REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

NEW FARMERS PLAZA, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, NATIONAL EVALUATION BOARD, AND REGIONAL EVALUATION BOARD OF REVENUE REGION NO. 7,
Respondents.

CTA CASE NO. 9474

Members:
UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 27 2021
11:14 a.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

The instant *Petition for Review* filed on September 22, 2016 prays that the Court:

1. Annul, reverse and set aside the *Notice of Denial* dated June 1, 2016 of the *Application for Compromise Settlement*;

2. Issue and Order directing respondents Commissioner of Internal Revenue (CIR) and National Evaluation Board (NEB) to issue the corresponding approval of petitioner's *Application for Compromise Settlement* of the deficiency tax assessment for calendar year ending December 31, 2006; and

3. In any case, issue an Order directing respondent to perpetually cease and desist from collecting the balance of the purported deficiency tax assessment for CY 2006 from NFPI amounting to ₱88,261,970.99.[1]

THE PARTIES

Allegedly, petitioner New Farmers Plaza, Inc. is a corporation duly organized and existing under Philippine laws to engage in the business of buying, selling, renting, leasing, developing, and managing realty, with registered office at the 26th Floor Gateway Tower, Araneta Center 1109 Quezon City.[2]

Respondent CIR is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with, among others and duties, the responsibility of collecting all national internal revenue taxes. He is charged with, among other powers and duties, compromising the payment of any internal revenue tax when a reasonable doubt as to the validity of the claim against the taxpayer exists. He may be served with orders and processes of this Court at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

Respondent NEB, composed of respondent CIR, and the four (4) Deputy Commissioners, is the body charged with approving compromises where the basic tax involved exceeds ₱1,000,000.00.[4]

Respondent Regional Evaluation Board (REB) of Revenue Region No. 7 is the body authorized to compromise assessments issued by Revenue Region No. 7 involving basic deficiency taxes of ₱500,000.00 or less. It may be served with orders and processes of this Court at the BIR Revenue Region No. 7, 5th Floor (roof deck) Fisher Mall, Quezon Avenue, corner Roosevelt Avenue, Quezon City.[5]

THE FACTS OF THE CASE

The *Formal Letter of Demand* (FLD) dated April 27, 2011 assessed petitioner of deficiency taxes amounting to ₱111,709,140.78, comprised as follows:[6]

Income tax	₱ 86,926,846.69
Value-added tax (VAT)	20,419,761.46

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[1] Summary of the Case, Pre-Trial Order dated June 23, 2017, Docket – Vol. 1, p. 339.
[2] Par. 3.1, *Petition for Review*, Docket – Vol. 1, p. 11.
[3] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, pp. 330 to 331.
[4] Par. 3.3, *Petition for Review*, Docket, p. 12, which was not specifically denied in respondent's *Answer*, Docket, p. 124, and therefore deemed admitted. Refer also to Section 204(A), National Internal Revenue Code of 1997.
[5] Par. 1.2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 331.
[6] Par. 4.8, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 14 and 121, respectively; Exhibit "P-10", Docket – Vol. 1, pp. 278 to 281.

Expanded withholding tax (EWT)	4,362,532.63
Total	**₱111,709,140.78**

On November 13, 2013, petitioner filed an *Application for Compromise* dated October 30, 2013, based on doubtful validity of the alleged deficiency taxes assessed for calendar year 2006.[7]

Subsequently, on August 23, 2016, petitioner received the *Notice of Denial* dated June 1, 2016 of the *Application for Compromise Settlement.*[8]

Petitioner filed the instant *Petition for Review* on September 22, 2016.[9]

On November 21, 2016, respondent filed his *Answer,*[10] interposing the following special and affirmative defenses, to wit:

> "SPECIAL AND AFFIRMATIVE DEFENSES
>
> He reiterates and re-pleads the foregoing paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. The Honorable Court has no jurisdiction over the instant petition. The issue at bar is the denial of the Respondent Commissioner of the application / offer of compromise settlement by the Petitioner NFPI. Compromise settlement by its nature is not appealable to the Courts. It is not a ministerial duty on the part of the Respondent Commissioner to accept application / offer of compromise settlement. Acceptance of compromise settlement is discretionary on the part of the Respondent Commissioner.
>
> 5.1 Paragraph (A) Section 204 in relation to Section 229 of the NIRC of 1997, provides:
>
> > 'Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – <u>The Commissioner may</u> –
> >
> > (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

[7] Par. 1.3, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 331; Exhibit "P-12", Docket – Vol. 1, pp. 287 to 295.
[8] Par. 1.4, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 331; Exhibit "P-16", Docket – Vol. 1, p. 33.
[9] Docket – Vol. 1, pp. 10 to 32.
[10] Docket – Vol. 1, pp. 121 to 125.

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

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 percent (40%) of the basic assessed tax.

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.

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6. Furthermore, compromise settlement is an agreement wherein both parties freely enter into stipulations. It is perfected by mutual consent. Denial of the application for compromise settlement means that the consent of the other party is not given. This is unappealable. Courts cannot give an order to a party to give his consent to a contract or agreement."

On December 12, 2016, petitioner filed its *Reply*.[11]

The Pre-Trial Conference was initially set on March 14. 2017.[12] However, upon the filing of respondents' *Urgent Motion To Reset Pre-Trial Conference* on March 6, 2017,[13] the Pre-Trial Conference was reset to, and was held, on May 23, 2017.[14] Prior thereto, petitioner's *Pre-Trial Brief* was filed on

[11] Docket – Vol. 1, pp. 129 to 138.
[12] *Notice of Pre-Trial Conference* dated November 23, 2016, Docket – Vol. 1, pp. 126 to 127.
[13] Docket – Vol. 1, pp. 155 to 157.
[14] Minutes of the hearing held on, and Order dated March 14, 2017, Docket – Vol. 1, pp. 306 to 307; Minutes of the hearing held on, and Order dated, May 23, 2017, Docket – Vol. 1, pp. 324 and 328 to 329, respectively.

March 13, 2017;[15] while petitioner's *Respondent's Pre-Trial Brief* was submitted on May 17, 2017.[16]

In the meantime, on April 5, 2017, respondent transmitted the *BIR Records* for the instant case.[17]

Thereafter, the parties submitted their *Joint Stipulation of Facts and Issue* (JSFI) on June 9, 2017.[18] In the Pre-Trial Order dated June 23, 2017,[19] the Court recognized the fact and issues stipulated by the parties in the said JSFI, and deemed the termination of the Pre-Trial Conference.

Trial ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Romeo M. Tan,[20] Management Consultant, and (2) Mr. Kenneth A. Mondero,[21] Senior Vice President for Finance, both of Araneta Center, Inc.

On February 1, 2018 petitioner filed its *Formal Offer of Evidence.*[22] Respondents, however, failed to file a comment thereto.[23] In the Resolution dated March 26, 2018,[24] this Court admitted petitioner's Exhibits, *except* for Exhibit "P-8", for failure to present the original for comparison.

Respondent CIR likewise presented his documentary and testimonial evidence. He presented witnesses, namely: (1) Ms. Teresita B. Alava,[25] a Group Supervisor, and (2) Ms. Sonia SD Albiento,[26] a Revenue Officer, both from the Arrears Management Section, Collection Division, Revenue Region No. 7 – Quezon City.

On August 23, 2019, *Respondent's Formal Offer of Evidence* was filed.[27] Thereafter, on September 9, 2019, petitioner filed its *Comment/Opposition (To Respondent's Formal Offer of Evidence).*[28] In the Resolution dated November 21,

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[15] Docket – Vol. 1, pp. 159 to 176.
[16] Docket – Vol. 1, pp. 320 to 323.
[17] Respondent's *Compliance* dated April 5, 2017, Docket – Vol. 1, pp. 315 to 316.
[18] Docket – Vol. 1, pp. 330 to 337.
[19] Docket – Vol. 1, pp. 339 to 346.
[20] Exhibit "P-17", Docket – Vol. 1, pp. 201 to 226; Minutes of the hearing held on, and Order dated, August 7, 2017, Docket – Vol. 1, pp. 367 to 368.
[21] Exhibit "P-18", Docket – Vol. 1, pp. 185 to 191; Minutes of the hearing held on, and Order dated, December 4, 2017, Docket – Vol. 1, pp. 391 to 393.
[22] Docket – Vol. 1, pp. 409 to 421.
[23] Records Verification Report dated February 15, 2018, Docket – Vol. 1, p. 474.
[24] Docket – Vol. 2, pp. 476 to 477.
[25] Exhibit "R-42", Docket – Vol. 2, pp. 511 to 516; Minutes of the hearing held on, and Order dated, September 17, 2018, Docket – Vol. 2, pp. 524 to 525.
[26] Exhibit "R-43", Docket – Vol. 2, pp. 530 to 536; Minutes of the hearing held on, and Order dated, April 11, 2019, Docket – Vol. 2, pp. 560 to 562.
[27] Docket – Vol. 2, pp. 572 to 577.
[28] Docket – Vol. 2, pp. 579 to 587.

2019,[29] the Court admitted respondent CIR's Exhibits. The Court likewise gave the parties a period of thirty (30) days from notice to file their respective memorandum.

Petitioner filed its on *Memorandum* on January 8, 2020.[30] Respondents, however, failed to file their memorandum.[31]

The present case was deemed submitted for decision on March 12, 2020.[32]

THE ISSUES RAISED BY THE PARTIES[33]

Petitioner submitted the following issues for this Court's resolution, as follows:

> "2.1.1 Whether or not the purported assessment was of doubtful validity which entitles [petitioner] NFPI to the approval of its application for compromise; and
>
> 2.1.2 Whether or not Respondent can still collect the balance of the purported assessment."

On the other hand, respondent submitted the following issues, to wit:

> "2.2.1 Whether or not the Honorable Court has jurisdiction to try to case considering that it involves the denial of the Respondents of the application / offer of compromise settlement of the petitioner.
>
> 2.2.2 Whether or not Respondent can still collect the balance of the purported assessment."

Petitioner's arguments:

Petitioner argues that the Court is empowered to review the petition pursuant to its "Other Matters" jurisdiction; and that the assessment was not just of doubtful validity, but was in fact void for the following reasons: (1) the BIR officials who conducted the audit were not armed with a valid *Letter of Authority* (LOA); (2) respondent CIR issued the assessment and served the FLD beyond the prescriptive period; (3) respondent CIR failed to properly serve the

[29] Docket – Vol. 2, pp. 589 to 591.
[30] Docket – Vol. 2, p. 592 to 623.
[31] Records Verification Report dated March 3, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. .
[32] Resolution dated March 12, 2020, Docket – Vol. 2, p. .
[33] Stipulation of the Issues, JSFI, Docket – Vol. 1, pp. 331 to 332.

FLD on petitioner; (4) even assuming that service was proper, respondent violated its right to due process when it issued the FLD merely thirteen (13) days after petitioner's alleged receipt of the *Preliminary Assessment Notice* (PAN), or within its statutory period to file a reply to PAN; and the assessment was a "naked assessment".

Finally, petitioner is of the view that the respondent CIR cannot collect the amounts alleged to be due, for the following reasons: (1) his right to collect was already barred by prescription; and (2) no right to collect may ripen from a void assessment.

Respondent Commissioner's counter-arguments:

Respondent CIR argues that the Court has no jurisdiction over the instant *Petition*, as the issue at bar is his denial of the application / offer of compromise settlement by the petitioner; that the approval or denial of application / offer of compromise settlement is discretionary on his part; that a compromise settlement is an agreement wherein both parties freely enter into stipulation; and that it is unappealable, and courts cannot compel a party to give his consent to a contract or agreement.

THE RULING OF THE COURT

The instant *Petition for Review* is meritorious.

This Court has jurisdiction to entertain the present appeal.

Respondent CIR argues that this Court has no jurisdiction over the case.

We disagree.

Section 7(a)(1) of Republic Act (RA) No. 1125,[34] as amended by RA No. 9282,[35] provides as follows, to wit:

> "SECTION 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

[34] AN ACT CREATING THE COURT OF TAX APPEALS.
[35] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> (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 **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases and underscoring ours)*

Based on the foregoing provisions, the appellate jurisdiction of this Court is *not* limited to cases which involve decisions of respondent CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the BIR.[36] The wording of the provision is clear and simple.[37]

In this case, what is being appealed to this Court is the denial by respondent CIR of petitioner's application for compromise settlement, as embodied in the *Notice of Denial* dated June 1, 2016.[38]

Such being the case, the instant case arises out of the NIRC, specifically, Section 204(A) thereof. Thus, this Court is vested with jurisdiction to entertain the same.

Said Section 204(A) of the NIRC of 1997 empowers respondent CIR to compromise the payment of internal revenue taxes, subject to certain limitations. It 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:
>
> (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.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:

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[36] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[37] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[38] Exhibit "P-16", Docket – Vol. 1, p. 33.

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 percent (40%) of the basic assessed tax.

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 provisions, the payment of any internal revenue tax may be compromised by respondent CIR on either of the said 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 *Philippine National Oil Company vs. Court of Appeals, et al., etseq.*,[39] the Supreme Court held as follows:

"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.

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.**

<u>The discretionary authority to compromise 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[40] of the NIRC of 1977, as

[39] G.R. Nos. 109976 and 112800, April 26, 2005.
[40] Now Section 204(A) of the NIRC of 1997.

> **amended, can only be exercised under certain circumstances specifically identified in said statutes. The BIR Commissioner would have to exercise his discretion within the parameters set by the law, 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 CIR's power to compromise is sanctioned under the NIRC of 1997, the exercise thereof, whether in granting or denying the application for compromise, is subject to the determination of this Court, in the first instance, whether the same is *"within the parameters set by the law"*.

The law prescribes requirements in the exercise of the power to compromise a tax liability.

To reiterate, based on the aforequoted Section 204(A) of the NIRC of 1997, the payment of any internal revenue tax may be compromised by respondent CIR 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 the latter case, 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 BIR.

Moreover, relative to Section 204(A) of the NIRC of 1997, Section 6 of Revenue Regulations (RR) No. 30-2002,[41] as amended by RR No. 9-2013, provides:

> "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**

[41] 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.

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 tax liabilities." *(Emphases and underscoring ours)*

In connection with the power of compromise by respondent CIR, Section 7(c) of the NIRC of 1997 reads:

"SEC. 7. *Authority of the Commissioner to Delegate Power.* – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however*, That the following powers of the Commissioner shall not be delegated:

xxx xxx xxx

(c) The power to compromise or abate, under Section 204(A) and (B) of this Code, any tax liability: *Provided, however*, That **assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (₱500,000) or less**, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, **may be compromised by regional evaluation board** which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members;" *(Emphases ours)*

Correspondingly, on the basis of the foregoing provisions, the legal requirements for a valid exercise of respondent CIR's power to compromise a tax liability are as follows, to wit:

1) There exists a reasonable doubt as to the validity of the claim against the concerned taxpayer, or the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax;

2) The taxpayer has paid the minimum compromise rate, which is either forty percent (40%) or ten percent (10%) of the basic assessed tax or taxes, depending on the ground being relied upon. The compromise offer must have been paid and fully settled by the concerned taxpayer upon filing of the application for compromise settlement; and

3) In case the basic tax exceeds ₱1,000,000.00, the application for compromise settlement has been approved by respondent NEB, with the concurrence of respondent CIR; and in case the basic tax is ₱500,000.00 or less, the said application was approved by respondent REB.

Petitioner paid the required compromise rates, yet, there is no showing that respondent NEB approved the application for compromise settlement.

Petitioner asserts that the assessment issued by respondent is of doubtful validity. Such being the case, petitioner should have at least paid forty percent (40%) of the basic assessed taxes, and that the same have paid and fully settled upon filing of the application for compromise settlement.

Petitioner's payment of the required forty percent (40%) may be summarized as follows:

	Basic Tax[42]	Paid Compromise Rate	Percentage to the Basic Tax / Compromise Penalties
Income tax	₱47,683,046.35	₱19,073,218.54[43]	40%
VAT	10,934,878.13	4,373,951.25[44]	40%
EWT	2,329,321.84	2,329,321.84[45]	100%

Based on the records, the foregoing payments of the compromise rates were all made on November 13, 2013, whereas petitioner's application for compromise was filed on November 13, 2013.[46] Thus, petitioner has complied with the payment and full settlement of the required amounts upon filing of its application for compromise settlement.

[42] Exhibit "P-10", Docket – Vol. I, p. 296 and 299.
[43] Exhibits "P-13-1" and "P-14-1", Docket – Vol. I, p. 296 and 299.
[44] Exhibits "P-13-2" and "P-14-2", Docket – Vol. I, p. 297 and 300.
[45] Exhibits "P-13-3" and "P-14-3", Docket – Vol. I, p. 298 and 301.
[46] Exhibit "P-13", Docket – Vol. I, p. 287 to 395.

However, there is *no indication* that the application for compromise settlement for the foregoing deficiency tax assessments, the respective basic tax of which exceeds ₱1,000,000.00, was approved by respondent NEB.

For easy reference, the *Notice of Denial* dated June 1, 2016[47] issued by respondent CIR reads as follows:

"SN C-RR7-2016-003

NOTICE OF DENIAL

Application for COMPROMISE SETTLEMENT

JUNE 01, 2016

NEW FARMER'S PLAZA INC.
17/F Aurora Tower, Gen Malvar St., Cubao Q. City
001-076-026-000

Gentlemen/Sir/Madam:

This refers to the application/offer for **Compromise Settlement** of your **2006, Income Tax (IT), Value Added Tax (VT), Expanded Withholding Tax (EWT)** involving the total amount of **Php 111,709,140.78** on the ground of Doubtful Validity pursuant to the provisions of Section 204 of the National Internal Revenue Code of **1997**, as amended, as implemented under Revenue Regulations No. **30-2002**

Please be informed that after careful review and evaluation of your application, the same has been **disapproved** by the **REGIONAL EVALUATION BOARD (REB), Revenue Region No. 7 Quezon City** of this Bureau.

In view thereof, you are hereby requested to pay the amount of Php**88,261,970.99** net of Php **23,447,169.79** which was previously paid, **plus all the increments incident to delinquency** with any authorized agent banks within fifteen (15) days from receipt hereof. Should you fail to do so, we will be constrained, much to our regret, to enforce the collection thereof thru the administrative summary remedies provided by law without any further notice.

For your information and guidance.

Very truly yours,

(signed)
KIM JACINTO HENARES
Commissioner of Internal Revenue"

On the basis thereof, it is clear that it was only respondent REB which "disapproved" petitioner's application for compromise settlement. Thus, it is implied that the same application was never presented to respondent NEB for review and evaluation. On this score alone, We find that the command of the law, in relation to the exercise of the respondent CIR's power to compromise

[47] Exhibit "P-16", Docket – Vol. 1, p. 33.

tax liability, has not been followed. Consequently, the aforequoted *Notice of Denial* dated June 1, 2016 is void.[48]

The subject assessment is void, not only of doubtful validity.

According to petitioner, the assessment did not become final, demandable, and executory; and the assessment is void, not just of doubtful validity.

We agree.

Section 228 of the NIRC of 1997 provides, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**
>
> xxx xxx xxx." *(Emphasis ours)*

To implement the foregoing provision, Section 3.1.2 of Revenue Regulations (RR) No. 12-99[49] reads:

> SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** –
>
> 3.1. Mode of procedure in the issuance of a deficiency tax assessment:

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[48] Article 5 of the Civil Code of the Philippines reads: *"Acts executed against the provisions of mandatory or prohibitory law shall be void, except when the law itself authorizes their validity."*

[49] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

xxx xxx xxx

3.1.2. *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. **If the taxpayer fails to respondent within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties." (Emphasis added)

Based on the foregoing, petitioner is given fifteen (15) days from receipt of the PAN within which to respond thereto, before the issuance of the FLD and assessment notice. Accordingly, considering that the PAN was received by petitioner on April 14, 2011[50] and the subject FLD was issued by respondent on April 27, 2011,[51] petitioner was not given the full fifteen (15) days within which to reply to the said PAN. Since petitioner may still file a reply to the same PAN until April 29, 2011, petitioner cannot be considered in default as of April 27, 2011 and the FLD and assessment notice cannot as yet be issued at that point.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,[52] the Supreme Court said:

"**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void.</u> While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment

[50] Exhibits "P-9" and "P-9-1", Docket – Vol. 1, pp. 270 to 274.
[51] Par. 4.8, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 14 and 121, respectively; Exhibit "P-10", Docket – Vol. 1, pp. 278 to 281.
[52] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

> **process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**" *(Emphases and underscoring ours)*

Based on the foregoing doctrinal pronouncements, respondent or the BIR is mandated to perform its assessment functions in accordance with, and strict adherence to law, with their own rules of procedure, and always with regard to the basic tenets of due process. In case respondent or the BIR fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect.

Hence, the assessment of respondent CIR against petitioner is not just of doubtful validity, but was void. As such, it bears no valid fruit,[53] and could not have attained finality. Relative thereto, it is a hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act.[54] Consequently, respondent CIR may no longer collect the balance of the assessment.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED.**

Accordingly, the *Notice of Denial* dated June 1, 2016 issued by respondent CIR against petitioner involving the amount of ₱25,776,491.63 is hereby **ANNULLED, REVERSED**, and **SET ASIDE**, for being void.

Furthermore, the FLD dated April 27, 2011, assessing petitioner of the deficiency income tax, VAT, and EWT, with interests, in the aggregate amount of ₱111,709,140.78, for calendar year 2006, is **CANCELLED** and **SET ASIDE**, likewise for being void. Respondent CIR is **ORDERED** to cease and desist from collecting the balance of the said assessment from petitioner.
SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[53] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.
[54] *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201225-26 and 201132, April 18, 2018, citing *Commissioner of Internal Revenue vs. San Roque Power Corporation*, 703 Phil. 311 (2013)

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
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