 of the Revised Rules of the Court of Tax Appeals.**" *(Emphasis supplied)*

Prescription

Petitioner claims that the waiver it executed on April 12, 2010, or three days before the last day for the issuance of the FAN, was not valid, and thus did not extend the period of the Statute of Limitations pursuant to Revenue Memorandum Order (RMO) No. 20-90. It alleges that the waiver was not accepted or signed by, and did not indicate the date of acceptance by respondent or her duly authorized representative. Petitioner further avers that it was not furnished a copy of the waiver duly accepted or signed by respondent or his duly authorized representative.

Respondent, on the other hand, maintains that the waiver being questioned by petitioner is insignificant because the FAN was issued within the prescribed period of three (3) years, pursuant to Section 203 of the 1997 NIRC.[41]

Petitioner's position is untenable.

Section 203 of the 1997 NIRC provides for the period when assessment can be made, 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."

In the present case, petitioner filed its Annual Income Tax Return for taxable year 2006 on April 16, 2007[42]. Based on the afore-

[41] Discussion, Memorandum for the Respondent, Docket, p. 430.
[42] April 15, 2007 fell on a Sunday.

quoted provision of the 1997 NIRC, respondent had until April 15, 2010 within which to assess petitioner.

Records show that the FAN was issued on April 14, 2010[43], which is within the prescriptive period to assess. Hence, as respondent pointed out, the validity of the waiver executed by petitioner is immaterial.

Due Process

Petitioner likewise posits that its right to procedural due process was violated when respondent issued the FAN barely two (2) days after petitioner filed its protest to the PAN.

Respondent, on the other hand, maintains that petitioner's right to procedural due process was not violated. He contends that petitioner was afforded ample opportunity to present and protect its side and no prejudice was inflicted against it.[44]

Petitioner's position deserves scant consideration.

Section 228 of the 1997 NIRC states:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, that a pre-assessment notice shall not be required in the following cases:
>
> > (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> >
> > (b) When a discrepancy has been determined between the tax withheld and the

---

[43] Exhibit "R-19"; Par. 1.8, Stipulations/Admitted Facts, JSFI, Docket, p. 105.
[44] Discussion, Memorandum for the Respondent, Docket, pp. 432-433.

amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. Jr

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Furthermore, Section 3 of RR No. 12-99, as amended by RR No. 18-13, outlines the procedure in the issuance of a deficiency tax assessment to ensure due process, to wit:

"SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. xxx

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

> **If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void. xxx
>
> 3.1.4 *Disputed Assessment.* – **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows: xxx" *(Emphasis supplied)*

From the foregoing, it can be seen that the taxpayer is given fifteen (15) days from receipt of the PAN within which to reply.

In the present case, respondent issued the PAN on March 24, 2010. Petitioner filed its protest thereto on April 12, 2010, after receiving it on April 5, 2010. Thereafter, petitioner received the FAN dated April 14, 2010 on April 16, 2010. Petitioner then filed a protest to the FAN on April 19, 2010.

There is nothing in the foregoing provisions of Section 228 of the 1997 NIRC and RR No. 12-99, as amended, that would support petitioner's contention that it was deprived of due process because the BIR already issued the FAN two (2) days after its protest letter to the PAN was filed.

In this regard, the CTA Decision in the case of *Global Metal Tech Corp. vs. Commissioner of Internal Revenue*[45] is apropos. In the said case, petitioner therein also claimed that its right to due process was violated when respondent issued the FAN before the lapse of the 15-day period from the date of receipt of the PAN granted by law for petitioner to respond to the same. This Court held:

> "Petitioner posits that its right to due process was violated by respondent when the latter issued the Formal Assessment Notice before the lapse of the 15-day period from the date of receipt of the Preliminary Assessment Notice granted by law for petitioner to respond to the same. Thus, the assessment is null and void.
>
> On the other hand, respondent maintains that due process was observed in the issuance of notices. Respondent likewise argues that the Final Assessment Notice was validly issued despite its issuance within the period to comment on the PAN. An assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a tax liability that is definitely set and fixed. The purpose of assessment is to inform the taxpayer of its deficiency tax liability and to give opportunity to refute the same. The essence of due process is simply an opportunity to be heard, logically preconditioned on prior notice, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling being complained.
>
> One of the most basic and fundamental precepts of law enshrined in the Constitution is that no person shall be deprived of his property without due process of law. In the case of *Commissioner of Internal Revenue vs.*

---

[45] CTA Case No. 8329, September 23, 2014.

Steelasia Manufacturing Corporation, the CTA *En Banc* held:

> 'xxx, suffice it to say that due process in our jurisdiction refers to the right of the taxpayer to be informed of the legal and factual findings of the BIR as regards its deficiency taxes, and the opportunity to be heard through protest.
>
> Note that a preliminary assessment notice preparatory to the issuance of a formal or final assessment notice is not, legally speaking, an assessment even if it contains a computation of the tax liabilities of a taxpayer and a demand for payment of the computed tax liabilities was made in such preliminary assessment notice. Section 228 of the NIRC of 1997 clearly refers to the Final Assessment Notice that should be formally protested to by SAMC; else, the same becomes final and executory.'

The CTA *En Banc* likewise explained that a protest against the PAN, unlike the protest against the FAN, is not indispensable. A PAN may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the PAN final and unappealable. Therefore, the issuance of the FAN before the lapse of the 15-day period for the taxpayer to file its protest to the PAN, inflicts no prejudice on the taxpayer for as long as the latter is properly served a FAN and that it was able to intelligently contest the FAN by filing a protest letter within the period provided by law. Moreover, this Court observed that petitioner was afforded the procedural due process required by law when it was fully apprised of the legal and factual bases of the assessment issued against it and that petitioner was given the opportunity to substantially protest or dispute the assailed assessments via its protest letter.

Considering the afore-cited cases and the PAN with attached Details of Discrepancies, petitioner was afforded due process by apprising it of the legal and factual bases of the assessment."

Since petitioner was able to receive the PAN and the FAN, and that it was even able to contest the PAN and the FAN by filing a protest letter within the period provided by law, there is no doubt that petitioner was given due process. Moreover, there was no prejudice incurred in the procedure in protesting the assessments and petitioner's right to due process was adequately observed and protected. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[46]

Compromise

Petitioner claims that respondent's income tax assessment amounts to a jeopardy assessment because it was arrived at without complete audit as may be gleaned from the interval of the dates between the PAN and the FAN. It contends that its protest letter to the PAN, which was filed on April 12, 2010, could not have been evaluated and reviewed thoroughly by the assigned revenue officer since on April 14, 2010, barely two days after the protest letter was filed, the BIR already issued the FAN.

Considering that the present case allegedly involves a jeopardy assessment as the income tax assessment was made without the benefit of a complete audit, petitioner avers that its case falls under the criteria for acceptance of compromise settlement mentioned in Section 3 of RR No. 30-2002.

Petitioner thus contends that respondent's denial of its compromise offer is bereft of factual and legal bases. According to petitioner, it has substantiated its claim for a compromise settlement. It cites *Ang Tibay, et al. vs. The Court of Industrial Relations, et al.*[47], saying that administrative decisions must be formulated in such a manner that the parties to the proceeding can know the various issues involved and the reasons for the decision rendered.

[46] *Vivo vs. Philippine Amusement and Gaming Corporation (PAGCOR),* G.R. No. 187854, November 12, 2013, citing *Office of the Ombudsman vs. Reyes,* G.R. No. 170512, October 5, 2011 and *Ledesma vs. Court of Appeals,* G.R. No. 166780, December 27, 2007.
[47] G.R. No. L-46496, February 27, 1940.

Respondent counter argues that his denial of petitioner's compromise offer has factual and legal bases. He insists that a compromise is consensual in nature and that its approval is within his judgment and discretion.[48] Respondent likewise argues that contrary to petitioner's claim, the subject assessment is not based on mere assumptions but on the audit investigations conducted pursuant to LOA No. 201-00061303 dated July 20, 2007.[49]

Petitioner's argument must fail.

Section 204(A) of the 1997 NIRC 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.

[48] Discussion, Memorandum for the Respondent, Docket, p. 434.
[49] Discussion, Memorandum for the Respondent, Docket, pp. 435-436.

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."

In relation thereto, Section 3 of RR No. 30-2002, as amended, provides instances when respondent may compromise the payment of any internal revenue tax, to wit:

"SECTION 3. *Basis for Acceptance of Compromise Settlement.* – **The Commissioner <u>may</u> compromise the payment of any internal revenue tax** on the following grounds:

1. *Doubtful validity of the assessment.* – The offer to compromise a delinquent account or disputed assessment under these Regulations on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:

(a) The delinquent account or disputed assessment is one resulting from a jeopardy assessment **(For this purpose, '*jeopardy assessment*' shall refer to a tax assessment which was assessed <u>without the benefit of complete or partial audit</u> by an authorized revenue officer, who has reason to believe that the assessment and collection of a deficiency tax will be jeopardized by delay because of the taxpayer's failure to comply with the audit and investigation requirements to present his books of accounts and/or pertinent records, or to substantiate all or any of the deductions, exemptions, or credits claimed in his return);** or

(b) 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

(c) The taxpayer failed to file an administrative protest on account of the alleged failure to receive notice of assessment and there is reason to believe that the assessment is lacking in legal and/or factual basis; or

(d) The taxpayer failed to file a request for reinvestigation/reconsideration within 30 days from receipt of final assessment notice and there is reason to believe that the assessment is lacking in legal and/or factual basis; or

(e) The taxpayer failed to elevate to the Court of Tax Appeals (CTA) an adverse decision of the Commissioner, or his authorized representative, in some cases, within 30 days from receipt thereof and there is reason to believe that the assessment is lacking in legal and/or factual basis; or

(f) The assessments were issued on or after January 1, 1998, where the demand notice allegedly failed to comply with the formalities prescribed under Sec. 228 of the National Internal Revenue Code of 1997; or

(g) 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; or

(h) The assessment was issued within the prescriptive period for assessment as extended by the taxpayer's execution of Waiver of the Statute of Limitations the validity or authenticity of which is being questioned or at issue and there is strong reason to believe and evidence to prove that it is not authentic; or

(i) The assessment is based on an issue where a court of competent jurisdiction made an adverse decision against the Bureau, but for which the Supreme Court has not decided upon with finality." *(Emphasis and underscoring supplied)*

Jeopardy assessment, as expressly defined in RR No. 30-2002, as amended, refers to a tax assessment which was assessed without the benefit of complete or partial audit by an authorized revenue officer, who has reason to believe that the assessment and collection of a deficiency tax will be jeopardized by delay because of the taxpayer's failure to comply with the audit and investigation requirements to present his books of accounts and/or pertinent records, or to substantiate all or any of the deductions, exemptions, or credits claimed in his return.

As borne by the stipulated facts and the evidence presented, it is clear that the assessment was the result of the audit investigations conducted pursuant to LOA No. 2001-00061306. And as discussed earlier, it cannot be said that petitioner was denied of due process just because the BIR already issued the FAN two (2) days after its protest letter to the PAN was filed. Hence, contrary to petitioner's position, the income tax assessment involved in the present case cannot be considered as a jeopardy assessment.

Accordingly, it cannot be said that the denial of petitioner's compromise offer has no factual or legal basis. Considering that petitioner's income tax assessment is not a jeopardy assessment, it does not fall within the criteria set by RR No. 30-2002, as amended. Moreover, as correctly argued by the respondent, a compromise is mutual and consensual in nature[50] and the approval thereof is subject to his judgment and discretion. A compromise implies agreement. One party cannot impose it upon the other.[51]

Presumption of Correctness of Assessment

It is a settled rule that tax assessments are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise.[52] In the absence of proof of any irregularity in the performance of duties, an assessment duly made by a BIR examiner

[50] *Dr. Felisa L. Vda. De San Agustin v. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[51] *Commissioner of Internal Revenue v. Armando L. Abad*, G.R. No. L-19627, June 27, 1968.
[52] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[53]

In the present case, the respondent explained in his FLD and the attached Details of Discrepancies[54] that based on the result of the audit investigation conducted by the revenue examiners covering petitioner's internal revenue taxes for taxable year 2006, petitioner has deficiency income tax, exclusive of increments, computed as follows:

Deficiency Income Tax

Taxable Income per Return		P	457,369.00
Add: Adjustments per Investigation			
Undeclared Purchases	P 17,828,717.67		
Undeclared Zero Rated Sales	931,233.75		
Unaccounted Professional Fee	213,519.60		
NOLCO	877,776.00		
Unsupported Salaries	581,250.93		20,432,497.95
Adjusted Taxable Income			20,889,866.95
Tax Due		₱	7,311,453.43
Less: Tax Paid			457,369.00
Deficiency Income Tax Due		**₱**	**6,854,084.43**

According to respondent, the deficiency income tax assessment arose from petitioner's undeclared purchases, undeclared zero-rated sales, unaccounted professional fees, disallowed net operating loss carry-over (NOLCO) as well as unsupported payroll and related expenses.[55]

It bears stressing that the present Petition essentially assails the denial of petitioner's compromise offer and raises the question of whether or not the assessment was issued within the prescriptive period. Notably, petitioner neither contested the correctness of the assessment nor presented any evidence to that effect. Consequently, petitioner failed to overcome the presumption of correctness of respondent's assessment.

[53] *Commissioner of Internal Revenue vs. Bank of the Philippines Islands*, G.R. No. 134062, April 17, 2007.
[54] Exhibits "P-13" and "P-13-A", Docket, pp. 188-189.
[55] *Ibid.*

In view of the foregoing, the Court upholds the assessment made by respondent against petitioner.

Considering, however, that petitioner's offer of compromise was denied, petitioner is not liable for the compromise penalty of ₱50,000.00 found in the FAN.

The Court likewise notes petitioner's payment of ₱2,741,633.77 on October 26, 2011.

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit. The assessment issued by respondent against petitioner covering deficiency income tax for taxable year 2006 is **AFFIRMED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **EIGHT MILLION FIVE HUNDRED SIXTY-SEVEN THOUSAND SIX HUNDRED FIVE PESOS AND 54/100 (₱8,567,605.54)** representing basic deficiency income tax and the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the 1997 NIRC, computed as follows:

Basic Deficiency Income Tax	₱ 6,854,084.43
Add: 25% Surcharge	1,713,521.11
Total Amount Due	**₱8,567,605.54**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax computed from April 15, 2007 until full payment thereof pursuant to Section 249(B) of the 1997 NIRC; and

(b) Delinquency interest at the rate of 20% per annum (1) on the total amount of ₱8,567,605.54, representing basic deficiency income tax and 25% surcharge; and (2) on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 21, 2011[56] until full payment thereof pursuant to Section 249(C) of the 1997 NIRC.

[56] Exhibit "P-26", Docket, p. 209.

Accordingly, the amount of ₱2,741,633.77 already paid by petitioner on October 26, 2011 shall be deducted from the total amount due.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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's Division.

JUANITO C. CASTAÑEDA, JR.
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