REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SPECTRUM GRAPHIX, INC.
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11117

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

2:00 PM

x - x

DECISION

FERRER-FLORES, J.:

The **Petition for Review** filed on March 31, 2023 prays that the assessment issued by respondent against petitioner on its alleged deficiency improperly accumulated earnings tax (IAET) in the total amount of **₱651,591.09**, net of ₱42,488.75, for taxable year (TY) 2007, be cancelled and set aside.[1]

THE PARTIES

Petitioner **Spectrum Graphix, Inc.** is a duly organized and registered domestic corporation under Philippine laws. Its primary purpose is to carry on business as proprietor and publisher of newspapers, journals, magazines, books and other literary works and undertakings; and also, to carry on business as printer, bookseller, bookbinder, paper maker, stationer, engraver photographer, photographic printer, stereotyper, electro-typer, lithographer, machinist, silkscreener, or any other business or manufacture that may seem expedient.[2] Its principal place of business is located at 239-B Swigert St.,

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[1] Summary of the Case, Pre-Trial Order dated February 1, 2024, Docket – Vol. I, p. 400.
[2] Exhibits "P-1"and "P-2", Docket – Vol. II, pp. 452 to 477.

Phase 2, Moonwalk Village, Parañaque City, Philippines.[3] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number 004-484-711-00000.[4]

Respondent is the duly appointed **Commissioner of Internal Revenue** who may be served with summons, notices, and court processes at the Legal Division of Revenue Region 8-B South NCR located at the 2nd Floor, BIR Building, 313 Gil Puyat Avenue, Makati City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On December 16, 2008, petitioner received the Letter of Authority (LOA) No. 200700049233 dated December 9, 2008 issued by respondent. The said LOA authorized the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2007.[6]

On November 24, 2010, petitioner received the Formal Assessment Notice (FAN) with attached Details of Discrepancy and Assessment Notices, all dated November 17, 2010,[7] assessing alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT) and IAET for TY 2007.[8] Petitioner is allegedly liable for deficiency taxes as follows:[9]

Tax Type/Year	Basic	Interest/ Surcharge	Tax Due
Income Tax	₱ 22,941,730.10	₱ 12,256,540.74	₱ 35,198,270.84
VAT	₱ 8,877,570.62	₱ 5,136,829.90	14,014,400.52
EWT	₱ 470,396.75	₱ 278,579.41	748,976.16
IAET	₱ 424,887.45	₱ 162,970.53/ ₱ 106,221.86	694,079.84
		TOTAL	**₱ 50,655,727.36**

In 2012, petitioner filed an application to compromise its alleged internal revenue tax liabilities for TY 2007[10] and accordingly paid the amounts offered as compromise[11] on the following dates:[12]

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3 Par. 1.3, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, pp. 381 to 382.
4 Par. 1.6, *Id.* at 382.
5 Par. 1.5, *Id.* at 382.
6 Par. 1.7, *Id.* at 382; Exhibit "P-4", Docket – Vol. II, p. 486.
7 Exhibits "P-5", "P-6", "P-6-1", "P-6-2", and "P-6-3", BIR Records (Exhibit "R-5), pp. 165 to 172.
8 Par. 1.8, Stipulation of Facts (JSFI), Docket – Vol. I, p. 382.
9 Par. 1.9, *Id.* at 382 to 383.
10 Exhibits "P-7", "P-8", "P-8-2", "P-8-3" and "P-8-4", BIR Records (Exhibit "R-5"), pp. 295, 298, 303, 307, and 309, respectively.
11 Par. 1.2, Stipulation of Facts (JSFI), Docket – Vol. I, p. 381.
12 Par. 1.10, *Id.* at 383.

Tax Type	Date Filed the Application/Paid the Amount Offered
Income Tax	February 9, 2012 up to April 18, 2013
VAT	January 17, 2012
EWT	January 18, 2012
IAET	February 1, 2012

On April 24, 2013, petitioner executed a Waiver of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue Code,[13] of the government's right to collect but not later than December 17, 2016.

Petitioner executed a Sworn Declaration and Waiver of Right of Secrecy of Bank Deposits[14] and Sworn Statement[15] of no tax credit certificate on hand or in transit or claim for tax refund or tax credit certificate pending in any office, both received by respondent in March 2014.[16]

On March 1, 2023,[17] petitioner received the Notice of Denial on its Application for Compromise Settlement dated January 20, 2023,[18] signed by Mr. Edgar B. Tolentino, informing petitioner that its application has been disapproved by the Regional Evaluation Board (REB) due to lack of legal and factual basis. The Notice of Denial requests petitioner to pay the amount of ₱651,591.09, net of ₱42,488.75, which was previously paid, plus all the increments incident to the delinquency with any authorized agent bank within 15 days from receipt. The said Notice of Denial likewise provides that if the petitioner fails to pay, the BIR will enforce the collection thereof thru the administrative summary remedies provided by law.[19]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on March 31, 2023.[20]

On July 10, 2023, respondent filed, through registered mail, his *Answer*.[21]

Respondent then filed through registered mail the *BIR Records* of the present case on July 21, 2023, consisting of 450 pages in one folder.[22]

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[13] Exhibit "P-15", BIR Records (Exhibit "R-5), p. 400.
[14] Exhibit "P-10", Docket – Vol. II, p. 501.
[15] Exhibit "P-9", Docket – Vol. II, p. 500.
[16] Par. 1.11, Stipulation of Facts, JSFI, Docket – Vol. I, p. 383.
[17] Q&A No. 27, Exhibit "P-17", Docket – Vol. I, pp. 161 to 162.
[18] Exhibit "P-16", Docket – Vol. II, p. 569.
[19] Par. 1.12, Stipulation of Facts, JSFI, Docket – Vol. I, p. 383.
[20] Docket – Vol. I, pp. 1-F to 40.
[21] *Id.* at 294 to 303.

The Pre-Trial Conference was set and held on November 7, 2023.[23] Prior thereto, respondent's *Pre-Trial Brief* was filed *via* accredited courier on October 27, 2023,[24] while the *Pre-Trial Brief [For Petitioner Spectrum Graphix, Inc.]* was submitted on November 3, 2023.[25]

During the Pre-Trial Conference held on November 7, 2023, the case was referred to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) and the parties were directed to proceed to the mediation office on December 6, 2023.[26] However, the PMC-CTA later issued the *No Agreement To Mediate* dated December 6, 2023,[27] stating that the parties decided not to have their case mediated.

In the meantime, on December 5, 2023, the parties filed their *Joint Stipulation of Facts and Issue*,[28] which was admitted and approved by the Court in its Resolution dated January 4, 2024,[29] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated February 1, 2024 was then issued.[30]

Trial then ensued, with both parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimony of Ms. Marian R. Sycip,[31] its President and a member of its board of directors.

On March 14, 2024, petitioner filed its *Formal Offer of Evidence*,[32] to which respondent filed *via* accredited courier his *Comment/Opposition (To Petitioner's Formal Offer of Exhibits dated 14 March 2024)* on April 4, 2024.[33] In the Resolution dated May 23, 2024,[34] the Court admitted all of petitioner's offered exhibits. ม

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22 *Compliance* dated July 21, 2023, Docket – Vol. I, pp. 340 to 341.
23 Notice of Pre-Trial Conference dated July 17, 2023, Docket – Vol. I, pp. 344 to 345; Minutes of the hearing held on, and Order dated, November 7, 2023, Docket – Vol. I, pp. 380 and 393 to 394, respectively.
24 Docket – Vol. I, pp. 347 to 352.
25 *Id.* at 354 to 377.
26 Minutes of the hearing held on, and Order dated, November 7, 2023, Docket – Vol. I, pp. 380 and 393 to 394, respectively.
27 Docket – Vol. I, p. 397.
28 *Id.* at 381 to 392.
29 *Id.* at 396.
30 *Id.* at 400 to 408.
31 Exhibit "P-17", Docket – Vol. I, pp. 156 to 164; Minutes of the hearing held on, and Order dated, February 13, 2024, Docket – Vol. I, pp. 427 to 429.
32 Docket – Vol. II, pp. 432 to 451.
33 *Id.* at 579 to 581.
34 *Id.* at 583 to 585.

For his part, respondent presented the testimony of Revenue Officer (RO) Jerry C. Angeles.[35]

On June 3, 2024, respondent filed *via* accredited courier his *Formal Offer of Evidence*,[36] to which petitioner filed its *Comment [To Respondent's Formal Offer of Evidence dated May 03, 2024]* on June 19, 2024.[37] In the Resolution dated August 20, 2024,[38] the Court admitted all of respondent's offered exhibits.

On October 3, 2024, respondent filed through registered mail his *Memorandum*,[39] while the *Memorandum [For Petitioner Spectrum Graphix, Inc.]* was submitted on October 10, 2024.[40]

The present case was considered submitted for decision on October 21, 2024.[41]

THE STIPULATED ISSUES

As stipulated by the parties, the issues for this Court's resolution are as follows:

1. Whether or not the denial of the application for compromise settlement is valid; and,

2. Whether or not the right of respondent to collect the tax has already prescribed.[42]

Petitioner's arguments

Petitioner argues that the denial of the application for compromise settlement for IAET is not valid as: (a) the application was evaluated based on a ground different from the one applied for by petitioner; (b) respondent's review or evaluation of petitioner's application for compromise is tainted with defect; (c) the assessment is not only of doubtful validity but is actually void; and, (d) the right of respondent to collect the tax has already prescribed.

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[35] Exhibit "R-6", Docket – Vol. I, pp. 304 to 310 [offered as such, but not marked, refer to respondent's *Formal Offer of Evidence*, Docket – Vol. II, at p. 590]; Minutes of the hearing held on, and Order dated, May 28, 2024, Docket – Vol. II, pp. 586 and 588 to 588-A.
[36] Docket – Vol. II, pp. 589 to 592.
[37] *Id.* at 594 to 602.
[38] *Id.* at 604 to 605.
[39] *Id.* at 609 to 616.
[40] *Id.* at 619 to 656.
[41] Minute Resolution dated October 21, 2024, *Id.* at 657.
[42] Issues, JSFI, Docket – Vol. I, p. 384.

Respondent's counter-arguments

Respondent contends that the denial of petitioner's application for compromise settlement is valid because petitioner failed to prove its inability to pay the assessed tax.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

The denial of petitioner's application for compromise settlement is invalid.

To reiterate, petitioner argues that the denial of the application for compromise settlement is not valid as: (a) the application for compromise was evaluated based on a ground different from the one applied for by petitioner; (b) respondent's review or evaluation of petitioner's application for compromise is tainted with defect; and, (c) the assessment is not only of doubtful validity but is actually void.

On the other hand, respondent contends that his authority to compromise is purely discretionary, and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion. In this case, respondent stresses that there was no grave abuse of discretion on his part because the denial of petitioner's application for compromise settlement of its IAET is proper. According to respondent, petitioner failed to prove its financial incapacity to pay its tax liability as it did not fall in any of the grounds mentioned in Revenue Regulations (RR) No. 30-2002. In fact, petitioner allegedly did not submit any proof that would demonstrate its clear inability to pay its IAET.

The Court partly agrees with petitioner.

The power of respondent to enter into compromise settlements for deficiency taxes is explicit in Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> (A) Compromise the payment of any internal revenue tax, when:
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> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
>
> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
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> For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
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> Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, 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 on either of the two 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 10% of the basic assessed tax must be paid; while in all other cases, the minimum compromise rate is 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 four Deputy Commissioners of the BIR.

In this regard, the general rule is that the authority of respondent to compromise is purely discretionary, and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion.[43]

In *Philippine National Oil Company vs. The Hon. Court of Appeals, et al., et seq.*,[44] 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 functions by the administrative officer is <u>tainted by a failure to abide by the command of the law</u>, then it is incumbent on the courts to set matters right,** with this Court having the last say on the matter.

[43] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 225750-51, July 28, 2020.

[44] G.R. Nos. 109976 and 112800, April 26, 2005.

> 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.**
>
> **The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. 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[45] of the NIRC of 1977, as 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 added)*

Similarly, in the recent case of *Commissioner of Internal Revenue vs. Pacific Hub Corporation*,[46] the Supreme Court ruled as follows:

> While the courts may generally not interfere in an administrative agency's exercise of a purely administrative or discretionary power, this rule admits of exceptions such as when '**the issuing authority has gone beyond its statutory authority, has exercised unconstitutional powers or has clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion.**'
>
> xxx xxx xxx
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> Invariably, it is this very same rationale which the Court applied in *PNOC v. Court of Appeals* to hold that the exercise of the CIR's discretionary power to enter into a compromise is subject to the CTA's power of judicial review. The Court pronounced that the '**[CIR] 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 added)*

In this case, on January 18, 2012, petitioner filed the letter dated January 15, 2012,[47] stating, in part, that it is "financially distressed to meet [its] 2007 obligations", and its Application for Compromise Settlement of Internal Revenue Tax Liabilities Pursuant to RR No. 30-2002 (BIR Form No. 2107),[48] to compromise its deficiency IAET liability for TY 2007, had the box marked corresponding to the ground "Financial Incapacity" as the reason for its application. Petitioner offered and paid as compromise the

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[45] Now Section 204(A) of the NIRC of 1997, as amended.
[46] G.R. No. 252944, November 27, 2024.
[47] Exhibit "P-7", BIR Records (Exhibit "R-5"), p. 295.
[48] Exhibit "P-8-3", *Id.* at 307.

amount of ₱42,488.75 on February 1, 2012,[49] or equivalent to 10% of the basic deficiency IAET assessed of ₱424,887.45 for TY 2007.

In addition, petitioner executed a Sworn Declaration and Waiver of Right of Secrecy of Bank Deposits[50] and Sworn Statement[51] of no tax credit certificate on hand or in transit or claim for tax refund or tax credit certificate pending in any office, both received by the respondent in March 2014.[52]

In this regard, Section 3(2) of RR No. 30-2002,[53] enumerates the instances when respondent may accept a compromise on the ground of financial incapacity, to wit:

> **SEC. 3. BASIS FOR ACCEPTANCE OF COMPROMISE SETTLEMENT**. – The Commissioner may compromise the payment of any internal revenue tax on the following grounds:
>
> xxx xxx xxx
>
> 2. **Financial incapacity**. — The offer to compromise based on financial incapacity may be accepted upon showing that:
>
> (a) The corporation ceased operation or is already dissolved. Provided, that tax liabilities corresponding to the Subscription Receivable or Assets distributed/distributable to the stockholders representing return of capital at the time of cessation of operation or dissolution of business shall not be considered for compromise; or
>
> (b) The taxpayer, as reflected in its latest Balance Sheet supposed to be filed with the Bureau of Internal Revenue, is suffering from surplus or earnings deficit resulting to impairment in the original capital by at least 50%, provided that amounts payable or due to stockholders other than business-related transactions which are properly includible in the regular 'accounts payable' are by fiction of law considered as part of capital and not liability, and provided further that the taxpayer has no sufficient liquid asset to satisfy the tax liability; or
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> (c) The taxpayer is suffering from a networth deficit (total liabilities exceed total assets) computed by deducting total liabilities (net of deferred credits and amounts

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[49] Exhibit "P-13", BIR Records (Exhibit "R-5"), pp. 315 to 316.
[50] Exhibit "P-10", Docket – Vol. II, p. 501.
[51] Exhibit "P-9", *Id.* at 500.
[52] Par. 1.11, Stipulation of Facts, JSFI, Docket – Vol. I, p. 383.
[53] 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.

payable to stockholders/owners reflected as liabilities, except business-related transactions) from total assets (net of prepaid expenses, deferred charges, pre-operating expenses, as well as appraisal increases in fixed assets), taken from the latest audited financial statements, provided that in the case of an individual taxpayer, he has no other leviable properties under the law other than his family home; or

(d) The taxpayer is a compensation income earner with no other source of income and the family's gross monthly compensation income does not exceed the levels of compensation income provided for under Sec. 4.1.1 of these Regulations, and it appears that the taxpayer possesses no other leviable or distrainable assets, other than his family home; or

(e) The taxpayer has been declared by any competent tribunal/authority/body/ government agency as bankrupt or insolvent.

The Commissioner shall not consider any offer for compromise settlement on the ground of financial incapacity of a taxpayer with Tax Credit Certificate (TCC), issued under the National Internal Revenue Code of 1997 or Executive Order No. 226, on hand or in transit, or with pending claim for tax refund or tax credit with the Bureau of Internal Revenue, Department of Finance One-Stop-Shop Tax Credit and Duty Drawback Center (Tax Revenue Group or Investment Incentive Group) and/or the courts, or with existing finalized agreement or prospect of future agreement with any party that resulted or could result to an increase in the equity of the taxpayer at the time of the offer for compromise or at a definite future time. Moreover, no offer of compromise shall be entertained unless and until the taxpayer waives in writing his privilege of the secrecy of bank deposits under Republic Act No. 1405 or under other general or special laws, and such waiver shall constitute as the authority of the Commissioner to inquire into the bank deposits of the taxpayer.

Presence of circumstances that would place the taxpayer-applicant's inability to pay in serious doubt can be a ground to deny the application for compromise based on financial incapacity of the taxpayer to pay the tax.

Despite petitioner's application for compromise settlement on the basis of financial incapacity, respondent evaluated petitioner's application on the basis of doubtful validity as shown in the Regional Evaluation Board (REB) Resolution on the Application for Compromise Settlement or for Abatement/Cancellation of Assessment,[54] wherein the boxes corresponding to "Compromise Settlement (RMO 30-2002)" and "Doubtful Validity" were marked under Part I. Details of Application. Moreover, under Part IV. Conclusion of Facts and Legal Issues of the said REB Resolution, it was stated therein that: m

[54] Exhibit "R-1", BIR Records (Exhibit "R-5"), pp. 421 to 422.

1. Taxpayer letter request indicated request for abatement
2. Taxpayer cited grounds for availment of abatement
3. However, the evaluation of Collection Division reported an availment of compromise (@40% of basic IT) based on doubtful validity and supporting the application with the grounds available for financial incapacity.

In view thereof, it is hereby considered clear and compelling based on lack of factual and legal basis, that the application for abatement be denied. The taxpayer is however strongly recommended to avail of the Tax Amnesty Program.

Based on the above recommendation, respondent issued the Notice of Denial - Application for Compromise Settlement (BIR Form No. 0427) dated January 20, 2023[55] signed by Edgar B. Tolentino, which reads as follows:

NOTICE OF DENIAL
Application for Compromise Settlement

January 20, 2023

SPECTRUM GRAPHIX INC
239-B SWIGERT ST. PHASE 2, MOONWALK VILLAGE
PARAÑAQUE CITY
TIN:**004-484-711-000**

Gentlemen/Sir/Madam:

This refers to the **application(s)/offer(s) for compromise settlement of your Improperly Accumulated Earnings Tax liabilities for the period/taxable year 2007** involving the total amount of Six Hundred Ninety Four Thousand Seventy Nine and 84/100 (₱694,079.84) **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** of this Bureau, due to:

Reason: **Lack of legal and factual basis.**

In view thereof, you are hereby requested to pay the amount of Six Hundred Fifty One Thousand Five Hundred Ninety One and 09/100 (₱651,591.09), net of Forty Two Thousand Four Hundred Eighty Eight and 75/100 (₱42,488.75) 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

[55] Exhibit "P-16", Docket – Vol. II, p. 569.

thru the administrative summary remedies provided by law without any further notice.

For your information and guidance.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
By:
(Signed)
EDGAR B. TOLENTINO
Authorized Signatory
(Signature over Printed Name)
(Emphases added)

From the clear language of the *Notice of Denial*, coupled with the REB Resolution, petitioner's application for compromise settlement was erroneously evaluated on a ground different from what was applied for. This being the case, it is clear that respondent failed to exercise his discretion within the parameters set by the law.

As correctly pointed out by petitioner, this defect in the evaluation of petitioner's application cannot be cured by a mere allegation in respondent's *Answer* that the denial of petitioner's application is due to petitioner's failure to prove its inability to pay the assessed tax,[56] nor by the testimony of respondent's witness, RO Angeles,[57] that "[b]ased on the *FAN*, Petitioner's IAET is ₱694,079.84 inclusive of surcharge and interest while based on the *Balance Sheet for December 31, 2007* and *Comparative Balance Sheet as of December 31, 2009 and 2008*, Petitioner had a total asset of PHP43,322,235.25 in 2007, PHP51,502,117.40 in 2008 and PHP50,699,190 in 2009. Hence, Petitioner was very much capable of paying its IAET." These statements are clearly contradicted by what was stated on the REB Resolution and the *Notice of Denial*, and a last-ditch effort to convince the Court that respondent's denial of petitioner's application for compromise settlement was proper.

Hence, the *Notice of Denial* should be cancelled for being issued beyond the parameters set by law.

Moreover, even granting that respondent may evaluate an application based on a ground different from what was applied for, the *Notice of Denial* would still be invalidated for respondent's failure to adhere to the applicable law, rules and regulations on compromise settlement.

[56] Par. 43, *Memorandum [For Petitioner Spectrum Graphix, Inc.]*, Docket – Vol. II, p. 629.
[57] Q&A No. 9, Exhibit "R-6", Docket – Vol. I, p. 306.

Based on the *Notice of Denial* and REB Resolution and as already observed, petitioner's application for compromise settlement was evaluated based on the ground of doubtful validity. However, based on Section 204(A) of the NIRC of 1997, as amended, as quoted earlier, 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 respondent and four Deputy Commissioners of the BIR.

Moreover, relative to Section 204(A) of the NIRC of 1997, as amended, Sections 4 and 6 of RR No. 30-2002, as amended by RR No. 9-2013,[58] provides:

> **SEC. 4. PRESCRIBED MINIMUM PERCENTAGES OF COMPROMISE SETTLEMENT.** — The compromise settlement of the internal revenue tax liabilities of taxpayers, reckoned on a per tax type assessment basis, shall be **subject to the following minimum rates based on the basic assessed tax**:
>
> xxx xxx xxx
>
> 2. **For cases of 'doubtful validity' — A minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.**
>
> xxx xxx xxx *(Emphases added)*
>
> **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 NEB, granting the request of the taxpayer or favorable to the taxpayer, shall have the concurrence of the Commissioner.
>
> **Offers of compromise of assessments issued by the Regional Offices involving basic deficiency taxes of Five Hundred Thousand Pesos (P500,000) or less** and for minor criminal violations discovered by the Regional and District Offices, **shall be subject to the approval by the Regional Evaluation Board (REB)**, comprised of the following Officers of the Region:
>
> Regional Director – Chairman
> Members:
> - Assistant Regional Director
> - Chief, Legal Division
> - Chief, Assessment Division
> - Chief, Collection Division
> - Revenue District Officer having jurisdiction over the taxpayer-applicant

[58] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 30-2002.

> Provided, however, that **if the offer of compromise is less than the prescribed rates set forth in Sec. 4 hereof, the same shall always be subject to the approval of the NEB.**
>
> 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 added)*

Since the compromise settlement offered is less than the prescribed rate of 40% of the basic assessed tax for doubtful validity, then, the compromise is subject to the approval of the National Evaluation Board (NEB), which is composed of respondent and four Deputy Commissioners. Here, the *Notice of Denial* dated January 20, 2023[59] was only disapproved by the "Regional Evaluation Board", and there was no participation from the NEB, in violation of Section 204(A) of the NIRC of 1997 and RR No. 30-2002, as amended.

Hence, the *Notice of Denial* dated January 20, 2023, which was issued beyond the parameters set by law and regulations, should be cancelled.

The foregoing notwithstanding, the Court hereby emphasizes that the cancellation of the *Notice of Denial* does not necessarily result in the grant of petitioner's application for compromise settlement. This matter is still best left to the discretion of respondent.[60]

The deficiency IAET assessment for TY 2007 is already final, executory and demandable, petitioner having failed to file a protest.

Petitioner also argues that the FAN is not a valid assessment because it lacks the definite amount of tax liability for which it is allegedly accountable. It points out that the FAN was issued with the following statement "Please note that the interest and the total amount due will have to be adjusted if paid after the date specified herein." It further claims that in line with several Supreme Court rulings, the said statement rendered the assessment invalid, specifically citing the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* ("*Fitness By Design* case").[61]

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[59] Exhibit "P-16", Docket – Vol. II, p. 569.
[60] Refer to *Commissioner of Internal Revenue vs. Pacific Hub Corporation*, G.R. No. 252944, November 27, 2024.
[61] G.R. No. 215957, November 9, 2016.

In his *Answer*, respondent contends that petitioner failed to file a valid protest, hence, the FAN has long been final, executory and demandable and can no longer be disputed. Nonetheless, respondent avers that the FAN is valid as the Assessment Notice dated November 17, 2010 stated the definite amount to be paid, *i.e.*, petitioner is being demanded to specifically pay ₱694,079.84 on or before December 17, 2010.

The Court agrees with respondent.

As correctly pointed out by respondent, petitioner did not file a protest to the FAN dated November 17, 2010,[62] which petitioner received on November 24, 2010.[63]

Section 228 of the NIRC of 1997 reads:

> Section 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 taxpayer 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.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; <u>otherwise, the assessment shall become final</u>.**
>
> xxx xxx xxx. *(Emphasis and underscoring added)*

Based on the foregoing provision, a tax assessment issued by the BIR may be protested administratively, within 30 days from receipt thereof. Moreover, within 60 days from the filing of a protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. wl

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[62] Transcript of Stenographic Notes at the hearing held on February 13, 2024, pp. 9 to 10.
[63] Par. 1.8, Stipulation of Facts, JSFI, Docket – Vol. I, p. 382.

To implement the above-quoted Section 228, Section 3 of RR No. 12-99,[64] as amended by RR No. 18-13,[65] provides, in part, as follows:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> xxx xxx xxx
>
> 3.1.5 *Disputed Assessment.* — xxx
>
> xxx xxx xxx
>
> **If the taxpayer fails to file a valid protest** against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, **the assessment shall become <u>final, executory and demandable</u>**. *(Emphases and underscoring added)*

Based on the foregoing provisions, considering that petitioner did not file a protest to the FAN, then, the assessment became final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.

But even granting that petitioner is not barred from disputing the correctness of the assessment, still the assessment is valid.

In the *Fitness By Design* case, the Supreme Court emphasized the importance of the issuance of a valid formal assessment, *i.e.*, that it must demand payment of the taxes described, within a specific period, and that the amount of tax liability for which the taxpayer is accountable must be definite, *viz.*:

> **...the Final Assessment Notice is <u>not valid if it does not contain a definite due date for payment</u> by the taxpayer.**
>
> xxx xxx xxx
>
> **The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provided for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also <u>includes a demand for payment within a period prescribed</u>. <u>Its main purpose is to determine the amount that a taxpayer is liable to pay</u>.**

[64] 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.

[65] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

xxx xxx xxx

A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and **must demand payment of the taxes described therein <u>within a specific period</u>**.'

The disputed Final Assessment Notice is not a valid assessment.

First, **<u>it lacks the definite amount of tax liability for which respondent is accountable</u>. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. <u>An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed</u>.' <u>Although the disputed notice provides for the computation of respondent's tax liability, the amount remains indefinite</u>. <u>It only provides that the tax due is still subject to modification, depending on the date of payment</u>.** Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*** (Emphasis Supplied)

Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. **The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment**:

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, **<u>the enclosed assessment pertained to remained unaccomplished</u>**.

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. **The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.** M

> **Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality.** Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. **Tax collection should be premised on a valid assessment**, which would allow the taxpayer to present his or her case and produce evidence for substantiation. *(Emphases and underscoring added)*

From the foregoing, the *Fitness By Design* case is not on all fours with the facts of this case.

Here, the subject FAN dated November 17, 2010,[66] provides for the computation of petitioner's tax liability. It also provides in part, as follows:

> *Please note that the interest and the total amount due will have to be adjusted if paid after the date specified herein*
>
> xxx xxx xxx
>
> In view thereof, **you are requested to pay your aforementioned deficiency taxes liability through the duly authorized agent bank in which you are enrolled using the BIR Payment Form (BIR Form 0605) attached herewith within the time shown in the enclosed assessment notice.** xxx

In connection therewith, the enclosed Assessment Notice[67] clearly stated a due date for payment, *i.e.*, "PLEASE PAY ABOVE AMOUNT ON OR BEFORE DEC 17 2010", which confirms that there is a demand for payment within a specific period. In contrast, in the *Fitness By Design* case, there were no due dates in the FAN, which negates the BIR's demand for payment.

Hence, the subject FAN/Assessment Notice is valid, as it contained a demand for payment of the tax described, within a specific period, and that the amount of tax liability is definite. With a due date for payment definitely set and fixed, and a computation of the tax liability up to the said due date, then, the amount of petitioner's tax liability is definite. Although there is a statement that the interest will have to be adjusted if paid after the due date, this does not negate the definiteness of the amount of tax liability petitioner is accountable for. When interest is computed up to a specific date, adjusting the same if the total amount due is paid after the said date is the logical consequence of imposing an interest, which continues to run until full payment pursuant to Section 249(B) of the NIRC of 1997, as amended.

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[66] Exhibits "P-5", BIR Records (Exhibit "R-5), pp. 165 to 168.
[67] Exhibits "P-6-3" and "R-2", BIR Records (Exhibit "R-5), p. 169.

In fact, if the deficiency tax, surcharge and interest thereon are not paid on the due date appearing in the Assessment Notice, there shall be assessed and collected on the unpaid amount, delinquency interest until the amount is fully paid pursuant to Section 249(C) of the NIRC of 1997, as amended. Hence, the importance of indicating the due date on the FAN/Assessment Notice.

In addition, petitioner submits that the tax assessment for IAET should be cancelled for being groundless. According to petitioner, nowhere in the FAN and Details of Discrepancy did respondent expressly disclose any *prima facie* instance of improperly accumulated earnings and profits. In fact, respondent only made a general statement that its review disclosed the alleged IAET.

However, as already intimated, petitioner failed to file an administrative protest to the FAN, which renders the same final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the said assessment.

Be that as it may, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. The validity of the assessment itself, however, is a separate and distinct issue from the issue of whether the right of respondent to collect the validly assessed tax has prescribed.[68]

Respondent's right to collect the deficiency IAET has already prescribed.

Petitioner avers that it received the Assessment Notices on November 24, 2010, or within the three-year prescriptive period required under Section 203 of the NIRC of 1997, as amended. According to petitioner, applying the ruling of the Supreme Court in *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*,[69] the five-year prescriptive period for collection of taxes is deemed to have commenced to run on November 24, 2010, the latest date the respondent could have released, mailed or sent the Assessment Notice to the petitioner. Respondent, then, had only until November 24, 2015 within which to collect the alleged deficiency taxes. As such, petitioner claims that respondent's right to collect the alleged deficiency taxes had already prescribed when it failed to collect the same

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[68] *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, March 29, 2022.
[69] G.R. No. 139736, October 17, 2005.

within the five-year period provided in Section 222 of the NIRC of 1997, as amended.

Also, following the cases of *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division and QL Development, Inc.* ("*QL Development* case")[70], and *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.* ("*United Salvage* case")[71], petitioner claims that respondent actually has a shorter period to collect the alleged deficiency tax liabilities, that is, three years from November 25, 2010 or until November 25, 2013.

Nevertheless, according to petitioner, its execution of a Waiver of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue Code had the effect of extending respondent's deadline to collect until the expiry date of the period agreed upon by the parties.

However, aside from the execution of the *Waiver* until December 17, 2016, nothing on record points to other circumstances that may warrant the suspension of the running of statute of limitations. Petitioner claims that no Warrant of Distraint and/or Levy was issued by respondent much less served to petitioner and that not even the filing of an application for compromise has the effect of staying the hands of the BIR or affects its power to collect. Hence, petitioner contends that the right of respondent to collect the deficiency tax had already prescribed.

We agree with petitioner.

Section 203 of the NIRC of 1997 reads:

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

In the *United Salvage* case, the Supreme Court held that in case of a valid assessment issued within the three-year period, respondent has another three years within which to collect taxes, to wit:

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[70] G.R. No. 258947, March 29, 2022.
[71] G.R. No. 197515, July 2, 2014.

> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding.** The assessment of the tax is deemed made and the **three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.** *(Emphases added)*

In the *QL Development* case, the Supreme Court further clarified that the five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return pursuant to Section 222 of the NIRC of 1997, as amended, which provides:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) In the case of a **false or fraudulent return with intent to evade tax or <u>of failure to file a return</u>**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> xxx xxx xxx
>
> (c) **Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof** may be collected by distraint or levy or by a proceeding in court **within five (5) years** following the assessment of the tax. *(Emphases and underscoring added)*

Moreover, in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,*[72] the Supreme Court ruled that:

> The Tax Code provides **two types of remedies to enforce the collection of unpaid taxes**, to wit: (a) **summary administrative remedies, such as the distraint and/or levy of taxpayer's property**; and/or (b) **judicial remedies, such as the filing of a criminal or civil action against the erring taxpayer.**
>
> xxx xxx xxx
>
> **A judicial action for the collection of a tax is begun: (a) by the filing of a complaint with the court of competent jurisdiction, or (b)**

[72] G.R. Nos. 197945 and 204119-20, July 9, 2018.

> **where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for**. *(Emphases added)*

Based on the foregoing, and the earlier cited *United Salvage* and *QL Development* cases, and the above-quoted Sections 203 and 222(a) and (c) of the NIRC of 1997, as amended, respondent has three or five years, as the case may be, to enforce collection of deficiency taxes through summary administrative remedies, such as the distraint and/or levy of taxpayer's property; and/or through judicial remedies, such as the filing of a criminal or civil action against the erring taxpayer.

In this case, there is no showing that petitioner filed an Improperly Accumulated Earnings Tax Return (BIR Form No. 1704) on or before January 15, 2009, or 15 days after the close of the year immediately succeeding the covered taxable year, pursuant to Section 6 of RR No. 2-2001.[73] Thus, having failed to file the said return, the extraordinary 10-year assessment period to assess applies to petitioner. In such a case, the 10-year period began to run only from the date of discovery by the BIR of the omission.[74]

It is noteworthy that the subject deficiency IAET assessment for TY 2007 was issued on November 17, 2010 and received by petitioner on November 24, 2010.[75] Hence, considering that petitioner failed to file its Improperly Accumulated Earnings Tax Return (BIR Form No. 1704), and pursuant to the *QL Development* case, respondent has another five years to initiate collection of taxes. Thus, counting another five years reckoned from the date the assessment was received, and considering that this is the latest date respondent could have *"released, mailed or sent"* the FAN and Assessment Notice to petitioner,[76] respondent then had until November 24, 2015 to enforce collection of the assessed deficiency IAET.

Verily, there is no showing that respondent undertook any summary administrative remedies, such as issuing warrants of distraint and/or levy and/or garnishment against petitioner. Neither did respondent institute any judicial action for collection of tax before the lapse of the prescriptive period to collect.

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[73] SUBJECT: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997.

[74] Refer to *Commissioner of Internal Revenue vs. Philippine Global Communication, Inc.*, G.R. No. 167146, October 31, 2006.

[75] Par. 1.8, Stipulation of Facts, JSFI, Docket – Vol. I, p. 382; Exhibits "P-5" and "P-6-3", BIR Records (Exhibit "R-5), pp. 165 to 169.

[76] Refer to *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

Relative thereto, Section 223 of the NIRC of 1997, as amended, provides for the suspension of the running of the statute of limitations on the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, to wit:

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

Based on the foregoing provision, the running of the statute of limitations for the collection of deficiency taxes shall be suspended on the following grounds:

> a. When the Commissioner is prohibited from making the assessment, or beginning the distraint or levy or proceeding in court, and for 60 days thereafter;[77]
>
> b. When the taxpayer requests for a reinvestigation which is granted by the Commissioner;
>
> c. When the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected;
>
> d. When the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and,
>
> e. When the taxpayer is out of the Philippines.

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[77] The pendency of the taxpayer's appeal in the Court of Tax Appeals and in the Supreme Court had the effect of temporarily staying the hands of the Commissioner; Refer to *Protector's Services, Inc. vs. Court of Appeals, et al.*, G.R. No. 118176, April 12, 2000.

None of the foregoing grounds for suspension, however, are present in this case. Likewise, it is noteworthy that the filing of an application for compromise settlement is not one of the instances that would suspend or interrupt the running of the statute of limitations on collection of tax. In fact, pursuant to Revenue Memorandum Order (RMO) No. 28-2012,[78] the implementation of the summary remedies shall not be suspended or held in abeyance, notwithstanding the filing of an application for compromise settlement or abatement of penalties, where such application is still being processed by the concerned BIR offices.

In any event, it is noted that before the expiration of the five-year prescriptive period to collect on November 24, 2013 or November 24, 2015, petitioner executed on April 24, 2013, a Waiver of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue Code,[79] of the government's right to collect and consent to the collection of tax which may be found due after evaluation, but not later than December 17, 2016, "in connection with the evaluation and approval of [petitioner's] request for compromise/abatement" of its internal revenue tax liabilities for TY 2007. The *Waiver* was accepted by OIC-Chief, Collection Division, Revenue Region No. 8, Makati City, Ms. Zenaida U. Floresca, on April 25, 2013.

In connection therewith, Section 222(b) and (d) of the NIRC of 1997, as amended, provides as follows:

> SEC. 222. *Exceptions as to* ***Period of Limitation of*** ***<u>Assessment and Collection</u> of Taxes.*** —
>
> xxx xxx xxx
>
> (b) **If before the expiration of the time prescribed in Section 203 for the <u>assessment</u> of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx
>
> (d) **Any internal revenue tax, which has been <u>assessed</u> within the period agreed upon as provided in paragraph (b) hereinabove**, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

[78] SUBJECT: Updated and Consolidated Collection Manual.
[79] Exhibit "P-15", BIR Records (Exhibit "R-5), p. 400.

xxx xxx xxx. *(Emphases and underscoring added)*

The above-quoted Section 222(b) authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collection of taxes due is extended to an agreed upon date.[80] To be sure, it must be emphasized that a Waiver of the Defense of Prescription is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[81]

Based on a reading of Section 222(b) and (d) of the NIRC of 1997, as amended, it appears that what can be subject of a waiver is the period of limitation of an assessment, which consequently also extends the period of collection. It is not clear, however, if a waiver can likewise be issued merely extending the prescriptive period to collect.

