REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

BATANGAS ELECTRIC I COOPERATIVE 1 (BATELEC1)
Respondent.

CTA *EB* NO. 1939
(CTA Case No. 8423)

Present:

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

Promulgated:

JUL 08 2020
10:42a.m.

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DECISION

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review filed by the Commissioner of Internal Revenue (CIR) on October 10, 2018 seeking the reversal of the Amended Decision (assailed Amended Decision) dated June 1, 2018, and the Resolution (assailed Resolution) dated September 5, 2018, promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 8423 entitled, *"Batangas Electric 1 Cooperative 1 (Batelec 1) versus*

Commissioner of Internal Revenue, the dispositive portions of which read as follows:

Amended Decision dated June 1, 2018

"In addition and in light of the TRAIN Law which took effect on January 1, 2018, petitioner is **ORDERED TO PAY:**

a. Deficiency interest amounting to Php7,025,297.18 at the rate of twenty percent (20%) per annum on the basic deficiency VAT of Php3,536,873.75 computed from January 25, 2008 until December 31, 2017, pursuant to Section 249 (B) of the 1997 NIRC, computed as follows:

DEFICIENCY INTEREST
Pursuant to *Sec. 249 (B) of 1997 NIRC*
(January 25, 2008 to December 31, 2017)

Basic VAT Due	Php 3,536,873.75
Deficiency Interest Rate	20%
Total	Php 707,374.75
Multiplied by Period	
(9 years and 340 days)	9.93150685
TOTAL DEFICIENCY INTEREST	**PHP7,025,297.18**

b. Delinquency interest amounting to Php13,897,834.03at the rate of twenty percent (20%) per annum on the amount of Php4,421,092.19 representing basic deficiency VAT of Php3,536,873.75 and 25% surcharge of Php884,218.44; on the deficiency interest amounting to Php7,025,297.18 which have accrued as aforestated in (a) and on the deficiency interest on EWT and WTC amounting to Php161,641.31 computed from January 5, 2012 until December 31, 2017, pursuant to Section 249 (C) of the 1997 NIRC, computed as follows:

DELINQUENCY INTEREST
Pursuant to Section 249 (C) of 1997 NIRC
(January 5, 2012 to December 31, 2017)

Basic VAT Due Plus Surcharge	Php 4,421,092.19
Deficiency Interest on VAT	7,025,297.18
Deficiency Interest on WT	161,641.34
Total	Php 11,608,030.71
Delinquency Interest Rate	20%
Total	2,321,606.14
Multiplied by Period	
(5 years and 360 days)	5.98630137
TOTAL DELINQUENCY INTEREST	Php 13,897,834.03

c. Delinquency interest amounting to Php118,306.51 at the rate of twelve percent (12%) per annum on the amount of Php4,421,092.19, representing basic deficiency VAT of Php3,536,873.75 and 25% surcharge of Php884,218.44; on the deficiency interest amounting to Php7,025,297.18

which have accrued as afore-stated in (a) and on the deficiency interest on EWT and WTC amounting to Php161,641.31, computed form January 01, 2018 until January 31, 2018, pursuant to Section 249 (C) of the 1997 NIRC, as amended by Section 75 of RA No. 10963, computed as follows:

DELINQUENCY INTEREST
Pursuant to Sec. 75 of RA 10963 (TRAIN Law)
(January 1, 2018 to January 31, 2018)

Basic VAT Due Plus Surcharge	Php 4,421,092.19
Deficiency Interest on VAT	7,025,297.18
Deficiency Interest on WT	161,641.34
Total	11,608,030.71
Delinquency Interest Rate	12%
Total	1,392,963.69
Multiplied by Period	
(31 days)	0.08493151
TOTAL DELINQUENCY INTEREST	Php 118,306.51

The partial payment of petitioner in the amount of Php17,081,872.47, shall be **DEDUCTED** from the entire tax liability upon full payment thereof.

SO ORDERED.

Resolution dated September 5, 2018

"**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration Re: Amended Decision dated 1 June 2018** is **DENIED** for lack of merit."

THE FACTS

A narrative of the historical antecedents (as culled from the facts provided by the Court in Division) which led to the promulgation of the assailed Amended Decision is appropriate.

On December 15, 2010, the CIR issued a Preliminary Assessment Notice (PAN)[1] for alleged deficiency value-added tax (VAT) ; expanded withholding tax (EWT) and withholding tax on compensation (WTC) in the total amount of Php 6,309,862.96 for taxable year (TY) 2007. The PAN was received by Batangas Electric Cooperative 1 (Batelec 1) on December 17, 2010.

On January 13, 2011, Batelec 1 received a Formal Letter of Demand (FLD) and Assessment Notices dated January 10,

[1] Court Docket, Volume I, pp 32-36.

2011[2] for alleged deficiency VAT, EWT and WTC in the slightly higher amount of Php6,435,709.18 inclusive of interest, charges and compromise penalty.

Batelec 1 filed a protest against the FLD/assessments on February 14, 2011.[3] A series of submission of documents and communications between the CIR and Batelec1 ensued until finally, on December 12, 2011, the CIR issued a Final Decision on Disputed Assessment (FDDA) finding Batelec 1 liable for the alleged tax deficiencies. The FDDA was received by Batelec 1 on January 5, 2012.

On February 2, 2012, Batelec 1 filed a Petition for Review with the Court in Division appealing the decision embodied in the FDDA and for the cancellation and withdrawal of the subject assessments.

On April 29, 2015, the Court in Division promulgated a Decision denying Batelec 1's Petition for Review and upholding the assessments issued by the CIR for TY 2007.

On May 15, 2015, Batelec 1 filed a Motion for New Trial which was granted by the Court in Division allowing it to present additional evidence to support its arguments against the tax assessments.

On January 11, 2018, the Court in Division promulgated an Amended Decision upholding the tax assessments issued against Batelec 1 for TY 2007.

The CIR filed a Motion for Partial Reconsideration against this Amended Decision on January 31, 2018.

On June 1, 2018, the Court in Division promulgated a second Amended Decision which is now the assailed Amended Decision denying the CIR's Motion for Partial Reconsideration by upholding the tax assessments issued by the CIR and allowing Batelec 1's partial payment of Php17,081,872.47 to be deducted from its entire deficiency tax liabilies for TY 2007.

On June 25, 2018, the CIR filed a Motion for Partial Reconsideration on the assailed Amended Decision which was

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[2] Court Docket, Volume I, pp.35-40.
[3] Court Docket, Volume I, pp. 41-42.

denied by the Court in Division in a Resolution dated September 5, 2018.

On September 25, 2018, the CIR filed a Motion for Extension of Time to file Petition for Review which was granted by the Court and consequently gave the CIR a non-extendible period of fifteen (15) days or until October 10, 2018 to file his Petition for Review.

On October 10, 2018, the CIR filed a Petition for Review with the Court *En Banc.*

On October 29, 2018, the Court issued a Resolution ordering respondent Batelec 1 to file its Comment on the Petition for Review within ten (10) days from receipt thereof, after which the parties were directed to submit their respective memoranda.

Respondent Batelec 1 failed to file its Comment to the Petition for Review within the time prescribed by the Court which prompted the latter to issue a Resolution dated February 13, 2019 ordering the parties to submit their respective memoranda within thirty (30) days from receipt thereof.

The CIR filed its Memorandum on March 18, 2019 while respondent Batelec 1 filed a Manifestation in lieu of Memorandum on May 14, 2019.

In a Resolution dated July 10, 2019, the Court submitted the case for decision.

<u>THE ISSUE</u>

The sole issue presented by the CIR in its Petition for Review with the Court En Banc is as follows:

> Whether or not Batelec 1 is liable to pay the compromise penalty of Php56,000.00 which was not included by the Court in Division in the assailed Amended Decision.

Petitioner CIR's Arguments:

The CIR focuses its opposition to the portion of the assailed Amended Decision which cancelled the compromise penalty imposed on Batelec 1 applying the case of *CIR vs. Lianga Bay Logging Co., Inc., et.al.,* where the Supreme Court allegedly ruled that the imposition of a compromise penalty without the conformity of the taxpayer is illegal and unauthorized and that its imposition is dependent on the assent given by the taxpayer to pay said compromise penalty.

The CIR disagrees with the position held by the Court and maintains that the imposition of the compromise penalty finds legal basis in Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, which provides the liability of a taxpayer in cases of failure to file a return, supply correct and accurate information, withhold and remit tax and refund excess taxes withheld on compensation.

The CIR further cites Revenue Memorandum Order (RMO) No. 7-2015 in relation to RMO No. 1-90 which provides the Revised Consolidated Schedule of Compromise Penalties for violation of the NIRC, which he contends to be valid administrative issuances having the force and effect of law.

The CIR finds it erroneous for the Court to declare (in the assailed Amended Decision) that it has no jurisdiction to compel taxpayer to pay the compromise penalty on the ground that a compromise implies a mutual agreement between the parties and the choice of paying (or not paying) the compromise penalty distinctly belongs to the taxpayer. The CIR belies this theory of the Court because it is clear in Section 7 (a) (1) of Republic Act (RA) No. 1125 as amended by RA No. 9282 and RA No. 9503 that the Court of Tax Appeals (CTA) has jurisdiction to review by appeal, decisions of the CIR in cases involving disputed assessments, refunds of internal revenue taxes, fees, or other charges,and *penalties* in relation thereto. In the face of a clear provision of the law, the CIR finds that it is not complicated to assume that the Court has the requisite jurisdiction to rule upon the propriety of the imposition of the compromise penalty. As stated by the CIR, the inclusion of a compromise penalty is an integral part of the decision to be rendered by him on a disputed assessment which is clearly within the jurisdiction of the Court to review.

In its Manifestation in lieu of a Memorandum, Batelec 1 explains that a brief response in the form of a mere manifestation is proper so as to mimize costs and expenses as the issue raised by the CIR only involves the imposition of a compromise penalty. It claims that it has already paid a hefty sum to settle its tax liabilities in the instant case and in view of such payment, the Petition for Review filed by the CIR may be considered moot and academic. In its concise rebuttal of the arguments propounded by the CIR, Batelec 1 posits that Sections 250 and 255 of the 1997 NIRC, as amended, do not authorize the imposition of a compromise penalty without any form of compromise agreement and that by its very nature, a compromise penalty contemplates an "agreement" between the parties and not having entered into any such agreement with the CIR as regards the instant assessments, there is no legal basis to demand for its payment. In sum, Batelec 1 prays for the denial of the Petition for Review filed by the CIR on the sole issue of whether or not a compromise penalty may be legally imposed on top of its deficiency tax liabilites for TY 2007.

RULING OF THE COURT EN BANC

We shall first resolve the timeliness of the filing of the Petition for Review of the CIR with the Court *En Banc.*

On September 10, 2018, petitioner CIR received a copy of the Resolution of the Court in Division dated September 5, 2018 denying its Motion for Partial Reconsideration.

On September 25, 2018, the CIR filed a Motion for Extension of Time to file its Petition for Review. This Motion was granted by the Court on September 26, 2018 and gave the CIR until October 10, 2018 to file the Petition for Review.

On October 10, 2018, the CIR filed his Petition for Review with the Court *En Banc* which was the last day of the extended period granted by the Court on September 26, 2018, hence said Petition was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

Petitioner CIR's sole bone of contention is the deletion and non-inclusion of the compromise penalty in the assailed Amended Decision ordering Batelec 1 to pay the deficiency taxes for TY 2007. As earlier mentioned, the Court in Division rendered the assailed Amended Decision upholding the tax assessments issued against Batelec 1 inclusive of deficiency and delinquency interests provided under Section 249 (B) and (C) of the 1997 NIRC, as amended, but without the compromise penalty on the ground that "there is nothing in the records which would show that petitioner consented to the compromise penalty."

The ruling of the Court in Division in the assailed Amended Decision (dated June 1, 2018) as regards the non-imposition of the compromise penalty is consistent with its position in the original Decision dated April 29, 2015 and the first Amended Decision dated January 11, 2018.

Petitioner opposes the conclusion of the Court as regards the compromise penalty and firmly asserts that this is authorized under Section 255 of the 1997 NIRC, as amended, and as implemented by RMO 7-2015 in relation to RMO 1-90.

We analyze the concept and legal basis of imposing a compromise penalty in light of the relevant provisions of the 1997 NIRC, as amended, its implementing regulations and applicable jurisprudence.

The non-payment of taxes within the period specified by law carries with it not only the important obligation of paying the taxes on demand but also the concomitant effect of payment of penalties and interest for failure to pay them on time. Title X Chapter I of the 1997 NIRC, as amended, which was the applicable law in 2007 provides for the statutory offenses and penalties for certain violations which includes failure to file any return and pay taxes as required under the provisions of the said Code. Section 248 of the 1997 NIRC, as amended, provides for the civil penalties while Section 249 provides for the imposition of interests, and we quote both provisions below:

"Section 248. *Civil Penalties.-*

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein."

"SEC. 249. *Interest.* -

(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. - In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

> (2) The amount of the tax due for which no return is required, or
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.[2]
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> (D) Interest on Extended Payment. - If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid."

The compromise penalty, although not specifically named as such in the 1997 NIRC, as amended, has been included as one of the penalties imposed by the Bureau of Internal Revenue (BIR) in some of the tax assessments issued, citing Section 255 as its legal basis, quoted below:

> "Section 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withholdand Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information , who willfully fails to pay such tax, make such return. Keep such record, or supply such correct and accurate information or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or time required by law or rules and regulations shall, **in addition to other penalties provided by law,** upon conviction thereof, be punished by a fine of not less than ten thousand pesos (P10,000) but not more than Twenty Thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."(emphasis supplied)

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So in sum, there are types of penalties that may be imposed by the BIR for failure to pay the tax within the period prescribed by law, namely: a) Civil Penalties under Section 248, b) Interest under Section 249, c) Compromise Penalty under Section 255 of the 1997 NIRC, as amended, and d)

Imprisonment and fine for criminal conviction of tax evasion cases.

The compromise penalty must not be confused with the compromise settlement provided in Section 204 (A) of the 1997 NIRC, as amended. A compromise penalty is just an amount a taxpayer pays for various tax violations provided under the afore-quoted Section 255 of the 1997 NIRC, as amended, while the compromise settlement under Section 204 (A) of the same Code contemplates of a situation where the taxpayer and the BIR agree to the payment of a lesser amount of tax (than what is actually due to the government) but only in two instances; financial incapacity of the taxpayer and doubtful validity of the assessment.

The BIR has issued several regulations to implement Section 255 of the 1997 NIRC, as amended, and listed down the various tax violations subject to compromise penalty. RMO No. 19-2007 issued on August 8, 2007 which amended RMO No. 1-90 issued on November 28, 1989, provided for the *Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.* This was later on amended by RMO No. 7-2015 issued on January 22, 2015 which again revised the schedule of compromise penalties for violations of the NIRC.

The enactment of RA No. 10963 otherwise known as the "TRAIN Law" has also resulted to the issuance of Revenue Memorandum Circular (RMC) No. 54-2018 which again clarified the concept of a compromise penalty in light of the provisions of the new law.

More importantly, jurisprudence has also acknowledged the imposition of a compromise penalty for violations of the NIRC but with a condition that it can only be collected or imposed by agreement between the taxpayer and the tax authorities. In the case of *Wonder Mechanical Engineering Corporation vs. the Court of Tax Appeals,*[4] the Supreme Court (quoting the decision of respondent CTA) ruled that a "compromise penalty cannot be imposed without an agreement or conformity of a taxpayer." In the cited case of *CIR vs. Lianga Bay Logging Co. Inc.*[5], the Supreme Court again reiterated that the imposition of a compromise penalty "without the conformity

[4] G.R. Nos. L-22805 and L-27858, June 30, 1975.
[5] G.R. No. L-35266, January 21, 1991.

of a taxpayer is illegal and unauthorized." The fact that the BIR uses the term "compromise penalty" connotes that there should have been prior conformity by the taxpayer. Compromise implies agreement. One party cannot impose it upon the other.[6]

Even the BIR, in RMO No. 19-2007 acknowledges that the compromise penalty is an amount that should not form part of the assessment notice and that the payment thereof should be *suggested* to the taxpayer in order to avoid criminal prosecution which opens up the possibility that the taxpayer may refuse to pay such an amount. We quote the relevant portions of RMO 19-2007, thus:

> "RMO No. 19-2007
>
> III. Guidelines and Instructions
>
> 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 assessement 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.
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> 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 that a taxpayer refuses to pay the suggested compromise penalty.** (emphasis supplied)

Based on the above disquisitions on the nature of a compromise penalty, the CIR's argument in its Petition for Review in the instant case must fail. There is no evidence offered by the CIR to prove that the taxpayer Batelec 1 agreed to pay any compromise penalty as correctly ruled by the Court in Division in the assailed Amended Decision, therefore it cannot be made to pay said penalty, and we quote:

> "The case of *CIR vs. Lianga Bay Logging Co., Inc., et.al.,* is a case in point where the Supreme Court held that the imposition of compromise penalty without the conformity of the taxpayer is

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[6] CIR vs. Armando Abad and the CTA, G.R. No. L-19627, June 27, 1968.

> illegal and unauthorized. **It follows that a compromise penalty may be imposed if the taxpayer agreed to it, and there is nothing in the records which would show that petitioner consented to the compromise penalty."** (emphasis supplied)

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Amended Decision dated June 1, 2018 rendered by the Third Division of this Court in CTA Case No. 8423 and its Resolution dated September 5, 2018, are hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice