REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FRANKFORT, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9363

Members:

CASTAÑEDA, JR., *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:
SEP 18 2018 10:30 am

x- x

RESOLUTION

MANAHAN, *J.:*

This resolves the **Motion for Partial Reconsideration (Notice of Decision promulgated on July 10, 2018)**[1] of respondent Commissioner of Internal Revenue (CIR) asking this Court to dismiss petitioner's Petition for Review. The dispositive portion of the assailed decision reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **P5,450,000.00**, representing the excessive and illegally collected penalties..
>
> **SO ORDERED.**

Respondent argues that the penalties imposed against the petitioner were not excessive nor wrongfully collected, hence, they are not refundable and beyond the jurisdiction of this Court.

He further argues that the imposition of penalties must be based on the number of the machines that committed the

[1] Docket, CTA Case No. 9363, pp. 214-219.

violations, in this case involving fifty-six (56) machines, and not on a per violation basis.

On the other hand, petitioner in its Comment,[2] argues that respondent failed to explain the basis for petitioner's alleged violations of the Tax Code and the lack of proof regarding petitioner's alleged offer to pay the penalties therefor.

We deny the motion for lack of merit.

Item No. III of Revenue Memorandum Order (RMO) No. 19-2007[3] dated August 8, 2007 provides the following:

> 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. Cases involving fraud shall be referred to the concerned Division having jurisdiction over the case, for the institution of the corresponding criminal action.
> 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 but should appear in a separate assessment notice/demand letter as the amount suggested to the taxpayer to pay in lieu of criminal prosecution. If paid, the compromise penalties shall be collected and accounted for under the usual procedures, as internal revenue collection.
> 5. Since compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer, the violation shall be referred to the appropriate office for criminal action in the event

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[2] Docket, Comment/Opposition to Motion for Partial Reconsideration dated 17 July 2018, pp. 222-231.

[3] The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

that a taxpayer refuses to pay the suggested compromise penalty

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 of compromise shall be made by accomplishing the form as shown in Annex "B".

Nowhere in the abovementioned guidelines and instructions does it provide that the imposition of penalties must be based on the number of machines. Also, such basis is not indicated in the Annex A of said RMO which was cited in the assailed decision, to wit:

Hence, the penalty that must be imposed should be the one listed in Annex A of RMO No. 19-2007, to wit:

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE		
			If gross annual sales, earnings or receipts; or gross estate or gift		
			Exceeds	But does not exceed	Compromise is
232/235	Failure to keep/preserve records required by law or regulations	xxx xxx	xxx xxx 50,000,000	xxx xxx x x x	P 200 xxx xxx 50,000

Thus, the penalty for the each of the findings should be computed at the maximum amount of compromise and based on petitioner's BIR Form No. 2550M or the monthly Value-Added Tax (VAT) Declaration[4] of its annual income for CY 2013 of more than Php50,000,000.00. Hence, the following penalties should have been imposed upon the petitioner:

BIR Findings	Maximum Penalty per Annex A of RMO No. 19-2007
No Books	Php50,000.00
No Official Receipt	50,000.00

[4] BIR Records, BIR Form No. 2550M, pp. 213-235.

Unaccounted POS	50,000.00
Total	**Php150,000.00**

As shown in the Annex A of RMO No. 19-2007, the basis for the imposition of the penalties is the gross annual sales, earnings or receipts; or gross estate or gift per violations committed by a taxpayer. Thus, it belies respondent's argument that the basis of the imposition of said penalties should be based on the number of the machines and not on a per violation basis.

Further, as cited in the assailed decision, there was no evidence to prove that petitioner made an offer of paying the imposed amount because of the absence of a written offer to this effect which is required under the said RMO. Thus, there was no legal basis for such imposition.

There being no new issues or matters raised by the respondent in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Notice of Decision promulgated July 10, 2018)** is hereby **DENIED** for lack of merit. Accordingly, the assailed decision promulgated on July 10, 2018 is hereby **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice