REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BAP CREDIT BUREAU, INC.,
Petitioner,

CTA EB NO. 2095
(CTA Case No. 9570)

Present:

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 03 2020 3:10pm

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner BAP Credit Bureau, Inc. (**petitioner/BAP**) seeking the reversal and setting aside

---

[1] Rule 8 - Procedure in Civil Cases, Section 3(b), RRCTA. Filed 04 July 2019, *Rollo*, pp. 1-22.
Section 3. *Who may appeal; period to file petition.* —
...
(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

of the 08 April 2019 Decision[2] and 13 June 2019 Resolution[3] of the Court's Special Second Division. Both denied petitioner's claim for refund or issuance of tax credit certificate (**TCC**) pursuant to Section 229[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The dispositive portion of the assailed 08 April 2019 Decision reads:

> ...
>
> **WHEREFORE**, premises considered, petitioner's claim for refund or issuance of tax credit certificate for alleged erroneously imposed and collected penalties in the filing of its Annual ITR for 2014 in the total amount of Php1,062,626.00 is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

The Court's Special Second Division likewise denied petitioner's Motion for Reconsideration (**MR**) in its 13 June 2019 Resolution, *viz*:

> ...
>
> **WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated 8 April 2019)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

---

additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

2 Division Docket, Volume II, pp. 1031-1051.

3 Id., pp. 1052-1059.

4 **Sec. 229**. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without the written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

The Special Second Division found the antecedent facts of the case to be as follows.

On 14 April 2015 at about 10:35 a.m., preparatory to the filing of its 2014 Annual Income Tax Return (**ITR**), petitioner transferred funds in the amount of ₱4,141,429.00 from its Banco De Oro (**BDO**) Savings Account to the BDO-BIR-CBC Hinge Account to cover the e-payment of the income tax due for taxable year (**TY**) 2014. On even date, petitioner proceeded to file the offline Annual ITR through the Bureau of Internal Revenue's (**BIR's**) Electronic Filing and Payment System (**eFPS**). However, even after numerous attempts, it was not able to file its ITR.

On 15 April 2015, the deadline for the filing of the Annual ITR, petitioner again tried to file its offline Annual ITR through the eFPS but to no avail. Petitioner documented the unavailability of the system by taking screenshots of the same.

Before noon of 15 April 2015, petitioner's accountant, Josefina Salaveria (**Salaveria**), went to Revenue District Office (**RDO**) No. 48 to seek assistance on the offline status of the eFPS website. The OIC-Revenue District Officer Wilfredo Pilapil (**OIC-RDO Pilapil**) and Collection Head Geng Iglesias instructed Salaveria to bring the hard copies of petitioner's Annual ITR to Chinabank. She was likewise told that they will be calling the bank to auto-debit the payment.

Salaveria then coordinated with BDO and learned that an auto-debit was not possible. Still, Salaveria made several attempts to access the eFPS website, her efforts however remained futile.

On or about 7:30 p.m. of 15 April 2015, petitioner called the BIR to report its several failed attempts to connect to the eFPS website to file the 2014 Annual ITR. A certain Mr. Arix of the BIR instructed petitioner to follow the procedure set forth in Revenue Memorandum Circular (**RMC**) No. 20-2015[5] dated 15 April 2015 (on the manual filing and payment in lieu of eFPS).

---

[5] Alternative Mode in the Filing of BIR Form Nos. 1701Q and 1702Q with Payments using the ELECTRONIC PLATFORM OF BIR dated 15 April 2015.

The following day or on 16 April 2015, at about past 9:00 a.m., petitioner sent an e-mail to the e-mail address "1702Qv2008@bir.gov.ph", attaching the soft copy of the offline 2014 Annual ITR and the screenshots (showing its attempts to file the ITR electronically) in compliance with the procedure outlined in RMC 20-2015.

After issuing a new cheque, petitioner proceeded to the Development Bank of the Philippines (**DBP**)-Gil Puyat Branch to effect the manual payment. However, DBP declined its manual payment on the ground that OIC-RDO Pilapil did not sign the 2014 Annual ITR.

Subsequently, OIC-RDO Pilapil informed petitioner that the filing and payment of the Annual ITR will be charged with penalty as the new cheque was already late for clearing. He also instructed petitioner to present the confirmation e-mail of Trouble Ticket Reference No. 2590 issued by the BIR National Office before he would sign the 2014 Annual ITR.

At 8:21 p.m. of 16 April 2015, petitioner successfully filed the subject Annual ITR through the e-filing system, which automatically computed surcharge, interest and compromise penalties. At around 8:42 p.m. of the same day, petitioner paid electronically (e-payment) the basic taxes. Thereafter, petitioner "transferred funds" the amount of ₱1,062,626.00.

On 17 April 2015, petitioner's e-payment of penalties was successfully transmitted. Petitioner followed up with the BIR National Office for the issuance of the e-mail confirmation of Trouble Ticket Reference No. 2590. On 26 May 2015, the BIR National Office issued an e-mail confirmation.

On 25 November 2016, petitioner filed an administrative claim for refund or issuance of TCC for the alleged erroneously collected penalties.

On 29 March 2017, petitioner sent a letter requesting for the issuance of a certification that the eFPS was offline and unavailable on April 14-15, 2015.

In the span of the two-year prescriptive period for claims for refund or issuance of TCC, respondent failed to act on petitioner's application, thus prompting the filing of the judicial claim before this Court on 10 April 2017 (*via* a Petition for Review). The same was raffled to the Special Second Division that later on denied petitioner's claim for refund or issuance of TCC for lack of merit. It held:

> ...
>
> RMC No. 20-2015 or the *Alternative Mode in the Filing of BIR Form Nos. 1701Q and 1702Q with Payments Using the Electronic Platform of BIR* issued on April 15, 2015 provides the guidelines using the electronic platform for BIR Form Nos. 1701Q and 1702Q with payments which are due on or before April 15, 2015. Under RMC No. 20-2015, taxpayers, mandated to use the eFPS, after several unsuccessful attempts of e-filing should follow the procedures indicated therein...
>
> ...
>
> As can be gleaned from the foregoing, taxpayers who are mandated to use the eFPS, after several unsuccessful attempts of e-filing of *BIR Form Nos. 1701Q and 1702Q* with corresponding payments should manually file and pay following the existing procedures on or before April 15, 2015, attaching proof of unsuccessful eFPS, then re-file electronically on or before June 15, 2015. Notably, there is nothing under RMC No. 20-2015 which can be interpreted to mean that it also applies to BIR Form No. 1702RT. However, even assuming for the sake of argument that RMC No. 20-2015 should have suppletory application in this case, petitioner is still required under the said RMC to manually file its return, attaching proof of unsuccessful e-filing, and manually pay its taxes on or before April 15, 2015 and to re-file electronically on or before June 15, 2015.
>
> ...
>
> Contrary to petitioner's claim that there is no applicable issuance providing for an alternative filing of it annual ITR for taxable year 2014 and thus RMC No. 20-2015 should have suppletory application insofar as the procedure to be followed in case of unsuccessful attempt of e-filing of the Annual ITR, respondent previously issued RMC No. 14-2015...
>
> ...
>
> Annex A of RMC No. 14-2015 provides for an alternative procedure in case the ITR is not submitted via the eFPS, which is to manually file the ITR and pay (with the required attachments) to Authorized Agent Banks/Collection Agents (in proper cases), in the RDO where it is registered. Contrary to petitioner's claim, it is not left without recourse in the event of problems encountered during e-filing of its Annual ITR. In fact, as early as April 1, 2002, respondent

> in Revenue Memorandum Order (RMO) No. 5-2002, as amended, or the "Guidelines and Procedures in the Adoption of Electronic Filing and Payment System (EFPS)" already stated that in case the eFPS is not available during due dates, as declared by the BIR, taxpayers shall *manually* file their returns...
>
> ...
>
> Notably, petitioner was given by respondent an alternative mode of filing its return and paying its taxes by directing it to resort to manual filing and manual payment if the e-filing mode cannot be accessed. However, petitioner still insisted to electronically file and pay its taxes despite the alleged unavailability of the eFPS on April 14 and 15, 2015 and its failed attempts to connect to the system. On cross-examination, petitioner's accountant admitted that petitioner started to file and pay its annual ITR for taxable year 2014 only a day before the April 15 deadline...
>
> ...
>
> Petitioner also failed to prove that it exercised reasonable diligence in complying with its obligation to e-file its Annual ITR and e-pay its taxes on time. The perennial limited capability of the eFPS during deadlines should have been considered by petitioner when it opted to file its return on the last day. However, petitioner persisted in electronically filing its annual ITR despite difficulty in accessing the eFPS and the availability of manual filing and manual payment in case of failure to access the eFPS during due dates in accordance with existing rules and as suggested by BIR RDO No. 48...
>
> ...
>
> Accordingly, there was no erroneous and unlawful payment of penalties that would entitle petitioner to a refund considering the prevalent circumstances when respondent imposed penalties on petitioner for late e-filing of its Annual ITR and payment of taxes on April 16, 2015.
>
> ...

As earlier stated, petitioner's MR was also denied. Hence, it filed the present petition.

In herein petition, petitioner assigns the following errors in its bid for the reversal of the Special Second Division's assailed Decision and Resolution:

I.
THE SPECIAL SECOND DIVISION COMMITTED REVERSIBLE ERROR WHEN IT DECLARED THAT PETITIONER FAILED TO FOLLOW THE INSTRUCTIONS MANDATED IN THE APPLICABLE BUREAU OF INTERNAL REVENUE RULES ON ALTERNATIVE MODES OF FILING AND PAYMENT IN CASE OF THE UNAVAILABILITY OF THE ELECTRONIC FILING AND PAYMENT SYSTEM.

II.
THE SPECIAL SECOND DIVISION COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO DECLARE THAT THE CAUSE OF PETITIONER'S FAILURE TO TIMELY FILE AND PAY ITS 2014 ANNUAL INCOME TAX RETURN WAS THE UNAVAILABILITY OF THE ELECTRONIC FILING AND PAYMENT SYSTEM, A CAUSE BEYOND PETITIONER'S CONTROL.

III.
THE SPECIAL SECOND DIVISION COMMITTED REVERSIBLE ERROR WHEN IT DISMISSED PETITIONER'S MOTION FOR RECONSIDERATION FOR THE REASON THAT PETITIONER'S GROUNDS ARE MERE REHASH OF THE ARGUMENTS ALREADY PASSED UPON.

To reinforce the afore-cited assigned errors, petitioner asserts that RMC 20-2015[6] is applicable in its case instead of RMC 14-2015[7] as discussed in the assailed Decision and Resolution. Although RMC 20-2015 is only applicable to BIR Forms 1701Q and 1702Q with payments, which had become due on or before 15 April 2015, the same is applicable to its case as it would allegedly address squarely the issue on unavailability of the eFPS. Petitioner is firm on its stance that it correctly followed the instructions provided under RMC 20-2015.

Albeit insisting on the applicability of RMC 20-2015, petitioner argues that it cannot be faulted for still insisting to e-file. RMC 20-2015 was issued on 15 April 2015 and petitioner was also advised of the requirement to manually file at around 7:30 p.m. on the same day (at which time manual filing was already impossible).

---

6 Supra at note 5.

7 Guidelines in the Filing, Receiving and Processing using the ELECTRONIC PLATFORM OF BIR for Taxable Year 2014 Income Tax Returns (ITRs) BIR Form Nos. 1700, 1701, 1702-RT, 1702-EX and 1702-MX, All June 2013 ENCS version under Revenue Regulations No. 2-2014 dated 30 March 2015.

Moreover, petitioner emphasizes that its failure to file and pay the Annual ITR was beyond its control. Likewise, it was not remiss in its obligation to file the Annual ITR before the deadline and was only prevented to do so by a cause independent of its will. Hence, the imposition of penalties for late filing is unreasonable and it should get a refund or TCC corresponding to the said penalties.

Respondent, on the other hand, echoed the disquisitions of the Special Second Division in the assailed Decision and maintains that petitioner's arguments remain without merit.

The Court *En Banc's* ruling follows below.

After an assiduous review of the records, likewise of the parties' contrasting arguments, the Court *En Banc* finds the present Petition for Review lacking in merit.

The relevant portions of RMC 20-2015 relied upon by petitioner provide:

> ...
> Print eMail Notification as evidence of eFiled return from the BIR and the tax return, then proceed to Authorized Agent Bank/collection agent for manual payment.
>
> Taxpayers mandated to use EFPS (e.g. TAMP) after several attempts of unsuccessful efiling should:
>
> a. Print evidence/proof (PRINT SCREEN ON THE MESSAGE given by the system) that EFPS were tried several times but unsuccessful
> b. Report/call HELPDESK and get trouble ticket log 981-7050/9817051/9817107/9817108
> c. Report to BIR CONTACT CENTER 981-8888 and get reference number of the call to protect them from penalties to be imposed in the future. Thereafter, **manually file and manually pay** following existing procedures. File on or before APRIL 15, 2015 attaching the proof of unsuccessful eFPS, then RE-FILE ELECTRONICALLY on or before June 15, 2015.[8]
>
> ...

[8] Emphasis in the original text and underscoring supplied.

It bears stressing that petitioner filed and paid its Annual ITR electronically on 16 April 2015. While it indeed followed the instructions laid down in RMC 20-2015 (as far as reporting the unavailability of eFPS facility and securing a Trouble Ticket Reference Number), it obviously did not follow the RMC to the letter when it went beyond the period clearly prescribed therein; that is to **manually file and manually pay following existing procedures on or before April 15, 2015.**

We agree with the Special Second Division's position that RMC 20-2015 is not applicable as it clearly covers quarterly ITRs and not Annual ITR. Rather, it is RMC 14-2015 that is more apt in petitioner's case.

Nevertheless, even if we were to apply RMC 20-2015 in this case, as petitioner insists, the said RMC is clear that manual filing and payment on or before 15 April is required in case of unsuccessful attempts using the eFPS facility. While it is true that the technical glitch in the eFPS facility is beyond petitioner's control, its failure to manually file and pay the 2014 Annual ITR is inexcusable.

As shown clearly in the records, petitioner had three (3) months and fifteen (15) days from calendar year-end[9] to file its annual return and pay the corresponding tax due. Its decision to file the ITR only a day before the deadline should be with the assumption of risk for any system hurdles given the volume of taxpayers accessing the facility (and similarly beating the deadline like petitioner).

Additionally, We reiterate for emphasis the Special Second Division's disquisition in the assailed Decision, to wit:

> ...
>
> ... [A]s early as April 1, 2002, respondent in Revenue Memorandum Order (RMO) No. 5-2002, as amended, or the "Guidelines and Procedures in the Adoption of Electronic Filing and

---

[9] **Sec. 77**. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –

...

(B) *Time of Filing the Income Tax Return.* – ...The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be. (Underscoring supplied)

...

> Payment System (EFPS)" already stated that in case the eFPS is not available during due dates, as declared by the BIR, taxpayers shall *manually* file their returns...
>
> ...
>
> Notably, petitioner was given by respondent an alternative mode of filing its return and paying its taxes by directing it to resort to manual filing and manual payment if the e-filing mode cannot be accessed. However, petitioner still insisted to electronically file and pay its taxes despite the alleged unavailability of the eFPS on April 14 and 15, 2015 and its failed attempts to connect to the system. On cross-examination, petitioner's accountant admitted that petitioner started to file and pay its annual ITR for taxable year 2014 only a day before the April 15 deadline...[10]
>
> ...

Surely, the Court *En Banc* commiserates with petitioner's plight; but even so, its failure to properly observe the procedures in the filing and payment of the ITR leaves us with no choice but to affirm the disallowance of its claim for refund or issuance of TCC corresponding to the penalties. To do otherwise would result in an action on Our part that is devoid of any legal mooring.

Section 229 of the NIRC of 1997, as amended, allows the refund or issuance of TCC of erroneously paid or illegally collected tax or of penalty collected without authority. We cannot, however, justify the penalties that petitioner paid as collected without authority. Petitioner's case is simply a matter of late filing (and late payment).

With the foregoing disquisitions, the Court *En Banc* finds no need to discuss further. As earlier stated, there are no new issues raised for a belabored discussion. Conversely put, with clear want of merit in petitioner's arguments, We could not oblige to reverse or set aside the assailed Decision and Resolution of the Special Second Division.

WHEREFORE, premises considered, this Petition for Review filed by BAP Credit Bureau, Inc. is **DENIED** for lack of merit. Accordingly, the 08 April 2019 Decision and 13 June 2019 Resolution of the Special Second Division in CTA Case No. 9570, entitled *BAP Credit*

---

[10] Supra at note 2.

x - x

Bureau, Inc. v. Commissioner of Internal Revenue, are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(*With due respect, see D.O.*)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Ma. Belen s
(*With due respect, I join the D.O. of PJ*)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

(*With due respect, I join the D.O. of PJ*)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BAP CREDIT BUREAU, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2095
(CTA Case No. 9570)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

Promulgated:
SEP 03 2020 3:10 PM

x--x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I am constrained to withhold my assent on the *ponencia* which denies the Petition for Review filed by BAP Credit Bureau, Inc. and affirms the assailed Decision and Resolution of the Court in Division.

In denying the Petition for Review, the *ponencia* in *esse* declares that, in view of petitioner's unsuccessful attempt of filing its 2014 Annual Income Tax Return (ITR) and paying the tax due through the Bureau of Internal Revenue's (BIR) electronic filing and payment system (eFPS), petitioner should have resorted to manual filing of the aforesaid return and the payment of the tax due on or before April 15, 2015. The *ponencia* further states that *"while the technical glitch in the eFPS facility is beyond petitioner's control, petitioner's failure to manually file and pay the 2014 Annual ITR is inexcusable."*[1]

[1] Page 9 of the *ponencia*.

In my view, petitioner has sufficiently proven that the late filing of its 2014 Annual ITR and the payment of the corresponding tax due were attributable to the unavailability of the BIR's eFPS, a circumstance purely beyond petitioner's control. Accordingly, for the reasons elucidated hereunder, I submit that the penalties incurred by petitioner in the amount of ₱1,062,626.00 for said late filing and payment should be appropriately refunded, *viz.*:

(1) Article 1196 of the Civil of the Philippines states that "[W]henever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other."

Section 77 (B) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provide for the time of filing of the ITR and the time of payment of the income tax:

> "SECTION 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax. —
>
> (A) Place of Filing. — xxx
>
> (B) Time of Filing the Income Tax Return. — The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.
>
> (C) Time of Payment of the Income Tax. — The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner."

It appears from the foregoing that the period to file tax returns and payment of taxes were fixed by law to benefit both the BIR and the taxpayer. The BIR cannot, therefore, shorten said period by requiring a taxpayer -- in anticipation of the BIR's faulty system -- to file its returns and pay its taxes way before the deadline set forth under the NIRC of 1997, as amended.

(2) Article 1193 of the Civil Code of the Philippines provides that *"[O]bligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes."*

In the present case, under Section 77(A) and (B) of the NRIC of 1997, as amended, petitioner had until April 15, 2015 within which to file its 2014 Annual ITR and to pay the tax due thereon. Hence, petitioner should not be faulted for opting to file and pay a day before due date or on April 15, 2015 as petitioner was well within its right to do so.

(3) It would be the height of injustice and inequity to require petitioner to file its 2014 Annual ITR and pay the tax due **much earlier**, in anticipation of any technical glitch in the BIR's eFPS. **The imposition of such additional requirement to petitioner which effectively alters the time of filing specifically provided by the NIRC of 1997, as amended, is not sanctioned by law.**

The BIR, in mandating the filing of returns and payment of taxes through its eFPS, should ensure that the said facility is working properly and efficiently. **The BIR should, at the very least - in the performance of its duties - act with justice, give taxpayers their due, and observe honesty and good faith.[2] It cannot be permitted to pass on the burden brought about by its system's ineptness to taxpayers.**

To penalize a taxpayer with the imposition of penalties for late filing for reasons brought about by the inefficiency and unavailability of the BIR's eFPS, at its worse, sanctions and rewards government inefficiency to the prejudice of law-abiding citizens.

(4) Records of this case reveal that petitioner cannot even be considered as negligent in the performance of its obligation to file its return and pay the tax due.

Under Article 1173 of the Civil Code of the Philippines, if the law does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

---

[2] Article 19 of the Civil Code of the Philippines.

In the present case, the factual narration in the assailed Decision shows that petitioner exercised reasonable diligence which any reasonable man could have done in the premises, *viz.*:

> "On April 14, 2015 at 10:35 a.m. preparatory to the filing of its 2014 Annual Income Tax Return (ITR), petitioner transferred funds in the amount of P4,141,429.00 from its Banco de Oro (BDO) Savings Account to the BDO-BIR-CBC Hinge Account to cover the e-payment of the income tax due for taxable year 2014.
>
> Thereafter, petitioner proceeded to file the offline Annual ITR through the BIR's Electronic Filing Payment System (eFPS) on that same day April 14, 2015. However, said filing or submission was unsuccessful despite several attempts throughout the day.
>
> On April 15, 2015, petitioner again tried to file and submit its offline Annual ITR through the eFPS. Petitioner's numerous attempts remained unsuccessful. In order to document the unavailability of the eFPS website, petitioner saved screenshots of the same.
>
> Before noon of the same day, petitioner's accountant, Josefina Salaveria, proceeded to the Revenue District Office (RDO) No. 48 to seek assistance regarding the unavailability and offline status of the eFPS website. RDO No. 48 OIC-Revenue District Officer Wilfredo Pilapil and Collection Head Geng Iglesias instructed Ms. Salaveria to bring the hard copies of petitioner's Annual ITR to Chinabank and told her that they will be calling the bank to auto-debit the payment.
>
> Ms. Salaveria then coordinated with and inquired from BDO if an auto debit was possible. In response thereto, a certain Marc Allen Marcelo from BDO informed Ms. Salaveria that such is not possible under the circumstance.
>
> Subsequently, Ms. Salaveria returned to petitioner's office and attempted to connect to the eFPS website. However, all attempts made until 7:26 p.m. of the same day remained unsuccessful.
>
> On or about 7:30 p.m. of April 15, 2015, petitioner called the BIR Contact Center and reported the failed attempts to connect to the eFPS website to file the 2014 Annual ITR. Petitioner was instructed by a certain Mr. Arix of the BIR to follow the procedure and guidelines set forth under Revenue Memorandum Circular (RMC) No. 20-2015 dated April 15, 2015, which provides for manual filing and payment in lieu of eFPS.
>
> On April 16, 2015 at 9:12 a.m., petitioner sent an email 11 to the email address 1702Qv2008@bir.gov.ph attaching the soft copy of the offline 2014 Annual ITR and the error screenshots in compliance with the procedure outlined in RMC No. 20-2015.

OM

> After petitioner's authorized party signed the new check, petitioner proceeded to the Development Bank of the Philippines (DBP)-Gil Puyat Branch to effect manual payment at around 2:00 p.m. of the same day. Said manual payment, however, was not processed and accepted by the DBP because the 2014 Annual ITR to be filed was not signed by OIC-Revenue District Officer Wilfredo Pilapil.
>
> When consulted on the necessity of his signature on the said ITR, OIC-Revenue District Officer Pilapil informed petitioner that the filing of the ITR would now be subjected to penalty considering that the new check was already late for clearing. Petitioner was also instructed by OIC-Revenue District Officer Pilapil to present the confirmation e-mail of the Trouble Ticket Reference No. 2590 issued by the BIR National Office before he would sign the 2014 Annual ITR.
>
> At 8:11 p.m. of April 16, 2015, petitioner finally e-filed the said offline ITR through the e-filing system, which automatically computed surcharge, interest, and compromise penalties. At around 8:42 p.m. of the same day, petitioner paid electronically (e-payment) the basic taxes only. Subsequently, petitioner transferred funds in the amount of P1,062,626.00.
>
> On April 17, 2015, petitioner's e-payment of penalties was successfully transmitted. Petitioner then followed up with the BIR National Office for the issuance of the e-mail confirmation of the Trouble Ticket Reference No. 2590. On May 26, 2015, the email confirmation was issued by the BIR National Office."

Evidently, the efforts exerted by petitioner manifested its strong desire to complete the filing and payment process within the deadline set forth by law. **Petitioner's failure to file and pay on time was not due to its own fault or negligence but for reasons principally attributable to the BIR's faulty system.**

Should petitioner really be faulted for opting to pursue the filing and payment through the BIR's eFPS instead of going to the BIR's chaotic, disorderly and frenzied offices?

(5) While the nature of the obligation allows petitioner to file and pay through the BIR's eFPS, the BIR - precisely because of the anticipated influx of taxpayers seeking to access its system - imposes upon itself the responsibility to improve the same. **There should be an end to indifference, insensitivity and lack of good governance as this is not the kind of service taxpayers deserve for desiring to timely and legitimately file their tax returns and pay their taxes. Fair deal is expected by taxpayers from the BIR.**

(6) True, Sections 248 and 249 of the NIRC of 1997, as amended, explicitly impose a penalty equivalent to 25% of the amount due in case of failure to file any return and pay the tax due on or before the date prescribed for the filing and payment thereof and interest of 20% per annum from the date prescribed for payment until the amount is fully paid, respectively.

There are, however, instances when the imposition of the aforesaid penalty and interest has been deleted.

In *Michael J Lhuillier, Inc. v. Commissioner of Internal Revenue,*[3] the Supreme Court ruled that 'good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.' Said the Supreme Court:

> "Nevertheless, all is not lost for petitioner. The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest. In *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, it was held that:
>
>> 'We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. It did not delay filing the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.
>>
>> WHEREFORE, modified by eliminating the surcharge of 25% imposed upon appellant, the judgment appealed from is affirmed, without costs.'
>
> This ruling was subsequently reiterated in *Tuason, Jr. v. Lingad*, where we deleted the order to pay interest and surcharges, and in *Commissioner of Internal Revenue v. Republic Cement Corporation*, where the same surcharge was dispensed with because of the taxpayer's good faith and the BIR's previous erroneous interpretation of the laws involved. We see no reason not to apply the same doctrine in the instant case which settles the divergent rulings of the BIR on DST and establishes the foremost

[3] G.R. No. 166786, September 11, 2006.

> categorical pronouncement of the Court that pledge transactions entered into by pawnshops are subject to DST." (Citations omitted)

Also, In *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.,*[4] the imposition of surcharges and interest under Sections 248 and 249 of the NIRC of 1997, as amended, was deleted by the Supreme Court on the basis of good faith and honest belief on the part of St. Luke's Medical Center, Inc. that it is not subject to tax. This ruling was reiterated by the Supreme Court in *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*[5] when it held that St. Luke's Medical Center, Inc. should not be held liable for compromise penalty for its alleged failure to file its quarterly income tax returns based on its good faith and honest belief that it is not subject to tax.

In *Hon. Kim S. Jacinto-Henares, Commissioner of Internal Revenue vs. Philippine Plaza Holdings, Inc.*,[6] the Court *En Banc* affirmed the Amended Decision dated August 12, 2016 and the Resolution dated November 23, 2016 of the Second Division of this Court in CTA Case No. 8609 which found that Philippine Plaza Holdings, Inc.'s **belated filing of its Value-Added Tax (VAT) return for the second quarter of 2011 and the payment of the VAT due thereon were attributable to the system error in the EFPS facility of the BIR, a circumstance beyond its control. Thus, the penalties and/or interest incurred by Philippine Plaza Holdings, Inc. for said late filing and payment were cancelled and the BIR was ordered to refund in favor of Philippine Plaza Holdings, Inc. the surcharge in the amount of ₱807, 951. 22.**

In other words, the imposition of penalty and interest is not an iron-clad rule that is totally unmindful of special circumstances which -- by the use of ordinary reason -- preclude its imposition.

In the present case, records show that petitioner exerted all out efforts to file its 2014 Annual ITR and pay the income tax due thereon on time. Unfortunately, petitioner failed to complete the filing and payment within the deadline set by law for a reason beyond its control or more appropriately, for reason principally attributable to the BIR's inability to provide a reliable system. To my mind, this is sufficient justification to cancel the imposition of the penalties in the amount of ₱1, 062,626.00.

---

[4] G.R Nos. 195909 and 195960, September 26, 2012.
[5] G.R. No. 203514, February 13, 2017
[6] CTA EB NO. 1571, August 3, 2018.

The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kills the "hen that lays the golden egg."[7] In order to maintain the general public's trust and confidence in the Government, **this power must be used justly and not treacherously**.[8]

All told, I VOTE to: (i) GRANT the Petition for Review filed by BAP Credit Bureau, Inc.; and (ii) ORDER the refund or issuance of a tax credit certificate in favor of BAP Credit Bureau, Inc. in the amount of ₱1,062,626.00, representing erroneously imposed and collected penalties on its income tax due for the taxable year 2014.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[7] *Commissioner of Internal Revenue vs. SM Prime Holdings, Inc.*, G.R. No. 183505, February 26, 2010, *citing Roxas vs. Court of Tax Appeals*, G.R. No. L-25043, April 26, 1968.
[8] *Roxas vs. Court of Tax Appeals*, G.R. No. L-25043, April 26, 1968.