REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

NORTH SEA MARINE SERVICES CORP., Petitioner,	**CTA CASE NO. 10377**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 15 2022 8:29 a.m.

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JUDGMENT ON COMPROMISE AGREEMENT

DEL ROSARIO, P.J.:

For resolution is the parties' "**Joint Motion to Render Judgment Based on Compromise Agreement**" filed on July 26, 2022, with attached certified true copy of "Certificate of Availment (Compromise Settlement)" dated June 27, 2022.

In support thereof, the parties submitted the following documents:

1. Original copy of the parties' "Compromise Agreement" signed by petitioner's authorized representative, Leonardo A. Aborot and the Commissioner of Internal Revenue, Caesar R. Dulay;[1]

2. Original copy of the Secretary's Certificate executed by Leonardo A. Aborot on September 2021;[2]

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[1] *Docket*, pp. 398 to 404.
[2] *Docket*, pp. 405 to 406.

3. Original computerized print-out of Payment Form (BIR Form No. 0605) filed on September 17, 2021, with eFPS Filing Reference No. 292100043751407, covering petitioner's payment of ₱7,294,033.03, representing 40% of the basic deficiency income tax assessment for CY 2014; [3]

4. Original computerized print-out of Payment Form (BIR Form No. 0605) filed on September 17, 2021, with eFPS Filing Reference No. 292100043751836, covering petitioner's payment of ₱438,509.12, representing 100% of the basic deficiency expanded withholding tax (EWT) assessment for CY 2014;[4] and

5. Original computerized print-out of Payment Form (BIR Form No. 0605) filed on September 17, 2021, with eFPS Filing Reference No. 292100043752242, covering petitioner's payment of ₱116,401.82, representing 100% of the basic deficiency withholding tax on compensation (WTC) assessment for CY 2014.[5]

The parties' "Compromise Agreement"[6] reads:

"**COMPROMISE AGREEMENT**

This **COMPROMISE AGREEMENT** ("**AGREEMENT**"), made and executed, by and between:

NORTH SEA MARINE SERVICES CORPORATION, (the "**TAXPAYER**"), a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Aseana II Building, Bradco Avenue, Aseana City, Parañaque City, represented by its Finance Manager, Leonardo A. Aborot;

-and-

The **COMMISSIONER OF INTERNAL REVENUE** (the "**CIR**"), with principal office at Bureau of Internal Revenue, 511 National Office Building, Agham Road, Diliman, Quezon City, represented by the **Commissioner of Internal Revenue**, **Hon. Caesar R. Dulay**; (collectively, the "**PARTIES**")

-Witnesseth That-

[3] *Docket*, pp. 407 to 409.
[4] *Docket*, pp. 413 to 415.
[5] *Docket*, pp. 410 to 412.
[6] *Supra* Note 1.

WHEREAS, on December 21, 2018, the **TAXPAYER**, received the Bureau of Internal Revenue (BIR), Revenue Region (R.R.) No. 6's Formal Letter of Demand (FLD) with attached Details of Discrepancies requesting the **TAXPAYER** to pay alleged deficiency income tax (IT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) for taxable year (TY) 2014 in the total amount of Php40,506,178.12, inclusive of surcharge and interests.

WHEREAS, on January 21, 2019, the **TAXPAYER** filed with the BIR, R.R. No. 6 its request for reinvestigation of the FLD (the "Protest") praying that the CIR's assessments for alleged deficiency IT, EWT, and WTC for TY 2014 be cancelled.

WHEREAS, on September 16, 2020, the **TAXPAYER** received the BIR, R.R. No. 6's Final Decision on Disputed Assessment (FDDA) dated September 4, 2020. In his FDDA, the **CIR**, through the Regional Director of BIR, R.R. No. 6, denied the Protest and ordered the **TAXPAYER** to pay the alleged deficiency IT, EWT, and WTC liabilities for TY 2014 in the aggregate amount of Php44,354,780.63, which was computed as follows:

Tax Type	**Basic**	**Surcharge**	**Interest**	**Total**
Income Tax	Php18,235,082.57	Php9,117,541.29	Php15,934,964.22	Php43,287,588.08
EWT	438,509.12	-	404,822.01	843,331.13
WTC	116,401.82	-	107,459.60	223,861.42
Total	**Php18,789,993.51**	**Php9,117,541.29**	**Php16,447,245.83**	**Php44,354,780.63**

WHEREAS, on October 16, 2020, the **TAXPAYER** instituted an action against the **CIR** entitled "**NORTH SEA MARINE SERVICES CORP. vs. COMMISSIONER OF INTERNAL REVENUE**", docketed as CTA Case No. 10377, before the First Division of the Court of Tax Appeals ("**CTA**"), seeking the cancellation and nullification of the assessment for alleged deficiency IT, EWT, and WTC for TY 2014 in the aggregate amount of Php44,354,780.63, inclusive of surcharge and interest;

WHEREAS, on February 2, 2021, the CTA issued a Resolution in which the case was referred to mediation before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).

WHEREAS, in the course of the mediation proceedings before the PMC-CTA, the **PARTIES** have agreed to amicably settle this case upon the **TAXPAYER's** payment of the compromise amount of **Php7,848,943.97**.

WHEREAS, on September 17, 2021, the **TAXPAYER** has remitted and paid to the BIR the total amount of Php7,848,943.97, as evidenced by:

1. Payment Form (BIR Form No. 0605) filed on September 17, 2021, with EFPS Filing Reference No. 292100043751407, covering the **TAXPAYER's** payment

of Php7,294,033.03, representing 40% of the basic deficiency IT assessment for TY 2014;

2. Payment Form (BIR Form No. 0605) filed on September 17, 2021, with EFPS Filing Reference No. 292100043751836, covering the **TAXPAYER's** payment of Php438,509.12, representing 100% of the basic deficiency EWT assessment for TY 2014; and

3. Payment Form (BIR Form No. 0605) filed on September 17, 2021, with EFPS Filing Reference No. 292100043752242, covering the **TAXPAYER's** payment of Php116,401.82, representing 100% of the basic deficiency WTC assessment for TY 2014.

WHEREAS, the **CIR** has evaluated the **TAXPAYER's** proposal for amicable settlement and believes that a compromise would allow immediate tax collection and also put an end to litigation as provided in the Civil Code of the Philippines which is in accordance with the interest of the Government.

WHEREAS, the **PARTIES** have agreed to enter into an amicable settlement pursuant to the provisions of the Civil Code of the Philippines, jurisprudence, relevant decisions of the CTA and Supreme Court, and pertinent laws and issuances on judicial compromise without contravening laws, morals, public order, and public policy.

WHEREAS, the **PARTIES**, for the purpose of avoiding and putting an end to a protracted, expensive, and mutually prejudicial litigation, have agreed to amicably settle the above-mentioned case, upon terms and conditions hereinafter set forth.

NOW, **THEREFORE**, for and in consideration of the foregoing premises, the **PARTIES** hereto have agreed as follows:

Section 1. Judicial Compromise Amount. In order to settle the above-mentioned case, the **TAXPAYER** has offered and paid, and the **CIR** has accepted, the total payment of **Php7,848,943.97** (the "**Judicial Compromise Amount**") as full satisfaction of the TY 2014 tax assessment.

Section 2. Submission to the Honorable CTA. This Agreement, fully signed by the **PARTIES**, shall be submitted for the approval of the Honorable Court of Tax Appeals in CTA Case No. 10377. The **PARTIES** undertake to perform any and all acts, and submit any and all documents, required by the CTA to be able to render a **Judgment by Compromise Agreement** in the said case.

Section 3. Effectivity of the Agreement. This **Agreement** shall take effect and bind the **PARTIES** upon approval by the Honorable CTA. This **Agreement** shall thereafter remain in force and effect until completion and fulfillment of the covenants and undertaking of the **PARTIES** hereto.

Section 4. Deliverables of the PARTIES upon approval of this Agreement by the Honorable CTA. Upon final approval by the Honorable CTA of this **Agreement**, the **CIR** undertakes to execute and deliver to the **TAXPAYER** any and all documents as may be required to effectively and fully implement the provisions of this **Agreement**.

Section 5. Authority to Enter Compromise Agreement. The **CIR** warrants that he has the necessary authority and capacity under the law to enter, sign, and execute this **Agreement**, and to deliver its implementing documents to the Honorable CTA.

The **TAXPAYER**, through its Finance Manager, Mr. Leonardo A. Aborot, is duly authorized by the Board of Directors of the **TAXPAYER** and has full legal capacity to enter, sign, and execute this **Agreement**, and to deliver payment of the above-agreed amount.

Section 6. Full and Final Settlement. This **Agreement** is executed by the **PARTIES** for the purpose of amicably settling and ending CTA Case No. 10377. Upon approval by the CTA, the **CIR** recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA Case No. 10377 and acknowledges that the **TAXPAYER** no longer has any tax liability whatsoever based upon, arising from, or in connection with the deficiency tax assessments for TY 2014.

Section 7. Disapproval of this Agreement by the Honorable CTA. In the event that this **Agreement** is disapproved by the Honorable CTA, the **PARTIES** agree to a curing period of sixty (60) days, subject to extension, from receipt of the Order/Resolution disapproving this **Agreement**. During such curing period, the **PARTIES** mutually agree to perform any and all acts necessary to rectify or correct the deficiency, defect, or imperfection which caused its disapproval, and re-submit the rectified or corrected Agreement for approval of the Honorable CTA. However, in case the deficiency, defect or imperfection is not or cannot be rectified or corrected within the said curing period, or still not approved by the Honorable CTA after it is rectified or corrected by the parties:

1. The amount already paid by the **TAXPAYER** to the Bureau of Internal Revenue shall be deemed a tax credit which may be applied against any internal revenue taxes for which the **TAXPAYER** may be directly liable, as allowed under existing rules and regulations; and

2. The proceedings of CTA Case No. 10377 shall continue and the discussions pursuant to the disapproved Agreement cannot be used by the **PARTIES** in said proceeding unless consent of the other party be obtained.

Section 8. No Admission of Liability. The execution of this **Agreement** shall not constitute or be interpreted in any way as an admission or acknowledgment of error or liability by the **PARTIES**.

Section 9. Non-Performance. The **PARTIES** agree that the failure of any **PARTY** to comply with any of the terms and conditions of this Agreement shall entitle the aggrieved **PARTY** to file an appropriate motion with the Honorable CTA for the immediate implementation and execution of the terms and conditions of this Agreement or the judgment or order of the Honorable CTA approving the same.

Section 10. Signatures and Counterparts. This Agreement may be signed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which shall be taken together as a single instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, the Agreement shall have no effect and no party shall have any right or obligation hereunder.

IN WITNESS WHEREOF, the **PARTIES** hereto have mutually and voluntarily agreed to the foregoing stipulations and have hereunto signed these presents at the date and place indicated above, for the consideration and approval of the Honorable Court.

NORTH SEA MARINE SERVICES CORPORATION
Petitioner/TAXPAYER

COMMISSIONER OF INTERNAL REVENUE
Respondent/CIR

By:

SIGNED

LEONARDO A. ABOROT
Authorized Representative

SIGNED

HON. CAESAR R. DULAY
Commissioner of Internal Revenue

Witnesses:

____

SIGNED

ATTESTED:

SIGNED
RET. JUSTICE OSWALDO D. AGCAOLI
Mediator"

THE COURT'S RULING

Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, authorizes respondent to compromise the payment of internal revenue taxes, subject to certain conditions or limitations, *viz.*:

> "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."** (*Boldfacing supplied*)

Based on the foregoing, respondent is empowered to compromise the payment of any internal revenue tax on either of the two (2) grounds, namely: (i) when the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax; or, (ii) when a reasonable doubt exists as to the validity of the claim against the taxpayer.

In case of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax must be paid. For other cases, the minimum compromise rate is forty percent (40%) of the basic tax assessed. In addition, when the basic tax exceeds ₱1,000,000.00 or where the settlement offered is less than aforesaid prescribed minimum rates, the compromise must be approved by the National Evaluation Board (NEB), which is composed of respondent and the four (4) Deputy Commissioners of the Bureau of Internal Revenue (BIR).

Revenue Regulations (RR) No. 30-2002 dated December 16, 2002, as amended, was issued to implement Section 204(A) of the NIRC of 1997, as amended. Sections 2 and 3 of RR No. 30-2002, as amended, provide:

> "SEC. 2. *CASES WHICH MAY BE COMPROMISED.* - The following cases may, upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations, be the subject matter of compromise settlement, viz:
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> 1. xxx
>
> xxx xxx xxx
>
> 2. **Civil tax cases being disputed before the courts;**
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> xxx xxx xxx
>
> EXCEPTIONS:
>
> 1. Withholding tax cases, unless the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold; xxx.
>
> SEC. 3. *BASIS FOR ACCEPTANCE OF COMPROMISE SETTLEMENT.* – The Commissioner may compromise the payment of any internal revenue tax on the following grounds:
>
> 1. Doubtful validity of the assessment. — The offer to compromise a delinquent account or disputed assessment under these Regulations on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:
>
> (a) xxx xxx xxx
>
> (b) The assessment seems to be arbitrary in nature, appearing to be based on presumptions and there is reason to believe that it is lacking in legal and/or factual basis; or
>
> xxx xxx xxx."

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Furthermore, any application for compromise must comply with the requirement set forth under Revenue Memorandum Order (RMO) No. 3-2017, *viz.*:

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

In *Philippine National Oil Company vs. Court of Appeals*,[7] the Supreme Court elucidated on the extent of the power of respondent to compromise the payment of internal revenue taxes, *viz.*:

> "It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise 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.
>
> The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. 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 of the NIRC of 1977, as amended, can only be exercised under certain circumstances specifically identified in said statutes. **The BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them**." (*Boldfacing supplied*)

In light of this, it is clear that the exercise of respondent's power to compromise under Section 204 of the NIRC of 1997, as amended, must be made within the parameters set by the law, and in case of

[7] G.R. No. 109976 and 112800, April 26, 2005.

abuse of discretion, this Court, upon appeal, may exercise its jurisdiction to correct the same.

In sum, the following requisites must be present for a valid compromise agreement:

1. The application for compromise is based on either the doubtful validity of respondent's assessment or the taxpayer's financial incapacity to pay such assessment;

2. In case the basis of the compromise offer is doubtful validity, the minimum payment of compromise settlement shall be at the rate equivalent of forty percent (40%) of the basic assessed tax; while if the ground is financial incapacity, the minimum payment should be at the rate equivalent to ten percent (10%) of the basic assessed tax; and,

3. The approval of the NEB which is composed of the respondent and his four (4) Deputy Commissioners, if the subject assessment exceeds One Million Pesos (₱1,000,000) or where the settlement offered is less than the prescribed minimum rates.

In the present case, respondent submitted petitioner's Application for Compromise, which indicates that the offer of compromise of its deficiency income tax, EWT, and WTC liability is based on the doubtful validity of the assessments.

After a judicious review of the records of the case, including the documents submitted by the parties in support of the present motion, the Court finds that petitioner and respondent have fully complied with the requirements set forth under Section 204(A) of the NIRC of 1997, as amended, its implementing revenue issuances, and jurisprudence.

The issuance of the assessment against petitioner is of doubtful validity as it violated its right to due process of law

There is a doubtful validity of the claim against petitioner when the procedure in issuing the assessment deprives a taxpayer of its right to due process of law.

A careful scrutiny of the Formal Letter of Demand (FLD) and its Details of Discrepancies[8] and the Preliminary Assessment Notice (PAN) and its Details of Discrepancies[9] reveals that the FLD and its Details of Discrepancies are **verbatim reproductions** of the wordings in the PAN and its Details of Discrepancies. The only difference between the two is the computation of interests and the portion added to the FLD and its Details of Discrepancies as regards the filing of a valid protest. The FLD did not refer to petitioner's Letter Reply to the PAN[10] nor did it address its arguments therein. The BIR's disregard of petitioner's Letter Reply leaves the latter with a hollow remedy to contest the findings of the BIR in the pre-assessment level, which is tantamount to a violation of its right to due process of law.

A cursory reading of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et al.*,[11] is instructive as to the proper handling of a reply to the PAN, to wit:

> **"<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 its 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 the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. <u>Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.</u>**
>
> xxx xxx xxx
>
> **The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and

[8] Exhibit "P-12", *Docket*, pp. 74 to 81.
[9] Exhibit "P-10", *Docket*, pp. 61 to 65.
[10] Exhibit "P-11", *Docket*, pp. 66 to 73.
[11] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; **otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. **Failure to do so would invalidate the Final Decision on Disputed Assessment.**

xxx xxx xxx

On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

xxx xxx xxx

The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, **did not even comment or address the defenses and documents submitted by Avon.** **Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, **this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that '[Avon] failed to submit supporting documents within 60-day period.' This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulations No. 12-99.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. <u>However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.</u>

> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**
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> xxx xxx xxx
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.**
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.**
>
> xxx xxx xxx
>
> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. **Her disregard of the standards and rules renders the deficiency tax assessments null and void.**" (*Boldfacing and underscoring supplied*)

Applying the doctrine from the aforequoted case to the present case, the issuance of the FLD against petitioner readily violates its right to due process when the BIR failed to address petitioner's arguments in the FLD and its Details of Discrepancies. Part of the due process requirement in the issuance of tax assessments is that respondent must give the reason/s for rejecting petitioner's explanations, and must give the particular facts upon which his conclusions are based, and those facts must appear on record. Respondent obviously did not observe such requirement in the issuance of the subject FLD and its Details of Discrepancies. It is clear that petitioner's right to due process of law, as recognized under Section 228 of the NIRC of 1997, as amended, and Sections 3.1.2 and 3.1.4 of RR No. 12-99, was violated by respondent. Consequently, the said deficiency tax assessments issued against petitioner is rendered void.

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Based on the foregoing, the ground of doubtful validity relied upon by the parties in entering into a compromise agreement has been satisfied.

The minimum compromise amount of forty percent (40%) of the basic assessed tax was paid by petitioner

With regard to the requirement that the minimum payment of compromise settlement shall be at the rate equivalent to forty percent (40%) of the basic tax assessed for cases involving assessments that are of doubtful validity, the table below shows the basic deficiency taxes imposed against petitioner,[12] the rate of compromise offer per tax type, and the amounts paid by petitioner:

Tax Type	**Basic Tax**	**Rate**	**Compromise Amount**	**Payment Made**
Income Tax	₱18,235,082.57	40%	₱7,294,033.028	₱7,294,033.03
EWT	438,509.12	100%	438,509.12	438,509.12
WTC	116,401.82	100%	116,401.82	116,401.82
Total	**₱18,789,993.51**		₱7,848,943.968	₱7,848,943.97

As shown above, the compromise rate was forty percent (40%) of the total basic income tax, and one hundred percent (100%) of the total basic EWT and WTC, as evidenced by respondent's following submissions:

1. Payment Form (BIR Form No. 0605) filed on September 17, 2021, with EFPS Filing Reference No. 292100043751407, covering the payment of ₱7,294,033.03, representing 40% of the basic deficiency income tax assessment for CY 2014;[13]

2. Payment Form (BIR Form No. 0605) filed on September 17, 2021, with EFPS Filing Reference No. 292100043751836, covering the payment of ₱438,509.12, representing 100% of the basic deficiency EWT assessment for CY 2014;[14] and,

3. Payment Form (BIR Form No. 0605) filed on September 17, 2021, with EFPS Filing Reference No. 292100043752242,

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[12] Exhibit "P-10", Preliminary Assessment Notice, *Docket*, pp. 61 to 65; Exhibit "P-12", Formal Letter of Demand, *Docket*, pp. 74 to 81; and, Exhibit "P-14", Final Decision on Disputed Assessment, *Docket*, pp. 93 to 97.
[13] *Supra* Note 3.
[14] *Supra* Note 4.

covering the payment of ₱116,401.82, representing 100% of the basic deficiency WTC assessment for CY 2014.[15]

Moreover, respondent submitted a certified true copy of the "Certificate of Availment (Compromise Settlement)" dated June 27, 2022 signed by Clavina S. Nacar, OIC-Assistant Commissioner, Head, TWG on Compromise,[16] certifying that petitioner's application for compromise settlement of deficiency income tax, EWT, and WTC amounting to ₱44,354,780.63 has been approved by the NEB.

Considering that the parties have faithfully complied with all the requirements under Section 204 (A) of the NIRC of 1997, as amended, as well as its implementing revenue issuances, the Court finds respondent's approval of petitioner's application for compromise in order.

WHEREFORE, in light of the foregoing, the parties' "**Joint Motion to Render Judgment Based on Compromise Agreement**" filed on July 26, 2022 is hereby **GRANTED**. The "Compromise Agreement" entered into by the parties is hereby **APPROVED** and judgment is rendered in accordance with its terms. The parties are enjoined to faithfully comply with all the terms and conditions of the aforesaid "Compromise Agreement".

Accordingly, the present case is now deemed **CLOSED** and **TERMINATED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

[15] *Supra* Note 5.
[16] *Docket, unpaginated.*

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Judgment by Compromise Agreement were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice