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,** and **MANAHAN,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 22 2019 3:02 p.m.

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RESOLUTION

For resolution is petitioner's ***MOTION FOR RECONSIDERATION (of the Resolution dated January 24, 2019*** filed on February 1, 2019[1], without the Commissioner of Internal Revenue (CIR)'s comment despite notice as per Records Verification dated March 22, 2019.[2]

In the instant *Motion for Reconsideration*, petitioner prays for the reconsideration of the Court *En Banc's* Resolution dated January 24, 2019,[3] denying *its MOTION TO HOLD IN ABEYANCE THE PROCEEDINGS OF THE CASE.*

Petitioner reiterates that it has taken steps toward the possible settlement of the subject assessment, having completed the last set of requirements sought from it by the Office of the Commissioner.

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[1] EB Docket – Vol. 2, pp. 629 to 633.
[2] EB Docket – Vol. 2, p. 637.
[3] EB Docket – Vol. 2, pp. 506 to 507.

Specifically, it submits that it has already paid the compromised amount in relation to the subject tax assessment for taxable year 2008 on October 30, 2018 and November 20, 2018.

It further submits that its application for compromise settlement is currently with the office of the Regular Large Taxpayer Division III for further evaluation, and that it is awaiting the approval by respondent and the National Evaluation Board (NEB).

THE COURT'S RULING

Section 204 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended provides as follows:

> "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.
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> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
>
> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
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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, **<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 to the foregoing provisions, Section 6 of Revenue Regulations (RR) No. 30-2002[4], as amended by RR No. 9-2013, states as follows:

> "SECTION. 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**.
>
> 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." (Emphases and underscoring supplied)

Based on the foregoing provisions, respondent CIR 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 rates, the compromise settlement is subject to the approval by a majority of all the members of the NEB [composed of respondent and the four (4) Deputy Commissioners], with respondent having concurred with the same.

In this case, since the basic tax involved amounts to ₱76,697,301.51[5], the subject application for compromise settlement must be approved by a majority of the members of the NEB, with the concurrence of respondent.

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[4] *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.*

[5] Exhibit "P-2", Division Docket – Vol. 1 (CTA Case No. 8793), p. 540.

While petitioner's request for compromise settlement has not yet been approved by the majority members of the NEB and by respondent, a perusal of the records of this case, however, shows that petitioner has already paid a total amount of ₱33,283,681.33 as part of the compromise settlement process in the subject tax assessment, 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[6]
LTRAD2-VT-2008-0009	VAT	4,820,849.54	40%	1,928,339.82[7]
LTRAD2-VT-2008-0012	EWT	4,341,267.87	100%	4,341,267.887[8]
Total		76,697,301.51		33,283,681.33

Moreover, petitioner is now awaiting the approval of its application, having submitted all the required documents to the CIR.

We find the foregoing sufficient to constitute as definitive and substantial actions by petitioner towards the settlement of its tax liabilities. As such, this Court deems it proper to reconsider and set aside the Resolution dated January 24, 2019 and give petitioner a period of thirty (30) days to complete the compromise settlement process and to submit to this Court the proof of approval of the majority members of the NEB, with the concurrence of respondent.

WHEREFORE, in light of the foregoing considerations, the instant *MOTION FOR RECONSIDERATION* is **GRANTED.** The Resolution dated January 24, 2019 is hereby **SET ASIDE**. Accordingly, petitioner is given a period of thirty (30) days from receipt hereof, to **SUBMIT** to this Court the proof of approval of its request for compromise settlement.

Meanwhile, the Resolution dated August 9, 2018 considering this case submitted for decision stands, subject to the compliance of petitioner with the foregoing directive of the Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] EB Docket – Vol. 2, p. 609.
[7] EB Docket – Vol. 2, p. 610.
[8] EB Docket – Vol. 2, p. 608.

J. 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
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice