REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

ED & F MAN PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10053

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

AUG 1 0 2023 ; 10:10AM

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DECISION

REYES-FAJARDO, *J.*:

This Petition for Review,[1] filed on April 1, 2019, by ED & F Man Philippines, Inc., seeks the refund of alleged erroneously paid compromise amount, in the sum of ₱46,018,145.17, representing twenty-five percent (25%) of the basic deficiency Value-Added Tax (VAT) assessment for Taxable Year (TY) 2008.

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1 Docket (Vol. I), pp. 10-29.

FACTS

Petitioner ED & F Man Philippines, Inc. is a duly registered domestic corporation, engaged in the business of buying, selling and distributing all kinds of goods, commodities, wares and merchandise, but primarily of sugar. As a sugar trader, part of its regular business operations requires it to export and import sugar.[2] It is registered with the Bureau of Internal Revenue (BIR), under Tax Identification Number (TIN) 004-456-541-000, with registered address at Rm. 214, 2nd Floor Capitol Subdivision, 15th Lacson St., Bacolod City.[3]

Respondent Commissioner of Internal Revenue is vested by the Tax Code with the authority to decide, approve and grant tax refunds. He may be served with summons and other court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On March 16, 2010, Regional Director Araceli L. Francisco (RD Francisco) of Revenue Region No. 12, Bacolod City, issued a Termination Letter, relative to the case under Letter of Authority (LOA) No. 00026325 dated June 18, 2009, because petitioner paid the deficiency income tax, VAT, and penalties, amounting to ₱600,000.20, covering TY 2008.[5]

On September 26, 2013, petitioner received[6] a Preliminary Assessment Notice (PAN) dated April 18, 2011, issued by Nelson M. Aspe, Deputy Commissioner, Operations Group, LN Task Force (DC Aspe), containing the proposed deficiency VAT assessment against it for TY 2008.[7]

Through Letter dated October 18, 2013, petitioner replied on the PAN.[8]

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2 Par. 1(a), Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI). *Id.* at p. 606.
3 Exhibit "P-3." Docket (Vol. II), p. 741.
4 Par. 4, Petition for Review, vis-à-vis par. 1, Answer. Docket (Vol. I), pp. 11 and 206, respectively.
5 Exhibit "P-22." Docket (Vol. II), p. 781.
6 See Exhibit "P-27." *Id.* at p. 785.
7 Exhibit "P-26." *Id.* at pp. 782-783.
8 *Supra* note 6. The stamped portion found in upper left part of the FAN. Consistent with par. 14 of Petition for Review.

On November 6, 2013, petitioner received[9] DC Aspe's Final Assessment Notice (FAN) dated August 23, 2013, with Assessment Notices dated October 14, 2011,[10] assessing it for deficiency VAT amounting to ₱439,422,114.17, and compromise penalty in the amount of ₱25,000.00, for TY 2008, computed below:

I. DEFICIENCY VALUE ADDED TAX		
Discrepancy per Letter Notice (Sales)	₱	864,473,501.64
Less: Adjustments per evaluation		669,464,670.61
Total Discrepancy		1,553,938,172.25
Add: Input Tax Benefit		-
Net Discrepancy		1,553,938,172.25
Multiply by VAT Rate		12.00%
Deficiency VAT	₱	184,072.580.67
Add: 50% Surcharge		92,036,290.34
20% Interest p.a. up to (06/30/2013)		163,313,243.17
Compromise Penalty		
TOTAL AMOUNT DUE	₱	**439,422,114.17**
II. MANDATORY COMPROMISE		
Non-submission of SLS/SLP (RMO No. 30-2003)		25,000.00
TOTAL AMOUNT DUE	₱	**25,000.00**

On February 14, 2014, a First Notice was issued by Revenue District Officer Imelda D. Cebuano (RDO Cebuano) of Revenue District No. 77, Bacolod City, requesting petitioner to pay the deficiency VAT and compromise penalties for TY 2008, amounting to ₱439,422,114.17.[11]

On February 28, 2014, petitioner filed its reply to the First Notice, stating that a tax audit under BIR LOA No. 00026325 dated June 18, 2009 was successfully conducted, and subsequently, a Termination Letter duly signed by RD Francisco was issued on March 16, 2010, after it paid in full, the tax deficiencies found in said audit.[12]

In a Letter dated March 15, 2014, RDO Cebuano requested petitioner to submit proof of filing of an administrative protest on the FAN.[13]

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9 Exhibit "P-28." Docket (Vol. II), pp. 793-797.
10 Exhibit "R-2." Folder 1, BIR Records (Exhibit "R-5"), pp. 51-54.
11 Exhibit "P-29." Docket (Vol. II), p. 798.
12 Exhibit "P-30." *Id.* at p. 799.
13 Exhibit "P-31." Folder 4, BIR Records (Exhibit "R-5"), p. 1835.

In its Letter dated March 25, 2014, petitioner insisted that it already protested the assessment on October 18, 2013.[14]

On June 5, 2015, Officer-In-Charge (OIC)-RD Myrna S. Leonida (RD Leonida) issued a Decision, declaring the FAN dated October 7, 2013 final and unappealable, for petitioner's failure to validly protest the same. In addition, the latter was directed to pay the amount of ₱439,422,114.17, representing the deficiency VAT and compromise penalty for TY 2008.[15]

In its Letter dated June 10, 2015, petitioner requested RD Leonida not to enforce collection of assessed taxes.[16]

In the Letter dated July 7, 2015, RD Leonida found petitioner's letter dated June 10, 2015, without merit. Consequently, she sustained her Decision dated June 5, 2015.[17]

In its Letter dated July 16, 2015, petitioner pleaded with RD Leonida, not to enforce the collection of tax, because to do so would gravely and unduly injure its business beyond repair.[18]

In another letter dated July 16, 2015, petitioner requested DC Aspe to hold in abeyance the collection of tax, and, to re-evaluate, reconsider, and set aside the VAT assessment for TY 2008.[19]

In a Letter dated July 31, 2015, RDO Cebuano informed petitioner that: (1) its request for consideration of the Decision dated June 5, 2015 was denied; and (2) the BIR would enforce the collection of its tax liability for TY 2008.[20] Petitioner opposed such plan to collect, through its Letter dated August 17, 2015.[21]

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14 Exhibit "P-32." Docket (Vol. II), p. 800.

15 Exhibit "P-34." *Id.* at pp. 803-808. The FAN is actually dated October 14, 2011, *supra* note 10.

16 Exhibit "P-35." Folder 4, BIR Records (Exhibit "R-5"), pp. 1822-1825.

17 Exhibit "P-36." Docket (Vol. II), p. 809.

18 Exhibit "P-37." *Id.* at pp. 810-812.

19 Exhibit "P-38." *Id.* at pp. 814-817.

20 Exhibit "P-39." *Id.* at p. 818.

21 Exhibit "P-40." Folder 4, BIR Records (Exhibit "R-5"), pp. 1804-1806.

On December 18, 2015, petitioner filed a Letter of even date with the BIR, applying for compromise settlement on its deficiency tax assessment for TY 2008 based on doubtful validity.[22] On even date, petitioner paid the amount equivalent to fifteen percent (15%) of the basic deficiency VAT in the amount of ₱27,610,887.10.[23]

In a Letter dated March 10, 2017, RDO Arnulfo A. Galapia (RDO Galapia) of Revenue District No. 77, Bacolod City informed petitioner that its application of Compromise Settlement for deficiency VAT covering TY 2008, was disapproved by the Regional Evaluation Board (REB) and was concurred by respondent. Moreover, petitioner was required to pay the tax liability in the amount of ₱723,182,519.50, representing the unpaid balance of deficiency VAT and penalties; otherwise, its accreditation as importer will be cancelled, and respondent shall be constrained to enforce the collection thereof through the administrative summary remedies or legal action provided for by existing laws and regulations.[24]

On March 13, 2017, petitioner received then Commissioner of Internal Revenue Caesar R. Dulay (CIR Dulay)'s Notice of Denial dated September 28, 2016, stating that after review and evaluation, its application for compromise settlement was disapproved by the REB, and was concurred by CIR Dulay. Additionally, petitioner was requested to pay the amount of ₱411,811,227.08, plus all the increments incident to delinquency.[25]

On March 30, 2017, petitioner paid the additional compromise amount of ₱26,018,145.17[26] and ₱20,000,000.00,[27] or a total of ₱46,018,145.17, representing twenty five percent (25%) of the basic deficiency VAT for TY 2008.

On April 10, 2017, petitioner filed its *second* application for compromise settlement, covering the deficiency VAT assessment for TY 2008.[28]

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22 Exhibit "P-8." Docket (Vol. II), pp. 742-746.
23 Exhibits "P-5," and "P-5-1." Folder 4, BIR Records (Exhibit "R-5"), pp. 1855-1856.
24 Exhibit "P-12." Folder 4, BIR Records (Exhibit "R-5"), p. 1850.
25 Exhibit "P-13." Folder 6, BIR Records (Exhibit "R-5"), p. 2321.
26 Exhibits "P-6" and "P-6-1." Folder 4, BIR Records (Exhibit "R-5"), pp. 1853-1854.
27 Exhibits "P-7" and "P-7-1." Folder 4, BIR Records (Exhibit "R-5"), pp. 1851-1852.
28 Exhibit "P-10." Docket (Vol. II), pp. 747-753. See also par. 1(b), Stipulation of Facts, JSFI, Docket (Vol. I), p. 606.

On December 18, 2017, petitioner posted its *first* administrative claim for refund of its alleged erroneously paid compromise payment made last December 18, 2015, in the amount of ₱27,610,887.10, representing the fifteen percent (15%) of the basic deficiency VAT for TY 2008.[29]

On May 31, 2018, respondent issued the Certificate of Availment (COA),[30] stating, *inter alia,* that petitioner's application for compromise settlement of deficiency VAT for TY 2008, amounting to ₱439,422,114.17, was approved by the BIR's National Evaluation Board (NEB). Accordingly, the BIR issued an Authority to Cancel Assessment No. ACA200700013812 (ATCA) dated July 24, 2018, covering the said assessment.[31]

On March 29, 2019, petitioner posted its *second* administrative claim for refund of alleged erroneously collected compromise payment in the total amount of ₱46,018,145.17, representing twenty five percent (25%) of the basic deficiency VAT for TY 2008.[32]

On April 1, 2019, petitioner filed a Petition for Review, docketed as CTA Case No. 10053,[33] to which respondent filed his Answer[34] on October 7, 2019.

On October 29, 2020, a Pre-Trial Conference was held, whereby the Court: (1) adopted the issue to be resolved in this case, as agreed upon by the parties; (2) directed the parties to embody matters and the issue agreed upon in a Joint Stipulation of Facts and Issues; and (3) set the schedules for the marking of the parties' exhibits, as well as for the presentation of their respective evidence.[35]

On November 18, 2020, the parties submitted their Joint Stipulation of Facts and Issues,[36] which was approved, through

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29 See Exhibit "P-14." Docket (Vol. II), pp. 754-762.
30 Exhibit "R-3." Folder 6, BIR Records (Exhibit "R-5"), p. 2410.
31 Exhibit "R-4." Folder 6, BIR Records (Exhibit "R-5"), p. 2415.
32 Exhibits "P-16" and "P-17." Docket (Vol. II), pp. 767-779.
33 *Supra* note 1.
34 Docket (Vol. I), pp. 206-213.
35 Order dated October 29, 2020. *Id.* at pp. 589-591.
36 *Id.* at pp. 606-613.

Resolution dated December 11, 2020.[37] On the basis thereof, the Court issued a Pre-Trial Order dated February 24, 2021.[38]

Trial ensued.

Petitioner presented: (1) Mr. Cesar R. Amposta,[39] its Accounting Consultant; and (2) Ms. Krista V. Bambao,[40] the Court-commissioned Independent Certified Public Accountant (ICPA),[41] as its witnesses.

On April 13, 2021, petitioner posted its Formal Offer of Evidence with Motion to Take Judicial Notice of Documentary Exhibits,[42] to which respondent filed his comment on May 24, 2021.[43]

By Resolution dated June 22, 2021,[44] petitioner's Motion to Take Judicial Notice of Documentary Exhibits was denied.

Under Resolution dated February 22, 2022,[45] the pieces of evidence offered by petitioner were admitted. Petitioner rested its case.

Respondent presented Chief Revenue Officer Jasmin V. Asuero (RO Asuero)[46] as sole witness.

On March 30, 2022, respondent filed his Formal Offer of Evidence,[47] *sans* petitioner's comment.[48]

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37 *Id.* at p. 640.

38 *Id.* at pp. 687-694.

39 Exhibit "P-18," *id.* at pp. 429-439; and Minutes of the hearing held on, and Order dated, February 16, 2021, Docket (Vol. II), pp. 676-680.

40 Exhibit "P-20," *id.* at pp.565-570 (commissioning), and Exhibit "P-20," *id.* at pp. 654-675; Minutes of the hearing held on, and Order dated, February 16, 2021, *id.* at pp. 676-684.

41 Oath of Commission dated October 28, 2020, Docket (Vol. I), p. 588; Minutes of the hearing held on, and Order dated, October 29, 2020, *id.* at pp. 584-587, and 589-591, respectively.

42 Docket (Vol. II), pp. 703-718.

43 *Id.* at pp. 833-836.

44 *Id.* at pp. 848-849.

45 *Id.* at pp. 858-860.

46 Exhibit "R-6," Docket (Vol. I), pp. 529-533; and Order dated March 24, 2022, Docket (Vol. II), pp. 864-865.

47 Docket (Vol. II), pp. 870-874.

48 Records Verification dated May 5, 2022. *Id.* at p. 877.

Through Resolution dated June 6, 2022,[49] the pieces of evidence offered by respondent were admitted.

By Minute Resolution dated August 10, 2022, this case was submitted for decision,[50] taking into account: (1) respondent's Memorandum,[51] filed on July 4, 2022; and (2) petitioner's Memorandum,[52] filed on July 25, 2022.

ISSUE

Is petitioner entitled to the refund of alleged erroneously paid compromise payment amounting to Forty-Six Million Eighteen Thousand One Hundred Forty-five & 17/100 Pesos (₱46,018,145.17)?[53]

ARGUMENTS

Petitioner admits that respondent presented as evidence, the COA dated May 31, 2018 and ATCA dated July 24, 2018. Petitioner nevertheless asserts these documents were never served to it.

Petitioner, too, states that the requisites for the successful prosecution of a refund under Sections 204(C) and 229 of the 1997 National Internal Revenue Code (NIRC), as amended are: *first,* the timeliness of its administrative and judicial claims for refund; and *second,* the internal revenue taxes sought to be refunded were illegally and erroneously collected by the BIR. According to petitioner, it successfully met these conditions.

For the *first* condition, petitioner avers that it filed an administrative claim, prior to instituting a judicial claim for refund. Also, both its administrative and judicial claims for refund were lodged within two (2) years, from payment of tax.

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49 *Id.* at pp. 880-881.
50 *Id.* at p. 927.
51 *Id.* at pp. 882-895.
52 *Id.* at pp. 897-917.
53 See Stipulation of Issue, JSFI. Docket (Vol. I), p. 607.

For the *second* condition, petitioner maintains that its compromise payment, representing twenty-five percent (25%) of the basic deficiency VAT amounting to ₱46,018,145.17 were illegally collected by the BIR because: (1) the deficiency VAT assessment for TY 2008 is barred by the statute of limitations under Section 203 of the NIRC, as amended; (2) the BIR's issuance of a termination letter in its favor, demonstrates its full settlement of such VAT liability for such period; (3) the deficiency VAT assessment lacks legal and factual basis; and (4) the FAN for TY 2008 was issued, *sans* a valid LOA, issued by respondent or his duly authorized representatives.[54]

With the concurrence of these two (2) conditions, petitioner believes that grant of the refund prayed for is justified.

In refutation,[55] respondent ripostes that petitioner offered, and the BIR accepted, the compromise settlement for the VAT assessment covering TY 2008, as evidenced by the COA dated May 31, 2018 and ATCA dated July 24, 2018. Having entered into a valid compromise agreement relative to such tax assessment, there is no more tax controversy on the deficiency VAT assessment for said period. Being so, petitioner had no more cause of action before the Court.

Respondent further points out that the FAN, embodying the deficiency VAT assessment for TY 2008, was timely issued within the ten (10)-year extraordinary prescriptive period under Section 222(a) of the NIRC, as amended, because the filing of its VAT Returns is tainted with falsity or fraud with intent to evade payment of tax.

Respondent also counters that said FAN attained immutability since petitioner failed to file a valid administrative protest thereto, as mandated by Section 228 of the NIRC, as amended. Thus, questions involving the correctness thereof must be rejected.

Respondent as well retorts that the finding of deficiency VAT against petitioner for TY 2008, encapsulated in the FAN, is supported by factual and legal basis.

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54 *Supra* note 52.

55 Respondent's Answer. *Supra* note 34.

For these reasons, respondent concludes that the denial of petitioner's refund claim is in order.

RULING

We grant the Petition.

First, do we have jurisdiction over this case?

Yes.

Section 7(a)(2) of Republic Act (RA) No. 1125,[56] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
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> ...
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relations thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> ...[57]

Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) [58] clarified that the Court in Division has jurisdiction over the inaction of respondent involving refunds of internal revenue taxes, among others. Among of the classes thereof is one premised upon illegal or erroneous collection of tax, as acknowledged in Sections 204 and 229 of the NIRC, as amended.

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56 An Act Creating the Court of Tax Appeals.
57 Boldfacing supplied.
58 A.M. 05-11-07-CTA.

Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc. (Carrier)[59] illuminated on the requirements for us to acquire jurisdiction over said type of refund case, as follows:

> Section 204 [of the NIRC, as amended] refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from payment of the tax.
>
> Section 229 [of the NIRC, as amended], on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.
>
> Reading the two provisions together, both administrative and judicial claims must be filed within the two-year period. Furthermore, the administrative claim must be filed before the judicial claim. This Court has previously declared that "[t]imeliness of the filing of the claim is mandatory and jurisdictional. The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund file either prematurely or out of time."

Pertinently, the allegations in petitioner's Petition for Review determine our jurisdiction over the subject matter of a case. *Malabanan v. Republic of the Philippines (Malabanan)*[60] decreed:

> The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the [petition for review], the law in force at the time the [petition for review] is filed, and the character of the relief sought, irrespective of whether the [petitioner] is entitled to all or some of the claims averred. Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the [respondent] in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the [respondent].

In its Petition, petitioner alleged that on March 30, 2017, it posted 25% of the basic deficiency VAT for TY 2008, *i.e.*, ₱46,018,145.17, as additional compromise amount[61]— the very sum desired for refund.[62] Following *Carrier*, petitioner had two (2) years

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59 G.R. No. 226592, July 27, 2021.

60 G.R. No. 201821, September 19, 2018.

61 See Par. 25, Petition for Review. Docket (Vol. I), p. 15.

62 See Prayer, Petition for Review. *Id.* at p. 28.

therefrom, or until March 30, 2019, to file both its administrative and judicial claims for refund in the order stated. Considering that March 30, 2019 fell on a Saturday, petitioner had until April 1, 2019 to institute said claims. Therefore, petitioner seasonably lodged its: (1) administrative claim for refund before the BIR on March 29, 2019;[63] and (2) judicial claim for refund on April 1, 2019,[64] vesting us with jurisdiction over CTA Case No. 10053.

Next, was there a perfected compromise agreement between petitioner and the BIR, barring the former from assailing, and us, from ruling, on the propriety of petitioner's refund claim, premised upon the alleged void deficiency VAT assessment covering TY 2008?

No.

Article 2028 of the Civil Code[65] defines compromise as "... a **contract** whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."[66] Being a contract, Article 1318 of the same Code requires three (3) crucial elements for a compromise to exist:

> **Article 1318.** *There is no contract unless the following requisites concur:*
>
> (1) *Consent of the contracting parties;*
>
> (2) Object certain which is the subject matter of the contract;
>
> (3) Cause of the obligation which is established. (1261)[67]

Indeed, for a contract, such as a compromise, to exist, consent of the contracting parties must be had, *inter alia*. Conversely, the lack of such consent negates the existence thereof. Article 1319 of the Civil Code explains *how* consent is demonstrated:

> **Article 1319.** Consent is manifested by the *meeting of the offer and the acceptance upon the thing and the cause which are to constitute the*

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63 Par. 29, Petition for Review. *Id.* at p. 16.
64 Page 1, Petition for Review. *Id.* at p. 10.
65 Republic Act No. 386.
66 Boldfacing supplied. This definition was used by the Supreme Court in *Philippine National Oil Company v. The Hon. Court of Appeals, The Commissioner of Internal Revenue, and Tirso Savellano,* G.R. No. 109976, April 26, 2005.
67 Boldfacing in the original. Italics supplied.

> *contract.* The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.
>
> *Acceptance made by letter or telegram does not bind the offer[o]r except from the time it came to his [or her] knowledge.* The contract, in such a case, is presumed to have been entered into in the place where the offer was made. (1262a)[68]

Consent is manifested by meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[69] No contract, too, shall arise unless its acceptance is communicated to the offeror.[70] In fact, "under the law, [the offeror] still had the freedom and the right to withdraw the offer by communicating such withdrawal to [the other party] before the latter's acceptance of the offer; or, if the offer has been accepted, before the acceptance came to be known by [the offeror]."[71] The reason for this is easy to perceive—unless the offeror knows of the acceptance, there is no meeting of minds of the parties, no real concurrence of offer and acceptance.[72]

To recall, on March 30, 2017, petitioner paid the additional compromise amount of ₱26,018,145.17[73] and ₱20,000,000.00,[74] or a total of ₱46,018,145.17, representing twenty-five percent (25%) of the basic deficiency VAT for TY 2008. On April 10, 2017, petitioner filed its application for compromise settlement, covering the deficiency VAT assessment for TY 2008.[75]

However, on March 29, 2019, petitioner posted its *second* administrative claim for refund of alleged erroneously collected compromise payment in the total amount of ₱46,018,145.17, representing twenty five percent (25%) of the basic deficiency VAT for TY 2008.[76] By claiming such compromise amount paid for refund,

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68 Boldfacing in the original. Italics supplied.

69 See *Heirs of Ignacio v. Home Bankers Savings and Trust Company, et al.,* G.R. No. 177783, January 13, 2013.

70 See *The Insular Life Assurance Company Ltd. v. Asset Builders Corporation,* G.R. No. 147410, February 5, 2004.

71 *Ibid.*

72 Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines (Vol. IV) - Obligations and Contracts, p. 413. ACME Publishing Company Manila.

73 Exhibits "P-6" and "P-6-1." Folder 4, BIR Records (Exhibit "R-5"), pp. 1853-1854.

74 Exhibits "P-7" and "P-7-1." Folder 4, BIR Records (Exhibit "R-5"), pp. 1851-1852.

75 Exhibit "P-10." Docket (Vol. II), pp. 747-753. See also par. 1(b), Stipulation of Facts, JSFI, Docket (Vol. I), p. 606.

76 Exhibits "P-16" and "P-17." Docket (Vol. II), pp. 767-779.

petitioner evinced its intention to withdraw its previous compromise offer of April 10, 2017.

Thus, to sustain respondent's position that there was a compromise agreement perfected between the BIR and petitioner, he must show that the latter's compromise offer of April 10, 2017, was accepted, *and* that petitioner knew of such acceptance, *prior* to its filing of its *second* administrative claim for refund on March 29, 2019. Respondent failed in this regard.

True, on May 31, 2018, respondent issued a COA,[77] stating, *inter alia,* that petitioner's application for compromise settlement of deficiency VAT for TY 2008, amounting to ₱439,422,114.17, was approved by the BIR NEB. Equally true is that the BIR issued ATCA dated July 24, 2018, covering said assessment.[78] At first blush, one might be led to conclude that petitioner's compromise offer of April 10, 2017, was accepted prior to the filing of its *second* administrative claim for refund on March 29, 2019. Yet, the acceptance is *incomplete* at best.

To be precise, petitioner disclaimed receipt of the BIR's COA dated May 31, 2018 and ATCA dated July 24, 2018. Further, it was only informed of the existence thereof only on respondent's presentation of his witness.[79] Being so, respondent is tasked to prove petitioner's *knowledge* of the BIR's acceptance on its compromise offer, prior to the filing of its *second* administrative claim for refund on March 29, 2019. *Ei incumbit probatio qui dicit, non que negat.* He [or she] who asserts, not he [or she] who denies, must prove,[80] since, by the nature of things, he [or she] who denies a fact cannot produce any proof of it.[81] No such proof was presented by respondent. Consider:

First. Respondent presented the BIR's COA dated May 31, 2018 and ATCA dated July 24, 2018 to exhibit the BIR's acceptance of petitioner's compromise offer. Apart from these documents, the BIR

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77 Exhibit "R-3." Folder 6, BIR Records (Exhibit "R-5"), p. 2410.
78 Exhibit "R-4." Folder 6, BIR Records (Exhibit "R-5"), p. 2415.
79 Paragraphs 19 and 20. Petitioner's Memorandum. Docket (Vol. II), p. 902.
80 See *Franco v. People,* G.R. No. 191185, February 1, 2016, citing *People v. Masalihit,* G.R. No. 124329, December 14, 1998.
81 See *MOF Company, Inc. v. Shin Yang Brokerage Corporation,* G.R. No. 172822, December 18, 2009.

Records, too, contain: (1) a Case Briefer,[82] expressing approval of the NEB and respondent of petitioner's compromise offer; and (2) Memorandum dated May 31, 2018,[83] for the RD of Revenue Region No. 12 and Chief, Collection Division in said region, stating that petitioner's compromise offer has been approved by the NEB. These documents were addressed to concerned BIR personnel, none of which exhibit petitioner's knowledge of the BIR's acquiescence on its compromise offer, prior to the filing of its *second* administrative claim for refund on March 29, 2019.

Second. Section 6 of Revenue Regulations (RR) No. 30-2002,[84] as amended by RR No. 9-2013, provides that save for the approval of compromise settlement delegated to the REB, the favorable action on a taxpayer's compromise offer shall be approved by at least majority of the members of the NEB and respondent.[85] Said approval is signified by the Certificate of Availment.[86] In turn, Revenue Memorandum Circular No. 36-2017[87] commands the pertinent BIR personnel to *distribute* the original Certificate of Availment – Compromise Settlement (BIR Accountable Form No. 2342) to the taxpayer, among others. No proof of delivery of the COA dated May 31, 2018 to petitioner was produced by respondent.

Third. RO Asuero professed in open court that the there was no proof in the BIR Records that petitioner was informed of the COA dated May 31, 2018. She added that the BIR National Office could have possibly possessed proof of petitioner's receipt of the COA dated May 31, 2018:

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82 Folder 6, BIR Records (Exhibit "R-5"), p. 2423.

83 *Id.* at pp. 2411.

84 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.

85 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.**
... (Boldfacing supplied)

86 See Revenue Memorandum Order (RMO) 3-2017. Said issuance states that "All approved applications for compromise settlement and / or abatement of penalties **shall** be issued Certificate of Availment ...." (Boldfacing supplied)

87 SUBJECT: Authorizing the Use of BIR Form Nos. 2342, 2343, 0427 and 0428 Pursuant to Revenue Memorandum Order (RMO) No. 3-2017

ATTY. KYRA KAE B. DIOLA:

Q. Yes. You do not have any knowledge of the fact of the issuance or the official communication of the Certificate of Availment to the petitioner in 2018, when it was **dated** by the BIR?

CHIEF REVENUE OFFICER MA. JASMIN V. ASUERO:

A. There was a document that is attached to the docket when it was forwarded to the Regional Office.

ATTY. KYRA KAE B. DIOLA:

Q: And no receipt from the petitioner?

CHIEF REVENUE OFFICER MA. JASMIN V. ASUERO:

A. The one that is attached is, no proof *diyan*, because it is to be attached *lang. Siguro, may* file copy *ang* [BIR] National Office.

JUSTICE FAJARDO:

She already answered. [It is] with the [BIR] National Office.

...[88]

However, the document emanating from the BIR National Office, cited by RO Asuero to show petitioner's receipt of the COA dated May 31, 2018 was *not* presented as evidence.

Ergo, respondent only established the BIR's approval of petitioner's compromise offer pertaining to the deficiency VAT assessment covering TY 2008, and nothing else. He *failed* to provide formidable proof indicative of petitioner's *knowledge* of the BIR's approval of said compromise offer, prior to the filing of its *second* administrative claim for refund on March 29, 2019. *Sans* proof of said BIR's acceptance *prior* to withdrawal of petitioner's compromise offer, no consent, let alone, compromise agreement, materialized between them. Being inexistent, the alleged compromise agreement did not

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88 Transcript of Stenographic Notes (TSN) of Hearing held on March 24, 2022, pp. 14-15. Boldfacing and italics in the original. Underscoring supplied.

give rise to conclusiveness on the matter supposed to have been settled by petitioner and the BIR—the deficiency VAT assessment for TY 2008. For this reason, petitioner may still impugn, and, we may address, its refund claim premised on the alleged invalidity of such assessment.

Lastly, is petitioner entitled to refund of alleged erroneously paid "compromise" payment amounting to ₱46,018,145.17, corresponding to twenty-five percent (25%) of the basic deficiency VAT for TY 2008?

Yes.

Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation (PSPC)[89] ordained that "Section 229[90] of the NIRC, as amended, allows the recovery of taxes erroneously or illegally collected. An 'erroneous or illegal tax' is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal."

Taking our cue from *PSPC,* the BIR illegally and erroneously collected from petitioner, deficiency VAT for TY 2008. Bear in mind:

First. The BIR conducted an invalid examination on petitioner for TY 2008.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue (Medicard),*[91] the BIR anchored its tax assessment against Medicard Philippines, Inc. (MPI) based on the findings in an LN. It was also

89 See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,* G.R. No. 188497, April 25, 2012.

90 **SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.***- no suit or proceeding shall be maintained in any court for the recovery of **any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

... (Boldfacing supplied)

91 G.R. No. 222743, April 5, 2017.

found that the BIR failed to issue an LOA in favor of MPI. The Supreme Court explained: *one,* an LN is different from an LOA; and *two,* a previously issued LN must be converted to an LOA before the RO may further proceed with the audit and examination of the taxpayer:

> The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact, Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.
>
> The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that **after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.** Unfortunately, this was not done in this case.[92]

There being no conversion of the LN to an LOA, or issuance of an LOA by the CIR, or his duly authorized representatives in favor of the examining ROs, the Supreme Court in *Medicard,* struck down the tax assessment issued against *MPI*:

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92 Boldfacing supplied.

> ... What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**[93]

Akin to *Medicard*, the FAN dated August 28, 2013[94] was pivoted on Letter Notice (LN) No. M-077-RLF-08-00-00007 dated April 18, 2011. RO Asuero reinforced said finding, by validating in open court: (1) no LOA was issued relative to the deficiency VAT assessment for TY 2008; and (2) such VAT assessment was solely anchored on an LN:

> ATTY. KYRA MAE B. DIOLA:
>
> I will rephrase, Your Honors.
>
> Q. When this case, when you elaborated this case, are you aware if the BIR issued any Letter of Authority?
>
> CHIEF REVENUE OFFICER MA. JASMIN V. ASUERO:
>
> A. **It was a letter notice without LOA, without Letter of Authority.**
>
> ATTY. KYRA MAE B. DIOLA:
>
> Q. Without Letter of Authority?
>
> CHIEF REVENUE OFFICER MA. JASMIN V. ASUERO:
>
> A. **Without Letter of Authority.**
>
> ATTY. KYRA MAE B. DIOLA:
>
> Q. Only Letter Notice.
>
> CHIEF REVENUE OFFICER MA. JASMIN V. ASUERO:
>
> A. *Oo.*
>
> ...[95]

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93 Boldfacing supplied.
94 Exhibit "P-28." Docket (Vol. II), pp. 793-797.
95 TSN of Hearing held on March 24, 2022, pp. 12-13. Boldfacing supplied. Italics in the original.

It means that the audit and examination conducted by respondent's agents covering TY 2008, have no prior legal permission from respondent or his duly authorized representatives. Thus, the resultant deficiency VAT assessment slapped by the BIR against petitioner for TY 2008 is a patent nullity.

Second. Petitioner's obligation to pay the deficiency VAT found by the BIR for TY 2008 did not arise.

Section 6(A) of the NIRC, as amended, provides that the tax or deficiency tax so assessed shall be paid upon notice and demand from the CIR or his duly authorized representative.[96] In this regard, an assessment is described as a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[97]

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[98] and *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation,*[99] the tax assessments therein were nullified, for lack of due dates in their FAN. Such defect likewise permeates respondent's FAN issued against petitioner for TY 2008.

Particularly, the FAN referred petitioner's period to pay the deficiency VAT for TY 2008 in the enclosed assessment notice.[100] Yet, the due date in the assessment notice[101] for VAT was left blank,

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96 SEC. 6. *Power of the Commissioner to Make and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

(A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

... (Boldfacing supplied)

97 *Commissioner of Internal Revenue v. Megabucks Merchandising Corp.,* CTA EB No. 1974, February 12, 2020, citing *Adamson v. Court of Appeals,* G.R. No. 120935, May 21, 2009.

98 G.R. No. 215957, November 9, 2016.

99 G.R. No. 214933, February 15, 2022.

100 Exhibit "P-28," Docket (Vol. II), pp. 793-794; and Exhibit "R-2," Folder 1, BIR Records (Exhibit "R-5"), p. 51-52.

101 Exhibit "P-28," Docket (Vol. II), p. 795; and Exhibit "R-2," Folder 1, BIR Records (Exhibit "R-5"), p. 53.

thereby exposing the absence of demand for payment of such tax against petitioner.

Therefore, the refund of 25% of the basic deficiency VAT for TY 2008, in the total sum of ₱46,018,145.17,[102] in favor of petitioner, is warranted.

To cap up our discussion, the all too familiar complaint is that the government acts with dispatch when it comes to tax collection, but pays little, if any, attention to tax claims for refund or exemption. It is high time our tax collectors prove the cynics wrong.[103]

WHEREFORE, the Petition for Review, filed on April 1, 2019, is **GRANTED**. Accordingly, the Commissioner of Internal Revenue is **DIRECTED** to refund ED & F Man Philippines, Inc., the amount of ₱46,018,145.17, representing twenty-five percent (25%) of the basic deficiency Value-Added Tax assessment it paid, for Taxable Year 2008.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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102 Prayer, Petition for Review. *Supra* note 62.

103 See *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008.

We Concur:

With Concurring and Dissenting Opinion.
ROMAN G. DEL ROSARIO
Presiding 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 before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

ED & F MAN PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVEUE,
Respondent.

CTA Case No. 10053

Members:

DEL ROSARIO, *P.J. and Chairperson*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:
AUG 10 2023 10:10AM

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* that there was never a perfected compromise agreement between the parties.

With due respect, however, I am constrained to withhold my assent on the *ponencia* declaring that petitioner is entitled to refund of its compromise payment in view of the nullity of the assessment.

It is my humble view that this Court can **no longer rule on the validity of the deficiency tax assessment** as the same had already become final and executory even prior to the filing of the present Petition for Review.

Records disclosed that petitioner **did not appeal** Regional Director Myrna S. Leonida's Letter dated July 7, 2015[1] which denied petitioner's request for [re]consideration of the Final Decision dated **June 5, 2015**[2]. Hence, the tax assessment had already become final and executory. At the time of the filing of its Petition for Review on **April 1, 2019**, the deficiency tax assessment was already unappealable.

[1] Exhibit "P-36", CTA Docket, Vol. II, p. 809.
[2] Exhibit "P-34", CTA Docket, Vol. II, pp. 803 to 808.

It bears stressing that **an Offer of Compromise is NOT a "continuation" of assessment proceedings** as laid down in Section 228 of the NIRC of 1997, as amended. **Thus, to nullify a final and executory assessment at this stage would create a precedent that a final and executory deficiency tax assessment can always be reviewed and reopened by a taxpayer simply by making an Offer of Compromise and, in case of denial, appeal such denial.** Needless to say, an assessment may only be invalidated through a proper proceeding in accordance with Section 228 of the NIRC.

While the Court has exclusive appellate jurisdiction to review on appeal the Final Decision on Disputed Assessment (FDDA) of the Commissioner of Internal Revenue (CIR) or his/her duly authorized representative, and has power to nullify void assessments, such authority, however, may only be exercised if appeal to the Court by way of a Petition for Review is filed within the prescribed period.

To be sure, to nullify in a proceeding involving a claim for refund an assessment which has attained finality, is legally and jurisdictionally flawed.

In ***Commissioner of Internal Revenue vs. New Farmers Plaza, Inc.***,[3] the Court *En Banc* made the following pronouncements, *viz.:*

> "While it is true that a void assessment bears no fruit, it is equally and undeniably true that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and also precluding the appellate court from acquiring jurisdiction over the case. **This Court cannot hastily proceed in determining the correctness and/or validity of a deficiency tax assessment without first inquiring whether it has the requisite authority to rule on that matter. In other words, it must first be established that the appeal was duly perfected and that this Court validly acquired jurisdiction over the case. As discussed above, this Court will only acquire jurisdiction over 'disputed assessments' if there is due compliance with the procedure provided under Section 228 of the 1997 NIRC and related rules.** The cart cannot be placed before the horse. After all, tax assessments are presumed correct and made in good faith and,

[3] CTA EB No. 2290, May 6, 2022; penned by Associate Justice Ma. Belen M. Ringpis-Liban with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo and Lanee S. Cui-David concurring.

unless duly proven otherwise, all presumptions are in favor of the correctness thereof.

This Court cannot, and shall not, permit the circumvention of the unappealable character of an assessment that had long attained finality by allowing an inquiry into the validity of the assessment in the present Petition for Review considering that the same strictly involves a challenge to the correctness of the denial by petitioner of respondent's offer of compromise. xxx Truth be told, **an application for compromise under Section 204(A) of the 1997 NIRC is neither a part of nor a continuation of the assessment process as governed by Section 228 of the 1997 NIRC.**" (Emphases supplied)

In ***Brewery Properties, Inc. vs. Commissioner of Internal Revenue***[4] *(Brewery case)*, the taxpayer therein received the CIR's FDDA, and instead of filing an appeal to the CTA within thirty (30) days from receipt of the FDDA, it paid under protest to the Bureau of Internal Revenue (BIR) the deficiency documentary stamp tax and penalties, as stated in the FDDA, and subsequently filed its administrative and judicial claims for refund relating to aforesaid payment. The Supreme Court declared that therein petitioner failed to exercise the remedy of appeal as provided in Section 228 of the NIRC, thus, the FDDA became final, executory and demandable, and its administrative claim for refund is not a valid substitute for the lost remedy of appeal to question the FDDA, *viz.:*

"At the outset, it must be pointed out that **petitioner availed of the wrong remedy**. Section 228 of the NIRC governs the rules on protesting an assessment, while Section 229 provides the rules on refund of tax erroneously or illegally collected. Under Section 228, a taxpayer has 30 days from receipt of the disputed assessment to appeal to the CTA. Otherwise, the assessment shall become final, executory, and demandable. Meanwhile, under Section 229, a taxpayer is allowed to claim a refund within two years from its payment of the tax erroneously or illegally collected.

Since petitioner received the FDDA on 19 September 2012, petitioner had only until 19 October 2012 to file an appeal before the CTA to question the FDDA. Considering that petitioner did not exercise the remedy of appeal as provided in Section 228, the FDDA became final, executory and demandable. Petitioner is thereby precluded from questioning the legality or validity of the assessment in the guise of claiming a refund of the DST and penalties it paid under protest. Simply put, **petitioner's administrative claim for refund is not a valid substitute for the lost remedy of appeal to question the final decision of the CIR on the disputed assessment.** Conversely, the validity of the said deficiency DST and penalties pursuant to a final and executory FDDA may not be

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[4] G.R. No. 239260, March 6, 2023.

assailed nor be the subject of a claim for refund under Section 229."
(Emphases supplied)

The present case is similar to *Brewery* as herein petitioner did not exercise the proper remedy of appeal to the CTA as provided in Section 228 of the NIRC; hence, the disputed assessment became final, executory and demandable. Petitioner is precluded from questioning the legality or validity of the assessment in the guise of a claim for refund of its compromise payment in view of the alleged nullity of the assessment. Petitioner's administrative claim for refund is not a valid substitute for the lost remedy of appeal to question the FDDA.

Thus, in resolving the present case, the Court's jurisdiction should be confined to the issue of whether there was a perfected compromise agreement between the parties. Stated otherwise, **the Court has no jurisdiction to nullify the deficiency tax assessment for TY 2008 in a proceeding confined to the validity of the action of the BIR on an Offer of Compromise** and use the same as basis for ordering the refund of the compromise amount. As the assessment had become final and executory, the compromise amount may no longer be refunded but instead credited against petitioner's liability as decreed in the assessment.

All told, I vote to **DENY** the present Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice