REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
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C.F. SHARP CREW MANAGEMENT, INC., Petitioner,	**CTA Case No. 9707**
	Members:
- versus -	**UY**, Chairperson, and **RINGPIS-LIBAN**, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	MAR 06 2019 2:20 p.m.

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RESOLUTION

For resolution is petitioner's **"MANIFESTATION WITH MOTION TO WITHDRAW PETITION"** filed on September 28, 2018,[1] with respondent's **"COMMENT (To Petitioner's Manifestation with Motion to Withdraw Petition dated September 28, 2018)"** filed on October 19, 2018,[2] praying that this Court: (1) allow the withdrawal of the *Petition for Review* dated October 27, 2017; and (2) order the termination of the instant proceedings.

In the Resolution dated November 16, 2018, the Court directed petitioner to submit the certified true copies of the Letter dated September 7, 2018 issued by Alfredo V. Misajon, Assistant Commissioner, Collection Service of the Bureau of Internal Revenue (BIR), informing petitioner of the approval of its application for compromise settlement of the deficiency income tax and documentary stamp tax for taxable year 2013 by the National Evaluation Board (NEB), and the *Certificate of Availment (Compromise Settlement)* dated September 7, 2018.

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[1] Docket, pp. 326 to 329.
[2] Docket, pp. 336 to 337.

On December 11, 2018, petitioner filed a *Motion to Admit Attached Manifestation/Compliance*, submitting the certified true copy of the *Certificate of Availment (Compromise Settlement)* dated September 7, 2018 with Reference No. CAC201700004466. In the said *Motion*, petitioner manifested that the BIR refused to issue a certified true copy of the Letter dated September 7, 2018.

The said *Motion to Admit* was granted and the attached *Manifestation/Compliance* was admitted by the Court in the Resolution dated December 13, 2018.

THE ISSUES

In disposing the instant *Motion to Withdraw Petition*, the following issues must be resolved:

1) Whether the Court may grant the said *Motion to Withdraw Petition*; and

2) Whether it was shown that the power to compromise the subject assessed tax was exercised by respondent in accordance with law.

THE COURT'S RULING

While We grant petitioner's *Motion to Withdraw Petition*, the withdrawal of the instant *Petition for Review* renders respondent's assailed assessment final and executory.

The granting of a motion of withdrawal is discretionary upon this Court.

Section 3, Rule 1, and Section 1, Rule 7, both of the Revised Rules of the Court of Tax Appeals (RRCTA), read as follows:

> "SECTION. 3. *Applicability of the Rules of Court.* – **The Rules of Court in the Philippines shall <u>apply suppletorily to these Rules</u>.**" *(Emphasis and underscoring supplied)*

Relative thereto, Section 3, Rule 50 of the Rules of Court reads:

"RULE 50
DISMISSAL OF APPEAL

> Section 3. *Withdrawal of appeal.* – An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. **Thereafter, the withdrawal may be allowed in the discretion of the court.**" *(Emphasis supplied)*

Based on the foregoing, withdrawals of appeals made after the filing of the appellee's brief may be allowed in the discretion of the court. In the instant case, respondent has already filed his Answer on December 15, 2017. In fact, after pre-trial proceedings held on April 10, 2018, a Pre-Trial Order has been issued on May 31, 2018. Thus, the granting of a withdrawal is discretionary upon this Court.

Considering that petitioner is no longer interested in pursuing the instant *Petition*,[3] petitioner's *Motion to Withdraw Petition* must be granted.

Nevertheless, it must be pointed out that when an appeal is withdrawn, the assailed decision becomes final and executory.[4] Such being the case, with the withdrawal of the instant *Petition for Review*, the decision appealed from, *i.e.*, the letter dated October 11, 2017 of Regional Director Arnel SD. Guballa, of the Bureau of Internal Revenue (BIR), that the assessment has become final, executory and demandable, has attained finality.

The power of respondent to compromise the subject assessed taxes was not exercised within the parameters of the law.

A compromise agreement is a contract whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced. It is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.[5]

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[3] Par. 3, petitioner's Manifestation with Motion to Withdraw Petition, Docket, p. 327.

[4] *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181371, March 2, 2011.

[5] *California Manufacturing Company, Inc. vs. The City of Las Piñas and the Hon. Rizal Y. Del Rosario, City Treasurer*, G.R. No. 178461, June 22, 2009.

Indeed, respondent is empowered to compromise the payment of internal revenue taxes, under certain conditions, pursuant to Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* –
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> **The Commissioner may –**
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> (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**
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> **(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.**
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> 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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> 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."

Based on the foregoing, the payment of any internal revenue tax may be compromised by respondent on either of the two (2) instances, namely: (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. In case of the *second* instance, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax must be paid; while in all other cases, the minimum compromise rate is forty percent (40%) of the basic assessed tax. Furthermore, in case the basic tax exceeds

₱1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the Evaluation Board, which is composed of respondent and the four (4) Deputy Commissioners of the Bureau of Internal Revenue.

Relative to Section 204(A) of the NIRC of 1997, Sections 2, 3 and 6 of Revenue Regulations (RR) No. 30-2002,[6] as amended by RR Nos. 8-2004 and 9-2013, provide:

> "SEC. 2. *CASES WHICH MAY BE COMPROMISED.* – **The following cases may, <u>upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations</u>, be the subject matter of compromise settlement**, viz:
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> 1. Delinquent accounts;
> 2. Cases under administrative protest after issuance of Final Assessment Notice to the taxpayer which are still pending in the Regional Offices, Revenue District Offices, Legal Service, Large Taxpayer Service (LTS), Collection Service, Enforcement Service and other offices in the National Office;
> 3. **Civil tax cases being disputed before the courts**;
> 4. Collection cases filed in courts;
> 5. Criminal violations, other than those already filed in court or those involving criminal tax fraud.
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> EXCEPTIONS:
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> 1. Withholding tax cases, unless the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold;
> 2. Criminal tax fraud cases confirmed as such by the Commissioner of Internal Revenue or his duly authorized representative;
> 3. Criminal violations already filed in court;
> 4. Delinquent accounts with duly approved schedule of installment payments;
> 5. Cases where final reports of reinvestigation or reconsideration have been issued resulting to

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[6] 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.

reduction in the original assessment and the taxpayer is agreeable to such decision by signing the required agreement form for the purpose. On the other hand, other protested cases shall be handled by the Regional Evaluation Board (REB) or the National Evaluation Board (NEB) on a case to case basis;

6. Cases which become final and executory after final judgment of a court, where compromise is requested on the ground of doubtful validity of the assessment; and
7. Estate tax cases where compromise is requested on the ground of financial incapacity of the taxpayer.

SEC. 3. *BASIS FOR ACCEPTANCE OF COMPROMISE SETTLEMENT.* – The Commissioner may 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 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); 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.

2. *Financial incapacity.* – The offer to compromise based on financial incapacity may be accepted upon showing that:

(a) The corporation ceased operation or is already dissolved. Provided, that tax liabilities corresponding to the Subscription Receivable or Assets distributed/distributable to the stockholders representing return of capital at the time of cessation of operation or dissolution of business shall not be considered for compromise; or

(b) The taxpayer, as reflected in its latest Balance Sheet supposed to be filed with the Bureau of Internal Revenue, is suffering from surplus or earnings deficit resulting to impairment in the original capital by at least 50%, provided that amounts payable or due to stockholders other than business-related transactions which are properly includible in the regular 'accounts payable' are by fiction of law considered as part of capital and not liability, and provided further that the taxpayer has no sufficient liquid asset to satisfy the tax liability; or

(c) The taxpayer is suffering from a networth deficit (total liabilities exceed total assets) computed by deducting total liabilities (net of deferred credits and amounts payable to stockholders/owners reflected as liabilities, except business-related transactions) from total assets (net of prepaid expenses, deferred charges, pre-operating expenses, as well as appraisal increases in fixed assets), taken from the latest audited financial statements, provided that in the case of an individual taxpayer, he has no other leviable properties under the law other than his family home; or

(d) The taxpayer is a compensation income earner with no other source of income and the family's gross monthly compensation income does not exceed the levels of compensation income provided for under Sec. 4.1.1 of these Regulations, and it appears that the taxpayer possesses no other leviable or distrainable assets, other than his family home; or

(e) The taxpayer has been declared by any competent tribunal/body/government agency as bankrupt or insolvent.

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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, **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**.
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> xxx xxx xxx
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> 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 tax liabilities." *(Emphases and underscoring supplied)*

As a corollary, in *Philippine National Oil Company vs. Court of Appeals*[7] the Supreme Court made the following clarifications regarding the power of respondent to compromise the payment of taxes, to wit:

> "It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; **but when the exercise of such authority of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right,** with this Court having the last say on the matter.
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> The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of grave abuse of discretion and/or whimsical exercise of jurisdiction. The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.
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> **The discretionary authority to compromise**

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[7] G.R. No. 109976 and 112800, April 26, 2005.

> **<u>granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained</u>. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246[8] of the NIRC of 1977, as amended, <u>can only be exercised under certain circumstances specifically identified in said statutes</u>. The BIR Commissioner would have to exercise his discretion <u>within the parameters set by the law</u>**, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them." *(Emphases and underscoring supplied)*

Based on the foregoing, while respondent's power to compromise is sanctioned under the NIRC of 1997, the exercise thereof is subject to the determination of this Court, whether the same is *"within the parameters set by the law"*. Such parameters are clearly delineated under the aforequoted Section 204(A) NIRC of 1997, and Sections 2 and 3 of RR No. 30-2002, as amended by RR Nos. 8-2004 and 9-2013, to wit:

1) The compromise was granted by the respondent because one of the following reasons exists: (a) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (b) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax. In other words, the taxpayer must have complied with the basis set forth under Section 3 of RR No. 30-2002, as amended by RR Nos. 8-2004 and 9-2013;
2) In case the basic tax exceeds ₱1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must have been approved by a majority of all the members of National Evaluation Board (NEB), with the concurrence of respondent; and
3) The taxpayer must fully settle the prescribed compromise amount or rate, *i.e.*, 10% of the basic tax assessed in case of financial incapacity, or 40% of the same basic tax assessed in all other cases.

In this case, upon review of the instant *Motion To Withdraw Petition* and the supporting documents submitted by petitioner, it was **<u>not</u>** shown that there is full compliance with the requirements set forth

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[8] Now Section 204(A) of the NIRC of 1997.

by law.

Specifically, there is no showing that the compromise settlement has been duly approved by a majority of all the members of the NEB, considering that the basic assessed taxes are more than ₱1,000,000.00 (for income tax, the basic assessed tax is ₱14,987,196.03, and for the documentary stamp tax, the basic tax assessed is ₱4,621,402.14). While it may be true that respondent may have concurred with the grant of the subject compromise settlement by not interposing any objection to the instant *Motion to Withdraw* in his Comment filed on October 19, 2018[9], it does not necessarily follow that a majority of the members of the NEB has already approved the same.

Furthermore, We find that the *Certificate of Availment (Compromise Settlement)* dated September 7, 2018 is insufficient to show the approval of the NEB, since there is no indication that the latter authorized Alfredo V. Misajon, to sign on their behalf.

Simply put, petitioner failed to show to this Court its full compliance with the legal parameters for the grant of a compromise settlement of its tax liabilities for the year 2013.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion To Withdraw Petition* is **GRANTED**. Accordingly, the Petition for Review filed on November 3, 2017 is deemed **WITHDRAWN** and this case is considered **CLOSED and TERMINATED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[9] Docket, pp. 336 to 337.