REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**FIRST DIVISION**

| | |
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| NEW FARMER'S PLAZA, INC., Petitioner, | CTA CASE NO. 9475 |
| | Members: |
| -versus- | |
| | DEL ROSARIO, *P.J., Chairperson,* FABON-VICTORINO, *and* MANAHAN, *JJ.* |
| COMMISSIONER OF INTERNAL REVENUE, NATIONAL EVALUATION BOARD, AND REGIONAL EVALUATION BOARD OF REVENUE REGION NO. 7, Respondents. | Promulgated: JAN 14 2020 - 3:40pm |

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**DECISION**

***Fabon-Victorino, J.*:**

This *Petition for Review* filed on September 22, 2016 by petitioner New Farmer's Plaza, Inc. against respondents Commissioner of Internal Revenue (CIR), National Evaluation Board (NEB), and Regional Evaluation Board (REB) of Revenue Region No. 7, seeks to (1) annul, reverse, and set aside the *Notice of Denial* dated June 1, 2016 on petitioner's *Application for Compromise Settlement* issued by respondent CIR; (2) direct respondents CIR and NEB to issue the corresponding approval of the said *Application for Compromise Settlement* of its deficiency tax assessments for calendar year (CY) 2007; and (3) order respondent to desist from collecting from it the alleged deficiency taxes amounting to ₱104,664,264.81.[1]

Petitioner is a domestic corporation engaged in the business of buying, selling, renting, leasing, developing, and

[1] Statement of the Case, Pre-Trial Order dated August 1, 2017, Docket, p. 394.

managing realty, with registered office address at 26th Floor Gateway Tower Araneta Center 1109 Quezon City.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the responsibility of collecting all national internal revenue taxes.[3]

Respondent NEB was constituted under Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, composed of respondent CIR and four (4) Deputy Commissioners. It has the authority to approve compromises where the basic tax involved exceeds ₱1,000,000.00.[4]

Respondent REB of Revenue Region No. 7 was constituted under Section 7(c) of the NIRC of 1997, is composed of the Regional Director as Chairman, with Assistant Regional Director, heads of the Legal, Assessment, and Collection Divisions, and Revenue District Officer having jurisdiction over the taxpayer, as members. It has the power to approve compromise assessments issued by the said Revenue Region involving basic deficiency taxes of ₱500,000.00 or less, and rule on minor criminal violations, as may be determined by the rules and regulations promulgated by the Secretary of Finance, upon recommendation of respondent.[5]

On September 5, 2008, respondent CIR issued *Letter of Authority* No. (LOA) No. 00026774 authorizing Revenue Officer Victoria C. Fontanilla and Group Supervisor Edgardo C. Uy to examine the books of accounts and other accounting records of petitioner.[6]

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[2] Par. 3.1, *Petition for Review*, Docket, p. 11; Par. 1.1, *Memorandum*, Docket, p. 605.
[3] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issue* (JSFI), Docket, p. 369.
[4] Refer also to Par. 3.3, *Petition for Review*, Docket, p. 12, vis-à-vis Par. 1, *Answer*, Docket, p. 124.
[5] Refer also to Par. 3.4, *Petition for Review*, Docket, p. 12, vis-à-vis Par. 1, *Answer*, Docket, p. 124.
[6] Par. 1.2, Stipulation of Facts, JSFI, Docket, p. 369.

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In relation to the investigation, petitioner executed the following *Waivers of the Defense of Prescription*:[7]

| *Waiver* | *Date of Execution* | *Date of BIR's Acceptance* | *Date of Extension* |
|---|---|---|---|
| 1st | March 3, 2010 | March 19, 2010 | June 30, 2011 |
| 2nd | May 27, 2011 | *(No acceptance)* | December 31, 2011 |

Subsequently, respondent issued a *Preliminary Assessment Notice* (PAN),[8] informing petitioner of its deficiency taxes, inclusive of interest and surcharge for CY 2007 as follows: income tax of ₱86,356,633.78, value-added tax (VAT) of ₱39,952,859.94, expanded withholding tax (EWT) of P114,424.00, final withholding tax (FWT) of ₱13,485,136.99, and compromise penalty of ₱14,000.00. Petitioner did not reply to the PAN.[9]

On June 24, 2011, respondent issued a *Formal Letter of Demand* (FLD),[10] assessing petitioner of deficiency taxes, plus compromise penalties, in the sum of ₱142,600,181.95, detailed as follows:[11]

| | **Basic Tax** | **Increments** | **Compromise Penalties** | **Total** |
|---|---|---|---|---|
| Income Tax | ₱53,207,581.58 | ₱34,840,032.87 | - | ₱88,047,614.45 |
| VAT | 23,961,212.42 | 16,753,154.55 | - | 40,714,366.97 |
| EWT | 68,399.54 | 48,198.25 | - | 116,597.79 |
| FWT | 7,000,000.00 | 6,682,602.74 | - | 13,682,602.74 |
| Compromise Penalties | - | - | ₱39,000.00 | 39,000.00 |
| **Aggregate Total** | **₱84,237,193.54** | **₱58,323,988.41** | **₱39,000.00** | **₱142,600,181.95** |

Petitioner did not file protest against the FLD.[12]

[7] Par. 4.5, *Petition for Review*, Docket, pp. 12 to 13, vis-à-vis Par. 3, *Answer*, Docket, p. 124; Exhibits "P-20" and "P-21", Docket, pp. 279 to 280.
[8] Exhibit "P-26", Docket, pp. 286 to 288; Exhibit "R-4", BIR Records, pp. 181 to 185.
[9] Par. 4.7, *Petition for Review*, Docket, p. 14, vis-à-vis Par. 5, *Answer*, Docket, p. 125.
[10] Exhibit "P-21", Docket, pp. 289 to 298; Exhibit "R-5-1", BIR Records, pp. 192 to 193.
[11] Par. 1.3, Stipulation of Facts, JSFI, Docket, pp. 369 to 370.
[12] Par. 4.10, *Petition for Review*, Docket, p. 14, vis-à-vis Par. 8, *Answer*, Docket, p. 125.

More than three years thereafter, petitioner received a Warrant of Distraint and Levy *(*WDL) dated October 22, 2013.[13]

In May 2014, petitioner filed an *Application for Compromise* dated May 2, 2014 before the Regional Director's Office of Revenue Region No. 7 - Quezon City.[14]

On August 23, 2016, petitioner received the assailed N*otice of Denial* dated June 1, 2016 of its Application for Compromise issued by respondent REB demanding payment of petitioner's alleged deficiency taxes in the amount of ₱104,664,264.81.[15] The deficiency tax assessment remains unsettled to date.[16]

On September 22, 2016, petitioner filed the instant *Petition for Review.*[17]

In its belatedly[18] filed *Answer*[19]*,* respondent points out that a compromise agreement is in the nature of a contract which requires mutual consent of the parties thereto. Further, the power and discretion to approve or disapprove the compromise agreement belongs to respondent, who cannot be compelled to approve or disapprove it, absent any law or rule mandating the same. Without the compromise agreement entered into by the parties, the Court is bereft of jurisdiction to review the present case.

In its *Reply*[20]*,* petitioner argues that the Court has jurisdiction over this case pertaining to "other matters" clause of its enabling law, namely, Republic Act (RA) No. 1125, as amended. The subject compromise can be reviewed by the Court as the law never intended respondent to have unbridled and absolute control over such compromises. Besides, the disapproval of respondent of the

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[13] Par. 4.11, *Petition for Review*, Docket, p. 14, vis-à-vis Par. 9, *Answer*, Docket, p. 125; Exhibit "P-2", Docket, p. 240.
[14] Par. 1.4, Stipulation of Facts, JSFI, Docket, pp. 369 to 370.
[15] Par. 1.5, Stipulation of Facts, JSFI, Docket, p. 370; Exhibit "P-33", Docket, p. 323.
[16] Par. 1.6, Stipulation of Facts, JSFI, Docket, p. 370.
[17] Docket, pp. 10 to 31.
[18] Docket, pp. 130 to 131.
[19] Docket, pp. 124 to 127.
[20] Docket, pp. 134 to 144.

compromise agreement was improper due to the dubious validity of the assessment. Moreover, the FLD issued on June 24, 2011, or beyond the 3-year prescriptive period, was not properly served on its authorized representatives. Petitioner further states that of the 2 Waivers of the defense of prescription executed by the parties, only the first could be considered as valid since the FLD issued within the second extended period of the second Waiver had prescribed. Estoppel on the part of petitioner to invoke the defense of prescription would not lie as respondent failed to allege specific facts and acts for its application.

On June 7, 2017, the parties filed their *Joint Stipulation of Facts and Issue* (JSFI),[21] which the Court approved in its Resolution dated July 3, 2017[22], thereby terminating the Pre-Trial Conference. On August 1, 2017, a Pre-Trial Order was issued by the Court.[23]

In support of its case, petitioner presented as its witnesses Romeo Tan,[24] consultant of Araneta Center, Inc. (ACI), petitioner's parent company, and Kenneth A. Mondero,[25] Senior Vice-President for Finance of ACI.

Witness **ROMEO M. TAN** testified that part of his duties as consultant of ACI, the company that owns petitioner as a subsidiary, is to supervise and oversee petitioner's books, tax assessment cases, and communications with the BIR, thus, he is familiar with the present case.

On April 15, 2008, petitioner filed its Annual Income Tax Return (AITR) for the year 2007. It also filed its Quarterly VAT Returns for the first to the fourth quarters of 2007 on April 22, 2007, July 24, 2007, October 22, 2007, and January 24, 2008, respectively.

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[21] Docket, pp. 369 to 375.
[22] Docket, p. 378.
[23] Docket, pp. 394 to 404.
[24] Exhibit "P-34", Docket, pp. 170 to 198; Minutes of the hearing held on, and Order dated, August 1, 2017, Docket, pp. 405 to 408; cross examination see TSN dated August 1, 2017 p. 12-28, redirect examination pp. 28-31.
[25] Exhibit "P-35" (actually marked as Exhibit "P-34"), Docket, pp. 154 to 160; Order dated September 5, 2017, Docket, pp. 420 to 421; cross examination see TSN dated September 5, 2017, pp. 9-13, redirect pp. 13-14, re-cross pp. 14-20.

Petitioner likewise filed its monthly EWT Returns for 2007, the latest of which was on January 11, 2008.

Subsequently, the BIR issued a Letter of Authority (LOA) dated September 5, 2008, with a First Request for Presentation of Records. Petitioner complied.

During the conduct of audit, the Revenue Officers (Ros) conducting the audit required petitioner to execute a Waivers of the defense of prescription which he signed just like the second Waiver.

The witness claimed that he was compelled to sign the two Waivers although he knew that as a consultant of ACI and not officer of petitioner, he had no authority to do it as the ROs told him that without the Waivers, a formal assessment would immediately issue to the prejudice of petitioner. In any event, he was not censured or sanction by petitioner for signing the two Waivers in its behalf. The witness admitted that he was not forced to sign the two Waivers indicating that he was the authorized representative of petitioner. According to the witness the execution of two Waivers benefited petitioner.

Later, the BIR issued the PAN which petitioner's accounting staff received. The witness believed that the PAN should be deemed as not received as the person to whom it was served was not the authorized representative of petitioner. He was informed about the service of the PAN after the time to file reply thereto had already lapsed.

Similarly, the FLD served by the BIR to petitioner's accounting department should as well be deemed not received by petitioner. He learned about the FLD after the period to file protest against it had lapsed, for which reason, petitioner was not able to timely file a protest against the FLD. The PAN and FLD were received by the same personnel assigned at petitioner's Accounting Department.

On October 22, 2013, petitioner properly received the Warrant of Distraint and/or Levy (WDL), through the same personnel assigned at its accounting department. No further action was taken by the BIR to collect from petitioner the alleged deficiency taxes.

To the mind of the witness, the assessment was invalid for the BIR's failure to conduct proper audit/examination of petitioner's books of account and other accounting records. He claimed that the assessment was solely based on petitioner's tax returns, audited financial statements, and schedules submitted to the BIR. The subject assessment based on erroneous presumptions should be deemed as a naked assessment.

The witness further testified that petitioner filed with the BIR an Application for Compromise dated May 2, 2014 on the ground of reasonable doubt on the validity of the assessment. Petitioner paid the compromise amount of P37,974,917.14, as computated by the BIR and required under Revenue Regulation (RR) No. 09-13. Nothing followed after this payment until petitioner received the assailed Notice of Denial dated June 1, 2016 of its Application for Compromise.

Witness **KENNETH A. MONDERO**, testified that he is the Senior Vice-President for Finance of ACI, whose duties is to extend management services to ACI's subsidiaries, such as petitioner. He deals with various government agencies, including the BIR. As a company policy, all communications from government agencies should be forwarded to the addressee, and in the absence thereof, to him. However, prior to petitioner's receipt of the WDL issued by the BIR, no correspondences or notices was forwarded to him, including the PAN and FLD issued in this case.

Petitioner rested after filing its Formal Offer of Evidence[26] on November 17, 2017, which the Court resolved in the Resolutions dated February 27, 2018,[27] and May 16, 2018.[28]

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[26] Docket, pp. 444 to 456.
[27] Docket, pp. 534 to 535.
[28] Docket, pp. 557 to 559.

For their part, respondents presented its lone witness BIR Revenue Officer II, **LOIDA E. TAGUIAM**.[29]

She testified that prior to June 1, 2018, she was a seizure agent of the BIR assigned at Revenue District Office No. 40-Cubao, Quezon City, Revenue Region No. 7. Her duties mainly pertain to the enforcement of collection proceedings and preparation and service of collection notices.

As authorized in the Memorandum of Assignment, she conducted the collection process of the deficiency tax liability of petitioner for the year 2007.

Her examination of the BIR Record of the case, revealed that the Letter of Authority (LOA) dated September 5, 2008, Preliminary Assessment Notice (PAN) and Details of Discrepancies, and the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) dated June 24, 2011 had been issued and served upon petitioner. She also found in the same BIR Record the Memorandum Report to the Regional Director, the Revenue Officer's Audit Reports, and the Waiver of the defense of prescription dated April 26, 2010.

On its face, the FAN/FLD was issued on June 24, 2011, but received by petitioner's employee on June 17, 2011. She however explained that copies of the FAN/FLD were served to petitioner through personal service and through the mail on different occasions, thus, the apparent discrepancy.

Since the subject deficiency tax liability had not been paid despite the notices issued for that purpose, she prepared the subject WDL dated October 22, 2013, which was served upon petitioner on the same date.

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[29] Exhibit "R-11", Docket, pp. 569 to 574; Order dated July 26, 2018, Docket, pp. 581 to 582; cross examination see TSN dated July 26, 2018 pp. 16-21, redirect pp. 22-23.

In the Resolution dated September 3, 2018[30], the Court admitted respondents belatedly filed *Formal Offer of Evidence*[31].

The case was submitted for decision on January 14, 2019.[32]

## THE ISSUES

The issues submitted by the parties are as follows:[33]

> 2.1 Whether or not the purported assessment was of doubtful validity which entitles *[petitioner]* NFPI to the approval of its application for compromise;
>
> 2.2 Whether or not Respondent can still collect the balance of the purported assessment; and
>
> 2.3 Whether or not the assessments are final, executory, and demandable thereby depriving the Court of Tax Appeals of jurisdiction over this case.

***Petitioner's arguments:***

Petitioner invokes this Court's jurisdiction to determine the present case. According to petitioner, the CTA in Division is competent to review cases falling under "other matters" as provided in Section 7(a)(1) of Republic Act (RA) No. 1125,[34] as amended, and other laws administered by the BIR. Further, the assessment did not become final, demandable, and executory as it was issued beyond the prescriptive period provided under the Tax Code.

Moreover, the subject assessment is void not only because it was issued beyond the 3-year prescriptive period but also due to the following reasons, to wit:

a) Respondent CIR violated petitioner's right to due process when it issued the FLD within petitioner's

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[30] Docket, p. 593.
[31] Docket, pp. 584 to 586.
[32] Resolution dated January 14, 2019, Docket, p. 641.
[33] Pars. 2.1 to 2.3, Stipulation of the Issue, JSFI, Docket, p. 370.
[34] AN ACT CREATING THE COURT OF TAX APPEALS.

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statutory fifteen-day period to file a reply to the PAN;

b) Improper service of notices to petitioner;
c) The audit was re-assigned to a new group supervisor without issuance of a new LOA; and
d) The assessment was a "naked assessment" based on mere presumptions.

Being void, the assessment cannot be the basis for any collection of taxes on the part of respondents.

Lastly, petitioner believes that respondent CIR can no longer collect the assessed amount as his right to collect is already barred by prescription. Section 222(c) of the NIRC, as amended, provides that the period to collect by distraint or levy or by a proceeding in court is five years following the assessment.

Petitioner claims that it received the FLD on July 1, 2011 giving respondents five years or until July 1, 2016 to collect the alleged tax deficiency. Since no collection was made or pursued to date, the BIR is already precluded from collecting the said deficiency taxes.

***Respondents' counter-arguments:***

Respondents argue that this Court is without jurisdiction to determine the present case involving a denial of an Application for Compromise since a compromise agreement is in the nature of a contract requiring mutual consent of the contracting parties. By law, respondent CIR has the discretion to approve or disapprove the compromise agreement, thus neither petitioner nor the Court can compel him to enter into such agreement absent any law or rule that authorizing the same.

Since no compromise agreement has been entered into by the parties in this case, there is nothing for the Court to review.

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## THE RULING OF THE COURT

On the jurisdiction of the Court, Section 7(a)(1) of Republic Act (RA) No. 1125,[35] as amended by RA No. 9282[36], provides as follows:

> SECTION 7. *Jurisdiction*. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; *(Emphases and underscoring ours)*

Evident from the foregoing provision that the appellate jurisdiction of the Court is *not* limited to cases which involve decisions of respondent CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the BIR.[37] The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of the Statute of Limitations was validly effected.[38]

In this case, petitioner assails the *Notice of Denial* dated June 1, 2016 issued by respondent CIR, communicating the denial of its Application for Compromise by respondent REB, consequently, the demand to pay the assessed deficiency taxes amounting to ₱104,664,264.81 net of P37,935,917.14, which petitioner previously paid.[39]

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[35] AN ACT CREATING THE COURT OF TAX APPEALS.

[36] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[37] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[38] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[39] Par. 1.5, Stipulation of Facts, JSFI, Docket, p. 370; Exhibit "P-33", Docket, p. 323.

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To pursue and enforce collection of the subject tax liability through administrative summary remedies, respondent issued a WDL dated October 22, 2013, prompting petitioner to file the subject Application for Compromise dated May 2, 2014, which in turn was denied by respondent REB. Clear as a day that the present case falls under Section 204 (A) of the NIRC, as amended, hence, within the jurisdiction of the Court.

On the authority of respondent CIR to compromise the payment of internal revenue taxes, Section 204(A) of the NIRC of 1997 provides as follows:

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

As indicated above, respondent CIR has the discretionary power 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. 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.

However, while respondent CIR's power to compromise is sanctioned under the NIRC of 1997, the same is never unbridled as the exercise thereof may be scrutinized by the Court to determine whether the exercise of such discretion is within the parameters set by the law, as ruled by the Supreme Court, in the following manner:

> It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; **but when the exercise of such authority of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right,** with this Court having the last say on the matter.
>
> The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of grave abuse of discretion and/or whimsical exercise of jurisdiction. The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.
>
> **<u>The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained</u>. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246[40] of the NIRC of 1977, as amended, <u>can only be exercised under</u>**

[40] Now Section 204(A) of the NIRC of 1997.

> **<u>certain circumstances specifically identified in said statutes</u>. The BIR Commissioner would have to exercise his discretion <u>within the parameters set by the law</u>, and in case he abuses his discretion, <u>the CTA may correct such abuse if the matter is appealed to them</u>.**" *(Emphases and underscoring supplied)* [41]

Moreover, Section 6 of Revenue Regulations (RR) No. 30-2002,[42] as amended by RR No. 9-2013, provides:

> 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) <u>shall be approved by a majority of all the members of the NEB</u> composed of the Commissioner and the four (4) Deputy Commissioners. <u>All decisions of the NEB, granting the request of the taxpayer or favorable to the taxpayer, shall have the concurrence of the Commissioner</u>**.
>
> xxx xxx xxx
>
> 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. *(Emphases and underscoring ours)*

Significantly, respondent CIR's power to compromise may be delegated under Section 7(c) of the NIRC of 1997 which reads as follows:

> SEC. 7. *Authority of the Commissioner to Delegate Power.* – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such

[41] Philippine National Oil Company vs. Court of Appeals, et al., etseq., G.R. Nos. 109976 and 112800, April 26, 2005.
[42] SUBJECT: Revenue Regulations Implementing Sections 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001.

> limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:
>
> xxx xxx xxx
>
> (c) The power to compromise or abate, under Section 204(A) and (B) of this Code, any tax liability: *Provided, however,* That **assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (₱500,000) or less**, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, **may be compromised by regional evaluation board** which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; *(Emphases ours)*

Thus, for a valid exercise of the power to compromise the following requirements must be satisfied:

1) There must be a reasonable doubt as to the validity of the claim against the taxpayer, or the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax;

2) The taxpayer has paid the minimum compromise rate, which is either forty percent (40%) or ten percent (10%) of the basic assessed tax or taxes, depending on the ground being relied upon. The compromise offer must have been paid and fully settled upon filing of the application for compromise settlement; and

3) In case the basic tax exceeds ₱1,000,000.00, the application for compromise settlement has been approved by respondent NEB, with the concurrence of respondent CIR; and in case the basic tax is ₱500,000.00 or less, the said application was approved by respondent REB.

In its Application for Compromise Settlement, petitioner invoked the ground of doubtful validity of the subject tax assessments. And in compliance with the rules, petitioner paid in full at least forty percent (40%) of the basic assessed taxes on May 2, 2014 or four (4) days before it filed its Application for Compromise Settlement on May 6, 2014[43] with the Regional Director's Office of Revenue Regions No. 7-Quezon City. In fine, petitioner was able to with the requisites for respondent CIR's valid exercise of his discretionary power to compromise payment of taxes.

Petitioner's payment of the required forty percent (40%) may be summarized as follows:

| | **Basic Tax / Compromise Penalties** | **Paid Compromise Rate** | **Percentage to the Basic Tax / Compromise Penalties** |
|---|---|---|---|
| Income tax | ₱53,207,581.58 | ₱21,283,032.65[44] | 40% |
| VAT | 23,961,212.42 | 9,584,484.97[45] | 40% |
| EWT | 68,399.54 | 68,399.54[46] | 100% |
| FWT | 7,000,000.00 | 7,000,000.00[47] | 100% |
| Compromise penalties | 39,000.00 | 39,000.00[48] | 100% |

Notwithstanding petitioner's compliance insofar as the requisite full payment of at least forty percent (40%) of the basic assessed taxes even before the filing of its Application for Compromise Settlement, the same was denied by respondent REB. In the Notice of Denial dated June 1, 2016, respondent CIR effectively sustained such denial and demanded payment of the amount of Php<u>104,664,264.81</u> net of Php <u>37,935,917.14</u> which petitioner previously paid, plus all the increments incident to delinquency within fifteen (15) days from notice. The Notice however failed to indicate the ground for such denial by the REB, it reads as follows:[49]

SN C-RR7-2016-0002

[43] Exhibit "P-28", Docket, p. 299.
[44] Exhibits "P-29-1", and "P-30-1", Docket, pp. 509, and 514 to 515, respectively.
[45] Exhibits "P-29-2", and "P-30-2", Docket, pp. 510, and 516 to 517, respectively.
[46] Exhibits "P-29-3", and "P-30-3", Docket, pp. 511, and 518 to 519, respectively.
[47] Exhibits "P-29-4", and "P-30-4", Docket, pp. 512, and 520 to 521, respectively.
[48] Exhibits "P-29-5", and "P-30-5", Docket, pp. 513, and 522 to 523, respectively.
[49] Par. 1.5, Stipulation of Facts, JSFI, Docket, p. 370; Exhibit "P-33", Docket, p. 323.

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NOTICE OF DENIAL

Application for COMPROMISE SETTLEMENT

**JUNE 01, 2016**

**NEW FARMER'S PLAZA INC.**
**17/F Aurora Tower, Gen Malvar St., Cubao Q. City**
**001-076-026-000**

Gentlemen/Sir/Madam:

This refers to the application/offer for **Compromise Settlement** of your **2007, Income Tax (IT), Expanded Withholding Tax (EWT), Final Withholding Tax (FWT), Compromise (CP)** liabilities involving the total amount of **Php 142,600,181.95** on the ground of Doubtful Validity pursuant to the provisions of Section 204 of the National Internal Revenue Code of **1997**, as amended, as implemented under Revenue Regulations No. **30-2002**

Please be informed that after careful review and evaluation of your application, the same has been **disapproved** by the **REGIONAL EVALUATION BOARD (REB), Revenue Region No. 7 Quezon City** of this Bureau.

In view thereof, you are hereby requested to pay the amount of Php**104,664,264.81** net of Php **37,935,917.14** which was previously paid, **plus all the increments incident to delinquency** with any authorized agent banks within fifteen (15) days from receipt hereof. Should you fail to do so, we will be constrained, much to our regret, to enforce the collection thereof thru the administrative summary remedies provided by law without any further notice.

For your information and guidance.

Very truly yours,

*(signed)*
**KIM JACINTO HENARES**
Commissioner of Internal Revenue

It must be noted that the requirement to refer Application for Compromise Settlement to the NEB under Section 6 of the NIRC, as amended, shall not apply given that the Application for Compromise Settlement was not favorably acted upon, in fact, it was denied.

The foregoing, however becomes irrelevant given that the assessments issued against petitioner is void for failure of respondent CIR to observe due process in the issuance of the subject assessments.

Section 228 of the NIRC of 1997, relevantly provides, to wit:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**
>
> xxx xxx xxx. *(Emphasis ours)*

In relation thereto, Section 3.1.2 of Revenue Regulations (RR) No. 12-99[50] provides:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as

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[50] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

> the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. xxx. **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.** (*Emphasis ours*)

The law requires that the taxpayer be informed in writing of the law and the facts and the law upon which the assessment is based. Otherwise, the assessment is void. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.[51]

Moreover, the taxpayer concerned upon proper notice must allowed to respond to the PAN within fifteen (15) days, before the said taxpayer can be considered in default. After the lapse of the said period, only then that the BIR shall issue the FAN/FLD.

In this case, petitioner denied proper service of both the PAN and the FAN, on the ground that both were received by an employee of its Accounting Department. However, petitioner's own witness Romeo M. Tan testified that it was the same employee who properly received the WDL prompting petitioner to file its Application for Compromise Settlement.

In any event, the PAN[52] was served upon petitioner on June 14, 2011.[53] Pursuant to Section 3.1.2 of RR No. 12-99, petitioner had fifteen (15) days from such receipt, or until June 29, 2011, within which to file its reply thereto. However, respondent issued the subject FLD on June 24,

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[51] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014.
[52] Exhibit "P-26", Docket, pp. 286 to 288.
[53] Exhibit "P-26-1", Docket, p. 286.

2011,[54] or ten (10) days from petitioner's receipt of the PAN, and before the lapse of the said 15-day period for it to respond thereto. Thus, the said FLD was issued prematurely, thereby depriving petitioner of due process and the right to be heard on the PAN. Otherwise stated, the assessments as stated in the PAN is void due to respondent CIR's failure to comply with the 15-day period for petitioner to respond prescribed under RR. No. 12-99, as amended by RR. No. 18-13. The infirmity that attended the issuance of the FAN/FLD prior to the lapse of the 15-day period to respond to the Pan was not cured by petitioner's subsequent offer to compromise. Due to clear violation of petitioner's right to due process, the assessments issued by respondent should be considered void.

It has been held that respondents are required to comply with the due process requirements under the law and the regulations which respondent CIR himself has issued, otherwise, any tax assessments issued in violation of due process are void, thus:

> <u>**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.**</u> **While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**" *(Emphases and underscoring ours)* [55]

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[54] Exhibits "P-27" and "P-27-1", Docket, pp. 289 to 298; Exhibit "R-5-1", BIR Records, pp. 192 to 193.

[55] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[56]

Correspondingly, since the subject deficiency tax assessments were issued in violation of petitioner's right to due process, the same are null and void. A void assessment bears no valid fruit,[57] and must not be given any effect, including all the subsequent proceedings.

**WHEREFORE,** finding merit in the appeal, the instant *Petition for Review* filed on September 22, 2016 by New Farmer's Plaza, Inc. is **PARTLY GRANTED**.

Accordingly, the *Warrant of Distraint and Levy* dated October 22, 2013 issued against petitioner,[58] is **CANCELLED** and **SET ASIDE**.

**SO ORDERED**.

ESPERANZA R. FABON-VICTORINO
Associate Justice

*We Concur:*

*(With Dissenting Opinion)*
ROMAN G. DEL ROSARIO
Presiding Justice

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[56] Commissioner of Internal Revenue vs. Fitness By Design, Inc., G.R. No. 215957, November 9, 2016.
[57] Samar-I Electric Cooperative vs. Commissioner of Internal Revenue, G.R. No. 193100, December 10, 2014.
[58] Par. 4.11, *Petition for Review*, Docket, p. 14, vis-à-vis Par. 9, *Answer*, Docket, p. 125; Exhibit "P-2", Docket, p. 240.

CATHERINE T. MANAHAN
Associate Justice

## CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
**Court of Tax Appeals**
QUEZON CITY

***FIRST DIVISION***

**NEW FARMER'S PLAZA, INC.,**
*Petitioner,*

-*versus*-

**COMMISSIONER OF INTERNAL REVENUE, NATIONAL EVALUATION BOARD, AND REGIONAL EVALUATION BOARD OF REVENUE REGION NO. 7,**
*Respondents.*

**CTA CASE NO. 9475**

Members:

**DEL ROSARIO**, *P.J., Chairperson,*
**FABON-VICTORINO**, *and*
**MANAHAN**, *JJ.*

Promulgated:

JAN 14 2020 3:40 p

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# DISSENTING OPINION

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

With utmost respect, I am constrained to withhold my assent on the *ponencia*. I submit that the Court has no jurisdiction to cancel the Warrant of Distraint and Levy (WDL) dated October 22, 2013 for failure of petitioner to question the WDL before this Court within thirty (30) days from receipt thereof.

A Formal Letter of Demand/Assessment Notice (FLD/FAN) and a WDL are integral components of the entire process by which an assessment may be assailed and the tax due on the taxpayer collected. Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations No. 12-99, as amended, provide for the manner by which an FLD/FAN may be protested. In addition, Section 11 of Republic Act (RA) No. 1125, as amended, provides for a period of thirty (30) days after receipt of an adverse decision, ruling or inaction of the Commissioner of Internal Revenue (CIR) within which to file an appeal with this Court.

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,*[1] the Supreme Court held that "the fact that an

[1] G.R. No. 169225, November 17, 2010.

assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide."

Notably, in *Hambrecht*, the taxpayer was able to elevate the WDL before the CTA within the 30-day period to appeal. Thus, the CTA had jurisdiction to rule on the validity of the WDL, albeit the assessment had become final and executory for failure of the taxpayer to file a protest within the 30-day period provided by law. The CTA nonetheless acquired jurisdiction to rule on the issue of whether or not the WDL was issued by the CIR within the prescribed period to collect.

Here, both FLD and WDL have undisputedly became FINAL and EXECUTORY (more so as the WDL was not elevated to the CTA within the reglementary period) as what was elevated to the CTA was the Notice of Denial of petitioner's Offer of Compromise which was issued almost **three (3) years after the WDL** was received by petitioner.

An Offer of Compromise is NOT a "continuation" of assessment proceedings as laid down in Section 228 of the NIRC of 1997, as amended and its implementing revenue regulations. Thus, to nullify a final and executory assessment and WDL <u>at this stage</u> would create a precedent that a final and executory assessment and WDL - - and logically even a judgment by a court - - can always be reviewed and reopened by a taxpayer simply by making an Offer of Compromise; thereafter, in case of "denial" the Bureau of Internal Revenue's (BIR) action would be elevated to the CTA.

Hence, in resolving the present case, the Court's jurisdiction should be confined to the issue on whether or not the BIR's denial of the Offer of Compromise is valid. Stated otherwise, the Court has no jurisdiction to nullify an assessment and set aside a WDL in a proceeding confined to the validity of the action of the BIR on an Offer of Compromise.

All told, I VOTE for the Court to proceed in determining the validity of the Offer of Compromise.

**ROMAN G. DEL ROSARIO**
Presiding Justice