REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

JOYFOODS CORPORATION,
Respondent.

CTA EB NO. 2061
(CTA Case No. 9364)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 22 2020
3:29 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) against respondent Joyfoods Corporation (Joyfoods) seeking to set aside the assailed Decision of this Court's Special First Division dated November 12, 2018 granting the Petition for Review of Joyfoods and ordering the refund/issuance of a tax credit certificate in the amount of ₱7,750,000.00 representing compromise penalties imposed without authority or wrongfully collected and the assailed Resolution dated April 10, 2019 which denied his motion for reconsideration.

The Parties

Petitioner CIR is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the

[1] *Rollo*, pp. 1-10.

power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.[2]

Respondent Joyfoods Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal offices at Room 117 G/F Ortigas Building, Ortigas Avenue, Pasig City.[3]

The Facts[4]

On March 19, 2014, the Regional Director for the Bureau of Internal Revenue (BIR) Revenue Region No. 7 issued Mission Order No. 00096196,[5] directing the officers of BIR RDO No. 43A to (i) verify the registration and bookkeeping requirements of Joyfoods, as well as its compliance with the new invoicing requirements, and (ii) validate the permit to use Cash Register Machines (CRM) and/or Point of Sales machines (POS) of Joyfoods.[6]

On various dates thereafter, the officers of the BIR RDO No. 43A conducted the above-mentioned verification and validiation, pursuant to the mission order.[7] Thereafter, the BIR issued to Joyfoods BIR Form No. 0605[8], directing it to pay penalties in the total amount of ₱7,750,000.00 for its alleged violations, as follows:

a. No Books;
b. No official receipts;
c. No Back End Report; and
d. Unaccounted POS.[9]

On May 30, 2014, Joyfoods paid the above-mentioned penalties.[10]

Subsequently, on May 3, 2016, Joyfoods filed with the BIR RDO No. 43A a letter-request dated May 2, 2016 for the refund of the ₱7,750,000.00 they paid[11] and filed BIR Form No. 1914 (Application for Tax Credits/ Refunds), representing the same amount.[12]

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[2] Docket, p. 137.
[3] *Id.*
[4] As found by the Special First Division and as culled from the records of the case.
[5] *Id.* at Note 2, p. 84, Exhibit "P-1".
[6] *Id.*
[7] *Id.*, p. 138.
[8] *Id.*, p. 85, Exhibit "P-2".
[9] *Id.* at Note 7.
[10] *Id.*, Exhibits "P-2" and "P-3"; *id.*, pp. 85 to 86.
[11] *Id.*, pp. 87 to 91, Exhibit "P-4".
[12] *Id.*, p. 92, Exhibit "P-5".

In order to preserve its right to judicially claim for a refund of the said penalties, Joyfoods filed a Petition for Review on May 27, 2016 with the CTA, docketed as CTA Case No. 9364[13]

In the CIR's Answer filed on August 26, 2016,[14] he interposed the special and affirmative defenses that the CTA has no jurisdiction over the case as the amount Joyfoods paid was in the nature of a compromise penalty as opposed to taxes illegally assessed or collected, and the penalty was collected with authority. Moreover, in an action for tax refund/credit, the burden of proof rests upon the taxpayer to prove its entitlement to the refund which Joyfoods failed to prove. As taxes collected are presumed to be in accordance with laws and regulations, they are not refundable.

The pre-trial conference was held on February 2, 2017[15] for which Joyfoods filed its Pre-Trial Brief on October 21, 2016.[16] The CIR, however, failed to file his Pre-Trial Brief. The Court in Division gave the CIR another opportunity for him to file the same[17] and on February 8, 2017, the CIR filed a Motion To Admit Pre-Trial Brief, attaching his Pre-Trial Brief.[18] The motion was granted[19] and the CIR's Pre-Trial Brief was subsequently admitted.

On May 22, 2017, the parties filed their Joint Stipulation of Facts and Issues,[20] which the Court in Division approved in its Resolution dated May 29, 2017, and Pre-Trial was terminated.[21] The Pre-Trial Order dated June 22, 2017[22] was then issued.

During trial, Joyfoods presented Joel M. Balambam as its lone witness.[23]

On August 25, 2017, Joyfoods filed its Formal Offer of Documentary Evidence[24] which the CIR failed to comment to. In the Resolution dated October 25, 2017,[25] the Court in Division admitted all the formally offered exhibits of Joyfoods and noted the manifestation of the CIR's counsel that she would no longer present evidence. Both parties were then given thirty (30) days to file their respective memoranda.

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[13] *Id.*, p. 10.
[14] *Id.*, pp. 52 to 60.
[15] *Id.*, p. 94.
[16] *Id.*, pp. 69 to 74.
[17] *Id.*, pp. 99 to 102, Minute Resolution and Order, both dated February 2, 2017.
[18] *Id.*, pp. 104 to 117.
[19] *Id.*, p. 120.
[20] *Id.*, pp. 137 to 140.
[21] *Id.*, p. 143.
[22] *Id.*, pp. 157 to 162.
[23] *Id.*, pp. 147 to 154, Exhibit "P-6"; pp. 147 to 154, Minute Resolution and Order, both dated July 18, 2017.
[24] *Id.*, pp. 175 to 178.
[25] *Id.*, p. 185 to 186.

On December 5, 2017, the CIR filed his Memorandum[26] while Joyfoods filed its Memorandum on December 19, 2017[27]. The case was submitted for decision on January 8, 2018[28].

On November 12, 2018, the Court in Division issued the assailed Decision[29], the dispositive portion of which reads as follows:

> **WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **GRANTED.** Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **P7,750,000.00,** representing compromise penalties imposed without authority or wrongfully collected.
>
> **SO ORDERED.**

On December 3, 2018, the CIR filed his Motion for Reconsideration *(Re: Decision dated November 12, 2018)*[30] thereof. Joyfoods filed a Manifestation with Comment/Opposition to Motion for Reconsideration dated 03 December 2019 on February 8, 2019.[31] The CIR was unsuccessful, however, as on April 10, 2019, the Court in Division issued the assailed Resolution denying the motion for reconsideration for lack of merit.[32]

The CIR timely filed his Petition for Review[33] with the CTA *En Banc* on May 14, 2019, which was docketed as CTA EB No. 2061. However, due to the incompleteness of the Petition, on June 3, 2019, this Court ordered the CIR to submit certified true copies of Revenue Delegation Authority No. 2-2007, as well as originals or certified true copies of the assailed Decision and Resolution.[34]

On June 18, 2019, the CIR submitted his Compliance[35] which was noted by the Court.[36]

Joyfoods posted its Motion for Extension[37] of time to file Comment on

[26] Docket, pp. 187 to 195.
[27] Docket, pp. 197 to 211.
[28] Resolution dated January 8, 2018, Docket, p. 215.
[29] Docket, pp. 218-236.
[30] Docket, pp. 237-248
[31] Docket, pp. 252-257.
[32] Docket, pp. 259-261.
[33] En Banc Rollo (CTA EB No. 2061), p. 1-10.
[34] *Id.*, pp. 12-13.
[35] *Id.*, pp. 14-42.
[36] *Id.*, pp. 44-45.
[37] *Id.*, pp. 47-48.

August 2, 2019 which the Court received on August 14, 2019. However, since the same was filed with an insufficient number of copies[38], Joyfoods was required to rectify the same.[39]

On August 13, 2019, Joyfoods filed its Comment/Opposition to Petition for Review dated 28 May 2019[40] also in an insufficient number of copies. The Court ordered Joyfoods to submit additional copies of this pleading as well on August 27, 2019.[41]

On September 26, 2019, Joyfoods filed *Ex-Parte* Manifestations[42] with attached additional copies of the Motion for Extension and Comment/Opposition to Petition for Review dated 28 May 2019. The motion was then deemed granted by the Court[43] considering that the Comment/Opposition to Petition for Review dated 28 May 2019 had already been filed by Joyfoods.

On November 6, 2019, the case was submitted for decision.[44]

The Assignment of Error

Petitioner CIR claims that the Special First Division erred in ruling that Joyfoods is entitled to refund in the amount of ₱7,750,000.00 representing compromise penalties imposed without authority or wrongfully collected.

The Arguments of the Parties

The CIR argues that there was no erroneous assessment, erroneous collection, illegal assessment, or illegal collection of tax in this case as Joyfoods paid the tax voluntarily. Moreover, Revenue Memorandum Order (RMO) No. 19-2007 allows the CIR to accept a compromise penalty higher than what is provided. Since the penalties were paid by Joyfoods to avoid criminal prosecution and imposition of administrative sanctions, the penalties were collected with authority, making them non-refundable and beyond the jurisdiction of the Court.

On the other hand, Joyfoods argues that the Court in Division did not err in granting the refund because the CIR failed to show proof that Joyfoods

[38] *Id.*, p. 50.
[39] *Id.*, p. 64.
[40] *Id.*, pp. 51-61.
[41] *Id.*, p. 64.
[42] *Id.*, pp. 65-68.
[43] *Id.*, p. 69.
[44] *Id.*, pp. 71-72

offered to pay penalties to pay for its violations, its right to due process in imposing the penalties was violated, the penalties imposed were arbitrary and excessive, and Joyfoods complied with the requirements of Section 229 of the Tax Code.

The Ruling of the Court

We deny the Petition for lack of compelling ground to merit the reversal of the assailed Decision and Resolution.

As a general rule, official acts of an authorized official enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary. When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly.[45]

In *Land Bank of the Philippines v. Spouses Rosa and Pedro Costa*,[46] the Supreme Court ruled, as follows:

> "Verily, **factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence.** The Courts generally accord great respect, if not finality, to factual findings of administrative agencies, because of their special knowledge and expertise over matters falling under their jurisdiction." *(Emphasis supplied)*

Given the presumption of regularity, factual findings by administrative agencies may be deemed conclusive, if they remain unrebutted. However, a review of the evidence in this particular case shows that its findings – penalties in the total amount of ₱7,750,000.00 – were not supported by actual facts. While BIR Form No. 0605 indicates that the payment of Joyfoods was made for "No Books/No OR/No Back End Report/Unaccounted POS", there was no attached breakdown of the violations. Neither was there anything presented during trial by the CIR to show that Joyfoods was properly informed of the basis of the total amount of penalties. It is, for all intents and purposed, akin to a naked assessment.

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[45] *Reyes, Jr. vs. Belisario*, G.R. No. 154652, August 14, 2009.
[46] G.R. No. 174647, December 5, 2012.

In the case of *Commissioner of Internal Revenue vs. Hantex Trading Corporation*,[47] the Supreme Court ruled:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favour of the correctness of a tax assessment. **It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made.** If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. **Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis.**[48] In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. **Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.**" *(Emphasis supplied)*

In this case, Joyfoods alleges that it was not provided with any factual and legal bases for the amount of penalties imposed against it, nor was it provided with a breakdown of the amount of penalties imposed.[49] On the part of the CIR, the record is replete with bare allegations that "The compromise penalty and its breakdown were thoroughly explained to the authorized representatives of the Petitioner." However, because the CIR opted not to present evidence or any witnesses during the trial in the Court in Division, the allegation remains unsubstantiated. This Court can come to no other conclusion than that no breakdown was indeed presented to Joyfoods as regards its violations.

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[47] G.R. No. 136975, March 31, 2005.
[48] *Id.*, citing *United States v. Janis*, 49 L. Ed. 2d 1046 (1976); 428 US 433 (1976).
[49] *Id.* at Note 33, p. 52.

The Imposition of Penalties Should Conform to Annex A of RMO No. 19-2007

Furthermore, RMO No. 19-2007 dated August 8, 2007, otherwise known as "The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code", is controlling in determining the legality of the penalties imposed on Joyfoods for the said violations.

Item III Nos. (1), (3), (6), and (7) of RMO No. 19-2007 provide the following guidelines and instructions to all Internal Revenue Officers concerned:

> "*III. Guidelines and Instructions*
>
> 1. The internal revenue officers concerned shall apply the Revised Schedule of Compromise Penalties embodied in Annex "A" to ensure uniformity of action.
>
> 2. x x x
>
> 3. **In no case shall the compromise penalty differ in amount from those specified in the aforementioned Schedule,** except when duly approved by the Commissioner or concerned Deputy Commissioner, or in proper cases, by the Regional Directors.
>
> 4. **Although all amounts of compromise penalties incident to violations shall be itemized in the assessment notice and/or demand letter, the same should not form part of assessment notice that reflects deficiency basic tax, surcharge and interest <u>but should appear in a separate assessment notice/demand letter as the amount suggested to the taxpayer to pay in lieu of criminal prosecution</u>.** If paid, the compromise penalties shall be collected and accounted for under the usual procedures, as internal revenue collection.
>
> 5. x x x
>
> 6. **The schedule of compromise penalties herein**

> **prescribed shall not prevent the Commissioner or his duly authorized representative from accepting a compromise amount higher than what is provided hereof.** A compromise offer lower than the prescribed amount may be accepted after approval by the Commissioner of Internal Revenue or the concerned Deputy Commissioner/ Assistant Commissioner/ Regional Director.
>
> 7. In cases were Apprehension Slips were issued, **all offers shall be made by accomplishing the form as shown in Annex "B"."** *(Emphasis supplied)*

Under the said RMO, strict adherence to the schedule of penalties listed in the Annex A of RMO No. 19-2007 is required. As it stands, there are only two exceptions when the penalties may differ from the said schedule:

(1) when a **compromise offer is lower** than what is provided in the said schedule, there must be an approval from the CIR, or concerned Deputy Commissioner/ Assistant Commissioner/ Regional Director; and

(2) when a **compromise offer is higher** than those penalties, the offer must be in writing and if there is an Apprehension Slip, the form provided in Annex B of RMO No. 19-2007 shall be used.

In all cases, **all amounts of compromise penalties incident to violations shall be itemized in an assessment notice and/or demand letter, and if the compromise offer is higher, then all offers must be in writing.** In the event that an Apprehension Slip is issued, the form designated as Annex "B" in the said RMO must be used.

As the Court in Division correctly observed:

> "Thus, it is apparent that the BIR, in imposing the subject compromise penalties and in directing petitioner to pay the same, did not follow the strict mandate that all amounts of compromise penalties shall be itemized in a separate assessment notice/demand letter."

Corollary to the above, a compromise offer must be written either in the form of Annex B or, in cases wherein it is not applicable, the compromise agreement regarding penalties must be signed by both the taxpayer and the CIR, or his concerned deputies, or the RD, in appropriate cases.

The records of the case show a dearth of evidence not only as regards the assessment notice or demand letter, but also as to the required written offer from the taxpayer.

The Court, therefore, sees no error committed by the Court in Division in the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The assailed Decision dated November 12, 2018 and Resolution dated April 10, 2019 of the Special First Division in CTA Case No. 9364 are **AFFIRMED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO- SAN PEDRO
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice