REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AZUCENA T. REYES,
Petitioner,

- versus -

C.T.A. CASE NO. 6124

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 19 2002
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DECISION

This petition seeks to nullify the estate tax proceedings conducted by the Bureau of Internal Revenue (BIR) on the estate of the late Maria C. Tancinco. Petitioner prays that the assessment notice, letter of demand and final decision of respondent Commissioner ordering the advertisement and sale of the property in the estate tax case be set aside and that the respondent be ordered to cease and desist in the collection of Eighteen Million Thirty Four Thousand Three Hundred Eighty Two & 13/100 (P18,034,382.13) estate tax.

The material antecedents follow.

On July 8, 1993, Maria C. Tancinco died leaving a one thousand two hundred ninety two (1,292) square-meter residential lot with an old house erected thereon located at No. 4931 Pasay Road, Dasmarinas Village, Makati City. Petitioner is an heir of the decedent.

On the basis of a sworn information-for-reward filed on February 17, 1997 by a certain Raymond Abad before Revenue District Office No. 50 (South Makati), the estate of decedent Tancinco was investigated by the said office. A Return Verification Order was issued, but without submitting the required preliminary findings, Letter of Authority No. 132963 was issued for the regular investigation of the estate tax case (pars.1.4 & 1.5, Summary of Admitted Facts). Petitioner received the Letter of Authority on March 14, 1997 (page 5, BIR Records).

On September 11, 1997, the heirs of the decedent were informed that the report of investigation had already been submitted recommending the assessment of the estate tax due. The heirs were given the opportunity to present their side (page 25, BIR Records).

On January 9, 1998, Revenue Officer Juan Yap, Jr. submitted a memorandum-report addressed to the Revenue District Officer of Revenue District Office No. 50, stating that the lone real property left by the deceased was the one located at No. 4931 Pasay Road, Dasmarinas Village, Makati City. He recommended the tax assessment of Fourteen Million Five Hundred Eighty Thousand Six Hundred Eighteen & 67/100 (P14,580,618.67) (pages 32 & 33, BIR Records). Consequently, on February 12, 1998, a preliminary assessment notice was issued by the Chief of the Assessment Division of the BIR against the Estate of Maria C. Tancinco in the amount of P14,580,618.67 (page 35, BIR Records).

On May 10, 1998, the heirs received the final estate tax assessment notice and letter of demand, both dated April 22, 1998, for the amount of Fourteen Million Nine Hundred Twelve Thousand Two Hundred Five & 47/100 (P14,912,205.47), inclusive of surcharge and interest (par. 1.7, Summary of Admitted Facts).

The assessment was protested by a certain Mr. Felix M. Sumbillo in behalf of the heirs on June 1, 1998, on the ground that the residential house and lot constituting the estate had already been sold and disposed of by the deceased sometime in 1990, long before her death (page 38, BIR Records).

On November 12, 1998, respondent issued a preliminary collection letter to petitioner, followed by a Final Notice Before Seizure dated December 4, 1998, duly served upon the latter (par. 2.3, Stipulation of Facts).

On December 18, 1998, Mr. Sumbillo asked for an extension of time to submit the required copies of Deed of Sale executed by the deceased and her children absolutely transferring their ownership and interest in the subject real estate properties (page 55, BIR Records).

On January 5, 1999, a Warrant of Distraint and/or Levy was issued and served upon the estate and on February 11, 1999, Notices of Levy on Real Property and Tax Lien were issued by respondent's National Collection Tax Force (par. 2.4, Joint Stipulation of Facts).

The petitioner protested the aforesaid notice of levy on March 2, 1999 (page 82, BIR Records). However, on March 11, 1999, the heirs of the decedent, represented by petitioner, proposed a compromise settlement for P1,000,000.00.

On December 2, 1999, informer Abad executed an affidavit withdrawing his information-for-reward, claming that that the same was based on his mistaken belief that the estate deliberately failed to file the required estate tax return.

On January 27, 2000, petitioner wrote another letter to respondent, this time proposing to pay 50% of the basic tax due of P5,313,891.00, for the reason that the heirs are financially incapable of paying the tax assessment (page 125, BIR Records).

On March 20, 2000, informer Abad withdrew his desistance and reinstated his sworn information. On the same day, respondent denied petitioner's offer to pay 50% of the basic tax due for lack of legal basis. According to respondent, the estate tax is a charge on the estate of the decedent and not on the heirs. Thus, the fact that the heirs are financially incapable of paying the estate tax due of P14,912,205.47 does not affect the capacity of the estate to pay because the gross value of the estate is P32,420,360.00. In his letter, respondent demanded payment of the amount of P18,034,382.13 on or before April 15, 2000; otherwise, the notice of sale of the estate's property shall be published. The petitioner received the said letter on April 7, 2000 (page 146, BIR Records).

On April 11, 2000, petitioner wrote again a letter to respondent, finally proposing to pay 100% of the basic tax due in the amount of P5,313,891.00 (page 150, BIR Records). Petitioner also wrote a follow-up letter on May 18, 2000 (page 163, BIR Records).

On June 13, 2000, petitioner, through counsel, filed a protest with the Appellate Division of the BIR against the scheduled August 8, 2000 auction sale of the estate's house and lot on the ground that such auction could not be legally done because the basis thereof, i.e. the assessment, letter of demand and the whole tax proceedings (based on an information-for-reward) are **void ab initio**. Likewise, petitioner offered to voluntarily file the corresponding estate tax return and pay the correct amount of tax without surcharges and interest (pars. 2.7 & 2.8, Stipulation of Facts).

Respondent Commissioner did not act on the protest and the offer to file the return and pay the estate tax; instead, he instructed the Collection Enforcement Division to proceed with the August 8, 2000 scheduled auction sale (par. 2.9, Stipulation of Facts).

On June 28, 2000, petitioner filed this petition for review.

Respondent filed his Answer on July 12, 2000, claiming by way of Special and Affirmative Defenses that:

> "6. This Honorable Court has no jurisdiction to entertain the instant appeal as the subject assessment against the Estate of Maria C. Tancinco has long become final, executory and demandable;
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> 7. The finality of the subject assessment is supported by the records of the case, to wit:
>
> (a) The estate tax assessment was issued by the respondent on April 12, 1998;
>
> (b) The estate tax assessment was protested on June 1, 1998;
>
> (c) Preliminary collection letter to the taxpayer was sent on November 12, 1998;
>
> (d) On December 4, 1998, a Final Notice Before Seizure was served upon the taxpayer;
>
> (e) On December 18, 1998, petitioner thru Mr. Sumbilo filed a request for extension of time to submit supporting documents of his protest.
>
> (f) Warrants of Distraint and Levy was issued and served upon taxpayer on January 25, 1999;
>
> (g) On February 11, 1999, the National Collection Task Force issued Notice of Levy on Real Property and Tax Lien;
>
> (h) On March 2, 1999, petitioner protested the issuance of said Notice of Levy;
>
> (i) On March 11, 1999, the heir of the deceased proposed a compromise settlement of the case;
>
> (j) On March 20, 2000, the Commissioner informed petitioner that the proposed settlement cannot be

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accepted and requested that the amount of P18,034,382.13 be paid on or before April 15, 2000 otherwise the notice of sale of the estate's property shall be published.

(k) Said Letter of the Commissioner was received by the petitioner on April 7, 2000;

(l) On June 13, 2000, counsel for the Estate questioned the whole proceedings taken in the case, alleging that the same is a legal nullity, a farce and consequently the assessment issued therein is void ab initio,

(m) The petition for review before this Honorable Court, assailing the subject tax assessment, was filed on June 28, 2000.

