REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HONDA CARS KALOOKAN, INC., Petitioner,	**CTA CASE NO. 9552**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 07 2020 10:30 AM

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted before this Court are the following:

1. respondent's **Motion for Partial Reconsideration**, filed on November 7, 2019, with petitioner's **Comment/Opposition [To Respondent's Motion for Partial Reconsideration Dated November 7, 2019]**, filed on December 16, 2019; and,

2. petitioner's **Motion for Reconsideration with Manifestation [Re: Decision dated October 21, 2019]**, filed on November 7, 2019, with respondent's **Opposition (To Petitioner's Motion for Reconsideration dated 7 November 2019)**, filed on December 12, 2019.

On October 21, 2019, this Court promulgated a Decision partially upholding respondent's deficiency assessments against petitioner in the reduced amount of ₱6,317,503.98, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The deficiency income tax assessment issued by respondent against petitioner covering the taxable year 2008 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **SIX MILLION THREE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED THREE PESOS AND NINETY-EIGHT CENTAVOS (₱6,317,503.98)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, computed until December 31, 2017, as follows:

Basic Deficiency income tax	₱ 1,840,629.50
Add: 25% surcharge	460,157.38
20% deficiency interest from April 16, 2009 to March 24, 2017 *(₱1,840,629.50 x 20% x 2900/365 days)*	2,924,835.92
Total amount due as of March 24, 2017	**₱5,225,622.80**
Add: 20% deficiency interest from March 25, 2017 to Dec. 31, 2017 *(₱1,840,629.50 x 20% x 282/365 days)*	284,415.08
20% delinquency interest from March 25, 2017 to December 31, 2017 *(₱5,225,622.80 x 282/365 days)*	807,466.10
Total amount due as of December 31, 2017	**₱ 6,317,503.98**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the aggregate amount of **₱5,225,622.80** due as of March 24, 2017, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

In their respective Motions, both parties move for the reconsideration of the above Decision.

Respondent's Motion for Partial Reconsideration

Respondent claims that the Court erred in cancelling the ₱8,045,637.39 additional income representing the difference between the Summary List of Sales (SLS) and Reconciliation of Listing for Enforcement (RELIEF) for lack of factual basis. He asserts that the assessments were the product of evaluation of documents submitted by petitioner and the data gathered by the Bureau of Internal Revenue (BIR) from the petitioner and other taxpayers, pursuant to Section 5(B)

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of the National Internal Revenue Code (NIRC) of 1997, as amended. As such, respondent submits that the assessments are valid and are not contrary to law.

On the other hand, in its comment, petitioner countered respondent's claim by reiterating that the assessed amount of ₱8,045,637.39, representing the difference between SLS and RELIEF, was correctly cancelled since the imposition of which lacked factual basis. It also argues that respondent failed to present any documentary proof to substantiate the said discrepancy in petitioner's declared income.

After due consideration, this Court finds no merit in respondent's Motion. Apparently, the arguments presented by respondent are mere rehash of what have been said in his previous pleadings, which have already been considered, weighed and resolved in the assailed Decision.

Again, to emphasize, this Court finds that RELIEF data obtained by respondent pursuant to "best evidence obtainable" rule and Revenue Memorandum Order (RMO) No. 14-2011, was not supported by externally-sourced information. This externally-sourced data could have taken the form of confirmations from petitioner's clients as to the amounts of their purchases from petitioner. By failing to do so, the assessment was therefore based merely on unverified amounts extracted from respondent's own database. Simply stated, absent any third-party verification, the assessment becomes unreliable. Hence, it is only proper for the Court to cancel the ₱8,045,637.39 assessment for lack of factual basis.

More so, it is also worthy to reiterate that albeit Section 6(B) of the NIRC of 1997, as amended, authorizes the BIR to assess proper tax on the best evidence obtainable, the law, however, provides that the assessment must be based on actual facts.

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be. In order to withstand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[1]

Considering the foregoing, this Court is constrained to deny respondent's Motion for Partial Reconsideration.

Petitioner's Motion for Reconsideration

At the outset, petitioner manifests that it extended offers of tax compromise and tax abatement to respondent. It claims to have paid the compromise amount of ₱1,862,641.04 representing forty percent (40%) of the basic assessed tax on May 9, 2017, and an additional payment of ₱2,793,961.55 was made on May 7, 2018, pursuant to its tax abatement offer, which totals in the amount of ₱4,656,602.59, representing one hundred percent (100%) of the basic assessed tax. Unfortunately, however, petitioner has not received from respondent any resolution or decision on its requests for compromise and/or abatement up to the filing of the present Motion.

Accordingly, petitioner's manifestation is hereby noted.

Now proceeding to its Motion, petitioner primarily claims that its remaining income tax assessment for taxable year 2008 should take into consideration the payments made in connection with its request for tax compromise and/or abatement. It also asserts that this Court should not impose twenty percent (20%) deficiency interest, as well as delinquency interest, beyond May 9, 2017, the date when the basic deficiency income tax was fully paid, considering that it is no longer deficient and delinquent as contemplated by law. It appeals that the payments it made should be considered by this Court to reduce, if not remove, any remaining income tax assessment. Therefore, as per its computation, petitioner should only pay respondent the aggregate amount of ₱613,397.03, inclusive of the 25% surcharge and 20% deficiency interest from April 16, 2009 to May 9, 2017.

On the other hand, respondent admits that he has verified with the Large Taxpayers Collection and Enforcement Division (LTCED) of petitioner's application for tax abatement and its payment of the amount of ₱4,656,602.59. However, he claims that the abatement is yet to be approved, and, as per the LTCED, the same is still pending for final review with the Office of the Commissioner of Internal

[1] *Collector of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. 13656, January 31, 1962.

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Revenue (CIR). Therefore, still being a pending matter for review, the same should not be considered in the computation of the tax assessment in the Decision dated October 21, 2019.

Nonetheless, respondent argues that in the event tax abatement is denied, petitioner's total payment in the amount of ₱4,656,602.59 may be considered as advanced payment to the BIR of petitioner's tax assessment liability. In any case, he submits that in view of the pendency of petitioner's application and considering that it has not paid in full its tax liabilities, the imposition of deficiency and delinquency interests under Sections 248 and 249 of the NIRC is proper.

After due consideration, this Court resolves to deny petitioner's Motion for Reconsideration.

Verily, Section 204(A)(2) of the NIRC of 1997, as amended, which provides for the authority of the CIR for compromise settlement states that:

> **SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.—*** The Commissioner may –
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> *(A) Compromise the Payment of any Internal Revenue Tax, when:*
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> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
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> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
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> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
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> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
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> For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

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> **Where the basic tax involved exceeds One million pesos (₱1,000.000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners.** *(Emphasis supplied)*

Moreover, Section 6 of Revenue Regulations (RR) No. 30- 2002, as amended by RR No. 9-2013, also provides that:

> **SEC. 6.** *APPROVAL OF OFFER OF COMPROMISE.* – Except for offers of compromise where the approval is delegated to the REB pursuant to the succeeding paragraph, all compromise settlements within the jurisdiction of the National Office (NO) shall be approved by a majority of all the members of the NEB composed of the Commissioner and the four (4) Deputy Commissioners. All decisions of the NEB, granting the request of the taxpayer or favorable to the taxpayer, shall have the concurrence of the Commissioner.
>
> Offers of compromise of assessments issued by the Regional Offices involving basic deficiency taxes of Five Hundred Thousand Pesos (₱500,000) or less and for minor criminal violations discovered by the Regional and District Offices, shall be subject to the approval by the Regional Evaluation Board (REB), comprised of the following Officers of the Region:
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> Regional Director –
> Chairman Members:
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> Assistant Regional Director
> Chief, Legal Division
> Chief, Assessment Division
> Chief, Collection Division
> Revenue District Officer having jurisdiction over
> the taxpayer-applicant
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> Provided, however, that if the offer of compromise is less than the prescribed rates set forth in Sec. 4 hereof, the same shall always be subject to the approval of the NEB.

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> **The compromise offer shall be paid by the taxpayer upon filing of the application for compromise settlement. No application for compromise settlement shall be processed without the full settlement of the offered amount. In case of disapproval of the application for compromise settlement, the amount paid upon filing of the aforesaid application shall be deducted from the total outstanding tax liabilities.** *(Emphasis supplied)*

From the foregoing, it is clear that respondent has the discretion to compromise the payment of any internal revenue tax on either of the two (2) instances, namely: (1) if there exist a reasonable doubt as to the validity of the claim against the taxpayer; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax. In the latter case, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax must be paid, while in all other cases, the minimum compromise rate is forty percent (40%) of the basic assessed tax. **However, in case the basic tax exceeds ₱1,000,000.00**, or where the settlement offered is less than the said prescribed minimum rates, **the compromise must be approved by the Evaluation Board composed of respondent CIR and the four (4) Deputy Commissioners of the BIR**. To stress, all decisions of the NEB, granting the request of the taxpayer or favorable to the taxpayer, shall have the concurrence of the Commissioner.

In the present case, petitioner's basic deficiency income tax amounts to ₱1,840,629.50 for taxable year 2008. Consequently, its offer of compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners.

Indeed, a compromise agreement is a contract whereby the parties make **reciprocal concessions** in order to resolve their differences and, thus, avoid or put an end to a lawsuit. They adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing. It must not be contrary to law, morals, good customs and public policy, and must have been freely and intelligently executed by and between the parties. A compromise agreement may be executed in and out of court. Once a compromise agreement is given judicial approval, however, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment.[2]

Perforce, a compromise agreement, in order to be binding, must have been executed and approved by the petitioner and respondent pursuant to Section 204 (A) (2) of the NIRC of 1997, as amended as implemented by Section 6 of RR No. 30- 2002, as amended by RR No. 9-2013. While the procedure may sound tedious, it must be stressed that procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity.[3]

On the final note, petitioner itself admitted that there is yet no resolution or decision by the respondent on its requests for compromise and/or abatement. As such, without prior approval by the CIR, there is yet no compromise agreement to speak of. Hence, there would no basis for the grant of petitioner's prayer.

In view of the foregoing, this Court finds no compelling reasons to justify the reversal or modification of the assailed Decision.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration and petitioner's Motion for Reconsideration are both **DENIED** for lack of merit. Meanwhile, petitioner's Manifestation is hereby **NOTED**.

SO ORDERED.

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

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[2] *David M. David vs. Federico M. Paragas, Jr.*, G.R. No. 176973, February 25, 2015.
[3] *Juanito Magsino vs. Elena De Ocampo, et al.*, G.R. No. 166944, August 18, 2014; citing *Garbo vs. Court of Appeals, et al.*, G.R. No. 107698, July 5, 1996.