REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

WPP MARKETING COMMUNICATIONS INC. (formerly known as J. Walter Thompson Company (Philippines) Inc.),
Respondent.

CTA EB NO. 2034
(CTA Case No. 9778)

Present:

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

Promulgated:
JUN 16 2021 11:45 am

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RESOLUTION

CASTAÑEDA, JR., J.:

This resolves the Motion for Reconsideration (Re: Decision dated 23 September 2020) filed by petitioner on October 9, 2020,[1] with respondent's Comment (to the Motion for Reconsideration filed by Petitioner Commissioner of Internal Revenue) filed on January 18, 2021.[2]

Petitioner seeks to reverse the Court's Decision affirming the court *a quo*'s October 19, 2018 and March 5, 2019 Resolutions, which declared that petitioner's right to collect the deficiency taxes for taxable year 1992 had *prescribed* and, thus, the collection of the deficiency taxes was *null and void*.[3]

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[1] *Rollo*, pp. 163-175.
[2] *Rollo*, pp. 180-189.
[3] October 19, 2018 Resolution, *Rollo*, pp. 32-37; March 5, 2019 Resolution, *Rollo*, pp. 38-48.

To assail the Decision, petitioner Commissioner of Internal Revenue (CIR) states the same issues previously raised in his petition, namely, that the court *a quo* erred:

1. When it assumed jurisdiction over the CIR's denial of the compromise offer; [4]

2. When it ruled that the taxpayer's petition was timely filed; [5] and,

3. When it ruled that the CIR's right to collect is barred by prescription.[6]

The motion is denied.

To reiterate, while petitioner CIR's power to compromise is sanctioned under the National Internal Revenue Code of 1997 (1997 NIRC), as amended, the exercise thereof, whether in granting or denying the application for compromise, is subject to the determination of this Court, in the first instance, whether the same is "within the parameters set by the law." This is explicitly provided under Section 7(a)(1) of Republic Act No. 1125, as amended.

Furthermore, in *Philippine National Oil Company v. The Honorable Court of Appeals, et al.*,[7] the Supreme Court has already established the CTA's jurisdiction over matters pertaining to compromise applications under the 1997 NIRC, thus:

> "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 tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with this Court having the last say on the matter.
>
> 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. <u>The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts</u>.
>
> <u>The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained</u>. 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.

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[4] *Compare* the Petition for Review, *Rollo*, pp. 12-16 with the Motion for Reconsideration (Re: Decision dated 23 September 2020), *Rollo*, pp. 164-166.
[5] *Compare* the Petition for Review, *Rollo*, pp. 12-16 with the Motion for Reconsideration (Re: Decision dated 23 September 2020), *Rollo*, pp. 164-166.
[6] *Compare* the Petition for Review, *Rollo*, pp. 16-20 with the Motion for Reconsideration (Re: Decision dated 23 September 2020), *Rollo*, pp. 166-169.
[7] G.R. Nos. 109976 and 112800, April 26, 2005.

44 or Section 246 of the NIRC of 1977 [now Section 204], 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." (*Underscoring supplied*)

Furthermore, to briefly recall the facts, the Court should point out that this case originated more than twenty-five (25) years ago, in 1995, when petitioner issued a pre-assessment notice against respondent taxpayer followed by an Assessment Notice dated January 15, 1996. It was only in 2000, after a lapse of more than four (4) years, when the assessment became the subject of compromise offer from the taxpayer, which was refiled in 2001. Then again, *after more than fourteen (14) years of inaction,* or in 2016, the assessment was revived with the Notice of Denial of the compromise application.

Remarkably, in his Motion to Dismiss filed at the trial court, the CIR failed to allege the affirmative defenses that would help explain what transpired after the 1996 assessment notice was issued or even why his examiners failed to enforce collection on the same. Petitioner's Motion to Dismiss merely alleged that (1) the taxpayer's petition stated no cause of action; and, (2) the court *a quo* had no jurisdiction over the subject matter and over the main case, and, therefore, it could not grant the ancillary remedies prayed for and should dismiss the main case.[8] In short, the motion was silent on the facts that were necessary to explain the prolonged inaction of the CIR.

On the timeliness of the petition filed by the taxpayer, the March 5, 2019 Resolution[9] of the court *a quo* has thoroughly considered the inaction above together with petitioner's arguments and decided to rule in favor of the taxpayer:

"As to respondent's [CIR] allegation that the petition was not timely filed, the records of the instant case reveal otherwise. On January 15, 1996, respondent issued the Assessment Notice No. 34-14-00931-92 for income tax (IT) and value-added tax (VAT) assessments. On February 6, 1996, petitioner filed its protest letter on said assessments. There was no allegation as to the issuance of the Final Decision on Disputed Assessment (FDDA). On February 1, 2018, petitioner received a letter dated November 6, 2017 from the Bureau of Internal Revenue (BIR) as respondent's final action on petitioner's application for compromise. Petitioner filed the instant petition for review on March 2, 2018.

The Supreme Court in its decision ruled that when taxpayers receive a notice or a letter other than the FDDA demanding payment of the alleged tax deficiency assessment after the latter filed its protest letter, the same is deemed a denial of such protest.

[8] Division Docket, pp. 186-196.
[9] *Rollo*, pp. 38-48.

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, the Supreme Court ruled that a taxpayer can wait for the final action of the respondent before it can elevate such action to this court, xxx:

xxx xxx xxx

When petitioner received on February 1, 2018 the letter of Commissioner Caesar R. Dulay dated November 6, 2017, it was deemed as the final action or decision of the respondent, hence, petitioner had thirty (30) days from such receipt or until March 3, 2018 to appeal its case before this Court. Thus, the instant petition for review was timely filed on March 2, 2018.

Respondent posits that his right to collect the alleged deficiency taxes from the petitioner has not yet prescribed because the request for reinvestigation and offer of compromise filed by the petitioner had effectively suspended the running of the prescriptive period to collect and a waiver of its right to invoke prescription to collect the alleged deficiency taxes, respectively. Respondent is totally mistaken. What petitioner filed was a request for reconsideration instead of a request for reinvestigation." (*Citations omitted and underscoring supplied*)

Based on the foregoing, the Court finds that the issues raised in petitioner's motion are but mere rehash of the grounds already evaluated and passed upon by the Court in the assailed Decision. Hence, the Court finds no cogent reason to reverse the same.

WHEREFORE, in view of the foregoing, petitioner's Motion for Reconsideration (Re: Decision dated 23 September 2020) is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice