REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

JOYFOODS CORPORATION, Petitioner,	**CTA Case No. 9364**
- versus -	***Members:***
	DEL ROSARIO, *P.J.*, *Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** NOV 12 2018 . 4:03 pm

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DECISION

UY, *J.*:

In this *Petition for Review*[1] filed on May 27, 2016 by Joyfoods Corporation, as petitioner, against the Commissioner of Internal Revenue, as respondent, the former, seeks the refund of, or issuance of a tax credit certificate in, the amount of ₱7,750,000.00, allegedly representing penalties erroneously collected and/or imposed without authority.

THE FACTS

Petitioner Joyfoods Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic

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[1] Docket, pp. 9 to 24.

of the Philippines, with principal offices at Room 117 G/F Ortigas Building, Ortigas Avenue, Pasig City.[2]

Respondent has the authority to, among others, decide, approve and grant refunds of erroneously or excessively paid taxes or penalties imposed without authority, as provided by law.[3]

On March 19, 2014, the Regional Director for the Bureau of Internal Revenue (BIR) Revenue Region No. 7 issued Mission Order No. 00096196,[4] directing the officers of BIR RDO No. 43A to (i) verify the registration and bookkeeping requirements of petitioner, 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 petitioner.[5]

Pursuant to the above-mentioned mission order, the officers of the BIR RDO No. 43A, on various dates after March 19, 2014, conducted the above-mentioned (i) verification of the registration and bookkeeping requirements of petitioner, and (ii) validation of the permit to use CRM and/or POS of petitioner.[6]

After conducting the said verification and validation, the BIR issued to petitioner BIR Form No. 0605[7], directing petitioner to pay penalties in the total amount of ₱7,750,000.00 for the alleged violations of petitioner, as follows:

a. No Books;
b. No official receipts;
c. No Back End Report; and
d. Unaccounted POS.[8]

On May 30, 2014, petitioner paid the above-mentioned penalties.[9]

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[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 137.
[3] Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 137.
[4] Exhibit "P-1", Docket, p. 84.
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 137.
[6] Par. 4, Summary of Admitted Facts, JSFI, Docket, p. 138.
[7] Exhibit "P-2", Docket, p. 85.
[8] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 138.
[9] Par. 6, Summary of Admitted Facts, JSFI, Docket, p. 138; Exhibits "P-2" and "P-3", Docket, pp. 85 to 86.

Subsequently, on May 3, 2016, petitioner filed with the BIR RDO No. 43A the letter-request dated May 2, 2016 for the refund of the said amount of ₱7,750,000.00.[10] On the same date, petitioner filed with the same BIR office, BIR Form No. 1914 (Application for Tax Credits / Refunds), representing the same amount.[11]

And to preserve its right to judicially claim for a refund of the said penalties, petitioner filed the instant *Petition for Review* on May 27, 2016.[12]

Respondent filed his *Answer* on August 26, 2016,[13] interposing the following Special and Affirmative Defenses, to wit:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> He reiterates and re-pleads the foregoing paragraphs of this Answer as part of his Special and Affirmative Defenses;
>
> 14. The Honorable Court of Tax Appeals has no jurisdiction over the case.
>
> Paragraph (C) of Section 204 in relation to Section 229 of the NIRC of 1997, as amended, provides:
>
>> Sec. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes – the Commissioner may –
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>> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchase, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two

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[10] Exhibit "P-4", Docket, pp. 87 to 91.
[11] Exhibit "P-5", Docket, p. 92.
[12] Par. 6, *Petition for Review*, Docket, p. 10.
[13] Docket, pp. 52 to 60.

(2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

Section 229 of the NIRC of 1997, as amended, provides:

'Section 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, or of any sum alleged to have been 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.

In any case, no such suit or proceeding shall be filed after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.'

15. As clearly discussed in the preceding paragraphs, the penalties paid by the Petitioner was in the nature of a compromise penalty. It was paid by Petitioner to avoid criminal prosecution and imposition of administrative sanctions.

Nowhere in the Petition for Review does it show that the taxes paid by Petitioner were erroneously or illegally assessed or collected. The penalties paid were collected with authority. The penalties were not excessive nor wrongfully collected.

Thus, the penalties subject matter of the instant case are not refundable and beyond the jurisdiction of the Honorable Court.

16. In an action for tax refund/credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund/credit, and failure to adduce sufficient proof is fatal to the action for tax refund/credit (*Commissioner of Internal Revenue* vs. Tokyo Shipping Co. Ltd., 244 SCRA 336).

17. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same *(Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005).*

18. Taxes collected are presumed to be in accordance with laws and regulations. Hence, not refundable.

19. Petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected. Hence, not refundable.

20. Taxes are the lifeblood of the nation. The Philippines has been struggling to improve its tax efficiency collection for the longest time with minimal success. Consequently, the Philippines has suffered the economic adversities arising from poor tax collection, forcing the government to continue borrowing to fund the budget deficits. **This court cannot turn a blind eye to this economic malaise by being unduly liberal to taxpayer who do not comply with the statutory requirements for tax refunds or credits.** The tax refund claims in the present cases are not a pittance. Many other companies stand to gain if this Court were to rule otherwise. The dissenting opinions will turn on its head the well-settled doctrine that tax refunds are strictly construed against the taxpayer. (Commissioner of Internal Revenue vs. San Roque Power Corp., G.R. No. 187485, 12 February 2013) Emphasis supplied.

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21. Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of the assessments *(Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 134062, April 17, 2007)*.

22. To be entitled to refund, Petitioner must prove that it was able to comply with the following documentary and legal requirements as provided under Section 229 of the 1997 National Internal Revenue Code, as amended, to wit:

a) That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;

b) That, if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within said two (2) year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed;

c) The claim for refund must be a categorical demand for reimbursement;

d) There must be a proof or payment of the erroneously or illegally collected taxes; and

e) No refund shall be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

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23. Petitioner must be able to prove that they are entitled to a refund of the penalties paid in the amount of Php 7.750 million on May 30, 2014, for its failure to present books of accounts, official receipts, back end sales report and unaccounted Point of Sales Machines (POS). Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same *(Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005).*

24. In an action for tax refund/credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund/credit, and failure to adduce sufficient proof is fatal to the action for tax refund/credit (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 336).*

25. A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. The taxpayer must present convincing evidence to substantiate a claim for refund. (*FEBTC vs. CIR, G.R. No. 149589, September 16, 2006*)

26. In the case of *CIR vs. Rosemarie Acosta, G.R. 154068 dated August 3, 2007*, the Honorable Supreme Court ruled, to wit:

> 'As tax refunds involve a return of revenue from government, the claimant must show indubitably the specific provision of law from which her right arises, it cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund. To repeat, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied in this jurisdiction.' Petitioner must prove compliance with the governing rules relative to tax recovery or refund as provided under Sections 204 (C) and 229 of the 1997 NIRC, as amended.

27. Taxes collected are presumed to be in accordance with laws and regulations. Petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected. Hence, not refundable."

The pre-trial conference was initially set on October 27, 2016.[14] However, after respondent filed a *Motion for Resetting of Pre-Trial Conference* on October 17, 2016,[15] which *Motion* was granted by the Court per its Resolution dated October 24, 2016, the pre-trial conference was reset on February 2, 2017.[16] In the meantime, petitioner filed its *Pre-Trial Brief* on October 21, 2016.[17]

At the pre-trial conference held on February 2, 2017, it was noted by the Court that respondent failed to file his *Pre-Trial Brief*. Thus, respondent was directed to file the same within a non-extendible period of five (5) days from notice.[18] Respondent then filed a *Motion To Admit Pre-Trial Brief* on February 8, 2017, attaching his *Pre-Trial Brief*.[19] In the Resolution dated February 23, 2017,[20] the Court granted the said *Motion To Admit* and admitted respondent's *Pre-Trial Brief*.

On May 22, 2017, the parties filed their *Joint Stipulation of Facts and Issues*,[21] which the Court approved in its Resolution dated May 29, 2017, thereby terminating the Pre-Trial.[22] Thereafter, the Court issued its Pre-Trial Order dated June 22, 2017.[23]

During trial, petitioner presented Joel M. Balambam as its lone witness.[24]

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[14] Notice of Pre-Trial Conference dated September 1, 2016, Docket, pp. 61 to 62.
[15] Docket, pp. 65 to 68.
[16] Docket, p. 94.
[17] Docket, pp. 69 to 74.
[18] Minute Resolution and Order, both dated February 2, 2017, Docket, pp. 99 to 102.
[19] Docket, pp. 104 to 117.
[20] Docket, p. 120.
[21] Docket, pp. 137 to 140.
[22] Docket, p. 143.
[23] Docket, p. 157 to 162.
[24] Exhibit "P-6", Docket, pp. 147 to 154; Minute Resolution and Order, both dated July 18, 2017, Docket, pp. 166 to 169.

On August 25, 2017, petitioner filed its *Formal Offer of Documentary Evidence,*[25] offering Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", and "P-6-A". Respondent, however, failed to file his comment to petitioner's *Formal Offer of Evidence.*[26] In the Resolution dated October 25, 2017,[27] the Court admitted all the formally offered exhibits of petitioner and noted the manifestation of respondent's counsel during the hearing held on July 18, 2017, that she will no longer present evidence for respondent. Thus, the parties were given thirty (30) days to file their respective memorandum.

Upon the filing of respondent's *Memorandum* on December 5, 2017[28] and petitioner's *Memorandum* on December 19, 2017[29], this case was considered submitted for decision on January 8, 2018.[30]

Hence, this decision.

THE ISSUE

The parties submitted this lone issue for the Court's resolution:[31]

> "...whether petitioner is entitled to the refund of, or the issuance of a Tax Credit Certificate corresponding to the penalties in the total amount of Seven Million Seven Hundred Fifty Thousand Pesos (P7,750,000.00), which it paid pursuant to BIR Form No. 0605."

Petitioner's arguments:

Petitioner argues that the BIR did not afford petitioner due process in imposing and collecting the above-mentioned penalties.

According to petitioner, the BIR did not have any basis, in fact and in law, to impose and collect the said penalties. In this connection, petitioner points out that it properly maintained its books

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[25] Docket, pp. 175 to 178.
[26] Records Verification dated September 20, 2017, Docket, p. 179.
[27] Docket, pp. 185 to 186.
[28] Docket, pp. 187 to 195.
[29] Docket, pp. 197 to 211.
[30] Resolution dated January 8, 2018, Docket, p. 215.
[31] Issues To Be Resolved, JSFI, Docket, p. 138.

of accounts as required by law and regulations, and that it properly secured the appropriate official receipts for the use of its head office and its branches. Allegedly, the Tax Code, or any of the regulations of the BIR, does not require any taxpayer to maintain such "back-end report", much less submit the same to the BIR; that petitioner properly registered all of its POS machines and complied with existing regulations in connection with the use thereof; and that the above-mentioned penalties imposed in BIR Form No. 0605 are arbitrary and excessive.

Respondent's counter-arguments:

Respondent avers that petitioner failed to state its factual and legal basis for its claim for refund. The payment of the compromise penalty was made voluntarily by petitioner; that there was no demand from the respondent directing petitioner to pay such an amount; and that in fact, petitioner did not even bother to show proof that there was demand from respondent.

According to the respondent, petitioner failed to comply with Section 229 of the National Internal Revenue Code (NIRC), as amended.

Lastly, respondent claims that this Court has no jurisdiction over the case. Relative thereto, respondent points out that the penalties paid by petitioner was in the nature of a compromise penalty, which was paid by petitioner to avoid criminal prosecution and imposition of administrative sanctions. Nowhere in the *Petition for Review* shows that the taxes paid by petitioner were erroneously or illegally assessed or collected; and that the penalties paid were collected with authority; not excessive nor wrongfully collected.

THE COURT'S RULING

The instant *Petition for Review* has merit.

Section 229 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "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**

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> **revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been 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.
>
> xxx xxx xxx." *(Emphasis supplied)*

Pursuant to the foregoing provision, the law allows the recovery by a taxpayer from respondent of certain sums, which are categorized as follows, to wit:

1. Any national internal revenue taxes alleged to have been erroneously or illegally assessed or collected,
2. Any penalty claimed to have been collected without authority, and
3. Any sum alleged to have been excessively or in any manner wrongfully collected.

The first category covers an "erroneous or illegal tax", which 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.[32]

The second category refers to penalties collected without authority (for brevity, referred to hereinafter as "unauthorized collected penalties"); while the third category pertains to sums of money excessively or in any manner wrongfully collected.

In the instant case, as what is being refunded herein are compromise penalties, the same may fall under either the second category or the third category.

The crux of the controversy centers around the question as to whether or not the subject compromise penalties were: collected with authority; or excessively or in any manner wrongfully collected.

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[32] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

We rule in favor of petitioner.

Section 6 of Revenue Regulations (RR) No. 12-99[33] provides as follows:

> "SECTION 6. **Suggested Compromise Penalty in Extra-judicial Settlement of a Taxpayer's Criminal Violation.** – Section 204 of the Tax Code of 1997 provides that ***'All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud.'*** This means that, in general, the taxpayer's criminal liability arising from his violation of the pertinent provision of the Code may be settled extra-judicially instead of the BIR instituting against the taxpayer a criminal action in Court. A compromise in extra-judicial settlement of the taxpayer's criminal liability for his violation is consensual in character, hence, may not be imposed on the taxpayer without his consent. Hence, the BIR may only suggest settlement of the taxpayer's liability through a compromise.
>
> The extra-judicial settlement of the taxpayer's criminal liability and the amount of the suggested compromise penalty shall conform with the schedule of compromise penalties provided under Revenue Memorandum Order No. 1-90 or as hereafter revised." *(Underscoring supplied)*

Based on the foregoing provision, it is clear, *inter alia*, that payment of a suggested compromise penalty must conform with the schedule of compromise penalties provided under Revenue Memorandum Order (RMO) No. 1-90 or any revision thereon after the promulgation of RR No. 12-99.

At the time the BIR conducted the verification and validation of petitioner, the administrative issuance dealing with the imposition of

[33] 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.

compromise penalties and providing the schedule thereof was RMO No. 19-2007[34], pertinent portions of which state:

> "...**the following are hereby prescribed for the information and strict compliance by all concerned:**
>
> 1. **In all cases of criminal violations of the NIRC, not involving the commission of fraudulent act, it is directed that henceforth, compromise penalties to be imposed shall follow strictly the amounts in the attached 'Revised Schedule of Compromise Penalties', marked as Annex 'A' and made an integral part hereof.**
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> 2. Certain acts/violations which are commonly resorted to by taxpayers as means of tax evasion are deleted from the coverage thereof for having met the requirements of the definition of fraudulent acts.
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> III. Guidelines and Instructions:
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> 1. **The internal revenue officers concerned shall apply the Revised Schedule of Compromise Penalties embodied in Annex 'A' to ensure uniformity of action.**
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> 2. xxx
>
> 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**

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

that reflects deficiency basic tax, surcharge and interest but <u>should appear in a separate assessment notice/demand letter</u> 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.

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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.**" *(Emphases and underscoring supplied)*

It is likewise clear from the foregoing provisions that the following rules must be strictly followed in the imposition and collection of compromise penalties, to wit:

a) To ensure uniformity of action of internal revenue officers, the imposition of compromise penalties shall strictly follow the amounts stated in the *Revised Schedule of Compromise Penalties* attached to RMO No. 19-2007 as Annex "A" thereof;

b) In case the suggested amount of compromise penalty differs, whether higher or lower, from those specified in the said *Revised Schedule*, the same must be duly approved by respondent or other pertinent BIR officials, as stated in RMO No. 19-2007;

c) All amounts of compromise penalties incident to violations shall be itemized in a separate assessment notice/ demand letter as the amounts suggested to the taxpayer to pay in lieu of criminal prosecution.

In this case, it was established that after conducting the said verification and validation, the BIR issued to petitioner BIR Form No. 0605[35], which merely directed petitioner to pay penalties in the total amount of ₱7,750,000.00 for the alleged violations of petitioner, as follows:

a. No Books;
b. No official receipts;
c. No Back End Report; and
d. Unaccounted POS.[36]

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.

Furthermore, the said and supposed criminal violations committed by petitioner are not clearly shown as falling under any of the items stated in the *Revised Schedule of Compromise Penalties* attached to RMO No. 19-2007.

And while it may be argued that anent the finding of *"No Books"*, the same may fall under *"Failure to keep/preserve records required by law or regulations"*,[37] respondent still failed to show as to which bracket will the case of petitioner fall for such violation, for this Court to determine the specific amount of compromise penalty which

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[35] Exhibit "P-2", Docket, p. 85.
[36] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 138.
[37] The pertinent part of the *Revised Schedule of Compromise Penalty* reads:

CODE SEC.	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	If gross annual sales, earnings or receipts		
			Exceeds	But Does Not Exceed	Compromise is
232/235	Failure to keep/ preserve records required by law or regulations	Fine of not more than P1,000 or imprisonment for not more than 6 months, or both (Sec. 275, NIRC)	P x x x	P 10,000	P 200
			10,000	20,000	400
			20,000	30,000	600
			30,000	50,000	1,000
			50,000	75,000	1,500
			75,000	100,000	2,000
			100,000	250,000	3,000
			250,000	500,000	5,000
			500,000	1,000,000	7,500
			1,000,000	5,000,000	10,000
			5,000,000	10,000,000	15,000
			10,000,000	20,000,000	20,000
			20,000,000	50,0000,000	30,000
			50,0000,000	x x x	50,000

is imposable to it. Relative thereto, it behooves respondent to show which amount of compromise penalty is applicable to petitioner for the supposed violation of having *"No Books"*, since he or the BIR is mandated to strictly follow or apply the amounts stated in the above-stated *Revised Schedule*. Failing which, it cannot be said that respondent strictly followed the same.

Correspondingly, for the failure of respondent or the BIR to strictly observe the requirements of RMO No. 19-2007, the amount of compromise penalties paid by petitioner is deemed to be collected without authority. For the same reason, the subject compromise penalties paid by petitioner may also be considered as a sum which was wrongfully collected. In this connection, it must be emphasized that acts executed against the provisions of mandatory or prohibitory laws shall be void.[38]

Such being the case, considering that the pertinent provisions of RMO No. 19-2007 were not strictly observed by respondent or the BIR in this case, the payment of compromise penalties by petitioner is a nullity.

Hence, the amount of ₱7,750,000.00 paid by petitioner may be refunded to the latter.

We do not agree with respondent's contention that petitioner failed to comply with Section 229 of the NIRC, as amended.

In *Commissioner of Internal Revenue vs. Acosta*,[39] the Supreme Court said:

> "Noteworthy, the requirements under Section 230[40] for refund claims are as follows:
>
> 1. A **written claim** for refund or tax credit must be filed by the taxpayer with the Commissioner;

[38] Civil Code of the Philippines, Article 5 provides: "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Refer also to *Barcelote vs. Republic of the Philippines, et al.*, G.R. No. 222095, August 7, 2017.
[39] G.R. No. 154068, August 3, 2007.
[40] Now Section 229 of the NIRC of 1997.

2. The claim for refund must be a **categorical demand** for reimbursement;

3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court **within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.** (Emphasis ours.)

In our view, the law is clear. A claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court. This obviously is intended, first, to afford the CIR an opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure."

Thus, the said three (3) requirements must be complied with for petitioner to be refunded in the amount of ₱7,750,000.00. In this case, petitioner has shown compliance therewith.

As for the *first* requirement, petitioner filed with the BIR RDO No. 43A, a written claim for refund or tax credit via the letter-request dated May 2, 2016 in the said amount of ₱7,750,000.00.[41]

And in compliance with the *second* requirement, the said letter-request shows a categorical demand for reimbursement, to wit:

"On behalf of our client, Joyfoods Corporation (Joyfoods), we, pursuant to Section 229, in relation to Section 204(C), of the National Internal Revenue Code of 1997, as amended (Tax Code), formally request for the refund of penalties paid in the total amount of Seven Million Seven Hundred Fifty Thousand Pesos (P7,750,000.00), which this Honorable Office erroneously collected from Joyfoods last 30 May 2014.

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[41] Exhibit "P-4", Docket, pp. 87 to 91.

> In view of all the foregoing, we, on behalf of Joyfoods, pursuant to Section 229, in relation to Section 204(C), of the Tax Code, respectfully request this Honorable Office to refund the above-mentioned erroneously collected penalties in the amount of Seven Million Seven Hundred Fifty Thousand Pesos (P7,750,000.00)."[42]

With regard to the *third* requirement, it is likewise shown that the filing of the said letter-request on May 3, 2016[43] and action in court on May 27, 2016[44] were done within the prescriptive two-year period which commenced, in this case, on May 30, 2014—the date of payment of the subject compromise penalties.[45]

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 **₱7,750,000.00**, representing compromise penalties imposed without authority or wrongfully collected.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[42] Exhibit "P-4", Docket, pp. 87 and 91.
[43] Exhibit "P-4", Docket, p. 87.
[44] *Petition for Review*, Docket, pp. 9 to 24.
[45] Exhibits "P-2" and "P-3", Docket, pp. 85 to 86.

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.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division