REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

ARCHIPELAGO MOTOR CORPORATION, Petitioner,	**CTA EB No. 1258** (CTA Case No.8321)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAR 01 2018 11:47 a.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"PARTIAL MOTION FOR RECONSIDERATION (of the Resolution dated August 15, 2017)"** filed on September 19, 2017, praying for reconsideration of the Court *En Banc*'s Resolution dated August 15, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration* and *Motion to Withdraw Petition* are **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In its *Partial Motion for Reconsideration*, petitioner contends that the Certificate of Availment is sufficient proof that the assessment subject of the instant case has been fully satisfied by the acceptance of the offer for compromise settlement of the Bureau of Internal Revenue (BIR), invoking Revenue Delegation Authority Order (RDAO) No. 6-2007; and that as the said Certificate confirms the settlement of the disputed assessment, this renders the issue of validity of the said assessment moot and academic.

In the Resolution dated October 4, 2017[1], respondent was directed to file Comment to aforesaid motion within ten (10) days from notice. It appears however that respondent failed to file said comment despite due notice, as per Records Verification dated January 16, 2018.[2]

Hence, this resolution.

THE COURT *EN BANC*'S RULING

Petitioner's *Partial Motion for Reconsideration* lacks merit.

To reiterate, the Certificate of Availment No. CAV 200100001302 dated February 3, 2017 issued in favor of petitioner is only to the effect that petitioner's offer of compromise for the settlement of its VAT liability for 2001 has been "accepted". Thus, the word "accepted", as used in the said Certificate, cannot be treated as tantamount to the word "approved". Especially so that the certification was done by a subordinate to respondent, *i.e.*, an Assistant Commissioner; and considering that the approval of a compromise settlement rests on the National Evaluation Board (NEB), with the concurrence of respondent, not on any other officer or officers of the BIR, and that the power to compromise cannot be delegated to such an official in accordance with Section 7(c) of the National Internal Revenue Code of 1997.

Pertinent portions of RDAO No. 6-2007[3], the administrative

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[1] Docket, pp. 166-167
[2] Records Verification issued by Leocadia De Alday, Records Officer I, CTA Judicial Records Division, Docket, p. 168
[3] SUBJECT: Delegation of Authority to Sign Termination Letter or Letter of Denial/Notice of Disqualification for Abatement and Compromise Settlement Cases After Approval or Disapproval of the Action on the Application for Abatement and Compromise by the Proper Authority Pursuant to Section 204 in Relation to Section 7 of the National Internal Revenue Code of 1997

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issuance being invoked by petitioner, read as follows:

> "For Compromise Settlement, approval of the application for Compromise on deficiency taxes assessed by the regional offices amounting to Five hundred thousand pesos (P500,000) or less, may be delegated to the Regional Evaluation Board. However, for all other cases, the approval of the application for Compromise shall be the sole authority of the CIR and is covered by the general prohibition on non-delegation of the power of the CIR to compromise tax liability. Provided, however, that where the basic tax exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates (10% for cases of financial incapacity; 40% for cases of doubtful validity of the assessment), the compromise shall be subject to the approval of the National Evaluation Board (NEB), composed of the CIR and the Deputy Commissioners of the BIR.
>
> II. Delegated Authority
>
> The signing/approval of the CIR on the recommendation/final report on the application for Abatement being the final act of approving/disapproving such application shall still be the sole authority of the CIR. **However, any succeeding certification to document/prove the approval or disapproval of the same can be properly delegated.**
>
> In order, therefore, to expedite the disposition of tax cases which are the subject of application for Abatement, the signing of the Termination Letter or Letter of Denial/Notice of Disqualification, as the case may be, notwithstanding the provisions of Revenue Memorandum Order No. 23-2006 and other issuances to the contrary, is hereby delegated to the following officials:
>
> xxx xxx xxx
>
> **For Compromise Settlement cases, recommendation/final report on the application shall be signed/approved as herein-stated:**
>
> xxx xxx xxx
>
> • **Cases which, by law, have been entrusted to the CIR — CIR**
>
> • **Cases which, by law, have been entrusted to the National Evaluation Board — NEB**
>
> **As there was no prohibition on the delegation of the signing of the certification documenting/proving the approval/disapproval of the application, <u>the signing of the Termination Letter or the Letter of Denial/Notice of Disqualification</u> is hereby delegated to the following:**
>
> xxx xxx xxx

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> - **Cases which, by law, have been entrusted to the CIR — ACIR, Collection Service for regional cases/ACIR or HREA-LTS for LTS cases**
>
> - **Cases entrusted to the NEB — ACIR, Collection Service for regional cases/ACIR or HREA-LTS for LTS cases**
>
> **The aforesaid Termination Letter or Letter of Denial/Notice of Disqualification shall only be signed by the delegate after the recommendation/final report has been signed/approved by the concerned REB/CIR/NEB, as the case may be.**" *(Emphases and underscoring supplied)*

A careful reading of the foregoing BIR issuance would reveal that what is being delegated under RDAO No. 6-2007, *inter alia*, is *"the signing of Termination Letter or the Letter of Denial/Notice of Disqualification"* in connection with the approval or disapproval of an application of a tax compromise. As a corollary, it must be emphasized that said RDAO does not state, in any way, that a *"Certificate of Availment"* issued by the named delegate is included in the term *"Termination Letter"*. Thus, the subject Certificate of Availment cannot be considered as falling under the delegated authority covered by RDAO No. 6-2007. Neither is the same RDAO explicit that a *"Certificate of Availment"* is proof that an application for compromise has been approved by the NEB. Further, the subject Certificate of Availment cannot be treated as an indication that petitioner's application for compromise settlement has been approved by the NEB, with the concurrence of respondent CIR.

In addition, it must be noted that Certificate of Availment No. CAV 200100001302 dated **February 3, 2017** is not in accordance with the prescribed format under Revenue Memorandum Order No. (RMO) 3-2017 dated **February 1, 2017**[4]. Thus, the same cannot be recognized by this Court. Said RMO reads:

> "**All approved applications for compromise settlement and / or abatement of penalties shall be issued Certificate of Availment (CA) following the prescribed format as per attached Annexes 'A'** and 'B', while denied applications shall be issued Notice of Denial (ND) following prescribed format as per attached annexes 'C' and 'D'.

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[4] SUBJECT: Amending Further the Prescribed Format for the Certificate of Availment / Approval and Notice of Denial Relative to Application for Compromise Settlement and / or Abatement of Penalties Pursuant to Section 204 of the Tax Code, as Amended

Both CA and ND shall be included as accountable forms of the Bureau.

This Order takes effect immediately." *(Emphases supplied)*

Relative thereto, Annex "A" of the said RMO No. 3-2017 is reproduced hereunder:

Republic of the Philippines
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

ANNEX "A"

CERTIFICATE OF AVAILMENT

(Compromise Settlement)

This is to certify that ______________________________

of ______________________________

with Taxpayer Identification Number ____________ has availed the provisions

of ______________________, and the application/s for the compromise

settlement of deficiency ______________________________

tax/es amounting to ______________________________

(P__________) under Assessment No/s. ______________________

dated __________ covering taxable year/period __________ has/have

been approved by the ______________________________.

Issued this ______ day of ______________, ______

Commissioner of Internal Revenue

By:

CAC 2017 00000000

It is noteworthy that the foregoing is clear, assuming all entries are all filled up, as to whether or not an application for compromise settlement is approved by the appropriate authority of the BIR. This is not so in the case of the subject Certificate of Availment.

In fine, petitioner fails to convince Us that the Certificate of Availment No. CAV 200100001302 dated February 3, 2017 is proof that its application for compromise of the subject tax assessment has been approved by the NEB, with the concurrence of respondent CIR.

WHEREFORE, premises considered, petitioner's *Partial Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion dated August 15, 2017)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Official Business)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Official Business)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice