REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LEPANTO CONSOLIDATED MINING COMPANY, Petitioner,	CTA Case No. 8889
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 08 2017 11:15 a.m.

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DECISION

Fabon-Victorino, J.:

This Petition for Review[1] filed by Lepanto Consolidated Mining Company on September 5, 2014, seeks to reverse the Decision dated August 4, 2014, issued by the Commissioner of Internal (CIR) denying its application for abatement of surcharges and compromise penalties in the total amount of Ten Million Two Hundred Thirty Thousand Two Hundred Forty-Eight Pesos and 71/100 (₱10,230,248.71) for the third (3rd) and fourth (4th) quarters of taxable year (TY) 2008, third (3rd) and fourth (4th) quarters of TY 2009, and the first (1st) quarter of TY 2010, and its claim for the refund of the said amount allegedly paid under protest.

Petitioner Lepanto Consolidated Mining Company is a domestic corporation[2] incorporated primarily: (1) to purchase, lease, or otherwise acquire, and to sell, lease or

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[1] Docket, pp. 14-21.
[2] Exhibits "P-1", docket, vol. 1, p. 270.

otherwise dispose of mining claims, whether patented or unpatented, mining rights, timber rights, water rights, oil and gas rights, all to the extent permitted by law, as well as such buildings, machinery, tools and other properties as may be necessary or convenient for carrying on the business of the corporation, and to pay or to take payment for the same, either in cash, or in stock, bonds, debentures, or other securities or otherwise, as permitted by law; (2) to search for, prospect and explore for ores and minerals and to locate mining claims, grounds or lodes, and record the same pursuant to the laws of the Philippines, and to bore, drill, prospect and mine in such mining claims, grounds or lodes for metals and minerals of all kinds; and (3) to conduct and carry on the business of mining, milling, concentrating, converting smelting, treating, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in gold, silver, copper, lead, zinc, brass, iron, steel, antimony, tin, asbestos, marble, and all kinds of ores, metals, minerals, precious stones, oils, gas and coal, and all by-products of the foregoing.[3] It is also registered with the Board of Investments (BOI) as a new export producer of gold bullion in accordance with the provisions of the Omnibus Investments Code of 1987.[4]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), vested with the power to grant refunds, issue and abate tax assessments, and examine books of accounts and tax returns to determine the correctness of taxes paid under the Tax Code. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Quarterly Excise Tax Returns for the 3rd and 4th quarters of TY 2008, the 3rd and 4th quarters of TY 2009, and the 1st quarter of TY 2010, but was unable to remit the taxes due thereon allegedly due to financial losses.[5] In view thereof, petitioner requested that it be allowed to pay the corresponding excise taxes for the afore-

[3] Exhibit "P-2", docket, vol. 1, p. 271.
[4] Exhibit "P-3", docket, vol. 1, p. 282.
[5] Par. 11, Statement of Facts and Proceedings, Petition for Review, docket, vol. I, p. 16.

mentioned periods through the proposed program of payment[6] and it did.[7]

On November 11, 2010, petitioner filed an application for abatement of surcharge and compromise penalties under Revenue Regulations (RR) No. 13-2001 in the total amount of Four Million Six Hundred Twenty-Seven Thousand Nine Pesos and 37/100 (₱4,627,009.37) for the 3rd and 4th quarters of TY 2008 on the ground of "continuous heavy losses for the last 3 years."[8]

On March 17, 2011, petitioner filed another application for abatement of surcharge and compromise penalties in the total amount of Five Million Six Hundred Three Thousand Two Hundred Nineteen Pesos and 34/100 (₱5,603,219.34) for the 3rd and 4th quarters of TY 2009 and 1st quarter of TY 2010 citing the same ground.[9]

On August 8, 2014, petitioner received a letter from respondent dated August 4, 2014, denying its applications for abatement for lack of legal basis. In the same letter, respondent demanded payment of the aggregate amount of ₱10,230,248.71 through the Electronic Filing and Payment System (*e*FPS), within ten (10) days from notice.[10]