Nevertheless, based on RMO No. 20-90,[82] it is provided therein that "[p]ursuant to Section 223 of the NIRC of 1997, as amended, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, **both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period**. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations."

Moreover, granting that the waiver of the period of limitation for collection of taxes is not specifically provided for in the NIRC of 1997, as amended, still, Article 6 of the Civil Code of the Philippines provides that "[r]ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law."

In *La Flor Dela Isabela, Inc. vs. Commissioner of Internal Revenue*,[83] the Supreme Court summarized the guidelines in the proper execution of the waiver of statute of limitations, and cited instances when waivers were invalidated, to wit:

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80 *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.

81 *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

82 SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

83 G.R. No. 202105, April 28, 2021.

On April 4, 1990, the BIR issued Revenue Memorandum Order (RMO) No. 20-90, which provides for the guidelines in the proper execution of the waiver of statute of limitations under the NIRC. It holds that a valid waiver of statute of limitations must be: (a) in writing; (b) agreed to by both the Commissioner and the taxpayer; (c) before the expiration of the ordinary prescriptive periods for assessment and collection; and (d) for a definite period beyond ordinary prescriptive period for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon.

Parenthetically, Revenue Delegation Authority Order (RDAO) No. 05-01 dated August 2, 2001 authorized subordinate officials to sign the waivers and introduced a new waiver form. It provides for the following procedures for the proper execution of a valid waiver, to wit:

> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ____ 19 _____,' which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

This Court had invalidated waivers which did not strictly comply with the provisions of RMO No. 20-90 and RDAO No. 05-01, such as, but not limited to: (a) failure to state the specific date within which the BIR may assess and collect revenue taxes; (b) failure to sign by the CIR as

> mandated by law or by his duly authorized representative; (c) failure to indicate the date of acceptance to determine whether the waiver was validly accepted before the expiration of the original three-year period; (d) failure to furnish the taxpayer of a copy of the waiver; (e) failure to indicate on the original copies of the waivers the date of receipt by the taxpayer of their file copy; (f) execution of the waivers without the written authority of the taxpayer's representative to sign the waiver on their behalf; (g) absence of any proof that the taxpayer was furnished a copy of the waiver; (h) a waiver signed by the Assistant Commissioner-Large Taxpayers Service and not by the CIR; (i) failure to specify the kind and amount of tax due; and (j) a waiver which refers to a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case.

Applying Section 222(b) of the NIRC of 1997, as amended, as well as RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01,[84] and relevant jurisprudence, the Court finds that the *Waiver* issued on April 24, 2013[85] failed to strictly comply with the requirements under the law, as: (1) it failed to specify the kind and amount of tax due; and, (2) it was not signed by respondent's duly authorized representative, *i.e.*, Regional Director for cases pending in the Divisions in the Regional Office, pursuant to RDAO No. 05-01, as it was merely signed by the OIC-Chief, Collection Division, Revenue Region No. 8, Makati City.

Petitioner likewise raised that the receipt by the taxpayer of its copy/copies of the *Waiver* is missing.[86] However, upon review of the subject *Waiver*, there is written, at the bottom part thereof, the following: "RECEIVED BY: (Sgd) ADORA V. JISON".

Notwithstanding the foregoing, even granting that the said *Waiver* is valid, it only extended the period to collect until December 17, 2016, while, as earlier stated, petitioner only received the Notice of Denial on March 1, 2023, receipt of which does not even have the effect of suspending the period to collect the deficiency tax.

To reiterate, respondent's collection efforts are initiated by distraint, levy, or court proceeding. The distraint and levy proceedings are validly begun or commenced by the issuance of a warrant of distraint and levy and service thereof on the taxpayer. And a judicial action for the collection of a tax is initiated: (a) by the filing of a complaint with the court of competent jurisdiction; or, (b) where the assessment is appealed to this Court, by filing

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[84] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

[85] Exhibit "P-15", BIR Records (Exhibit "R-5), p. 400.

[86] Par. 92, *Memorandum [For Petitioner Spectrum Graphix, Inc.]*, Docket – Vol. II, p. 650.

an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.[87]

All told, respondent failed to enforce the collection of the deficiency IAET for TY 2007, either through summary administrative remedies, such as the distraint and/or levy of taxpayer's property; and/or judicial remedies, such as the filing of a criminal or civil action against the erring taxpayer, within the prescriptive period to collect, *i.e.*, on or before November 24, 2015. Clearly, respondent's right to collect the same has already prescribed.

To emphasize, in *Republic of the Philippines vs. Ablaza*,[88] the Supreme Court emphatically explained that the statute of limitations of actions for the collection of taxes is justified by the need to protect law-abiding citizens from possible harassment:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest, peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law.

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

Accordingly, the **Notice of Denial - Application for Compromise Settlement** dated January 20, 2023 issued to petitioner disapproving its application for compromise settlement of its deficiency improperly accumulated earnings tax (IAET) for taxable year 2007 is **CANCELLED** and **SET ASIDE**.

Moreover, the assessment issued by respondent against petitioner on its alleged deficiency IAET in the total amount of ₱651,591.09, net of ₱42,488.75, for taxable year 2007, is declared valid. However, on the

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87 *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division and QL Development, Inc.*, supra.
88 G.R. No. L-14519, July 26, 1960.

ground of prescription, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
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's Division.

MA. BELEN M. RINGPIS-LIBAN
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice