REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SATURN HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9085

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
AUG 18 2017 : 3:05 pm

x- -x

DECISION

***DEL ROSARIO, P.J.*:**

This Petition for Review was filed by petitioner Saturn Holdings, Inc.[1] to appeal the Final Decision on Disputed Assessment (FDDA) dated June 1, 2015 issued by respondent Commissioner of Internal Revenue. In the FDDA, respondent denied petitioner's protest against the Formal Letter of Demand dated October 24, 2014 and Assessment Notice No. ELTAD-II-DS-09-0017 dated October 24, 2014 which assessed petitioner for deficiency Documentary Stamp Tax (DST) for the year 2009 in the total amount of Fifty Nine Million Five Hundred Thousand Five Hundred Twenty Eight Pesos and Fifty Nine Centavos (₱59,500,528.59), consisting of surcharge, interests and compromise penalty.

---

[1] The Petition for Review was filed pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended and Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA).

om

THE PARTIES

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission on February 18, 1997, with Company Registration No. A199702977. It is primarily engaged in the purchase, retention, possession or acquisition of shares of stock, franchise, patents, bonds, mortgages, obligations, debts or credits of any person or entity legally constituted within or outside the Philippine Islands, and issuance of issue shares of stocks, bonds, or other obligations for the payment of articles or properties acquired by the corporation for other legal considerations, all to the extent permitted by law, without however engaging as stockbroker or as dealer of securities.[2]

Respondent Commissioner of Internal Revenue (BIR) holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS

On May 25, 2010, petitioner received a Letter of Authority LOA-124-2010-00000073 dated May 14, 2010, Notice of Change of Audit Jurisdiction dated May 24, 2010, Letter Request for Data Files for Tax Audit, List of Requirements and List of Assets from respondent, which authorized respondent's representatives to conduct an examination of petitioner's books of accounts and other accounting records for all Internal Revenue Taxes for the period January 1, 2009 to December 31, 2009.[4]

On November 19, 2011, in reply to the October 18, 2011 Notice of Informal Conference received from respondent, petitioner submitted a letter dated November 10, 2011 saying that they are willing to pay the Basic Tax Due upon receipt of the Preliminary Assessment Notice (PAN) and that they have the intention to avail of the remedy of applying for abatement of penalties pursuant to Section 204(B) of the

---

[2] The Admitted Facts, Joint Stipulation of Facts and Issues ("JSFI"), CTA Docket, pp. 289-290.
[3] The Admitted Facts, JSFI, CTA Docket, p. 290.
[4] The Admitted Facts, JSFI, CTA Docket, p. 290.

ml

National Internal Revenue Code (NIRC), as amended and its implementing regulations.[5]

On December 23, 2011, petitioner received the PAN and Details of Discrepancies wherein respondent assessed petitioner for deficiency DST amounting to ₱81,853,249.96, broken down as follows:[6]

	ADVANCES TO AFFILIATES	ADVANCES FROM AFFILIATES
Amount	4,160,016,015.00	4,707,368,513.00
DST Rate	1/200	1/200
DST Due	20,800,081.00	23,536,843.00
DST Paid	0.00	0.00
DST Deficiency	20,800,081.00	23,536,843.00
Surcharge	5,200,020.25	5,884,210.75
Interest from 01/06/09 to 12/29/11	12,400,267.46	14,031,827.50
Total Amount Due	₱38,400,368.71	₱43,452,881.25
		₱81,853,249.96

On December 28, 2011, petitioner paid the Basic Tax Due amounting to ₱44,336,924.00. On the same day, it filed an "Application for Abatement or Cancellation of Tax, Penalties and/or Interest" for the cancellation of the imposed surcharge and interest amounting to ₱37,516,325.96 for taxable year 2009 based on "non-compliance due to difficult interpretation of the law", a ground prescribed under Revenue Regulations (RR) No. 13-2001 (which implements Section 204(B), in relation to Sections 7(C) and 290 of the NIRC).[7]

On October 28, 2014, petitioner received respondent's Formal Letter of Demand (FLD) together with Details of Discrepancies and Assessment Notice No. ELTAD-II-DS-09-0017 (FAN) assessing petitioner for deficiency DST in the aggregate amount of ₱59,500,528.59 for taxable year 2009, computed as follows:[8]

DST Deficiency (per PAN)	₱44,336,924.00
Surcharge	11,084,231.00
Interest from 01/06/2009 to 12/29/2011	26,432,094.96
Total amount due per PAN	81,853,249.96
Less: Basic DST paid on 12/28/2011	(44,336,924.00)

[5] The Admitted Facts, JSFI, CTA Docket, p. 290.
[6] The Admitted Facts, JSFI, CTA Docket, p. 290.
[7] The Admitted Facts, JSFI, CTA Docket, p. 291.
[8] Exhibit R-13; Exhibit P-5.

mn

Deficiency DST Due	37,516,325.96
Interest from 12/29/2011 to 11/30/2014	21,934,202.63
Compromise penalty	50,000.00
Total amount due	₱59,500,528.59

On November 21, 2014, petitioner filed an Administrative Protest by way of a Request for Reconsideration to the assessment contained in respondent's FLD.[9]

On June 11, 2015, petitioner received the Final Decision on Disputed Assessment (FDDA) wherein respondent denied petitioner's request on the ground that it lacks factual and legal bases and consequently, sustained the deficiency DST assessment as stated in the FLD.[10]

Due to the denial of its protest, petitioner filed the instant Petition for Review on July 10, 2015.[11]

On October 5, 2015, respondent posted his Answer, which was received by the Court on October 15, 2015.[12] Respondent interposed the following special and affirmative defenses: (i) petitioner's advances to/from affiliates are in essence debt instruments which are subject to DST; (ii) since petitioner failed to pay the DST within the period prescribed by law, it is liable for surcharge, deficiency interest, delinquency interest and compromise penalty; (iii) petitioner's application for abatement was given due course by respondent but due to petitioner's failure to adduce proof to support its claim, respondent denied petitioner's application and imposed civil and compromise penalties; (iv) the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[13] is applicable in the instant case; and, (v) petitioner is liable for civil penalties and compromise penalty for taxable year 2009.

On November 23, 2015, petitioner filed its Pre-Trial Brief,[14] while respondent filed his Pre-Trial Brief on January 8, 2016.[15]

---

[9] The Admitted Facts, JSFI, CTA Docket, p. 291.
[10] The Admitted Facts, JSFI, CTA Docket, p. 291.
[11] Petition for Review, CTA Docket, pp. 10-94.
[12] Answer, CTA Docket, pp. 124-140.
[13] G.R. Nos. 163653 and 167689, July 19, 2011.
[14] CTA Docket, pp. 222-229.
[15] CTA Docket, pp. 233-242.

cm

On February 5, 2016, the parties filed a Joint Stipulation of Facts and Issues,[16] which was approved by the Court in a Resolution promulgated on February 16, 2016.[17] The Court terminated the Pre-Trial and issued a Pre-Trial Order on March 1, 2016.[18]

During trial, both parties presented their respective evidence. On April 29, 2016, petitioner filed its Formal Offer of Documentary Evidence,[19] without any comment from respondent as per Records Verification dated May 31, 2016.[20] Petitioner's formally offered pieces of evidence were admitted in the Court's Resolution dated June 22, 2016,[21] except for Exhibits "P-1", "P-5-b", "P-11" and "P-11-a."

On June 27, 2016, petitioner filed a "Motion for Reconsideration of Resolution dated June 22, 2016 and received on June 24, 2016",[22] without respondent's comment as per Records Verification dated July 22, 2016.[23]

On August 23, 2016, the Court issued a Resolution partially granting petitioner's Motion for Reconsideration,[24] thereby admitting Exhibits "P-1" and "P-5-b." Exhibits "P-11" and "P-11-a" were still denied admission for petitioner's failure to submit the duly-marked documents.

On January 9, 2017, respondent posted his Formal Offer of Evidence.[25] Petitioner filed its comment thereon on January 18, 2017.[26] The Court admitted all of respondent's exhibits in a Resolution dated March 9, 2017.[27]

On April 12, 2017, petitioner filed a "Motion to Admit (The Attached Memorandum for the Petitioner)",[28] which the Court granted

---

[16] CTA Docket, pp. 289-296.
[17] CTA Docket, p. 299.
[18] CTA Docket, pp. 302-309.
[19] CTA Docket, pp. 322-327.
[20] CTA Docket, p. 335.
[21] CTA Docket, pp. 341-342.
[22] CTA Docket, pp. 343-347.
[23] CTA Docket, p. 351.
[24] CTA Docket, pp. 359-362.
[25] CTA Docket, pp. 388-395.
[26] CTA Docket, pp. 381-387.
[27] CTA Docket, pp. 402-403.
[28] CTA Docket, pp. 409-434.

and admitted in an Order dated April 18, 2017.[29] Respondent, on the other hand, filed his Memorandum on May 9, 2017.[30]

The case was submitted for decision on May 24, 2017,[31] hence this decision.

THE ISSUE

In their Joint Stipulation of Facts and Issues,[32] the parties submitted for resolution the sole issue of whether or not petitioner is liable for surcharge in the amount of ₱11,084,231.00; deficiency interest in the amount of ₱26,432,094.96; delinquency interest in the amount of ₱21,934,202.63 and compromise penalty in the amount of ₱50,000.00 or a total amount of ₱59,500,528.59 for assessed deficiency DST for the taxable year 2009, pursuant to the FLD/FAN and the FDDA.

THE PARTIES' ARGUMENTS

Petitioner claims that it is not liable to pay the surcharge, interests and compromise penalty amounting to ₱59,500,528.59. It also contends that the computation and basis of imposition of ₱50,000.00 as compromise penalty is erroneous.[33]

Petitioner argues that it cannot be considered in default of the fulfillment of its tax obligation since it believed in good faith that it should not have been liable for DST on inter-company advances made by petitioner in 2009. Petitioner claims that it was respondent's position, as manifested in its prevailing rulings at that time, that intercompany advances were not subject to DST. It was only after the Supreme Court's decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development* Corporation[34] in 2011 that

---

[29] CTA Docket, p. 435.
[30] CTA Docket, pp. 437-454.
[31] CTA Docket, p. 456.
[32] CTA Docket, p. 292.
[33] CTA Docket, p. 425.
[34] G.R. Nos. 163653 and 167689, July 19, 2011.

petitioner's liability for DST was established. As a consequence, petitioner immediately paid respondent its DST liability.[35]

Moreover, petitioner claims that its application for abatement was not acted upon by the BIR in callous disregard of taxpayer's concerns.[36]

On the other hand, respondent claims that since petitioner failed to pay the DST within the period prescribed by law, it is rightfully liable for surcharge, deficiency interest, and delinquency interest and compromise penalty.[37]

Respondent also states that petitioner's application for abatement was given due course, however, the latter failed to adduce any proof to support its claim. Hence, respondent was constrained to deny petitioner's application and imposed the proper civil and compromise penalty.[38]

THE COURT'S RULING

The FAN issued against petitioner is void

A close perusal of the FLD and FAN reveals that both failed to demand payment of the surcharge, interest and compromise penalty mentioned therein within a specific period. While the FLD specifically states that petitioner is requested to pay its aforesaid deficiency surcharge and interest through the duly authorized agent bank in which petitioner is enrolled within the time shown in the enclosed assessment notice, **the due date in the enclosed FAN was conspicuously left blank**, *viz.*:

---

[35] CTA Docket, p. 432.
[36] CTA Docket, p. 426.
[37] CTA Docket, p. 443.
[38] CTA Docket, p. 447.

m

BIR FORM NO. **0401**
REVISED: June 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

RETURN PERIOD	AUDIT RESULT / ASSESSMENT NOTICE	ASSESSMENT NUMBER
2009		LTAD-II-DS-09-0017
		DATE ISSUED 10/24/2014

TIN: 005-011-362-000
NAME: SATURN HOLDINGS, INC.
ADDRESS: SMI Compound, C. Raymundo Ave., Maybunga, Pasig City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS.

TAX TYPE:	PARTICULARS	AMOUNT	
DOCUMENTARY STAMP TAX			
BASED ON/REASON:			
SECS. 248(A)(1) and 249(B), NIRC RR 18-2003	Unpaid surcharge and interest on deficiency DST	Basic	37,516,325.96
		Interest	21,934,202.63
		Comp. penalty	50,000.00
		Total	59,500,528.59
DUE DATE:			

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

EXHIBIT "R-15"
FEB 0 2 2016
RESPONDENT
(ORIGINAL)

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

NSV
FMA
M/V
LBS
RRGM
AAD
CRM

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. **0401**
REVISED: June 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD	AUDIT RESULT / ASSESSMENT NOTICE	BCS NUMBER (TO BE FILLED UP BY BIR)
2009		

EXHIBIT "R-15-a"
FEB 0 2 2016
RESPONDENT
(ORIGINAL)

TIN: 005-011-362-000
NAME: SATURN HOLDINGS, INC.
TAX TYPE: DOCUMENTARY STAMP TAX
AMOUNT PAYABLE: 59,500,528.59
DUE DATE:

FOR FILING OF PROTEST
☐ I/WE DISAGREE TO THE ABOVE FINDINGS (SUBMIT LETTER OF PROTEST)

TAXPAYER'S SIGNATURE OVER PRINTED NAME

POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	TO BE FILLED UP BY BIR
CASH					AUDITED BY:
CHECK					
TAX DEBIT MEMO					DATE:
OTHERS					

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

EXHIBIT P-18

BIR FORM NO. **0401**
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

RETURN PERIOD		ASSESSMENT NUMBER
2009	[redacted]	ELTAD-II-DS-09-0017
		DATE ISSUED 10/24/2014

TIN 005-011-362-000
NAME SATURN HOLDINGS, INC.
ADDRESS SMI Compound, C. Raymundo Ave., Maybunga, Pasig City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE	PARTICULARS	AMOUNT
DOCUMENTARY STAMP TAX		
BASED ON/REASON:		
SECS. 248(A)(1) and 249(B), NIRC RR 18-2003	Unpaid surcharge and interest on deficiency DST	Basic 37,516,325.96 Interest 21,934,202.63 Comp. penalty 50,000.00 Total 59,500,528.59
DUE DATE		

IMPORTANT
PLEASE REFER AT THE BACK
OF THIS NOTICE
FOR FURTHER INSTRUCTIONS

FEB 0 2 2016

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

FAITHFUL REPRODUCTION OF

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD		RCS NUMBER (TO BE FILLED UP BY BIR)
2009	[redacted]	

		FOR FILING OF PROTEST
TIN	005-011-362-000	☐ I/WE DISAGREE TO THE ABOVE FINDINGS. (SUBMIT LETTER OF PROTEST)
NAME	SATURN HOLDINGS, INC.	
TAX TYPE	DOCUMENTARY STAMP TAX	TAXPAYER'S SIGNATURE OVER PRINTED NAME
AMOUNT PAYABLE	59,500,528.59	
DUE DATE		POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	TO BE FILLED UP BY BIR
CASH					AUDITED BY
CHECK					
TAX DEBIT MEMO					DATE
OTHERS					

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[39] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "An assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx xxx xxx.
>
> xxx xxx
>
> (N)either the NIRC nor the revenue regulations governing the protest of assessments provide a specific definition or form of an assessment. However, the NIRC defines the specific functions and effects of an assessment. To consider the affidavit attached to the Complaint as a proper assessment is to subvert the nature of an assessment and to set a bad precedent that will prejudice innocent taxpayers.
>
> True, as pointed out by the private respondents, an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> xxx xxx xxx
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. **It did not state a demand or a period for payment.** Worse, it was addressed to the justice secretary, not to the taxpayers." (Boldfacing supplied)

In the present case, the FAN referred to in the FLD bears no due date for the payment of the alleged surcharge, interest and compromise penalty. Since the FAN failed to demand payment thereof within a specific period, the Court finds that the FAN cannot be

[39] G.R. No. 128315, June 29, 1999.

considered as a valid formal assessment notice. The fatally infirmed FAN and consequently, the FLD and FDDA which demand the payment of the deficiency DST (consisting of surcharge, interests and compromise penalty, in the total amount of ₱59,500,528.59) as contained in the void FAN, must perforce be cancelled and set aside.

Petitioner is not liable for surcharge and interest

Even assuming that the FAN is valid, the Court holds that petitioner is not liable to pay the surcharge, interests and compromise penalty.

In a number of cases, the Supreme Court has decreed the cancellation of surcharges and interests upon showing that the taxpayer believed in good faith that at the time the tax was due for payment, the taxpayer was not liable to pay the same on the basis of previous rulings issued by respondent. In *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*,[40] the Supreme Court stated:

> "Nevertheless, all is not lost for petitioner. **The settled rule is 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.** In *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, it was held that:
>
>> We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. It did not delay filing the returns for the sales taxes corresponding to the period in question, let alone did so purposely. **The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.**
>>
>> WHEREFORE, modified by eliminating the surcharge of 25% imposed upon appellant, the judgment appealed from is affirmed, without costs.

---

[40] G.R. No. 166786, September 11, 2006.

ml

> This ruling was subsequently reiterated in *Tuason, Jr. v. Lingad*, where we deleted the order to pay interest and surcharges, and in *Commissioner of Internal Revenue v. Republic Cement Corporation*, where the **same surcharge was dispensed with because of the taxpayer's good faith and the BIRs previous erroneous interpretation of the laws involved.** We see no reason not to apply the same doctrine in the instant case which settles the divergent rulings of the BIR on DST and establishes the foremost categorical pronouncement of the Court that pledge transactions entered into by pawnshops are subject to DST." (Boldfacing supplied)

The doctrine laid down in *Lhuillier* was further reiterated in the cases of *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*,[41] and in *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue*.[42] In *Antam*, the Supreme Court declared:

> "**Good faith and honest belief that one is not subject to tax on the previous interpretation of the government instrumentality tasked to implement the tax law are sufficient justification for petitioner to be spared of interest and surcharges.**
>
> The dispute as to the tax liability of petitioner for DST on pawn tickets arose not simply because of ordinary divergence of views in the interpretation of the law. Petitioners position was founded on the previous interpretation of the BIR that a pawn ticket is not a printed evidence of indebtedness, hence, not subject to DST. That the posture of petitioner is plausible is supported by the fact that even the CTA, the specialized body handling tax cases, sustained its position. It was only recently, in ***Lhuillier***, that the Court made a categorical pronouncement that pawn tickets are subject to DST." (Boldfacing supplied)

In *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc./St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue*,[43] the Supreme Court stated:

> "However, St. Luke's has good reasons to rely on the letter dated 6 June 1990 by the BIR, which opined that St. Luke's is "a corporation for purely charitable and social welfare purposes" and thus exempt from income tax. In *Michael J. Lhuillier, Inc. v. Commissioner of Internal Revenue*, the Court said that **'good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to**

---

[41] G.R. No. 179085, January 21, 2010.
[42] G.R. No. 167962, September 19, 2008.
[43] G.R. Nos. 195909 and 195960, September 26, 2012.

m\

> **implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.'"** (Emphases supplied)

More recently, in *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*,[44] the Supreme Court applied the foregoing doctrine when it ruled that:

> "As to whether SLMC is liable for compromise penalty under Section 248(A) of the 1997 NIRC for its alleged failure to file its quarterly income tax returns, **this has also been resolved in G.R. Nos. 195909 and 195960 (*Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*), where the imposition of surcharges and interest under Sections 248 and 249 of the 1997 NIRC were deleted on the basis of good faith and honest belief on the part SLMC that it is not subject to tax.** Thus, following the ruling of the Court in the said case, SLMC is not liable to pay compromise penalty under Section 248(A) of the 1997 NIRC." (Boldfacing supplied)

Records disclose that petitioner believed in good faith that no DST was due on its advances to/from affiliates in 2009 as it relied on respondent's previous rulings declaring that intercompany advances are not subject to DST. Among these rulings include BIR Ruling No. DA-666A-99 in relation to BIR Ruling No. 191-99A both dated December 3, 1999; BIR Ruling No. DA-696-06, dated December 11, 2006; BIR Ruling No. DA-701-07 dated December 28, 2007; BIR Ruling No. DA-016-08 dated January 17, 2008; and BIR Ruling No. DA-(C-035) 127-08 dated August 8, 2008.[45]

When the Supreme Court finally declared that intercompany advances are subject to DST in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[46] in 2011, petitioner manifested its willingness to pay its basic DST liability just a few days after its receipt on October 28, 2011 of the Notice of Informal Conference with regard to its DST liability.[47] Thus, in its Letter dated November 10, 2011, petitioner averred:

> "November 10, 2011
>
> THE OIC-ASSISTANT COMMISSIONER
> Large Taxpayers' Service

---

[44] G.R. No. 203514, February 13, 2017.
[45] Memorandum for the Petitioner, CTA Records, pp. 418-419.
[46] G.R. Nos. 163653 and 167689.
[47] Exhibit "R-6", BIR Records, pp. 71-72.

d

Bureau of Internal Revenue
Quezon City

Attention: Group Supervisor Teodore L. Maroket
Large Taxpayers Audit Division II – Excise

Sir:

With reference to your Notice of Informal Conference dated October 18, 2011, **please be informed that we would be willing to pay the basic taxes due upon receipt of the corresponding Pre-Assessment Notice.**

However, we reserve the right to apply for an abatement of the penalties pursuant to the provisions of Section 204 (B) of the Tax Code, and its' implementing regulations.

Very truly yours,

Shirley L. Santillan
Corporation Secretary"[48] (Emphases supplied)

On December 23, 2011, petitioner received the PAN and Details of Discrepancies;[49] and on December 28, 2011, petitioner indeed paid the basic DST due amounting to ₱44,336,924.00.[50]

After considering the parties' respective evidence, the Court is inclined to give credence to petitioner's claim that its non-payment of DST for taxable year 2009 was due to an honest belief that it was not subject to DST. Petitioner's immediate willingness to settle its deficiency DST assessment after the *Filinvest case* has confirmed the taxability of intercompany advances for DST bolsters petitioner's stance that it acted in good faith and that it did not intend to evade its responsibilities as a taxpayer.

In fine, the Court holds that petitioner's reliance on respondent's previous rulings that it was not liable for DST justifies the non-imposition of the surcharge, deficiency and delinquency interests.

---

[48] Exhibit "P-6", CTA Records, p. 332.
[49] Exhibit "P-4" and "P-4-a", BIR Records, pp. 85-83.
[50] Exhibit "P-7" and "P-7-a", CTA Records, pp. 333-334.

Petitioner is not liable for compromise penalty

Respondent imposed on petitioner a compromise penalty in the amount of ₱50,000.00. The Court finds no legal basis for such imposition.

Under Revenue Memorandum Order ("RMO") No. 01-90, as amended by RMO No. 7-2015, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same.

It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[51] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[52]

In this case, there is nothing in the records which would establish that petitioner consented to the imposition of the compromise penalty. In the absence of said consent, respondent's assessment of the ₱50,000.00 cannot therefore be sustained.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice No. ELTAD-II-DS-09-0017 dated October 24, 2014, assessing petitioner Saturn Holdings, Inc. for deficiency DST for the taxable year 2009, consisting of surcharge, interests and compromise penalty, in the total amount of ₱59,500,528.59, is declared **VOID**. Accordingly, the Formal Letter of Demand dated October 24, 2014 and the Final Decision on Disputed Assessment dated June 1, 2015 demanding payment thereof are hereby **CANCELLED** and **WITHDRAWN.**

---

[51] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[52] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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