8. From the foregoing undisputed facts of the case, it is indubitably clear that the adverted assessment has long become final and executory as hereunder shown:

(a) Petitioner has not submitted any supporting documents within sixty (60) days from the date of filing of the protest on June 1, 1998. Hence, the assessment has already become final pursuant to the provision of Section 228 of the Tax Code as amended. (Revenue Regulations No. 12-99);

(b) Petitioner failed to appeal before this Honorable Court within thirty (30) days from the service of the Warrants of Distraint and Levy on January 5, 1999. The Supreme Court on this score has ruled that the service of the warrant of distraint and levy is proof of the finality of assessment and renders hopeless a request for reconsideration it being tantamount to an outright denial thereof and make the said request deemed rejected (*Com. of Internal Revenue v. Alque, Inc. G.R. No. 28896, February 17, 1998*);

(c) Assuming that the decision appealable before this Honorable Court is the letter of Commissioner dated March 20, 2000, nevertheless, this Honorable Court would not still acquire jurisdiction over the instant appeal as more than thirty (30) days has already elapsed

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from the date the instant appeal was made on June 28, 2000.

9. Settled is the jurisprudence that when an assessment has become final and executory, the taxpayer is thereafter barred from alleging in his defense that the assessment is excessive or illegal or invoking any defense that will in effect reopen the question of his liability on the merits (*Rep. v. Lim Tian Teng Sons & Co., 16 SCRA 584; Rep. v. Albert, 3 SCRA 384; Ferdinand R. Marcos II vs. Court of Appeals, et al., G.R. No. 120880, June 5, 1997; Protector's Services, Inc. v. Court of Appeals, et al., G.R. No. 118176, April 12, 2000)*;

10. This Honorable Court, having no jurisdiction to take cognizance of the instant appeal, perforce it has no authority to grant petitioner's motion for issuance of a temporary restraining order and/or preliminary injunction for the suspension of collection process being undertaken by the respondent;

11. Assuming for the sake of argument, that this Honorable Court has jurisdiction over the instant case, it is submitted that the adverted assessment was issued in accordance with law, rules and regulations."

On July 17, 2000, petitioner filed a Motion for the Issuance of a Writ of Preliminary Injunction or Status Quo Order. The motion was granted by the court on July 26, 2000 on the condition that petitioner files a surety bond in the amount of P27,000,000.00. The latter complied on August 10, 2000, for which reason this court issued a resolution on August 16, 2000 ordering respondent to desist and refrain from proceeding with the auction sale of petitioner's property or from issuing any warrant of distraint or garnishment of bank account, pending the determination of the merits of this case and/or unless a contrary order is issued.

On October 6, 2000, the parties filed their "Joint Stipulation of Facts and Statement of the Issues," submitting the following issues for this court's resolution:

1.1 Whether the sworn information-for-reward filed in this case and the investigation and/or proceedings done in connection therewith are void under the provisions of Republic Act No. 2338 (Section 282 of the CTRP and implementing regulations) and Article 5 of the New Civil Code.

1.2 Whether the assessment and letter of demand dated April 22, 1998 are void under Section 228 (e), second paragraph, of the CTRP and Section 3.1.4 of implementing Revenue Regulations No. 12-99.

1.3 Whether the case was timely appealed to this Honorable Court within the 30-day reglementary period provided for under Section 11 of Republic Act No. 1125 and Section 228 of CTRP.

On the same day, however, respondent filed a Motion to Dismiss on the ground that this court has no jurisdiction to take cognizance of the case as the estate tax assessment issued against the estate of the late Maria C. Tancinco in the amount of P14,912,205.17 has long become final, executory and demandable. The court denied the motion on November 23, 2000.

On December 26, 2000, petitioner filed an Ex-Parte Motion for Postponement (of the hearing set on January 9, 2001) on the ground that on November 25, 2000, petitioner had filed an application with the BIR for the compromise settlement of the assessment involved in this case, under the provisions of Section 204 (A) of the Tax Code, as implemented by Revenue Regulations No. 6-2000 and Revenue Memorandum Order No. 42-2000 (page 114, CTA Records). The same was granted by the Court and had the case reset for hearing on February 6, 2001.

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On January 29, 2001, petitioner filed another Ex-Parte Motion for Postponement (page 117, CTA Records). According to petitioner, she was already allowed to pay the full amount of compromise in the amount of P1,062,778.20, which was actually paid on January 10, 2001 (pages 119 and 120, CTA Records), but she is still awaiting the approval of the National Evaluation Board (NEB), which was supposedly delayed by the resignation of Commissioner Dakila B. Fonacier from the BIR. The Court granted the said motion on January 30, 2001 and reset the case for the last time on February 27, 2001.

However, on February 19, 2001, petitioner filed a Motion to Declare Application for the Settlement of Disputed Assessment as a Perfected Compromise. In her motion, petitioner alleged that the respondent Commissioner has not yet signed the compromise papers because of the procedural red tape whereby the four (4) Deputy Commissioners would first initial the same before submitting the papers to the Commissioner for signature. Petitioner asserted that the lack of initials and signature does not vitiate the already perfected compromise agreement.

By way of comment to petitioner's motion, respondent argued that there being no approval yet by the NEB of the BIR on the application for compromise settlement of tax liabilities of the estate of Maria C. Tancinco, there is no merit to petitioner's prayer to declare her application for compromise settlement with the BIR as perfected or consummated (page 221, CTA Records).

The Court denied petitioner's motion during the hearing of this case on March 9, 2001, prompting the latter to file a Motion for Reconsideration Ad Cautelam. Through a resolution dated April 10, 2001, the Court denied petitioner's motion and suggested that for an orderly presentation of her case and to prevent piecemeal resolutions of different

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issues which petitioner may raise, a Supplemental Petition for Review setting forth the new issue, i.e. the issue of settlement of disputed assessment as a perfected compromise, be filed before this Court pursuant to Section 6, Rule 10 of the 1997 Rules of Civil Procedure.

Thus, on May 2, 2001, petitioner filed a Supplemental Petition for Review, followed by Amplificatory Arguments (For the Supplemental Petition for Review) on June 4, 2001, this time advancing the following issues for this Court's resolution:

> 1. Whether or not an offer to compromise by the Commissioner of Internal Revenue, with the acquiescence by the Secretary of Finance, of a tax liability pending in court, that was accepted and paid by the taxpayer, is a perfected and consummated compromise.
>
> 2. Whether this compromise is covered by the provisions of Section 204 of the Tax Code (CTRP) that requires approval by the BIR National Evaluation Board.

Respondent filed his Answer to petitioner's Supplemental Petition for Review on June 5, 2001, still positing the view that under the rules and regulations delineated by Revenue Regulations No. 6–2000 and Revenue Memorandum Order No. 42-2000, it is clear that a taxpayer wishing to settle his delinquent accounts or to terminate his tax case either pending administratively or in court, an application/offer of compromise settlement must first be evaluated and approved/disapproved by the National Evaluation Board (NEB) or the Regional Evaluation Board (REB), as the case may be.

On June 14, 2001, petitioner filed a Motion for Judgment on the Pleadings (pages 285-287, CTA Records). The motion was granted on July 11, 2001.

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After both parties have submitted their respective memorandum, this case was submitted for decision on August 31, 2001.

The petition must fail.

On the issue of whether or not there was a valid and consummated compromise settlement, petitioner asseverates that when she agreed to pay 20% of the 1993 basic estate tax assessed against the estate of the late Mrs. Maria C. Tancinco, as allegedly offered under the conditions set by the government in RR No. 6-2000 and RMO No. 42-2000, there has been a perfection of the compromise contract by reason of the "meeting of the minds" of the two parties (Article 1305 of the Civil Code); and the subsequent payment of the compromise amount of P1,062,778.20 (20% of the assessed basic tax of P5,313,891.00) is the final execution or consummation thereof. Furthermore, petitioner maintains that while it is true that RMO No. 42-2000 requires that the 20% rate of compromise should be submitted to the NEB for approval, such requirement does not apply to the instant case because such approval applies only to a situation where it is the taxpayer who offered to compromise. According to petitioner, the reverse situation obtains in this case since it is the government who is the compromise offeror and the taxpayer is the accepting or approving party so that the NEB approval is not germane and relevant.

Respondent, however, contends that there will be a perfected and consummated compromise agreement in the case at bar only if the NEB has approved the application of herein petitioner in accordance with RR No. 6-2000, as implemented by RMO No. 42-2000.

We agree with the respondent.

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For easy reference, the pertinent provisions of Section 204 of the Tax Reform Act of 1997 and RR No. 6-2000 and RMO No. 42-2000 are hereby reproduced:

Section 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

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax: xxx

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

For other cases, a minimum compromise rate equivalent to forty (40%) of the basic assessed tax.

Where the basic tax involved exceeds One million pesos (P1,000,000.00) 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.

xxx

REVENUE REGULATIONS NO. 6-2000

Subject: Implementing Sections 7(c), 204(A) and 290 of the Tax Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities.

Sec. 2. ***CASES WHICH MAY BE COMPROMISED.***

The following cases may, upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations, be the subject matter of compromise settlement, viz:

xxx xxx xxx

3. Civil tax cases being disputed before the courts, e.g. CTA, CA, SC;

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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:

(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 Tax Code.

Sec. 4. ***PRESCRIBED MINIMUM PERCENTAGES OF COMPROMISE SETTLEMENT.*** – The compromise settlement of the subject internal revenue tax liabilities of taxpayers, reckoned on a per tax type assessment basis, shall be subject to the following minimum rates:

2. **For doubtful validity** – a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

Sec. 5. ***CREATION OF THE NATIONAL EVALUATION BOARD AND REGIONAL EVALUATION BOARD.*** – A National Evaluation Board in the National Office and a Regional Evaluation Board in each Revenue Region all over the country are hereby created to evaluate and approve/disapprove the applications for settlement of each delinquent account/disputed assessment, the composition of such Boards and the cases under their respective jurisdiction are as follows:

A. National Evaluation Board (NEB)

Commissioner of Internal Revenue - Chairman

Four (4) Deputy Commissioners - Members

Where the basic assessed tax involved exceeds One million pesos (P1,000,000.00) or where the settlement offered is less than the prescribed minimum rates of 40% (in cases of doubtful validity), xxx the compromise shall be subject to the approval by the NEB.

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REVENUE MEMORANDUM ORDER NO. 42-00

I. PURPOSE:

The purpose of this Order is to accelerate the collection of taxes through compromise pursuant to Section 204 of the Tax Code, as amended by RA 8424.

x x x

IV. BASIS OF COMPROMISE SETTLEMENT:

Pursuant to Section 204 of the Tax Code, the Commissioner may 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
(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

V. POLICIES:

1. All National and Regional Offices are hereby authorized to accept taxpayers' offers of compromise of all outstanding delinquent accounts and as disputed assessments of June 30, 2000, based on the following prescribed minimum percentages:

   Assessments involving taxable year 1994 & prior years

Financial incapacity	10% of the basic assessed tax
Doubtful validity	20% of the basic assessed tax

x x x

2. Basis for Acceptance of Compromise Offer

   A. Reasonable-Doubt as to the Validity of Assessment. The offer to compromise a delinquent account or disputed assessment under this Order on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:

x x x

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vi.) Assessments issued on or after January 1, 1998 where the demand notice allegedly failed to comply with the formalities prescribed under Section 228 of the Tax Code.

x x x

3. It shall be the responsibility of the National Evaluation Board (NEB) created under Section 204 of the Tax Code of 1997 and Regional Evaluation Board (REB) created under Section 7(c) of the same Code to evaluate and approve/disapprove the applications for settlement of each delinquent account/disputed assessment case under this Order. The composition of the National and Regional Evaluation Boards are as follows:

A. National Evaluation Board (NEB)

Commissioner of Internal Revenue	Chairman
Four (4) Deputy Commissioners	Members

Where the basic assessed tax exceeds One million pesos (P1,000,000.00) or where the settlement offered is less than the minimum rates of forty percent (40%) and ten percent (10%) of the basic tax as prescribed under Section 204(A) of the Tax Code, the compromise shall be subject to the approval of the National Evaluation Board (NEB), notwithstanding the provisions of Paragraph V(1) of this Order.

x x x

14. For compromise offers whose basic assessed tax exceeds P1,000,000.00, or where the compromise offer is less than the minimum percentage prescribed under Section 204, the application with attachments, appended to the case docket shall be forwarded to the Technical Working Group – NEB for evaluation on the legal and factual basis of compromise. The recommendation shall be forwarded to the NEB for deliberation/approval.

A. If the compromise settlement offer is approved, the TWG-NEB shall notify the taxpayer-applicant of approval thereof and, upon verification of duly validated BIR Payment Form 0605 showing payment of the approve compromise amount, shall issue Authority to Cancel Assessment (ATCA) for signature of the approving authority. The

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> entire case docket shall be forwarded to the originating office (e.i., RDO/Collection Division/CED, etc.) for cancellation of the A/R in their GCL.
>
> B. If the compromise settlement offer is disapproved for lack of legal/factual basis, the TWG-NEB shall notify the taxpayer-application of the denial of the compromise offer and the docket shall be forwarded to the originating office (i.e., RDO/Collection Division/CED, etc.) for follow up of collection or other appropriate action. Previous payments on the offer of compromise shall be credited against the corresponding delinquent account and/or disputed assessment.
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> x x x
>
> (Underlining Supplied)

The foregoing provisions are crystal clear: where the basic tax involved exceeds One million pesos (P1,000,000.00) or where the settlement offered is less than the prescribed minimum rates, the compromise shall in all cases be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners. The law speaks of no exception and does not distinguish as to who initiated the compromise. "It is a well-recognized rule that where the law does not distinguish, courts should not distinguish. In other words, there should be no distinction in the application of a statute where none is indicated. For courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not as they think it ought to be but as they find it and without regard to consequences" (*pages 152-153, Statutory Construction, Agpalo, 3rd Ed.*).

We do not agree with petitioner's ratiocination that the present situation involves a government-offered compromise that would exclude herein taxpayer from the

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applicability of the provisions of Section 204 of the CTRP and that RMO No. 42-00 is an administrative issuance that misinterpreted the law that is being implemented. True, the purpose for the issuance of RR No. 6-2000 and RMO No. 42-00 is to accelerate the collection of taxes through compromise. However, it is important to point out that these issuances will also benefit those taxpayers with outstanding receivable accounts and disputed assessments with the Bureau, including those already filed in court, for they will be given the opportunity to settle their tax liabilities and, accordingly reduce, if not eliminate, the huge number thereof. While the initiative came from the government, the offer nonetheless would still come from the taxpayer. Consequently, the Commissioner is not bound to approve every offer of compromise made by a taxpayer. The offer must still meet the conditions set forth in the implementing issuances. Considering that taxes are the lifeblood of the nation the primary purpose of which is to generate funds for the State to finance the needs of the citizenry, the law laid down the requirement that where the basic tax exceeds P1,000,000.00 or where the settlement offered is less than 40% , the compromise shall still be subject to the approval of the NEB.

Petitioner in this case wishes to avail of the 20% compromise accorded by RMO No. 42-00, but at the same time excludes herself from its application insofar as the approval of the NEB is concerned. This cannot pass the test of lawfulness and equity.

RR No. 6-2000 and RMO No. 42-00 merely implement the provisions of Section 204 of the CTRP; thus, the same should be in harmony with the law that it seeks to implement. At any rate, this Court finds no conflict between the provisions of Section 204 of the CTRP and its implementing issuances. A cursory reading of the provisions of RMO No. 42-00 would readily reveal that all National and Regional Offices were merely authorized to accept taxpayers' offers of compromise of all outstanding delinquent accounts and disputed assessments as of June 30, 2000, based on certain prescribed minimum percentages, after which it shall be the responsibility of the National Evaluation Board or the Regional Evaluation Board, as the case may be, to evaluate and approve/disapprove the applications.

Therefore, since this Court believes that the present case is not a government-offered compromise that would exclude herein taxpayer from the applicability of the provisions of Section 204 of the CTRP, We rule that the payment made by petitioner did not result to a consummated compromise.

We now proceed to the other issues raised by the parties.

According to petitioner, because of the gross violations of the provisions of Republic Act No. 2338 (Section 282 of CTRP), as implemented by Department of Finance Regulations No. 1 and Revenue Memorandum Order (RMO) No. 12-93, the whole proceedings in this case (from the filing of the sworn information up to the issuance of the order to sell the property in question through public auction) is a legal nullity, and worse, a farce. Thus, petitioner believes that the assessment issued therein is void ab initio; and therefore, there was nothing in law to protest.

We do not agree.

While this Court is convinced that the BIR failed to observe the procedural requirements laid down by Finance Regulations No. 1 and RMO No. 12-93, We still believe that the same cannot render void all the proceedings done in connection therewith for the following reasons:

The procedural requirements on sworn information and RMO No. 12-93 are directed to all internal revenue officers concerned. Clearly, it is only for the internal administration of the BIR. Violations may result to administrative sanctions against the erring officials but the Government is never estopped to collect legitimate taxes because of the error committed by its agents (*Visayan Cebu Terminal Co., Inc. v. Commissioner*, 13 SCRA 357, citing *Genato Commercial Corp. v. The CTA*, L-11727, September 29, 1958).

Secondly, it bears emphasis that as early as September 11, 1997, the heirs of the decedent were already informed about the investigation being conducted, for which reason an informal conference was set on September 16, 1997 to enable the heirs to go over the findings and present their objections. Petitioner never raised the issue on the alleged gross violations of RMO No. 12-93. In fact, when Mr. Felix Sumbillo protested the final estate tax assessment on June 1, 1998, he advanced the reason that the residential house and lot registered in the name of the deceased had already been sold and disposed of by the deceased sometime in 1990, which proved to be untrue. On several occasions, petitioner also wrote letters to respondent asking for a settlement. Again, petitioner failed to raise the alleged gross violations of RMO No. 12-93. It was only on June 13, 2000, after the Warrant of Distraint and Levy and Notice of Levy on Real Property have already been issued, that petitioner bothered to question the validity of the issuance of the assessment notice and letter of demand. In view of these circumstances, petitioner is estopped to question the validity of the assessment notice.

Furthermore, there is no dispute that the heirs of the deceased failed to file an estate tax return and pay the estate tax within the period of six (6) months from the decedent's

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death on July 8, 1993, as provided for under Sections 83 and 84 of the 1993 Tax Code . It bears stressing that an estate tax is a tax on the right to transmit property at death. Therefore, the estate tax liability of petitioner accrued from the time of the death of the decedent in 1993 and not from the time of filing of the sworn information. While it was the sworn information that led to the discovery of the non-filing of the estate tax return, which information is undoubtedly tainted with irregularities, the estate tax liability of petitioner, however, subsists. The principle in tax law enforcement is: the Government is not estopped by the mistakes or errors of its agents; erroneous application and enforcement of law by public officers do not block the subsequent correct application of statutes (*E. Rodriguez, Inc. v. Collector of Internal Revenue*, L-23041, July 31, 1969; *Commissioner of Internal Revenue v. Court of Tax Appeals, et al.*, G.R. No. 106611, July 21, 1994; *Philippine Basketball Association v. Court of Appeals, et al.*, G.R. No. 119122, August 8, 2000, cited on *page 174, Law of Basic Taxation in the Philippines, Aban, Revised Edition*).

We dwell on the second issue.

Petitioner argues that the assessment notice and letter of demand contain only erroneous computations, without stating the applicable facts, laws and jurisprudence; therefore, the same are void under the Section 228 of the Tax Reform Act of 1997 and Section 3.1.4 of implementing Revenue Regulations No. 12-99.

Again, We disagree.

Under Section 228 of the Tax Reform Act of 1997, it is required that the taxpayers shall be informed in writing of the law and the facts on which the assessment is based; otherwise the assessment shall be void. The purpose of the law is evident: to give the

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taxpayers the opportunity to be heard and to refute, if necessary, the findings of the Bureau of Internal Revenue.

Contrary to petitioner's assertion, an examination of the attendant facts would reveal that at the time the questioned assessment notice and letter of demand were issued, the heirs knew very well the law and the facts on which the same were based. As stated earlier, on September 11, 1997, the heirs were informed in writing of the investigation being conducted as well as the recommendation for the assessment of the estate tax due. A conference was even scheduled so that the heirs can present their side of the case. Petitioner even proposed settlements using the basic tax due being assessed by the respondent, the last of which she proposed to pay 100% of the basic tax in the amount of P5,313,891.00 but requested for the condonation of all the other assessments (interest and surcharge) (page 162, BIR Records). How then can petitioner argue that she was not informed in writing of the law and the facts on which the assessment was based?

Finally, as to the third issue, this Court believes that the present case was not timely appealed to this Court within the 30-day reglementary period provided for under Section 11 of Republic Act No. 1125 and Section 228 of the Tax Reform Act of 1997. Records show that on April 7, 2000, petitioner received the letter of respondent dated March 20, 2000 denying petitioner's request for settlement for lack of legal basis and stating that "in view of the foregoing, you are requested to pay the total amount of P18,034,382.13, (as per enclosed computation sheet), on or before April 15, 2000, otherwise we are constrained to publish the notice of sale on the real property located at 4931 Pasay Road, Dasmarinas Village, subject of our Warrant of Distraint and/or Levy dated January 5, 1999, without further notice to you." In the case of *Dy Pac & Co., Inc.*

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v. Court of Tax Appeals, 79 SCRA 442, the Supreme Court ruled that where several requests for reconsideration have been filed with the Commissioner, it would appear that the communication from the latter overruling taxpayer's request for reconsideration and affirming the disputed assessment in terms clearly indicating finality of the action taken, constitutes the appealable decision or ruling. In the case at bar, it is evident that the March 20, 2000 letter of the Commissioner has the unmistakable tenor of finality that would make it appealable under Section 11 of Republic Act No. 1125 and Section 228 of the Tax Reform Act of 1997. Petitioner filed the Petition for Review only on June 28, 2000. Consequently, petitioner's failure to elevate her case within 30 days from April 7, 2000 rendered the assessment final and executory.

WHEREFORE, in view of all the foregoing, the instant petition for review is hereby **DENIED**. Accordingly, petitioner is hereby **ORDERED to PAY** deficiency estate tax in the amount of Nineteen Million Five Hundred Twenty Four Thousand Nine Hundred Nine and 78/100 (P19,524,909.78), computed as follows:

Gross Estate		
a. Land - based on 1993 zonal valuation		
(1,292 m^2 x P13,000/m^2)		P 16,796,000.00
b. Residential house thereon		
(P2,536,130.00 x 200%)		5,072,260.00
Total		P 21,868,260.00
Less: Deductions		
Funeral expense (Sec 79(a)(1)(A)	P 100,000.00	
Family home (Sec. 79(a)(4)	1,000,000.00	1,100,000.00
Net Estate subject to tax		P 20,768,260.00
Estate Tax Due (Sec. 77)		
first P200,000.00	P -	
next P10,000,000.00	1,545,000.00	
in excess of P10M at 35%	3,768,891.00	P 5,313,891.00
Add: Penalties		
Willful neglect to file the return [Sec. 248(b)]		

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(P5,313,891.00 x 50%)	P 2,656,945.50	
Interest [Section 249(b)]		
From 01-09-94 to 04-15-00		
[(P5,313,891.00+P2,656,945.50) x 20%]	9,963,545.63	P 12,620,491.13
Deficiency estate tax due		P 17,934,382.13
Add: Delinquency interest [Sec. 249(c)]		
From 04-16-00 to 01-10-01		
(P17,934,382.13 x 20% x 270/365)		2,653,305.85
Total deficiency estate tax due		P 20,587,687.98
Less: Payment made on 01-10-01 (CTA recs., pages 219 & 220)		1,062,778.20
Deficiency estate tax still due		P 19,524,909.78 *

*Plus 20% delinquency interest on deficiency estate tax due of P17,934,382.13 from 01-11-01 until full payment thereof pursuant to Section 249(c) of the Tax Code, as amended.

Petitioner is likewise **ORDERED to PAY** 20% delinquency interest on deficiency estate tax due of P17,934,382.13 from January 11, 2001 until full payment thereof pursuant to Section 249(c) of the Tax Code, as amended.

The CAP General Insurance Corporation bond with CGI Bond No. JCL (8)00001-00010 issued in favor of the Commissioner of Internal Revenue for P27,000,000.00 is hereby forfeited in favor of the Government. The BIR may collect from the said insurance company the total amount of tax due should petitioner fail to settle the above tax obligation.

SO ORDERED.

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

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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