REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

WESTERN GUARANTY CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9338

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:
JAN 21 2021 3:17 pm

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RESOLUTION

MANAHAN, *J.:*

This resolves petitioner's **Motion for Reconsideration** filed on August 24, 2020, with respondent's **Opposition (To Petitioner's Motion for Reconsideration dated 24 August 2020)** posted on September 28, 2020 and received by this Court on October 7, 2020, and respondent's **Motion for Partial Reconsideration Re: Decision dated 24 July 2020** posted on August 18, 2020 and received by this Court on September 1, 2020, without petitioner's comment.

Petitioner, in its motion, seeks for the reconsideration of this Court's Decision dated July 24, 2020 (Assailed Decision) and prays that respondent's Final Decision on Disputed Assessment (FDDA) be set aside and be declared null and void.

On the other hand, respondent in his motion seeks the reversal and setting aside of said Assailed Decision and the issuance of another one which will order the petitioner to pay respondent the assessed deficiency value added-tax (VAT), expanded withholding tax (EWT), final withholding on value-added tax (FWVAT), and documentary stamp tax (DST) **including the compromise penalty** for the taxable year 2011.

It argues that it was deprived of due process when respondent failed to present the Insurance Commissioner's Report (ICR) during the trial of the case as basis for the assailed deficiency tax assessments.

Petitioner is also asking the Court for the abatement or reduction of the interest, penalties and surcharges charged in the subject deficiency tax assessments citing the case of *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*[1] which cited the ruling in the case of *Michael J. Lhuiller, Inc. v. Commissioner of Internal Revenue*[2] that "good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest."

On the other hand, respondent in his motion seeks the reversal and setting aside of said Assailed Decision and the issuance of another one which will order the petitioner to pay respondent the assessed deficiency value added-tax (VAT), expanded withholding tax (EWT), final withholding on value-added tax (FWVAT), and documentary stamp tax (DST) **including the compromise penalty** for the taxable year 2011.

He argues that this Court erred in cancelling the compromise penalty imposed on the subject deficiency assessment.

Before going into the substantive merits of their motions, this Court shall first determine whether the two motions were filed on time. Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> "SECTION 1. *Who may and when to file motion.-* **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution, or order **of the Court**. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

The records of the case reveal that petitioner received the Assailed Decision on August 13, 2020. In accordance with the abovementioned provision of the RRCTA, petitioner had until

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[1] G.R. Nos. 195909 &195960, September 26, 2012.
[2] Resolution, G.R. No. 166786, September 11, 2006.

August 28, 2020 within which to file its motion for reconsideration. Thus, the filing by petitioner of its *Motion for Reconsideration* on August 24, 2020 was on time.

The respondent, on the other hand, received the Assailed Decision on July 28, 2020, hence, he had until August 12, 2020 within which to file its motion. However, due to the increased number of COVID-19 cases, this Court resumed its operation only on August 18, 2020. Thus, the posting of respondent's motion on August 18, 2020 is considered.

As to petitioner's allegation on the denial of its right to due process for failure to present the ICR Report, this Court found that although the Final Decision on Disputed Assessment (FDDA) was defective, the Final Assessment Notice (FAN) was valid, and citing the case of *Commissioner Internal Revenue v. Liquigaz Philippines Corporation*[3], the decision of respondent differs from the deficiency assessment, hence, the invalidity of one does not necessarily result to the invalidity of the other.

The validity of said FAN retains the presumption of its regularity as "tax assessments by tax examiners are presumed correct and made in good faith"[4].

Thus, it is the petitioner's onus to disprove such assessment by providing contrary evidence that the computation in the FAN had indeed no legal basis. However, petitioner failed on this aspect. No substantial contrary evidence in the instant motion as well as during the trial of the case was even presented.

With regards to petitioner's request for the cancellation of the charges and interests in the subject assessment, the records of the case reveal that petitioner did not adduce any evidence nor raise in its arguments in the instant petition that it relied on any ruling of the respondent regarding its exemption from said taxes which this Court may consider in the instant case. Thus, this Court cannot grant such request.

Finally, on respondent's argument that there should be no cancellation of the compromise penalty, it must be borne in

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[3] G.R. Nos. 215534 and 215557. April 18, 2016.
[4] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

mind that an essential element of compromise is mutuality. Jurisprudence dictates that there must be an agreement by the taxpayer to such imposition by the Commissioner of Internal Revenue as held in the case of *Dr. Felisa L. Vda. De San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin v. Commissioner of Internal Revenue,*[5] to wit:

> "The Court of Tax Appeals correctly held that the compromise penalty of P20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties."

There being no other new issues or matters raised by the petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the Assailed Decision.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* and respondent's *Motion for Partial Reconsideration Re: Decision dated 24 July 2020* are hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] G.R. No. 138485, September 10, 2001.