On August 12, 2014, petitioner paid under protest the amount of ₱10,230,248.71, representing the surcharges and compromise penalties, detailed as follows:[11]

PERIOD COVERED	AMOUNT PAID
3rd Quarter of 2008	₱ 1,641,688.41[12]

6 BIR records, folder 1, pp. 13 to 14 (3rd and 4th quarters of TY 2008); folder 4, pp. 11 to 12 (3rd quarter of TY 2009); folder 3, pp. 40 to 41 (4th quarter of TY 2009); and folder 4, pp. 45 to 46 (1st quarter of 2010).
7 Exhibits "P-12-a" and "P-12-b", docket, vol. 2, p. 559 and 560, respectively; Exhibits "P-13", "P-13-c", and "P-13-c-1 to P-13-c-13", docket, vol. 2, pp. 563 to 564, pp. 568 to 570, and pp. 571 to 607, respectively; Exhibits "P-14-a" to "P-14-u", docket, vol. 2, pp. 609 to 668.
8 Par. 3, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 1, pp. 236 to 237; Exhibit "P-4", docket, vol. 1, p. 283.
9 Par. 4, JSFI, docket, vol. 1, p. 237; Exhibit "P-5", docket, vol. 1, p. 285.
10 Par. 5, JSFI, docket, vol. 1, p. 237; Exhibit "P-6", docket, vol. 1, p. 287.
11 Exhibit "P-16", docket, vol. 2, pp. 677 to 678.
12 Exhibit "P-15", docket, vol. 2, pp. 669 to 671.

4th Quarter of 2008	2,985,320.76[13]
3rd Quarter of 2009	1,527,981.94[14]
4th Quarter of 2009	2,435,176.18[15]
1st Quarter of 2010	1,640,081.22[16]

In a letter dated August 19, 2014, petitioner informed respondent that its payment should not be deemed as an admission of liability but only as a means to avoid interest and surcharges and in order to obtain a tax clearance from respondent which was necessary for issuance of its import permit.[17]

On September 5, 2014, petitioner filed the instant petition.

In his Answer[18], respondent assails the jurisdiction of Court over the case on the ground that tax abatement is not subject to judicial determination. According to respondent, he cannot be compelled by court action to exercise a power that is not ministerial but discretionary. Moreover, tax abatement is contractual, hence, consent of both parties is indispensable. To grant the relief prayed for by petitioner is to order him to give his consent to the abatement contract.

Further, to exercise of the power of abatement is to waive the government's right to receive the contribution from its inhabitants, therefore, the waiver must be voluntary. Respondent believes no person can "coerce" another to perform a "voluntary act" by judicial action.

Anent petitioner's claim for refund, the same is allegedly beyond the Court's competence since petitioner failed to file an administrative claim for refund, a condition *sine qua non* for the Court to acquire jurisdiction over the present judicial action. Besides, the collection of the

[13] Exhibit "P-15-a", docket, vol. 2, pp. 672 to 674.
[14] Exhibit "P-15-b", docket, vol. 2, pp. 675 to 676.
[15] Exhibit "P-15-c", docket, vol. 2, pp. 699 to 701.
[16] Exhibit "P-15-d", docket, vol. 2, pp. 702 to 704.
[17] Par. 6, JSFI, docket, vol. 1, p. 237.
[18] Docket, vol. 1, pp. 94 to 108.

surcharges and compromise penalties accompanying petitioner's tax liabilities, is justified.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues[19] (JSFI) on the basis of which a Pre-Trial Order[20] was issued on June 23, 2015.

During the trial, petitioner presented its lone witness **Teofilo Sacpa**, who testified[21] that as petitioner's Chief Accountant, his duties and responsibilities include overseeing and managing the accounting and tax concerns of petitioner. He is familiar with the present case as he was the one who filed the two (2) Applications for Abatement of Surcharge and Compromise Penalties with the Large Taxpayer Collection & Enforcement Division (LTCED) of the BIR. The first application filed on November 11, 2010 was for the abatement of surcharge and compromise penalties for the 3rd and 4th quarters of TY 2008 amounting to ₱4,627,009.37, while the second application filed on March 17, 2011, was for the 3rd and 4th quarters of 2009 and 1st quarter of 2010 in the amount of ₱5,603,219.34.

He further declared that due to continuous losses suffered, petitioner was forced to file the two (2) applications for abatement as provided under Section 2.3.6 of Revenue Regulations (RR) No. 13-2001. The said heavy losses during the years 2006 to 2010 were brought about by poor gold production and the tremendous drop in world copper prices, as reflected in petitioner's corresponding Audited Financial Statements (AFS) which resulted in petitioner's inability to remit the taxes due when it filed its Quarterly Excise Tax Returns for the 3rd and 4th quarters of 2008; 3rd and 4th quarters of 2009; and 1st quarter of 2010.

As a remedial action, petitioner proposed to pay respondent its basic tax liability and the interest penalty for the 3rd and 4th quarters of 2008; and the 3rd and 4th quarters of 2009 and 1stquarter of 2010, which payment program was approved by the BIR. For the 3rd and 4th quarters of 2008,

[19] Docket, vol. 1, pp. 236 to 242.
[20] Docket, vol. 1, pp. 247 to 251.
[21]Exhibit "P-17", docket, pp. 221-232.

petitioner paid through eFPS the total amount of ₱18,308,037.49 in excise taxes and ₱4,054,245.24 in interest penalties. For the 3rd and 4th quarters of 2009 and 1st quarter of 2010, petitioner paid the total amount of ₱22,112,877.33 in excise taxes and ₱4,357,617.89 in interest charges.

After the said payments, petitioner filed two (2) applications for abatement of surcharge and compromise penalties which respondent denied for lack of legal basis in his letter dated August 4, 2014. Petitioner was directed to pay within ten (10) days from notice the aggregate amount of ₱10,230,248.71, representing surcharges and compromise penalties.

On August 12, 2014, petitioner paid under protest the amount demanded to avoid interest and for the purpose of obtaining a BIR tax clearance, a prerequisite for issuance of its import permit. A week later, petitioner formally informed respondent that such payment should not be deemed as an admission of liability and its reservation of appeal the denial of its applications for abatement.

After formal offer of its evidence[22], petitioner rested its case per Resolutions of October 2, 2015[23] and March 9, 2016[24].

Respondent, on the other hand, did not present any evidence maintaining that the Court has no jurisdiction over the case.[25]

After respondent filed his Memorandum[26] on April 11, 2016 and petitioner, on May 4, 2016[27], the case was deemed submitted for decision on May 10, 2016.[28]

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22 Docket, pp. 265-269.
23 Docket, pp. 691-692.
24 Docket, pp. 726-727.
25 Minutes of the Hearing, docket, vol. 1, p. 260.
26 Docket, vol. 2, pp. 728 to 746.
27 Docket, vol. 2, pp. 759 to 772.
28 Resolution, docket, vol. 2, p. 775.

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THE ISSUES

The parties submitted the following issues[29] for the determination of the Court, to wit:

1. Whether petitioner is entitled to the abatement of, and consequently a tax refund of the amount of Ten Million Two Hundred Thirty Thousand Two Hundred Forty Eight Pesos and 71/100 (₱10,230,248.71) representing surcharges and compromise penalties for the 3rd and 4th quarters of taxable years 2008, 2009 and 1st quarter of 2010 that were paid under protest.

2. Whether the Honorable Court has jurisdiction over the Commissioner of Internal Revenue's denial of petitioner's application for abatement of surcharge and compromise penalties.

THE COURT'S RULING

The instant Petition for Review has no leg to stand on.

The Court has jurisdiction over the present case under the term "other matters" pursuant to Section 7(a)(1) of Republic Act No. 1125, as amended.

Respondent claims that the Court has no jurisdiction over the instant Petition as the discretion not to exercise his power to abate surcharges cannot be the subject of judicial determination. He stressed that the petition endeavors to force him to abate the subject surcharges and penalties on the ground of business reverses for the last three (3) years. However, he cannot be compelled by court action to exercise a power that is not ministerial but discretionary in nature. Further, the instant petition is basically an action for mandamus which is within the competence of the courts of

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[29] Issues, JSFI, docket, vol. 1, p. 237.

general jurisdiction and not of this Court's special jurisdiction.

The Court is not convinced.

Indeed, the Court of Tax Appeals (CTA) is a court of special jurisdiction and as such can only take cognizance of such matters as are clearly within its jurisdiction.[30] On this matter, Section 7 (a) (1) of R.A. No. 1125, as amended by RA Nos. 9282 and 9503 provides, thus:

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

In relation thereto, Section 3(a)(1) of Rule 4 of the Revised Rules of the CTA provides:

> SEC. 3. *Cases within the jurisdiction of the Court in Division*. - The Court in Division shall exercise:

[30]*Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010; *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717 (CTA Case No. 7876), April 17, 2012; *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, Resolution dated April 24, 2007.

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;"*(Emphasis supplied)*

Applying the foregoing provisions, the Supreme Court in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[31] made the following pronouncement, to wit:

"The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue..."

In relation to the issue at hand, Section 204 (B) of the National Internal Revenue Code of 1997, as amended, states, thus:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

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

xxx xxx xxx

(B) Abate or cancel a tax liability, ..."

A fortiori the abatement of petitioner's tax liability falls within the coverage of the phrase "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue" pursuant to Section 7 (a) (1) of R.A. No. 1125, as amended, and Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals.

Further, Section 11 of RA No. 1125, as amended, states that any party adversely affected by a decision or ruling of the Commissioner of Internal Revenue may file an appeal with the CTA within thirty (30) days after the receipt of such decision or adverse ruling.

The record show that petitioner received the decision denying its application for abatement of surcharges and compromise penalties on August 8, 2014. Counting thirty days therefrom, it had until September 7, 2014 to file a Petition for Review with this Court. Therefore, petitioner seasonably filed its Petition for Review on September 5, 2014, vesting the Court the jurisdiction to hear and determine the present action.

Continuous heavy losses incurred by the taxpayer for the last two (2) years as provided for in Section 2.3.6 of RR No. 13-2001 is only a ground for compromise and not for abatement or cancellation of tax or penalties.

Petitioner submits that grave abuse of discretion was committed when respondent denied its applications for abatement of surcharges and compromise penalties in the aggregate amount of ₱10,230,248.71 insisting that it is entitled thereto having proved that it had suffered heavy losses for five (5) years from 2006 to 2010, which was more than the required period to qualify for abatement under RR No. 13-2001. Besides, such denial was void as respondent failed to state the facts and the law upon which it was based.

Respondent, on the other hand, maintains that tax abatement is contractual, thus, consent voluntarily given by both parties is indispensable. However, petitioner practically seeks to direct him to give his consent to the abatement contract.

Respondent also argues that the power of abatement is a waiver of the government's right to receive taxes due from the taxpayers. To be valid, a waiver must be voluntary. Thus, no person can force or coerce another person to perform a voluntary act by judicial action.

Lastly, the collection of the surcharges and compromise penalties is justified since continuous heavy losses is not among the grounds for abatement of tax liability.

The Court rules for respondent.

Section 204(B) of the National Internal Revenue Code of 1997, as amended, relevantly states:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may -
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> xxx xxx xxx
>
> (B) Abate or cancel a tax liability, when:
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> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

> (2) The administration and collection costs involved do not justify the collection of the amount due.
>
> All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud."

In *People of the Philippines vs. Sandiganbayan (Fourth Division), et al.*[32], the Supreme Court defined abatement or cancellation as used within the purview of Section 204(B) of the NIRC of 1997, as amended, and the instances when they may be exercised, in the following manner:

> "*xxx* Abatement is the diminution or decrease in the amount of tax imposed; it refers to the act of eliminating or nullifying; *xxx* of lessening or moderating *xxx*. To abate is to nullify or reduce in value or amount; while to cancel is to obliterate, cross out, or invalidate; and to strike out; *xxx* delete; *xxx* erase; *xxx* make void or invalid; *xxx* annul; *xxx* destroy; *xxx* revoke or recall.
>
> The BIR may therefore abate or cancel the whole or any unpaid portion of a tax liability, inclusive of increments, if its assessment is excessive or erroneous; or if the administration costs involved do not justify the collection of the amount due. **No mutual concessions need be made, because an excessive or erroneous tax is not compromised; it is abated or canceled.** Only correct taxes should be paid. Besides, as we have discussed earlier, there was no finality in the assessment that could be settled." *(Emphasis supplied)*

Thus, to abate means to reduce, lessen or diminish. It is a technical word, which takes its color and content from

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[32] G.R. No. 152532, August 16, 2005.

context of subject-matter with which it deals. The word abate, as applied to taxation, presupposes error or mistake in assessment.[33]

Black, on the other hand, defined the term *erroneous or illegal tax* as one levied without statutory authority.[34] Excess, on the other hand, is the state of going beyond limits.[35] Thus, the term excessive tax may be defined as one which is assessed beyond or outside the limits of statutory authority.

With the foregoing definitions in mind, abatement or cancellation of tax or penalties attached thereto on the ground of excessive or erroneous assessment may be granted in two instances: *first,* when the assessed tax or penalty has been levied without statutory authority or without any legal anchor; and *second,* when the tax or penalty appears to have been assessed beyond or outside the limits of statutory authority.

In the present case, neither of the two circumstances is present. The subject surcharges and compromise penalties sought to be abated cannot be deemed as excessively or erroneously assessed tax or penalty.

Petitioner presented its AFS for the years 2006,[36] 2007,[37] 2008,[38] 2009,[39] and 2010.[40] However, the said pieces of evidence only show the alleged financial condition of petitioner for the years cited. There is nothing therein that even suggest that the subject surcharges and compromise penalties sought to be abated or cancelled have been assessed by the BIR without, in excess or outside the limits of the authority granted by law. For petitioner's failure to prove that the surcharges and compromise

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[33] Words and Phrases, p. 67 citing *Gulf States Steel Co. vs. U.S.* (C. C. A. Ala.) 56 F.(2d) 43, 46.
[34] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 161997, October 25, 2005.
[35] *Forbes, et al. vs. Chuoco Tiaco (alias Choa Tea), et al.*, G.R. No. L-6157, July 30, 1910.
[36] Exhibit "P-7", docket, vol. 1, pp. 288 to 333.
[37] Exhibit "P-8", docket, vol. 1, pp. 334 to 384.
[38] Exhibit "P-9", docket, vol. 1, pp. 385 to 443.
[39] Exhibit "P-10", docket, vol. 1, pp. 444 to 500.
[40] Exhibit "P-11", docket, vol. 2, pp. 501 to 557.

penalties assessed by respondent are erroneous or excessive, the same may not be abated or cancelled.

Petitioner anchors its claim for abatement of surcharges and compromise penalties on Section 2.3.6 of RR No. 13-2001, which states:

> "SEC. 2. *Instances When the Penalties and/or Interest Imposed on the Taxpayer May Be Abated or Cancelled on the Ground That the Imposition Thereof is Unjust or Excessive.* –
>
> xxx xxx xxx
>
> 2.3 When the taxpayer fails to file the return and pay the tax on time due to substantial losses from prolonged labor dispute, *force majeure*, legitimate business reverses such as in the following instances, provided, however, that the abatement shall only cover the surcharge and the compromise penalty and not the interest imposed under Section 249 of the Code:
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> xxx xxx xxx
>
> 2.3.6 Continuous heavy losses incurred by the taxpayer for the last two (2) years;"

The above-quoted regulation was promulgated by the Secretary of Finance pursuant to his rule-making power found in Section 244 of the NIRC of 1997, as amended, which provides:

> "**SEC. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.*** - The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code."

Basic is the principle that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid.[41] Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.[42] In relation to cited principle, the Supreme Court ruled in the case of *Commissioner of Internal Revenue vs. San Miguel Corporation*[43], as follows:

> "*xxx* In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails as said rule or regulation cannot go beyond the terms and provisions of the basic law. It must be stressed that the objective of issuing BIR Revenue Regulations is to establish parameters or guidelines within which our tax laws should be implemented, and not to amend or modify its substantive meaning and import."

An examination of the provision relied upon by petitioner reveals that Section 2.3.6 of RR No. 13-2001 does not conform to the standards prescribed by Section 204(B)(1) of the NIRC of 1997, as amended. There is no rational connection between an erroneous or excessive assessment of tax liability with the financial state of a taxpayer. The excessive or erroneous assessment of a tax liability is premised upon the consideration of whether the Bureau of Internal Revenue, in assessing a taxpayer, acts with and within the authority granted to it by law. On the other hand, continuous losses suffered by a taxpayer for the past two (2) years pertain to the taxpayer's financial situation without any regard as to the authority of the BIR to assess a taxpayer for tax liabilities. It is in this light that Section 2.3.6 of RR No. 13-2001 may not be relied upon by petitioner as a ground for abatement of its tax liabilities.

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[41] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.,* G.R. Nos. 158885 and 170680, April 2, 2009 citing *Lina, Jr. vs. Carino,* G.R. No. 100127, April 23, 1993.
[42] Article 7, Republic Act No. 386, otherwise known as "The Civil Code of the Philippines".
[43] G.R. No. 184428, November 23, 2011.

Established is the rule that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. However, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[44]

Further, the surcharges and compromise penalties imposed upon petitioner while it was allegedly suffering from a precarious financial condition cannot be deemed excessive or erroneous. As observed by the Court, petitioner failed to adduce sufficient evidence to prove that the surcharges and compromise penalties sought to be abated are indeed excessive or erroneous as provided under Section 204(B)(1) of the NIRC of 1997, as amended. Consequently, petitioner's claim for abatement must fail.

It must also be noted that the financial inability of a taxpayer to pay the assessed tax is a ground for a compromise of the said tax under Section 204(A)(2) of the NIRC of 1997, as amended, 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**:
>
> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
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> **(2) The financial position of the taxpayer demonstrates a clear inability**

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[44] *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation,* G.R. No. 167274-75, July 21, 2008, citing *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* 361 Phil. 916 (1999).

> **to pay the assessed tax.**" *(Emphasis supplied)*

In fine, continuous heavy losses incurred by the taxpayer for the last two (2) years as provided for in Section 2.3.6 of RR No. 13-2001 is a ground for compromise and not for abatement or cancellation of tax or penalties. The reason is that continuous heavy losses incurred by the taxpayer for the last two years might indicate its financial situation demonstrating a clear inability to pay the assessed tax as provided for in Section 204(A)(2) of the NIRC of 1997, as amended.

Note, tax statutes are to receive a reasonable construction with a view to carrying out their purposes and intent. They should not be construed as to permit the taxpayer to easily evade the payment of tax.[45]

Clearly, respondent did not commit grave abuse of discretion when it denied petitioner's applications for abatement of surcharges and compromise penalties for indeed it lacked legal basis.

In view of the above findings, a discussion of petitioner's prayer for the refund of the amount of ₱10,230,248.71, allegedly representing surcharges and compromise penalties paid under protest, becomes unwarranted.

WHEREFORE, the Petition for Review filed by Lepanto Consolidated Mining Company is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[45] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 104151, and *Atlas Consolidated Mining and Development Corporation vs. Court of Appeals, et al.*, G.R. No. 105563, March 10, 1995.

We concur:

LOVELL R. BAUTISTA
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice