REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE MINING DEVELOPMENT CORPORATION, *Petitioner,*	**CTA CASE NO. 9292**
	Members:
-versus-	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE and THE OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, in their official capacities as officers of the Bureau of Internal Revenue, *Respondents.*	Promulgated: SEP 01 2025 9:40 a.m.

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R E S O L U T I O N

MANAHAN, *J.*:

Before this Court is petitioner's *Motion for Reconsideration* filed through: (1) registered mail on June 2, 2025 and received by the Court on June 10, 2025; and (2) electronic mail on June 17, 2025, with respondent's *Comment/ Opposition [To Petitioner's Motion for Reconsideration]* personally filed on June 30, 2025 and electronically filed on July 1, 2025.

For easy reference, the dispositive portion of the assailed Decision[1] which is the subject of the instant motion reads, as follows:

> **WHEREFORE**, the present *Petition for Review* is **DENIED**, for lack of merit.
>
> **SO ORDERED.**[2]

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[1] Docket, Vol. II, pp. 809-826.
[2] *Id.*, p. 825.

Petitioner asserts that: (1) it did not receive the Final Assessment Notice (FAN) because the Bureau of Internal Revenue (BIR) sent it to the wrong address; (2) the BIR failed to comply with the due process requirement under Section 228 of the National Internal Revenue Code (Tax Code) and Revenue Regulation (RR) No. 12-99; and (3) the BIR's deficiency assessment is bereft of any factual and legal bases.

On the other hand, respondents counter that petitioner admitted the receipt of the FAN, among others.

After careful consideration, the Court resolves to deny the instant motion.

Respondent has no burden to prove that petitioner received the FAN due to its express admission of its receipt

Petitioner failed to show that there is reasonable doubt as to the validity of the assessment

Petitioner claims that the BIR sent the FAN to its former address at 5/F, PNOC-EDC Bldg. 5, Meritt Road, Fort Bonifacio, Makati City. However, as per petitioner's BIR Form 1905 dated September 26, 2008, it had already informed the BIR of the change of its business address at 2904-B PSE Centre West Tower, Exchange Road, Pasig City. Hence, considering that the FAN was sent to a wrong address, the same constitutes a violation of petitioner's right to due process.

Furthermore, petitioner relies on the ruling in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[3] where the Supreme Court said that:

> xxx if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to

[3] G.R. No. 185371, December 8, 2010.

respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.

The Court finds petitioner's claims untenable.

Again, as per petitioner's own Exhibit "P-4",[4] it admitted the receipt of the subject FAN on November 26, 2010, as follows:

> However, a review of the records shows that petitioner received the assessment notice, as per petitioner's letter dated December 1, 2010, showing that petitioner secured a copy of the FAN on November 26, 2010, to wit:
>
> xxx xxx xxx
>
> 1. xxx **Further, our staff was only able to secure a copy of said FAN through the BIR's account officer's assistance when she visited last November 26, 2010 (through Philip Viduya).**
>
> xxx xxx xxx[5]

The above admission is a judicial admission under Section 4, Rule 129 of the Rules of Court. It provides:

> **SEC 4.** *Judicial admissions.* — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Considering petitioner's judicial admission, the same "cannot be negated unless previously shown to have been made through palpable mistake."[6] Thus, petitioner is bound by its own evidence adduced during trial.

Meanwhile, the ruling in *Metro Star Superama* is inapplicable in this case because of petitioner's judicial admission of the receipt of the FAN. In other words, respondent has no burden to prove a fact which had already been judicially admitted by petitioner.

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[4] Exhibit "P-4", Docket - Vol. I, pp. 264 to 265.
[5] See Note 1, pp. 821-822.
[6] *Amelia C. Elayda v. Court of Appeals and Spouses Pedro Roxas and Leonora T. Roxas*, G.R. No. L-49327, July 18, 1991.

Consequently, since petitioner's offer of compromise, on the ground of reasonable doubt as to the validity of the assessment, is anchored on its receipt of the FAN, the Court still finds that petitioner failed to satisfy the same.

As a side note, the Court reiterates that the National Evaluation Board (NEB) of the BIR disapproved petitioner's offer of compromise, which is an essential requirement under Section 204(A) of the Tax Code, in relation to Section 6 of RR No. 30-2002, as amended by RR No. 9-2013. Said provisions respectively provide:

> **SEC. 204**. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* –
>
> xxx xxx xxx
>
> Where the basic tax involved exceeds One million pesos (P1,000,000) 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."
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> **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.
>
> xxx xxx xxx

Therefore, the denial of the offer of compromise is still justified for failure of petitioner to obtain the approval of the NEB. Hence, the Court finds no reason to reconsider the assailed Decision.

The Court has no power of review over assessments that have become final, executory and demandable

Finally, the Court observes that petitioner continues to raise arguments relative to the validity of the assessment subject of the compromise of its tax liability under Section 204 of the Tax Code.

On this score, Section 228 of the Tax Code pertinently provides:

> **SEC. 228**. *Protesting of Assessment.* –
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment xxx **otherwise, the assessment shall become final**. *(Emphasis supplied)*

In relation thereto, pertinent provision of RR No. 12-99 provides:

> **3.1.5. Disputed Assessment**. – xxx
>
> xxx xxx xxx
>
> If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. xxx

In this case, records show that petitioner did not protest the FAN. Instead of disputing the same, petitioner opted to file an offer of compromise. Considering that the assessment was undisputed, the same became final, executory and demandable. The Court may not review the same in an action to review the propriety of a denial of a compromise. In other words, an action for compromise under Section 204 is not a substitute remedy for administrative protest under Section 228 of the Tax Code.

As such, the Court may no longer review the subject assessment which had become final, executory and demandable. Thus, the Court need not discuss the other matters raised in the instant motion relative to the validity of the assessment.

To encapsulate, petitioner failed to show the existence of reasonable doubt as to the validity of the assessment because of its judicial admission of its receipt of the FAN. Meanwhile, considering that petitioner failed to obtain the approval of the NEB, the Court has more reason to uphold the denial of petitioner's offer of compromise by the BIR. Finally, an offer of compromise is not a substitute for petitioner's lost remedy of administrative protest under Section 228 of the Tax Code, in relation to RR No. 12-99. Hence, the denial of the instant motion is in order.

ACCORDINGLY, the present *Motion for Reconsideration* is **DENIED**, for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurrence)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice