REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CALUMPIT WATER DISTRICT, *Petitioner,*	**CTA Case No. 9493**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 14 2017 11:15 a.m.

x- x

D E C I S I O N

MANAHAN, *J.:*

This involves a *Petition for Review*[1] filed on November 16, 2016 by petitioner Calumpit Water District (CWD) pursuant to Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2] seeking for the reversal and setting aside of respondent's decision dated June 21, 2016 on disputed assessment against CWD for deficiency franchise tax and compromise penalty.

THE PARTIES

Petitioner CWD is a government entity organized and existing by virtue of Presidential Decree No. 198, as amended,

---

[1] Docket, CTA Case No. 9493, pp. 10-25.

[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

otherwise known as the "Provincial Water Utilities Act of 1973", holding office at Calumpit, Bulacan.[3]

Respondent Commissioner of Internal Revenue (CIR) as the Chief of the Bureau of Internal Revenue (BIR), a national government agency under the Department of Finance created under Commonwealth Act 466 and by Republic Act (RA) 8424, has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto in accordance with RA 8424 and other laws administered by the BIR, who is holding office at BIR National Office, Diliman, Quezon City.[4]

THE FACTS

On September 12, 2005, Letter of Authority (LOA) No. 00005121 was issued authorizing Revenue Officer Ma. Socorro Tresvalles under Group Supervisor A. Guevarra of Revenue District Office (RDO) No. 25-A, Plaridel, Bulacan, to examine CWD's book of accounts and other accounting records for the period from January 1, 2003 to December 31, 2003. The aforesaid LOA was personally received by CWD on October 3, 2005.[5] Ms. Tresvalles then returned the duly served LOA to her Revenue District Officer with an attached letter dated October 7, 2005 from CWD's General Manager (GM).[6]

In its letter dated October 7, 2005, CWD, through its GM, informed the RDO that upon the advice of its statutory counsel, the Office of the Government Corporate Counsel (OGCC), it is asking for the deferment of the examination of its records until such time that the higher authorities shall have issued a definite ruling on its position that water districts are excluded from tax on gross income under Section 32(B)(7)(b) of the National Internal Revenue Code, as amended (NIRC). Thus, CWD decided not to allow respondent to open its books of accounts and other accounting records in the meantime until the issue has been resolved with finality.[7] *cm*

---

[3] Docket, Joint Stipulation of Facts, p. 101.
[4] Docket, Petition for Review. p. 11.
[5] *Id.*, Joint Stipulation of Facts, p. 101; Annex "J", p. 144.
[6] *Id.*, Annex "M", pp. 147-149.
[7] *Id.* at 102; Annex "G", pp. 132-133.

However, respondent, through Ms. Tresvalles, issued an undated first[8] and second[9] Request for Presentation of Records in connection with the said LOA covering petitioner's accounting records and documents pertinent to the internal revenue taxes for taxable year 2003.

On September 6, 2006, petitioner issued Board Resolution No. 2006-081 authorizing its GM to open its book of accounts and other accounting records for taxable year 2004[10] and not 2003 which was the period covered by the LOA.[11]

On September 13, 2006, petitioner officially informed the BIR that the issuance of Final Request of Presentation of Records and possible Subpoena Duces Tecum was needless, inappropriate and unnecessary. Petitioner, however, stated that it will abide by said request.[12]

On August 13, 2007, the Regional Director of Revenue Region No. 5, Valenzuela City, issued the Subpoena Duces Tecum against the petitioner ordering the latter to present its books of accounts, accounting records, and other pertinent documents for taxable period 2003.[13] The issuance was in response to the recommendation made by Ms. Tresvalles to compel the petitioner to submit said records and documents because of its failure to heed respondent's request.[14]

Thus, on September 7, 2007, petitioner submitted its books of accounts, accounting records, and other pertinent documents for taxable period 2003.[15]

On January 25, 2008,[16] respondent then issued a Preliminary Assessment Notice (PAN) amounting to P1,837,186.23 consisting of the following:[17]

Metered Sales	P 40,165,939.00
Miscellaneous Service Revenues	3,861,375.00
Penalty Charges	106,303.00

om

[8] *Id.*, Annex "L", p. 146.
[9] *Id.*, Annex "K", p. 145.
[10] Docket, Annex "N", pp. 150-151.
[11] *Supra.*, Note 4.
[12] Docket, Joint Stipulation of Facts, p. 102; Annex "H", pp. 134-135.
[13] Docket, Annex "P", p. 153.
[14] *Id.*, Annex "O", p. 152.
[15] *Id.*, Annex "R", p. 155.
[16] *Id.*, Annex "A", p. 108.
[17] *Id.*, Annex "E-1", pp. 121-123.

Other Water Revenues		11,418.00
Total Operating Revenues		P 44,145,035.00
Franchise tax rate		2%
Franchise tax due		P 882,900.70
Less: Tax paid		-
Deficiency Franchise Tax		P 882,900.70
Surcharge	P 220,725.18	
Interest	713,560.35	
Compromise Penalty	20,000.00	954,285.53
Total amount Due		**P 1,837,186.23**

On February 26, 2008, respondent issued the Formal Letter of Demand (FLD) for the deficiency Franchise Tax[18] with Assessment Notice[19] and FLD for Compromise Penalty[20] amounting to Php1,836,168.59 and Php20,000.00, respectively, payable on March 28, 2008.

Thus, on March 24, 2008, the petitioner, through the OGCC, filed a Written Objection/Protest to the BIR FLD and Assessment Notice dated February 26, 2008.[21]

On June 21, 2016, respondent finally decided to deny said protest by petitioner.[22] Hence, petitioner filed the instant petition on November 16, 2016 after receiving the assailed respondent's decision on October 19, 2016.

On November 22, 2016, this Court required the respondent to submit its Answer to the instant petition.[23] Respondent submitted its Answer on December 13, 2016 where it refuted petitioner's argument that its authority to assess and collect franchise tax against the latter has already prescribed.[24]

On December 15, 2016, the parties were ordered to submit their respective pre-trial briefs.[25] Hence, on January 13, 2017, respondent filed its pre-trial brief[26] while petitioner filed its own on January 24, 2017[27].

---

[18] Docket, Joint Stipulation of Facts, p. 104; Annex "C", p. 117; Annex "D", p. 118.
[19] *Id.*, Annex "B", p. 116.
[20] *Id.*, Annex "E", pp. 119-120.
[21] *Id.*, Annex "F", pp. 124-131.
[22] *Id.*, Annex "A", p. 108-115.
[23] Docket, Summons dated November 22, 2016, p. 48.
[24] Docket, Answer, pp. 50-59.
[25] Docket, Notice of Pre-Trial Conference, pp. 64-65.
[26] Docket, Pre-Trial Brief for the Respondent, pp. 60-63.
[27] Docket, Pre-Trial Brief, pp. 66-71.

The parties were ordered by this Court to file their joint stipulation of facts and issues (JSFI) on February 2, 2017[28] and the same was submitted on February 16, 2017.[29] It was also agreed by the parties in the JSFI that they will forgo the trial-type hearing and instead submit their respective Memoranda to discuss purely legal issues.[30]

In view of such manifestation made by both parties, this Court ordered them to file their respective memoranda until April 21,2017.[31] Respondent filed its Memorandum[32] on April 20, 2017 while petitioner filed its Memorandum[33] on April 20, 2017 through registered mail and received by this Court on April 26, 2017. Hence, this Court deemed the case submitted for decision on May 9, 2017[34]

ISSUE

Whether the power of the respondent to assess and collect Franchise Tax against the petitioner has already prescribed[35]

Petitioner's Arguments[36]

Petitioner argues that the period of assessment by respondent has already prescribed under Section 203 of the NIRC considering that it filed its Income Tax Return on April 14, 2004. It further argues that its letter protest dated October 7, 2005 is not a request for reinvestigation under Section 223 of the NIRC that will suspend the running of the statute of limitations (SOL) on the power of the respondent to assess under Section 203 of the said Code. These codal provisions pertain to the following:

> **SEC. 203.** ***Period of Limitation Upon Assessment and Collection.*** - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the

---

[28] Docket, Order dated February 2, 2017, p. 100.
[29] *Id.*, Joint Stipulation of Facts, pp.101-107.
[30] *Id.* at 106.
[31] Docket, Order dated March 22, 2017, p. 184.
[32] *Id.*, Memorandum for the Respondent, pp. 185-197.
[33] *Id.*, Memorandum, pp. 198-210.
[34] *Id.*, Order dated May 9, 2017, p. 212.
[35] *Id.*, Joint Stipulation of Facts, p. 103.
[36] *Supra.*, Note 33.

period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

xxx xxx

SEC. 223. *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided*, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

Respondent's Counter-Arguments[37]

Respondent argues that petitioner is a non-filer of franchise tax return and he was prohibited from making the assessment which would clearly justify the suspension of the running of the SOL by reasons of petitioner's repeated requests for deferment of audit examinations/ investigations as borne out by its letters dated October 7, 2005 and September 13, 2006.

He further argues that such repeated requests for deferment of audit examinations/investigations are deemed positive acts which the government has been, for good reasons, persuaded to postpone tax assessment and collection in order to make the petitioner feel that the demand was not unreasonable or that no harassment or injustice is meant by the government.

[37] *Supra.*, Note 32.

RULING OF THE COURT

In order for this court to rule on its merit, it is important to determine first whether it has jurisdiction on the claim. Section 7(a)(1) of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503,[38] provides that:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> 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 or other laws administered by the Bureau of Internal Revenue;

In the instant case, after the failure of the petitioner to respond to the PAN, respondent issued the assailed FLD and assessment notice which the petitioner protested. Thus, it became a disputed assessment. In *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[39], the Supreme Court described a disputed assessment, to wit:

> **An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level.** Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA. (*Emphasis supplied*) om

---

[38] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes".

[39] G.R. Nos. 215534 and 215557, April 18, 2016.

Under Section 228 of the 1997 Tax Code, if the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period. In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[40], the Supreme Court explained these two options for the taxpayer, *viz*:

> It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, while we reiterate - the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, **these options are mutually exclusive and resort to one bars the application of the other.**
>
> Accordingly, considering that Lascona opted to await the final decision of the Commissioner on the protested assessment, it then has the right to appeal such final decision to the Court by filing a petition for review within thirty days after receipt of a copy of such decision or ruling, even after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. Thus, Lascona, when it filed an appeal on April 12, 1999 before the CTA, after its receipt of the Letter dated March 3, 1999 on March 12, 1999, the appeal was timely made as it was filed within 30 days after receipt of the copy of the decision.
>
> Finally, the CIR should be reminded that taxpayers cannot be left in quandary by its inaction on the protested assessment. It is imperative that the taxpayers are informed of its action in order that the taxpayer should then at least be able to take recourse to the tax court at the opportune time...

Just like Lascona, herein petitioner opted to wait for the final decision of the respondent on its protest which was issued on June 21, 2016 but was received on October 19, 2016. Petitioner then filed its appeal on November 16, 2016. The filing is within the prescribed period to appeal. Hence, this Court has jurisdiction over the case.

---

[40] G.R. No. 171251, March 05, 2012.

The assessment made by the respondent has not yet prescribed

Petitioner insists that the period to assess by the respondent has already prescribed under Section 203 of the NIRC considering that respondent received its Income Tax Return on April 14, 2004, hence, the three-year period should have expired "sometime in April, 2007 reckoning from the period April 15, 2004, the scheduled filing of return for calendar year 2003."[41]

However, the cited provision pertains to the filing of the annual income tax return by the taxpayer. As shown in the abovementioned facts, petitioner filed only its income tax return but no franchise tax return. And the assessment notice attached to the FLD pertains to a deficiency franchise tax instead of income tax.

The facts of this case show that petitioner did not file a tax return on its franchise fees for 2003. Thus, the applicable provisions are Sections 119 and 128 (A)(1) of the NIRC, which provide:

> **SEC. 119.** ***Tax on Franchises.*** - **Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises** on radio and/or television broadcasting companies whose annual gross receipts of the preceding year do not exceed Ten million pesos (P10,000.00), subject to Section 236 of this Code, a tax of three percent (3%) and **on** gas and **water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise**: Provided, however, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon: *Provided, further*, That once the option is exercised, said option shall be irrevocable.
>
> The grantee shall file the return with, and pay the tax due thereon to the Commissioner or his duly authorized representative, in accordance with the provisions of Section 128 of this Code, and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding. *em*

---

[41] Docket, Memorandum, p. 203.

xxx xxx

> **SEC. 128.** ***Returns and Payment of Percentage Taxes.*** -
>
> (A) *Returns of Gross Sales, Receipts or Earnings and Payment of Tax.* -
>
> (1) *Persons Liable to Pay Percentage Taxes.* - Every person subject to the percentage taxes imposed under this Title shall file a quarterly return of the amount of his gross sales, receipts or earnings and pay the tax due thereon within twenty-five (25) days after the end of each taxable quarter: Provided, That in the case of a person whose VAT registration is cancelled and who becomes liable to the tax imposed in Section 116 of this Code, the tax shall accrue from the date of cancellation and shall be paid in accordance with the provisions of this Section.
> (*Emphasis supplied*)

Had a tax return covering its franchise fees been filed by petitioner in 2003, then the 3-year prescriptive period to assess its last quarterly payment of its franchise tax obligation expired on January 25, 2007 pursuant to Section 203 in relation to Section 198 of the NIRC.

However, since respondent only discovered the non-payment/non-filing of franchise tax return by petitioner only on September 7, 2007 when the latter submitted its books of accounts, accounting records and other pertinent tax records, the 10-year prescriptive period and not the 3-year period to assess will apply. Section 222 of the NIRC provides:

> **SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*** -
>
> (a) **In the case of** a false or fraudulent return with intent to evade tax or of **failure to file a return, the tax may be assessed**, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of** the falsity, fraud or **omission**: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (*Emphasis supplied*)

Hence, when respondent issued the assailed FLD and assessment notice on February 26, 2008 or about four years after its payment of income tax due, the period of limitation has not yet prescribed. Besides, what was being assessed was not income tax but rather, franchise tax.

It is likewise noteworthy to mention that it was the fault of the petitioner why the revenue examiners of the respondent were able to assess the assailed deficiency franchise tax only in 2008.

As shown by the above facts, from the time the LOA was received by the petitioner on October 3, 2005, the latter tried to block the effort of said revenue examiners to perform said examination/investigation by asking for its deferment and when the revenue examiners insisted on such examination, petitioner still failed to give its accounting books and records for calendar year (CY) 2003 by issuing a board resolution that authorized the submission of its accounting books and records for CY 2004 instead of 2003.

It was only when the respondent issued a subpoena duces tecum on August 13, 2007 that the petitioner submitted its accounting books and records for CY 2003 on September 7, 2007. By that time, the three-year period to assess petitioner's franchise tax obligation under Section 203 of the NIRC had already expired, thus, an indication of bad faith on the part of the petitioner.

Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter.[42] The position of the petitioner that its letter protest did not constitute a request for reinvestigation that would suspend the running of the SOL holds no weight because with or without that letter, the respondent had 10 years to assess from the date of his discovery of the non-filing of tax return by petitioner on its revenue from franchise operation.

Petitioner initially enjoyed its franchise tax exemption under the following laws:

PD 198[43] particularly Sec. 45 thereof which provides:

> Sec. 45. *Exemption from Taxes.* – A district shall (1) be exempt from paying income taxes, and (2) shall be exempt

---

[42] *Department of Public Works and Highways v. Ronaldo E. Quiwa*, G.R. No. 183444, February 8, 2012.
[43] Took effect on May 25, 1973.

> from the payment of (a) all National Government, local government and municipal taxes and fees, including any franchise, filing, record, license or permit fees or taxes and any fees, charges or costs involved in any court of administrative proceeding in which it may be a party and (b) all duties or imposts on imported machinery, equipment and materials required for its operations.

Republic Act No. 7109 entitled "An Act Granting Tax Exemption Privileges to Local Water Districts"[44] under Section 1 which states:

> **Section 1. Exemption from taxes**. – A water district created pursuant to Presidential Decree No. 198, as amended, shall be exempted from the payment of (1) income taxes, except taxes on interest income from deposits and on investments that have no direct relation with water service operations; (2) franchise taxes; and (3) duties and taxes on imported machinery, equipment and materials required for its operations; provided, that such machinery, equipment and materials are not domestically manufactured at comparable and competitive prices and quality. (*underscoring supplied*)

The last law, however, limited the period of exemption from taxes of local water districts (LWDs) to only five (5) years from its date of effectivity. Thus, the effective period of exemption from the payment of franchise tax of petitioner was only for about twenty three (23) years starting 1973, the effectivity date of PD 198, till 1991. Thus, when the LOA was served upon the petitioner by respondent on October 3, 2005,[45] covering taxable year 2003, the former no longer enjoys the exemption from franchise tax. Thus, petitioner is now liable under Section 119. *Tax on Franchises*, of the NIRC as clarified under Revenue Memorandum Circular No. 63-2003 dated October 10, 2003, portions of which are quoted as follows:

> **SEC. 119. *Tax on Franchises.*** - **Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises** on radio and/or television broadcasting companies whose annual gross receipts of the preceding year do not exceed Ten million pesos (P10,000.00), subject to Section 236 of this Code, a tax of three percent (3%) and **on** gas and **water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise**: Provided, however, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added

---

[44] Took effect on August 14, 1991
[45] *Supra.*, Note 5.

taxpayer and pay the tax due thereon: *Provided, further*, That once the option is exercised, said option shall be irrevocable. (*Emphasis ours*)

xxx xxx

The exemption privilege (income and franchise taxes) granted to local water districts was limited to a period of five (5) years from the effectivity of R.A. No. 7109 as provided in Section 3 thereof, to wit:

"SECTION 3. *Period and Conditions of Exemptions.* - The tax exemption privileges provided for in Sections 1 and 2 to all water districts shall be enjoyed only for a period of five (5) years from the effectivity of this Act: *Provided*, That the water districts shall adopt internal control reforms that would bring about their economic and financial viability: *Provided, further*, That, for a water district to be entitled to the tax exemption, its appropriation for personal services, as well as for travel, transportation or representation expenses and purchase of motor vehicles, shall not be increased by more than twenty-five percent (25%) a year during the period of exemption." (Underscoring supplied)

Accordingly, local water districts are subject to income taxes and franchise taxes effective August 13, 1996 or five (5) years from the effectivity of R. A. No. 7109. (Memo No. 014-2002 dated October 24, 2002 signed by then Deputy Commissioner for Legal and Inspection Group, Edmundo P. Guevara addressed to the Office of the Revenue District Officer of Revenue District No. 23, Cabanatuan City). (*Underscoring supplied*)

Please be guided accordingly.

As to the latest law granting tax exemption to LWDs, namely, Republic Act No. 10026 otherwise known as "An Act Granting Income Tax Exemption to Local Water Districts by Amending Section 27(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, and Adding Section 289-A to the Code, For the Purpose", the same no longer contained the provision on the exemption from franchise tax of LWDs.

Compromise penalty of Twenty Thousand Pesos (P20,000.00) cannot be imposed.

Anent the imposition of compromise penalty amounting to Php20,000.00, the Supreme Court ruled that in order for such to be imposed, the taxpayer should agree or consent to such imposition and the absence of such agreement renders such compromise penalty unauthorized and illegal.[46]

In *Wonder Mechanical Engineering Corporation v. Court of Tax Appeals*[47], the Supreme Court ruled that:

> Regarding the compromise penalty suggested by respondent Bureau of Internal Revenue in both G.R. L-22805 and L-27858, it does not appear that petitioner accepted the imposition of the compromise amounts. Hence We find no compelling reasons to alter the decision of respondent Court of Tax Appeals in L-27858 that —
>
>> With respect to the compromise penalty in the total amount of P5,020.00 suggested by respondent to be paid by petitioner, it is now a *well settled doctrine that compromise penalty cannot be imposed or collected without the agreement or conformity of the tax payer* (Collector of Internal Revenue vs. University of Santo Tomas, et al., G.R. Nos. L-11274 & L-11280, November 28, 1958; the Collector of Internal Revenue v. Bautista, et al., G.R. Nos. L-12250 & 12259, May 27, 1959; the Philippines International Fair, Inc. v. Collector of Internal Revenue, G.R. Nos. L-12928 & L-12932, March 31, 1962). (Emphasis for emphasis)(sic)

In *Commissioner of Internal Revenue v. Fireman's Fund Insurance Company*,[48] the high court also ruled that:

> With respect to the 'compromise penalties' in the total sum of P 1,600.00, suffice it to say that penalties cannot be imposed in the absence of a showing that petitioner consented thereto. A compromise implies agreement. If the offer is rejected by the taxpayer, as in this case, respondent cannot enforce it except through a criminal action. (See Comm. of Int. Rev. vs. Abad, L-19627, June 27, 1968.) (CTA Decision, Rollo, pp. 20-21).

However, if the taxpayer, during appeal in this Court, expressed his willingness to pay said compromise penalties, that is the only time such penalty may be allowed and collected as part of the judgment.[49]

---

[46] *Mithi ng Bayan Cooperative Marketing Association, Inc. v. J. Antonio Araneta*, G.R. No. L-14575. July 31, 1961.
[47] G.R. Nos. L-22805 & L-27858, June 30, 1975.
[48] G.R. No. L-30644, March 9, 1987.
[49] *Commissioner of Internal Revenue v. Antonio G. Guerrero and Court of Tax Appeals*, G.R. Nos. L-19074 & L-19089, January 31, 1967.

However, based on the facts of the case, there was neither consent on the part of the petitioner nor indication of willingness to pay said compromise penalty during the period of BIR investigation nor at the trial before this Court. Hence, the imposition of compromise penalty was unauthorized and illegal.

WHEREFORE, in light of the foregoing, the Petition for Review is hereby **PARTIALLY GRANTED**. Consequently, the assailed Formal Letter of Demand (FLD) with Assessment Notice for the deficiency Franchise Tax amounting to Php1,836,168.59 is hereby **AFFIRMED** while the FLD for Compromise Penalty amounting to Php20,000.00 is hereby **CANCELLED**.

Accordingly, petitioner Calumpit Water District is **ORDERED TO PAY ONE MILLION ONE HUNDRED THREE THOUSAND SIX HUNDRED TWENTY-FIVE PESOS and 87/100 (P1,103,625.87)** for taxable year 2008, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	**Basic**	**Surcharge**	**Total**
Franchise Tax	Php882,900.70	Php220,725.17	Php1,103,625.87

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Franchise Tax computed from January 25, 2004 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of **P1,103,625.87** and on the 20% deficiency interest which have accrued as afore-stated in (a) computed from March 28, 2008 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice