REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE Petitioner, -versus- LBC EXPRESS, INC. Respondent.	CTA EB No. 1365 (CTA Case No. 8309) Present: DEL ROSARIO, *PJ,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.* Promulgated: JUN 22 2017 3:20 p.m.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review[1] posted on October 7, 2015, petitioner Commissioner of Internal Revenue (CIR) assails the (1) Decision dated April 30, 2015[2], which cancelled and set aside the Final Assessment Notice (FAN) and his Final Decision for respondent's payment of compromise penalties in the amount of ₱7,512,051.94, as well as the (2) Resolution dated September 2, 2015[3], which denied his plea for reconsideration of the adverse decision, both rendered by the Court in Division in CTA Case No. 8309.

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[1] *En Banc* Docket, pp. 6-19.
[2] Annex "A" to the Petition for Review, *en banc* docket, pp. 20-39.
[3] Annex "B" to the Petition for Review, *en banc* docket, pp. 40-45.

THE FACTS AND THE PROCEEDINGS

The facts as found by the Court in Division are as follows:

Petitioner is the head of the Bureau of Internal Revenue (BIR), vested with the power to cancel disputed assessments. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent LBC Express, Inc., on the other hand, is a domestic corporation with principal office address at General Aviation Center, Domestic Airport Compound, Domestic Road, Pasay City.

For the year 1998, respondent filed with the BIR the required returns and declarations on the following dates:

Monthly VAT Declarations for FY ending November 30, 1998	
Month	**Date of Filing of VAT Declarations**
February 1998	March 31, 1998
March 1998	April 29, 1998
April 1998	June 4, 1998
May 1998	June 29, 1998
June 1998	August 4, 1998
August 1998	October 20, 1998
September 1998	November 17, 1998
October 1998	December 15, 1998
November 1998	January 26, 1999
December 1998	February 10, 1999

Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for FY ending November 30, 1998	
Month	**Date of Filing of Monthly Remittance Return – Expanded**
January 1998	March 17, 1998
February 1998	April 29, 1998
February 1998	April 7, 1998
March 1998	July 23, 1998
April 1998	July 23, 1998
April 1998	October 26, 1998
May 1998	July 7, 1998
June 1998	August 25, 1998
July 1998	September 21, 1998
August 1998	October 15, 1998
September 1998	December 3, 1998
October 1998	February 1, 1999
November 1998	February 1, 1999
December 1998	April 12, 1999

Monthly Remittance Return of Income Taxes Withheld on Compensation for FY ending November 30, 1998	
Month	**Date of Filing of Monthly Remittance Return – Compensation**
January 1998	March 25, 1998
February 1998	July 22, 1998
March 1998	August 25, 1998
March 1998	September 2, 1998

On December 13, 2002, respondent received from petitioner a Preliminary Assessment Notice (PAN) dated December 4, 2002 for, among others, penalties for its alleged late filing of VAT Returns, Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded), and Monthly Remittance Return of Income Taxes Withheld on Compensation for fiscal year (FY) ending November 30, 1998.

On February 25, 2003, respondent received from petitioner Formal Assessment Notices (FANs) all dated February 12, 2003, assessing it for, among others, penalties for purported late filing of returns for VAT, EWT, and CWT for FY ending November 30, 1998. In the same FAN, respondent was required to pay the following penalties to which it filed a written protest on March 25, 2003:

1. ₱P5,619,984.27 - penalty for VAT;
2. ₱1,120,813.49 - penalty for EWT; and
3. ₱1,366,170.53 - penalty for CWT.

On May 12, 2004, respondent applied for the abatement of the foregoing penalties, invoking Revenue Regulations (RR) No. 13-2001 and offered to pay the following corresponding amounts, to wit:

TYPE	OFFER OF PAYMENT
Penalties for VAT	₱186,986.99
Penalties for CWT	259,854.75
Penalties for EWT	148,074.58
TOTAL	**₱594,916.35**

On May 31, 2004, respondent paid the penalties in the total amount of ₱594,916.35.

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On January 18, 2006, petitioner, through Acting Regional Director Anselmo G. Adriano of Revenue Region No. 8-Makati City issued a letter stating that respondent's case was deemed closed and terminated due to its payment of deficiency income tax (IT), VAT, EWT, and compromise penalty, except for its application for abatement/cancellation of penalties.

On February 29, 2008, respondent paid amnesty tax of ₱500,000.00 through Land Bank, as shown in the Payment Form and BIR Tax Payment Deposit Slip of even date.

On March 3, 2008, or within six (6) months from the effectivity of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9480, RDO No. 51 received respondent's amnesty documents consisting of the following: (1) Notice of Availment dated January 18, 2008; (2) Tax Amnesty Return dated January 18, 2008; (3) Statement of Assets, Liabilities and Networth (SALN) as of November 30, 2005; and (4) Payment Form dated January 18, 2008. With the filing of the cited documents and corresponding payment of amnesty tax in the amount of Ph500,000.00, respondent, as of March 3, 2008, was deemed to have validly availed of the tax amnesty pursuant to RA No. 9480.

On June 10, 2011, respondent received from the BIR the Notice of Denial of its application for abatement dated January 26, 2011 and a Collection Letter dated June 9, 2011. This prompted respondent to file a Petition for Review with the Court in Division on July 11, 2011.

On August 31, 2011, petitioner filed his Answer to the Petition for Review arguing that respondent's position that the subject assessment had no factual and legal bases was contrary to its payment of the amended/modified deficiency tax assessments. Further, the denial of respondent's application for abatement was due to its failure to submit the documents justifying the ground for abatement stated in its application, despite several requests. Contrary to respondent's impression, the Collection Letter of June 9, 2011 was not a "decision" on its protest but a mere notice of the denial of its request for abatement, hence, the demand to settle the balance of the penalties imposed in the total amount of ₱7,512,051.91. In fine, neither was there a decision as contemplated under Section 7 of RA No. 1125, as amended, nor a disputed assessment since respondent already paid its deficiency tax assessments on May 31, 2004, that could be a proper subject of an appeal before the Court in Division. That being the case, the Petition for Review filed by respondent should be dismissed on jurisdictional ground.

On September 16, 2011, respondent filed its Reply.

On April 30, 2015, the Court in Division rendered the assailed Decision[4], the decretal portion of which reads as follows:

> WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, the Final Assessment Notice (FAN) and Final Decision of the Commissioner of Internal Revenue for the payment of compromise penalties in the amount of ₱7,512,051.94, are hereby CANCELLED and SET ASIDE.
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> SO ORDERED.

The Court in Division affirmed its ruling when it denied petitioner's plea for reconsideration[5] for lack of merit in the similarly assailed Resolution of September 2, 2015[6].

Hence, this appeal[7], filed through registered mail, on October 7, 2015, with the following errors allegedly committed by the Court in Division, to wit:

(1.) THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN HOLDING THAT THE AMOUNT OF P7,512,051.94 PERTAIN (*sic*) TO UNPAID COMPROMISE PENALTIES.

(2.) THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN HOLDING THAT

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[4] *En Banc* docket, pp. 20-39.
[5] *Ibid.*, pp. 46-50.
[6] *Ibid.*, pp. 40-45.
[7] Minute Resolution dated October 13, 2015, *ibid.*, p. 5.

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PETITIONER'S ALLEGATION THAT THE SAID AMOUNT INCLUDES SURCHARGE AND INTEREST WAS BELIED BY HER VERY OWN ASSESSMENT.

(a) Petitioner's Formal Assessment Notice together with the Details of Discrepancies all dated February 12, 2003 clearly reflected the breakdown of the surcharges and interest (civil penalties).

(b) The Penalties for Late filing and Payment mentioned in a Letter dated January 18, 2006 by Acting Regional Director Anselmo G. Adriano clearly referred to civil penalties (surcharge and interest). Respondent LBC in fact, paid the actual and genuine COMPROMISE PENALTIES amounting to P55,000.00."

Petitioner insists that respondent belatedly filed and paid its Monthly VAT Declarations, Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) and Monthly Remittance Return of Income Taxes Withheld on Compensation for FY ending November 30, 1998, for which reason, it was assessed twenty-five percent (25%) surcharge and twenty percent (20%) interest pursuant to Sections 248[8] and 249[9] of the NIRC, as amended.

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[8] SEC. 248. Civil Penalties. - (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or xxxx.

[9] SEC. 249. Interest. -

(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. - In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected of the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax xxxx.

Respondent also violated Section 55 of the NIRC of 1997, as amended, and paid a total amount of ₱55,000.00 as compromise penalties.

Petitioner further posits that the Assessment Notices with Details of Discrepancies also indicate that the assessed unpaid amount of ₱7,512,051.94 refers to civil penalties which consist of surcharge and interest for respondent's failure to file the returns and pay the corresponding taxes within the prescribed period mandated under Sections 248 and 249 of the NIRC, as amended. Citing a Supreme Court case, petitioner states that the imposition of penalties for unpaid taxes, such as interest, is mandatory and cannot be condoned lightly[10]. Besides, payment of surcharge is mandatory and the BIR is without authority to waive the collection thereof; the same cannot also be condoned for flimsy reasons.[11]

Lastly, petitioner claims that respondent at the onset was aware that the amount of ₱7,512,051.94 represents the surcharge and interest arising from its late filing of return/payment of tax as reflected in the FAN with Details of Discrepancies. This is precisely the reason for his use of the term penalties in his pleadings and not unpaid compromise penalties.

In rejecting petitioner's arguments, respondent interposes the following arguments:

I.

THIS HONORABLE COURT CORRECTLY DETERMINED THE ASSESSED AMOUNT OF ₱7,512,051.94 TO BE IN THE NATURE OF COMPROMISE PENALTIES.

II.

LBC DID NOT CONSENT TO THE IMPOSITION OF COMPROMISE PENALTIES FOR ITS TAX LIABILITIES FOR FISCAL YEAR 1998.

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[10] Jamora et. al. v. Meer, et. al, 74 Phil 22 (1942).

[11] Philex Mining Corporation v. Commissioner of Internal Revenue, et. al., G.R. No. 125704, August 28, 1998.

III.
THE PENALTIES IMPOSED BY PETITIONER SHOULD BE CANCELLED IN VIEW OF LBC'S AVAILMENT OF THE TAX AMNESTY UNDER R.A. 9480.

IV.
EVEN ASSUMING THE IMPOSITION OF THE PENALTIES WAS PROPER, PETITIONER'S RIGHT TO ASSESS AND COLLECT THE PENALTIES ALREADY PRESCRIBED.

On June 24, 2016, the instant petition was deemed submitted for decision.[12]

THE RULING OF THE COURT *EN BANC*

The Petition must be denied.

There is no compelling reason for the Court *En Banc* to deviate from the findings of the Court in Division. Petitioner virtually truncated his arguments from his previous pleadings filed with the Court in Division. The said arguments had been exhaustively considered and discussed in the assailed Decision of April 30, 2015 and Resolution of September 2, 2015.

But if only to ease petitioner's mind, let it be repeated that the disputed assessment refers to respondent's unpaid compromise penalties and not to civil penalties (surcharge and interest), as petitioner alleged.

Evident from the record that the amount of ₱7,512,051.94 is the balance of the total amount of compromise penalties assessed by petitioner against respondent for the FY ending November 30, 1998.

As correctly observed by the Court in Division, the FAN issued by petitioner against respondent shows that respondent was assessed of deficiency WT on compensation,

[12] *En Banc* docket, pp. 109-110.

EWT and VAT plus compromise penalties in the total amount of ₱51,370,492.17, computed as follows:

Deficiency Tax	Withholding Tax on Compensation[13]	Expanded Withholding Tax[14]	Value-Added Tax[15]	Grand Total
Tax Due	₱3,539,914.16	₱590,880.25	₱19,558,353.85	₱23,689,148.24
Surcharge	-	-	-	-
Interest	2,925,035.92	488,245.16	16,161,094.56	19,574,375.64
Suggested Compromise Penalty	1,366,170.53	1,120,813.49	5,619,984.27	8,106,968.29
Total Amount Due	₱7,831,120.61	₱2,199,938.90	₱41,339,432.66	₱51,370,492.17

Respondent partially paid the compromise penalties assessed against it by petitioner, as follows:

TYPE	OFFER OF PAYMENT
Penalties for VAT	₱186,986.99
Penalties for CWT	259,854.75
Penalties for EWT	148,074.58
TOTAL	**₱594,916.35**

Thus, deducting the amount of ₱594,916.35 from the total amount of compromise penalties of ₱8,106,968.29, the balance for the assessed compromise penalties for FY ending November 30, 1998 amounts to ₱7,512,051.94.

Hence, it is clear that when petitioner demanded payment from respondent in the amount of ₱7,512,051.94 as balance of penalties arising from late filing of return/payment of tax covering FY ending November 30, 1998, the same refers to compromise penalties and not civil penalties.

Further, while it may be true that the Court mentioned in the assailed Decision that the subject Notice of Denial involves surcharge, interest and compromise penalty, the Court in the assailed Resolution explained that it was merely referring to the contents of the Notice of Denial as the source of the subject questioned assessment. Precisely, upon review and evaluation of the record of the case, the Court declared that the disputed amount of ₱7,512,051.94

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[13] Exhibit "C".
[14] Exhibit "D".
[15] Exhibit "E".

actually represents the balance of the assessed compromise penalties considering that the total amount of suggested compromise penalties assessed by petitioner against respondent was ₱8,106,968.29. But since respondent partially paid the suggested compromise penalties in the total amount of ₱594,916.35, there was a balance of unpaid suggested compromise penalties in the amount of ₱7,512,051.94.

Finally, as a rule, penalties cannot be imposed absent any showing that the taxpayer agreed to it, as in the case at bar. A compromise implies agreement. If the offer is rejected by the taxpayer, as shown in this case, petitioner cannot enforce it except through a criminal action.[16]

Therefore, considering that record is bereft of any evidence that shows that the parties have mutually agreed on the imposition of compromise penalty, the Court cannot sustain the same. As held in the assailed Decision and Resolution, the Final Assessment Notice and Final Decision of petitioner for the payment of compromise penalties in the amount of ₱7,512,051.94 should be canceled and set aside.

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue through registered mail on October 7, 2015, is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated April 30, 2015 and the Resolution dated September 2, 2015 of the Court in Division in CTA Case Nos. 8309, are hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[16] Commissioner of Internal Revenue v. Fireman's Fund Insurance Company and The Court of Tax Appeals, G.R. No. L-30644, March 9, 1987.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ON LEAVE
CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice