REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

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PHILIPPINE ELECTRIC CORPORATION, Petitioner,	**CTA EB NO. 1828** (CTA Case No. 8793)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** OCT 11 2019 3:28 p.m.

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RESOLUTION

For resolution are the following:

1) Petitioner's **"MOTION TO APPROVE COMPROMISE AND DECLARE THE CASE CLOSED AND TERMINATED"** filed on June 20, 2019,[1] with respondent's **"COMMENT Re: Petitioner's Motion to Approve Compromise and Declare the Case Closed and Terminated"** filed on July 25, 2019,[2] and petitioner's **"REPLY TO COMMENT *(Re: Petitioner's Motion to Approve Compromise and Declare the Case Closed and Terminated)*"** filed on August 23, 2019;[3] and

2) Petitioner's **"COMPLIANCE"** filed on July 23, 2019.[4]

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[1] EB Docket – Vol. 2, pp. 649 to 651.
[2] EB Docket – Vol. 2, pp. 677 to 680.
[3] EB Docket – Vol. 2, pp. 683 to 687.
[4] EB Docket – Vol. 2, pp. 657 to 659.

Records show that in the Resolution dated August 9, 2018,[5] the instant case was submitted for decision.

However, on October 18, 2018, petitioner filed a *Motion to Hold in Abeyance the Proceedings of the Case*,[6] praying that the proceedings in the present case be held in abeyance to enable it to pursue a compromise agreement with respondent.

In the Resolution dated October 24, 2018,[7] respondent was ordered to file his comment to petitioner's *Motion to Hold in Abeyance the Proceedings of the Case,* within ten (10) days from notice.

On November 19, 2018, respondent filed a *Motion for Extension of Time to File Comment Re: Petitioner's Motion to Hold in Abeyance the Proceedings of the Case*,[8] praying for an extension of five (5) days from November 17, 2018, or until November 22, 2018 to file his *Comment*. The Court granted the respondent's *Motion for Extension of Time to File Comment* on November 21, 2018.[9]

Thereafter, on November 21, 2018, respondent filed his *Manifestation Re: Petitioner's Motion to Hold in Abeyance the Proceedings of the Case*,[10] stating that respondent's counsel cannot comment on the motion, considering that the Litigation Division has yet to receive the proposal for compromise agreement. The said *Manifestation* was noted by the Court *En Banc* on November 23, 2018.[11]

In the Resolution dated January 24, 2019,[12] the Court denied petitioner's *Motion to Hold in Abeyance the Proceedings of the Case* for lack of merit.

On January 28, 2019, petitioner filed a *Manifestation*,[13] stating that petitioner met with respondent's counsel, and discussed the payments already made as to the pursuit of a compromise of the tax liabilities subject of this case; and that petitioner is awaiting the approval of respondent and the National Evaluation Board (NEB). Petitioner likewise manifested that it has paid a total amount of

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[5] EB Docket – Vol. 1, pp. 474 to 475.
[6] EB Docket – Vol. 1, pp. 477 to 480.
[7] EB Docket – Vol. 1, pp. 492 to 493.
[8] EB Docket – Vol. 1, pp. 494 to 497.
[9] Minute Resolution dated November 21, 2018, EB Docket – Vol. 1, p. 499.
[10] EB Docket – Vol. 1, pp. 500 to 502.
[11] Minute Resolution dated November 23, 2018, EB Docket – Vol. 1, p. 504.
[12] EB Docket – Vol. 2, pp. 506 to 507.
[13] EB Docket – Vol. 2, pp. 508 to 510.

₱33,283,681.33 relative to the tax assessment for taxable year 2008 as part of its offer of compromise.

Thereafter, on February 1, 2019, petitioner filed a *Motion for Reconsideration (of the Resolution dated January 24, 2019).*[14] Respondent, however, failed to file its comment thereto, despite due notice.[15]

In the Resolution dated April 22, 2019,[16] the Court granted petitioner's *Motion for Reconsideration (of the Resolution dated January 24, 2019)*, and gave petitioner a period of thirty (30) days to submit the proof of approval of its request for compromise settlement.

On May 31, 2019, petitioner filed its *Compliance*,[17] attaching therewith a photocopy of BIR Form No. 2342 or the *Certificate of Availment (Compromise Settlement)* dated May 29, 2019, indicating that the application for the compromise settlement of the deficiency taxes for taxable years 2008 and 2009 has been approved by the NEB.

Thereafter, on June 20, 2019, petitioner filed the instant *Motion to Approve Compromise and Declare the Case Closed and Terminated*,[18] praying that this Court issue an order: (a) approving the compromise settlement of the tax liabilities assessed against petitioner for taxable year 2008, and (b) declaring the case closed and terminated.

In the Resolution dated July 8, 2019,[19] the Court noted petitioner's *Compliance* filed on May 31, 2019, and directed petitioner to submit the following:

1. original or certified true copy of the *Certificate of Availment*;

2. proof of approval of the *Compromise Settlement* by the majority of the members of the NEB, as well as the concurrence thereon by respondent; and

3. proof of the authority of Alfredo V. Misajon to sign the *Certificate of Availment*.

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[14] EB Docket – Vol. 2, pp. 629 to 633.
[15] Records Verification dated March 22, 2019 issued by the Judicial Records Division of this Court, EB Docket – Vol. 2, p. 637.
[16] EB Docket – Vol. 2, pp. 639 to 643.
[17] EB Docket – Vol. 2, pp. 644 to 646.
[18] EB Docket – Vol. 2, pp. 649 to 651.
[19] EB Docket – Vol. 2, pp. 655 to 656.

In the same Resolution, the Court *En Banc* likewise ordered respondent to file his *Comment* on petitioner's *Motion to Approve Compromise and Declare the Case Closed and Terminated;* and pending compliance with the Court *En Banc's* directives, the Resolution dated August 9, 2018 submitting this case for decision was recalled and set aside.

On July 23, 2019, petitioner filed its *Compliance*,[20] submitting the following:

1. Certified true copy of the *Certificate of Availment (Compromise Settlement)* dated May 29, 2019 signed by Alfredo V. Misajon, Assistant Commissioner, Collection Service of the BIR;[21]

2. Certified true copy of the signature page evidencing approval by the NEB of the petitioner's *Application for Compromise Settlement* for taxable years 2008 and 2009;[22] and

3. Certified true copy of Revenue Delegation Authority Order (RDAO) No. 6-2007[23] and Revenue Memorandum Order (RMO) No. 33-2018[24], as proof of Alfredo V. Misahon's authority to sign the *Certificate of Availment* in relation to the approved Compromise Settlement

Accordingly, petitioner's *Compliance* filed on July 23, 2019 is hereby **NOTED**.

On July 25, 2019, respondent filed his *Comment Re: Petitioner's Motion to Approve Compromise and Declare the Case Closed and Terminated*,[25] opposing petitioner's *Motion*, and alleging that this Court has no jurisdiction over the instant case.

Thereafter, petitioner filed its *Reply to Comment (Re: Petitioner's Motion to Approve Compromise and Declare the Case Closed and Terminated)* on August 23, 2019,[26] submitting that it behooves respondent's counsel to support its *Motion to Approve* Compromise *and Declare the Case Closed and Terminated*, considering that respondent himself is a party to the compromise

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[20] EB Docket – Vol. 2, pp. 657 to 659.
[21] EB Docket – Vol. 2, p. 660.
[22] EB Docket – Vol. 2, p. 661.
[23] EB Docket – Vol. 2, pp. 662 to 664.
[24] EB Docket – Vol. 2, pp. 665 to 675.
[25] EB Docket – Vol. 2, pp. 677 to 680.
[26] EB Docket – Vol. 2, pp. 683 to 688.

agreement, which was approved by respondent and a majority of the member of the NEB. Moreover, petitioner stresses that it is on the very pendency of the case and the existence of doubtful validity of the assessments, that it has applied for a compromise of the subject deficiency taxes, and thereby put an end to the instant case.

THE COURT'S RULING

We grant petitioner's *Motion to Approve Compromise and Declare the Case Closed and Terminated.*

Before delving into the merits of the said *Motion*, however, We shall address respondent's allegation of the Court *En Banc*'s supposed lack of jurisdiction.

The Court* En Banc *has jurisdiction over the instant case, and thus, may rule on petitioner's Motion.

Respondent's allegation that the Court *En Banc* has no jurisdiction over the instant case deserves scant consideration.

At the outset, it bears noting that the case before this Court *En Banc* stems from the *Petition for Review* filed by petitioner on May 2, 2018,[27] assailing the Decision dated October 10, 2017[28] and Resolution dated March 19, 2018[29], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8793, entitled "*Philippine Electric Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent*".

Section 2(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) recognizes the exclusive appellate jurisdiction of the Court *En Banc* to review by appeal the following decisions, resolutions, or orders of the Court in Division, to wit:

"RULE 4
JURISDICTION OF THE COURT
xxx xxx xxx

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[27] EB Docket – Vol. 1, pp. 8 to 34.
[28] This Decision was penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred by Associate Justice Lovell R. *Bautista* and Associate Justice Ma. Belen M. Ringpis-Liban, EB Docket – Vol. 1, pp. 41 to 58.
[29] EB Docket – Vol. 1, pp. 77 to 79.

SEC. 2. *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) **Decisions or resolutions on motions for reconsideration or new trial of the Court in Division** in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;" *(Emphasis supplied)*

Clearly, an appeal from the decision or resolution of the Court in Division on a motion for reconsideration or new trial, falls under the exclusive appellate jurisdiction of the Court *En Banc*.

In determining whether this Court *En Banc* has acquired jurisdiction to entertain the instant case, We shall look into the timeliness of petitioner's *Petition for Review*.

Sections 3 and 4, Rule 8 of the RRCTA provides for the prescriptive period for the aggrieved parties to raise an appeal to the Court *En Banc*, to wit:

"RULE 8
PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* —

xxx xxx xxx

(b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, **the Court may grant**

> **an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review**. *(Rules of Court, Rule 42, sec. 1a)*
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> xxx xxx xxx
>
> SEC. 4. *Where to appeal; mode of appeal.* —
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> xxx xxx xxx
>
> (b) **An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court.** The Court *en banc* shall act on the appeal." *(Emphases supplied)*

Based on the foregoing provisions, a party adversely affected by the decision or resolution of the Court in Division on a motion for reconsideration or new trial, may appeal the same by filing a *Petition for Review* with the Court *En Banc* within fifteen (15) days from receipt of the questioned resolution. The Court *En Banc* may grant an additional period not exceeding fifteen (15) days from the expiration of the original period, provided the party files the proper motion before the expiration of the original period to file the said *Petition for Review*.

A perusal of the records show that petitioner received the assailed Resolution on April 2, 2018.[30] Thus, petitioner had until April 17, 2018 to file the *Petition for Review* before the Court *En Banc*. However, on April 12, 2018, petitioner instead filed a *Motion for Extension of Time to File Petition for Review*,[31] praying for an additional fifteen (15) days from April 17, 2018 or until May 2, 2018 to file the *Petition for Review*. The same was granted by the Court *En Banc* per the Minute Resolution dated April 13, 2018.[32] Petitioner then seasonably filed its *Petition for Review* on May 2, 2018.[33]

Evidently, with the timely filing of the said *Petition for Review*, the Court *En Banc* has acquired jurisdiction over this case.

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[30] Notice of Resolution dated March 21, 2018, Division Docket – Vol. 4 (CTA Case No. 8793), p. 2220.
[31] Division Docket – Vol. 4 (CTA Case No. 8793), pp. 2224 to 2228; EB Docket – Vol. 1, pp. 1 to 5.
[32] Division Docket – Vol. 4 (CTA Case No. 8793), p. 2229; EB Docket – Vol. 1, p. 7.
[33] EB Docket – Vol. 1, pp. 8 to 34.

In any event, it must be emphasized that the Court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction.[34] Correspondingly, this Court *En Banc* may rule on petitioner's *Motion to Approve Compromise and Declare the Case Closed and Terminated.*

***Petitioner has shown full compliance with the requisites of valid compromise settlement of its tax liabilities pursuant to law*.**

Section 204 of the National Internal Revenue Code (NIRC) of 1997 authorizes respondent to compromise the payment of any internal revenue tax when a reasonable doubt as to the validity of the claim against the taxpayer exists, to wit:

> "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:
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> **(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:
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> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
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> **For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.**

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[34] *The City of Manila, et al. vs. Hon. Caridad H. Grecia-Cuerdo, et al.*, G.R. No. 175723, February 4, 2014.

> **Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, <u>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.</u>**" *(Emphases and underscoring supplied)*

Relative thereto, Section 6 of Revenue Regulations (RR) No. 30-2002,[35] as amended by RR No. 9-2013,[36] states as follows:

> "SEC. 6. *APPROVAL OF OFFER OF COMPROMISE.* — Except for offers of compromise where the approval is delegated to the REB pursuant to the succeeding paragraph, **<u>all compromise settlements within the jurisdiction of the National Office (NO) shall be approved by a majority of all the members of the NEB composed of the Commissioner and the four (4) Deputy Commissioners. All decisions of the NEB, granting the request of the taxpayer or favorable to the taxpayer, shall have the concurrence of the Commissioner</u>**.
>
> xxx xxx xxx
>
> The compromise offer shall be paid by the taxpayer upon filing of the application for compromise settlement. No application for compromise settlement shall be processed without the full settlement of the offered amount. In case of disapproval of the application for compromise settlement, the amount paid upon filing of the aforesaid application shall be deducted from the total outstanding liabilities." *(Emphasis and underscoring supplied)*

Based on the foregoing provisions, respondent is vested with power to compromise the payment of any internal revenue tax. Moreover, where the basic tax involved exceeds ₱1,000,000.00 or where the settlement offered is less than the prescribed minimum

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[35] SUBJECT: 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.

[36] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 30-2002.

rates, the compromise settlement is subject to the approval by a majority of all the members of the NEB, which are composed of respondent and the four (4) Deputy Commissioners. Any grant of compromise or all favorable decisions, however, of the NEB shall have the concurrence of the respondent.

Accordingly, for a compromise settlement falling within the jurisdiction of the NEB to be valid, it must be shown that the same is approved by a majority of all the members of the NEB with the concurrence of respondent, and that there is a full settlement of the offered amount.

In this case, considering that the aggregate basic taxes involved herein amount to ₱76,697,301.51,[37] representing deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT) for taxable year 2008, the subject application for compromise settlement must be approved by a majority of the members of the NEB, with the concurrence of respondent.

Upon review of the supporting documents submitted to this Court, We find that petitioner has fully settled the legally required minimum amounts for compromise settlement, as shown in the *eFPS Payment Details and Filing References*, representing payments for deficiency Income Tax, VAT, and EWT, to wit:

Assessment No.	Tax Type	Basic Tax	Rate of Compromise	Payment
LTRAD2-IT-2008-0016	Income Tax	₱67,535,184.10	40%	₱27,014,073.64[38]
LTRAD2-VT-2008-0009	VAT	4,820,849.54	40%	1,928,339.82[39]
LTRAD2-VT-2008-0012	EWT	4,341,267.87	100%	4,341,267.87[40]
Total		₱76,697,301.51		₱33,283,681.33

Furthermore, petitioner likewise submitted a certified true copy of the *Certificate of Availment (Compromise Settlement)* dated May 29, 2019 issued in its favor,[41] and a certified true copy of the signature page evidencing approval by the NEB of the Compromise Settlement, with the concurrence of respondent.[42] These documents are considered sufficient compliance with the legal requirements for the approval of a compromise.

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[37] Exhibit "P-2", Division Docket – Vol. 1 (CTA Case No. 8793), p. 540.
[38] EB Docket – Vol. 2, pp. 604 and 609.
[39] EB Docket – Vol. 2, pp. 603 and 610.
[40] EB Docket – Vol. 2, pp. 603 and 608.
[41] EB Docket – Vol. 2, p. 660.
[42] EB Docket – Vol. 2, p. 661.

In light of the foregoing considerations, the Court finds that petitioner has faithfully complied with the requisites necessary for the compromise of its tax liabilities for taxable year 2008, pursuant to Section 204 of the NIRC of 1997, in relation to RR No. 30-2002, as amended by RR No. 9-2013.

Moreover, respondent, by accepting petitioner's application for compromise settlement and by signing the approval page of the said application, has clearly indicated his willingness to put an end to petitioner's tax liabilities arising from the tax assessments for taxable year 2008. Hence, for all intents and purposes, the parties may be considered to have entered into a compromise agreement to put an end to this appealed case.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[43] It is an accepted and desirable practice in courts of law and administrative tribunals.[44] Settlement of disputes brought before the courts is, in fact, encouraged.[45]

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion to Approve Compromise and Declare the Case Closed and Terminated* filed on June 20, 2019 is **GRANTED**. The Compromise settlement of petitioner's tax liabilities for taxable year 2008 is **APPROVED**.

Petitioner is deemed to have fully paid and settled the legally required minimum amounts for compromise settlement for deficiency Income Tax, VAT, and EWT, to wit:

Assessment No.	Tax Type	Basic Tax	Rate of Compromise	Payment
LTRAD2-IT-2008-0016	Income Tax	₱67,535,184.10	40%	₱27,014,073.64[46]
LTRAD2-VT-2008-0009	VAT	4,820,849.54	40%	1,928,339.82[47]
LTRAD2-VT-2008-0012	EWT	4,341,267.87	100%	4,341,267.87[48]
Total		₱76,697,301.51		₱33,283,681.33

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[43] Civil Code, Art. 2028.

[44] *Far East Bank and Trust Co., Trust and Investment Group, and FEB Investment Inc., vs. Trust Union Shipping Corp. et. al.*, G.R. No. 154716, September 16, 2008, citing *Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) vs. Abella,* G.R. No. 153904, January 17, 2005.

[45] *Far East Bank and Trust Co., Trust and Investment Group, and FEB Investment Inc., vs. Trust Union Shipping Corp. et. al.*, G.R. No. 154716, September 16, 2008, citing *Viesca vs. Gilinsky*, G.R. No. 171698, July 4, 2007.

[46] EB Docket – Vol. 2, pp. 604 and 609.

[47] EB Docket – Vol. 2, pp. 603 and 610.

[48] EB Docket – Vol. 2, pp. 603 and 608.

Accordingly, the instant case is now deemed **CLOSED** and **TERMINATED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice