REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1947** *(CTA Case No. 9363)*
	Present:
- versus -	**DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, *and* MODESTO-SAN PEDRO, *JJ.***
FRANKFORT, INC., *Respondent.*	**Promulgated:** MAR 09 2020 3:43 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 the respondent Frankfort, Inc. (Frankfort) seeking the reversal of the Decision dated July 10, 2018[2] (Assailed Decision) rendered by the Second Division of this Court in CTA Case No. 9363, as well as the Resolution dated September 18, 2018[3] (Assailed Resolution) denying its motion for reconsideration.

In the Petition, the CIR prays that both the Assailed Decision and Resolution be reversed and set aside; that judgment be rendered denying Frankfort's claim for refund in its entirety in the amount of ₱5,600,000.00 representing excessive and illegally collected penalties.

[1] *Rollo*, pp. 1-9, with Annexes "A" and "B", pp. 10-33.
[2] *Id.*, pp. 10-25.
[3] *Id.*, pp. 26-33.

The Parties

Petitioner CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code of 1997, as amended, (Tax Code) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Frankfort, Inc. is a domestic corporation duly organized and existing under and by virtue of laws of the Republic of the Philippines, with principal offices at Room 117 G/F Ortigas Building, Ortigas Avenue, Pasig City. It is the owner and operator of several quick service restaurants throughout the Philippines. It is also registered with the BIR with Taxpayer Identification (TIN) No. 007-047- 217-000.[4]

The Facts[5]

On March 21, 2014, the Regional Director (RD) of Revenue Region (RR) No. 7 of the BIR issued Mission Order No. 00096206 directing the officers of Regional District Office (RDO) No. 43A to (i) verify the registration status and bookkeeping compliance of Frankfort with the new invoicing requirements, and (ii) validate Frankfort's permit to use Cash Register Machines (CRM) and/or Point of Sales (POS)[6] machines covering the period from March 21 to March 27, 2014.[7]

On March 25, 2014, the RD issued a Letter of Authority (LOA) for the examination of Frankfort's accounting records pertaining to its value-added tax (VAT) liabilities covering the period from January 1, 2013 to December 31, 2013.[8]

Subsequently, two Audit Reports were prepared by the revenue examiners assigned; one for VAT[9]; another for findings related to Frankfort's lack of compliance with the new invoicing requirements, such as having no books, no official receipts, no back-end reports, and unaccounted POS.[10]

Relative thereto, BIR Form No. 0605 or the Payment Form was prepared

[4] *Id.*, p. 2.
[5] As found by the Second Division and as culled from the records of the case.
[6] *Docket*, CTA Case No. 9363, p. 174.
[7] *Id.*, p. 167.
[8] BIR Records, p. 205, Exhibit "R-1".
[9] *Id.* p. 267.
[10] *Id.*, p. 266, Exhibit "R-8".

for the corresponding assessment on their VAT findings[11] and on the miscellaneous penalties.[12]

Frankfort allegedly received said Payment Forms, one of which indicated miscellaneous penalties amounting to ₱5,600,000.00 for the following violations:[13]

a. No Books;
b. No Official Receipts;
c. No Back-End Report; and
d. Unaccounted POS

On May 30, 2014, Frankfort paid the assessments using the Payment Forms for VAT[14] and miscellaneous penalties[15] at the United Coconut Planters Bank (UCPB) - Pioneer Branch amounting to ₱5,689,002.75 and ₱5,600,000.00, respectively.

On May 2, 2016, Frankfort, through its counsel, filed a letter-request with the BIR claiming for a refund of its payment of the miscellaneous penalties.[16] It also filed an application for tax credit or refund in the BIR-RR No. 7 on May 3, 2016.[17]

The CIR did not act on the said application for tax refund/credit. Consequently, Frankfort filed a Petition for Review with the CTA, docketed as CTA Case No. 9363, claiming for the refund of the payment of said miscellaneous penalties on May 27, 2016.

On June 7, 2016, the Court in Division issued summons against the CIR and was ordered to submit an Answer to the Petition. The CIR submitted his Answer[18] on July 22, 2016 after his motion for extension to file said pleading[19] was granted[20] by the Court.

On July 29, 2016, the Court in Division set the pre-trial conference and ordered both parties to submit their respective pre-trial briefs.[21] The CIR

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[11] *Id.* at 268.
[12] *Id.* at. 270.
[13] *Id.* at Note 6, p.12.
[14] *Id.* at Note 8, p. 269, BIR Records, Exhibit "R-1".
[15] *Id.* at 271.
[16] *Id.* at Note 6, pp. 104-108, Exhibit "P-4".
[17] *Id.*, p. 109, Exhibit "P-5".
[18] *Id.*, pp. 44-51.
[19] *Id.*, pp. 40-42.
[20] *Id.*, p. 43.
[21] *Id.*, pp. 52-53.

submitted his pre-trial brief[22] on August 25, 2016 while Frankfort submitted its pre-trial brief on September 9, 2016.[23]

On September 15, 2016, the Court in Division ordered[24] the parties to file a Joint Stipulation of Facts and Issues which they submitted on September 30, 2016.[25] The Pre-trial Order[26] was thereafter issued on November 24, 2016.

Trial of the case ensued. After Frankfort presented its evidence, the same was formally offered.[27] After considering the CIR's comment[28] thereto, all the evidence formally offered by Frankfort were admitted.[29]

The CIR subsequently presented his evidence, after which, he formally offered the same[30]. After considering Frankfort's comment,[31] the Court in Division admitted the evidence of the CIR and both parties were ordered to submit their respective memoranda.[32]

The CIR submitted his Memorandum[33] on November 21, 2017 while Frankfort submitted its Memorandum[34] on December 18, 2017. The case was submitted for decision on January 4, 2018.[35]

On July 10, 2018, the Court in Division promulgated the Assailed Decision partially granting Frankfort's Petition. 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 **Php5,450,00.00,** representing the excessive and illegally collected penalties.

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[22] *Id.*, pp. 58-61.
[23] *Id.*, pp. 87-91.
[24] *Id.*, p. 110.
[25] *Id.*, pp. 114-117.
[26] *Id.*, pp. 119-122.
[27] *Id.*, pp. 137-140.
[28] *Id.*, pp. 141-144.
[29] *Id.*, pp. 148-149.
[30] *Id.*, pp. 152-155.
[31] *Id.*, pp. 157-160.
[32] *Id.*, pp. 165-166.
[33] *Id.*, pp. 167-173.
[34] *Id.*, pp. 174-193.
[35] *Id.*, p. 194.

SO ORDERED."[36]

On July 20, 2018, the CIR filed his Motion for Partial Reconsideration (Notice of Decision promulgated on July 10, 2018)[37] praying for the dismissal of Frankfort's Petition for Review, to which Frankfort posted its Comment/Opposition to Motion for Partial Reconsideration dated 17 July 2018[38] on August 13, 2018, which the Court received on August 22, 2018.

On September 18, 2018, the Court in Division issued the Assailed Resolution denying the motion for lack of merit.[39] The dispositive portion of the Assailed Resolution reads, as follows:

> **"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."**[40]

On October 4, 2018, the CIR timely filed his appeal via Petition for Review.[41]

On November 12, 2018, Frankfort was directed to file Comment thereto.[42]

On December 14, 2018, Frankfort filed its Comment/Opposition to Petition for Review dated 03 October 2018[43] with the given period.

On January 24, 2019, the Court *en banc* issued a Resolution giving due course to the Petition for Review and ordering the parties to file their respective memoranda.[44]

On March 1, 2019, the CIR filed his Memorandum[45], while Frankfort

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[36] *Id.* at Note 2, pp. 23-24.
[37] *Id.* at Note 6, pp. 214-219.
[38] *Id.*, pp. 222-231.
[39] *Id.* at Note 3.
[40] *Id.*, p. 29.
[41] *Id.* at Note 1.
[42] *Id.*, pp. 38-39.
[43] *Id.*, pp. 43-55.
[44] *Id.*, pp. 57-58.
[45] *Id.*, pp. 62-66.

posted its Memorandum[46] on March 20, 2019, which the Court received on March 26, 2019.

On April 4, 2019, the Court *en banc* issued a Resolution submitting the case for decision.[47]

The Assignments of Errors

The CIR argues that the Court in Division erred in ruling that the amount of ₱5,450,000.00 it imposed and collected from Frankfort as compromise penalty for its failure to keep books of account, issue official receipts, to have back-end report and account for its POS, was excessive and illegal.

The Arguments of the Parties

The CIR argues that the penalties imposed on Frankfort in the amount of ₱5,600,000.00 is not excessive nor illegal. Revenue Memorandum Order (RMO) No. 19-2007 allows him to penalize Frankfort's failure to keep books of accounts for its fifty-six (56) machines; failure of Frankfort's fifty-six (56) machines to issue official receipts; failure to maintain back-end report; failure to account for POS of Frankfort's fifty-six (56) machines, at ₱25,000.00 per machine that committed the violation. Hence, the penalties imposed for the violations are neither excessive nor illegal.

Furthermore, the offer to pay for the violations came from Frankfort for it to avoid criminal prosecution which was subsequently accepted by the CIR. RMO No. 19-2007 also allows the CIR or his authorized representatives to accept a compromise amount higher than what is provided in the schedule of compromise penalties therein.

On the other hand, Frankfort counters that the CIR's Petition is an exact rehash of its Motion for Partial Reconsideration in the proceedings with the Court in Division which ought to be dismissed for being pro forma.

Nonetheless, Frankfort argues that the CIR failed to inform Frankfort of the factual and legal bases for the penalties and did not provide it with a breakdown of the respective amounts of penalties for each violation, in order to arrive at the total amount of penalty to be imposed. Furthermore, Frankfort contends that the CIR failed to show proof that it offered to pay penalties for its alleged violations.

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[46] *Id.*, pp. 67-80.
[47] *Id.*, pp. 83-84.

The Ruling of the Court

We deny the Petition.

The contention of the CIR is simple. He claims that the imposition of the amount of ₱5,600,000.00 on Frankfort as compromise penalties is not excessive or illegal because the penalty is based on the number of machines that committed the violations - in this case, 56 machines - and not on a per violation basis.

While Frankfort concedes the fact that the BIR caused an investigation of records and POS machines[48], it also does not admit whether or not violations were indeed committed. Instead, it claims that it was not informed of the factual and legal bases of the imposed penalties and how the total compromise penalty was arrived at.

This is of no moment. Upon reviewing the records of the case, the Court *en banc* finds no reason to disturb the findings of the Court on Division on the subject.

Substantial Evidence Exists to Uphold the Findings of the BIR on the Violations Committed

It is undisputed that the CIR's authorized representatives, pursuant to Section 235(e) of the Tax Code[49], conducted an inspection in connection with Frankfort's compliance with keeping of books of accounts, official receipts, and related financial records. During the inspection, Frankfort failed to present its book of accounts and was advised to present the same on a re-scheduled date.[50] However, Frankfort still failed to present said books, hence, a recommendation for the issuance of a subpoena was made.[51]

The investigation also yielded the following findings: a) out of fifty-six (56) POS machines which have permits, only thirty-one (31) were being used while remaining twenty-five (25) machines were unaccounted for; and b) non-

[48] *Id.*, p. 47.
[49] SEC. 235 Preservation of Books of Accounts and Other Accounting Records. x x x (e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. x x x
[50] *Id.* at Note 8, p. 262, Five Days Notice Before Subpoena dated May 19, 2014, Exhibit "R-1".
[51] *Id.*, p. 264, Recommendation for Issuance of Subpoena Duces Tecum dated March 26, 2014.

generation of sales reports from the said POS machines due to the alleged lack of knowledge and capability of the managers of the petitioner to do such report generation.[52] All these findings were included in the "Memorandum for Post Evaluation of Point of Sale" generated by the inspectors.

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.[53]

In *Land Bank of the Philippines v. Spouses Rosa and Pedro Costa,*[54] 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, while the factual findings made by the CIR's authorized representatives may be rebutted by contrary evidence, Frankfort failed in this regard.

Instead of presenting evidence to prove that no infractions were committed, Frankfort merely gave a blanket denial and self-servingly alleged that it maintained its books of accounts, official receipts, and registered all its POS machines *sans* any proof to substantiate such claim. It is a fundamental principle in law that mere allegations are not evidence and are not equivalent to proof.[55]

A review of the records of the case shows that compliance with the new invoicing requirements pursuant to Revenue Regulations (RR) No. 11-2004 dated December 15, 2004 or the "Rules and Regulations on the Accreditation,

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[52] *Id.*, pp. 99-100.
[53] *Reyes, Jr. vs. Belisario*, G.R. No. 154652, August 14, 2009.
[54] G.R. No. 174647, December 5, 2012.
[55] *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Commissioner of Internal Revenue and the Head Revenue Executive Assistant, Large Taxpayer Service, in their official capacities as Officers of the Bureau of Internal Revenue*, G.R. Nos. 210689-90, November 22, 2017; *Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR)*, G.R. Nos. 210704 & 210725, November 22, 2007.

Registration and Use of Cash Register Machines (CRM), Point -of-Sale Machines and/ or Business Machines Generating Receipt/Invoices" was what sparked the investigation into Frankfort's records. Frankfort's BIR registration and compliance with bookkeeping requirements under the new invoicing requirements needed to be verified and its permit to use CRM and/or POS machines needed to be validated.

However, even prior to the issuance of RR No. 11-2004, Section 74 of the Corporation Code[56] required all domestic corporations to keep and carefully preserve its book of accounts in their principal office. Hence, the BIR has the power to inspect such book of accounts in the same location pursuant to Section 235(e) of the Tax Code, as amended. As the facts bear out, said book of accounts could not be found in said location.

RR No. 11-2004, specifically in Item Nos. 5.1.3 and 5.1.4 thereof, also provide the following:

> "5.1.3 The machine and/or the central server must be able to generate a report showing the reading of daily sales and the accumulated grand total recorded therein;
>
> 5.1.4 The machine must have a non-volatile memory or must be equipped with a recovery/back-up system;"

As the Court in Division observed correctly, it is required for CRM/POS machines used in the business operation, such as those used by Frankfort, that they should be able to generate a report of daily sales and accumulated totals and, furthermore, these machines must be supported by a recovery/back-up system. Upon investigation, however, the CIR's authorized representatives could not gain access to the subject machines and, when Frankfort's managers were asked about the report, they replied that they did not know how to generate such.

Given that Frankfort has so much as admitted that the required reports were not generated, it should have requested reconsideration of the investigation's findings or, at the very least, asked the CIR's representatives to demonstrate how to generate the required report. As this Court has previously observed, Frankfort failed in this regard. In the absence of evidence that Frankfort maintained its books of accounts, official receipts, and registered all its POS machines, and with the presumption of regularity in favor of the factual findings of the CIR's representatives, this Court is led to believe that there is, indeed, truth behind the factual findings in the investigation. Where there is smoke, there is fire. The presumption of regularity in the performance of duties

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[56] Batas Pambansa Bilang 68, otherwise known as "The Corporation Code of the Philippines" took effect on May 1, 1980.

by the CIR's representatives stands, and their findings must be upheld and accorded not only respect, but also finality.

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

Upholding the finding of Frankfort's violations is one thing; the accuracy of the penalties imposed is another.

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 Frankfort 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. x x x

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 offers must be in writing, and when 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:

> "Although there was no categorical statement in Item 111(6) of said RMO that the offer should be in writing, **the requirement under Item 111(7) that all offers shall be made using Annex B which is a written offer must be controlling**."

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 as regards the required written offer. No evidence was adduced by the CIR in the course of the trial. The absence of said written offer was even apparent during the cross-examination of the the CIR's witness, Alfredo Santos, who testified, as follows:[57]

[57] Transcript of Stenographic Notes (TSN), Hearing on May 10, 2017, pp. 6-7.

ATTY. BERNARDINO:
Q. In Exhibit R-8 of your Judicial Affidavit, is shown in the said audit result, you imposed a penalty of P1,200,000.00 for each of the alleged violations of the taxpayer. Is there a breakdown of computation in the report which would show how you arrive *(sic)* at the said penalty?

MR. SANTOS:
A. Actually, the taxpayer has fifty-six (56) issued POS permit *(sic)*. And then, out that 56 permit *(sic)*, we were only been able *(sic)* able to account about 31, so that's late for about 25. And on that 31, there's 3 POS machine *(sic)* which is not among the list of POS permit *(sic)* issued by the BIR. So, in short, there are about 28 POS machine *(sic)* unaccounted, and with that, we imposed a penalty of Fifty Thousand (P50,000.00) for each machine.

That's why, we arrived at an amount of P1,400,000.00

ATTY. BERNARDINO:
Q. Is it attached in the said revenue report?

JUSTICE CASTANEDA:
In effect, there is a P50,000.00 per machine.

MR. SANTOS:
A. Yes, your Honors.

ATTY. BERNARDINO:
Q. Was the breakdown sent to the taxpayer?

MR. SANTOS:
A. It was shown to the taxpayer.

ATTY. BERNARDINO:
Q. Do you have proof?

MR. SANTOS:
A. **I don't have a proof** right, but what I know is, I made a recommendation with this that because the taxpayer failed to submit their POS machine for reading, I made a recommendation that all POS machine of the taxpayer be sealed. And then, with that, the taxpayer made an offer of a compromise which is the total of P5.6 Million.

ATTY. BERNARDINO:
Q. So you are saying, the taxpayer offered this?

MR. SANTOS:
A. Yes, sir.

ATTY. BERNARDINO:
Q. Is it in writing?

MR. SANTOS:
A. Actually, the offer was not made thru me. I am just a Revenue Officer, and even the Revenue District Officer has no authority to accept the offer. So the taxpayer thru the law firm of Santiago Law Firm, they went to the Revenue Director of Revenue Region No. 7, Quezon City which is then Jonas Amora and they talked to the Director and they made the offer to the Director.

JUSTICE CASTANEDA:
Q. Was there a written offer?

MR. SANTOS:
A. I am not a privy to that meeting, your Honor. *(Emphasis supplied)*

Despite being one of the signatories to the BIR Form No. 0605[58] or the Payment Form which is the result of said compromise, Mr. Santos, the witness, was evasive when asked about the existence of a written offer. Since the written offer was supposed to be the basis for the preparation and issuance of the Payment Form, he ought to have had known of its existence or lack thereof. Instead, Mr. Santos merely provided an alibi that he was not privy to the negotiation phase of the compromise penalties. While Mr. Santos' absence during the negotiations is certainly plausible, not appending an important document in the ordinary course of business, such as the written offer which serves as evidence of the agreement of the parties, is less so. Indubitably, there was no written compromise offer of penalties as required by RMO No. 19-2007.

As regards the lack of "back-end report" for which Frankfort was charged the amount of ₱1,400,000.00 in penalties, the Court in Division ruled that there is no legal or factual basis for requiring the maintenance and submission of a "back-end" report to the BIR under RR No. 11-2004. The aforesaid rules and regulations do not even contain a definition or what a "back-end" report is.

We agree.

While Item No. 5.1.3 of RR No. 11-2004 requires that CRM/POS

[58] BIR Records (Exhibit "R-1 "), p. 270.

machines being used by the taxpayer "must be able to generate a report showing the reading of daily sales and the accumulated grand total recorded therein", the rules do not mention that this report - presumably what the CIR refers to as a "back-end report" - must be submitted to the BIR.

All told, as per Annex A of RMO No. 19-2007, the following penalties must be imposed on Frankfort for their violations:

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	Fine of not more than P1,000 or imprisonment for not more than 6 months, or both. (Sec. 275, NIRC)	P x x x **50,000,000**	P x x x **x x x**	P 200 x x x **50,000**

Applying the foregoing schedule of penalties, the penalty for the cumulative violations of Frankfort should be computed at the maximum amount of compromise, based on BIR Form No. 2550M or the monthly Value-Added Tax (VAT) Declaration[59] of Frankfort's annual income for CY 2013 which is more than ₱50,000,000.00. Hence, the following penalties should have been imposed on Frankfort:

BIR Findings	Maximum Penalty per Annex A of RMO No. 19-2007
No Books	₱50,000.00
No Official Receipt	50,000.00
Unaccounted POS	50,000.00
Total	**₱150,000.00**

[59] *Id.* at Note 8, pp. 213-235, BIR Form No. 2550M.

Evidently, the ₱5,600,000.00 in penalties imposed on and paid by Frankfort is excessive and not based on the pertinent regulation. The additional penalties imposed in excess of ₱150,000.00, must, perforce, be set aside for not being in accordance with RMO No. 19- 2007 and be refunded.

Accordingly, the Court *en banc* upholds the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The assailed Decision dated July 10, 2018 and the Resolution dated September 18, 2018 of the Second Division in CTA Case No. 9363 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

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA 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