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

**SPECIAL THIRD DIVISION**

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| WHOLESOME FOODS, INC., Petitioner, | CTA CASE NO. 9362 |
| | Members: |
| -versus- | FABON-VICTORINO, *Acting Chairperson* and RINGPIS LIBAN, *JJ.* |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: JAN 04 2019 3:10 p.m. |

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# DECISION

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

Before the Court is the Petition for Review dated May 27, 2016 filed by Wholesome Foods, Inc., praying for the refund or issuance of tax credit certificate in the amount of Eleven Million Pesos (₱11,000,000.00), allegedly representing penalties erroneously collected and/or imposed against it without authority.

Petitioner Wholesome Foods, Inc. is a domestic corporation, with principal office address at Shaw Boulevard corner Marielane St., Barrio Kapitolyo, Pasig City.[1] It is a registered taxpayer with Taxpayer Identification Number (TIN) 209-674-481-000.[2]

On the other hand, respondent is the Commissioner of Internal Revenue (CIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 100.
[2] Par. 1.1, Admitted Facts, JSFI, docket, p. 100.

or other matters arising under the National Internal Revenue Code (NIRC), as amended, or other laws administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On March 19, 2014, the Regional Director of BIR Revenue Region No. 7 issued a Mission Order No. 00096195, directing the officers of Revenue District Office (RDO) No. 43A to (a) verify petitioner's registration and bookkeeping requirements, as well as its compliance with the new invoicing requirements, and (b) validate petitioner's permit to use Cash Register Machines (CRM) and/or Point of Sales machines (POS).[3]

On various dates thereafter, the officers of RDO No. 43A, as directed, conducted verification of petitioner's compliance with the registration and bookkeeping requirements, and its permit to use CRM and/or POS.[4]

Subsequently, respondent issued BIR Form No. 0605, stating that petitioner is liable in the total amount of ₱11,000,000.00, representing penalties for the following alleged violations: (1) no books; (2) no official receipts; (3) no backend report; and (4) unaccounted POS.[5]

On May 30, 2014, petitioner paid the alleged penalties of ₱11,000,000.00 at the United Coconut Planters Bank (UCPB) - Pioneer Branch.[6]

On May 3, 2016, petitioner filed with the BIR a letter-request for refund of the ₱11,000,000.00[7] it paid as penalties. It also filed a similar application for refund or tax credit with BIR Revenue Region No. 7 on the same date.[8]

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[3] Par. 3, Admitted Facts, JSFI, docket, pp. 100-101.
[4] Par. 4, Admitted Facts, JSFI, docket, p. 101.
[5] Exhibit "P-2", docket, p. 83.
[6] Exhibit "P-3", docket, p. 84.
[7] Exhibit "P-4", docket, pp. 85-89.
[8] Exhibit "P-4", docket, p. 90.

Respondent failed to act on the said application for refund or tax credit prompting petitioner to elevate the matter to the Court on May 27, 2016, via the instant Petition for Review.[9]

In his Answer[10], respondent claims that the ₱11,000,000.00 payment made by petitioner constitutes as compromise penalties in order to avoid criminal prosecution and administrative sanctions for the various violations it committed, namely, no subsidiary sales book, no official receipts, no backend report, and unaccounted POS machines. Besides, petitioner voluntarily paid the said compromise penalty as there was no demand to pay the said amount from respondent. Voluntary payment is also evident in Box No. 17 of the Payment Form (BIR Form No. 0605) accomplished by petitioner which indicates "Voluntary Payment." Box No. 22A of the same Payment Form as well indicates that the payment made by petitioner was voluntary. The approval of such payment by the Regional Director only shows that the payment was offered by petitioner and only ratified by respondent.

Further, the amount and breakdown of the compromise penalties, which were thoroughly explained to petitioner, find basis in Revenue Memorandum Order (RMO) No. 19-2007.

In addition, Number 5, part three of RMO No. 19-2007 states that compromise penalties are the amounts suggested in the settlement of criminal liability. That being the case, any amount may be suggested by respondent subject to the acceptance of the taxpayer, as occurred in this case. The suggested amount of compromise penalty having been accepted and voluntarily paid by petitioner cannot therefore be deemed excessive.

Finally, contrary to petitioner's claim, the subject amount cannot be deemed erroneously or illegally collected as contemplated under Sections 204 and 229 of the NIRC,

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[9] Petition for Review, docket, pp. 10-37.
[10] Docket, pp. 50-57.

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as amended, since it is in the nature of compromise penalties it voluntarily paid.

After the submission of their respective Pre-Trial Briefs, the parties filed their Joint Stipulation of Facts and Issues[11] on December 14, 2016.

Meanwhile, during the scheduled pre-trial conference on November 29, 2016, counsel for respondent appeared without the required Special Power of Attorney (SPA) from respondent but obliged to submit it on or before December 5, 2016.[12] The period granted lapsed without compliance from respondent's counsel.[13] Thus, pursuant to Sections 4 and 5, Rule 18 of the Rules of Court, respondent was declared in default, and petitioner was allowed to present evidence *ex parte*.[14]

On January 30, 2017, respondent filed a Motion to Lift Order of Default with Motion to Admit Special Power of Attorney.[15] It was however denied in the Resolution dated March 24, 2017[16], for failure to give a valid reason for counsel's inability to submit the required SPA.

On March 27, 2017, the Court issued a Pre-Trial Order[17] terminating the Pre-trial Conference.

Respondent's subsequent Motion for Reconsideration to Lift Order of Default[18] was also denied in the Resolution dated May 22, 2017[19], as respondent failed to controvert the findings of the Court in declaring him in default, as well as his inability to cite a valid ground for his counsel's non-submission of the required SPA within the period requested.

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[11] Docket, pp. 100-104.
[12] Minutes of the Hearing dated November 29, 2016, docket, p. 96; Order dated November 29, 2016, docket, pp. 97-98.
[13] Records Verification Report dated December 9, 2016, docket, p. 99.
[14] Resolution dated January 13, 2017, docket, pp. 106-108.
[15] Docket, pp. 109-114.
[16] Docket, pp. 126-128.
[17] Docket, pp. 130-133.
[18] Docket, pp. 135-142.
[19] Docket, pp. 146-148.

During the trial, petitioner presented its record custodian Maylyn V. Sorrosa, as its lone witness.[20] She testified that based on documents in her possession, petitioner received BIR Mission Order No. 00096195 dated March 19, 2014 directing the personnel of BIR RDO No. 43A to verify and validate petitioner's compliance with the registration, bookkeeping, and invoicing requirements, as well as its permit to use Cash Register Machines (CRM) and Point of Sales (POS) machines.

Subsequently, petitioner received BIR Form No. 0605, imposing penalties in the amount of ₱11,000,000.00 for violations it allegedly committed. The said BIR Form No. 0605 contained only the total amount of the penalties imposed without details or breakdown. In any event, petitioner paid the entire amount on May 30, 2014.

Convinced that the penalties imposed had no factual and legal basis, petitioner, on May 3, 2016, filed with respondent an application for refund of the amount illegally collected and paid.

In the Resolution dated November 16, 2017[21], the Court admitted all the exhibits formally offered by petitioner.

The case was submitted for decision on January 12, 2018.[22]

## THE ISSUE

The lone issue for the resolution of the Court is as follows:[23]

> Whether petitioner is entitled to refund or the issuance of a Tax Credit Certificate in the amount of Eleven Million Pesos (₱11,000,000.00),

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[20] Minutes of the Hearing dated May 29, 2017, docket, p. 160; Amended Judicial Affidavit dated May 26, 2017, Exhibit "P-6", docket, pp. 152- 159.
[21] Docket, p. 168.
[22] Docket, p. 189.
[23] Issue to be Resolved, JSFI, docket, p. 101.

representing the penalties imposed against it by respondent.

## Petitioner's Arguments[24]

Petitioner claims that it was deprived of due process by respondent since BIR Form No. 0605 merely indicates the total amount of penalties imposed with neither basis nor breakdown for it to intelligently refute or rebut them.

Further, such imposition has no basis in fact and in law as petitioner did not commit any of the alleged violations as stated in the BIR Form No. 0605 issued against it. Petitioner properly maintains its books of accounts and has properly secured appropriate registration, permits, and official receipts for the use of its head office and branches.

Assuming that it committed the alleged violations, the penalties imposed were excessive, being not in accordance with Revenue Memorandum Order (RMO) No. 19-07.[25]

## Respondent's Counter-Arguments[26]

Respondent reiterates that petitioner is not entitled to the refund sought as the amount it paid was in the nature of a compromise penalty in order for it to avoid criminal prosecution and imposition of administrative sanctions. The amount was collected with authority, therefore, not excessive or wrongfully collected to justify the refund/tax credit.

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[24] Docket, pp. 174-185.
[25] The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.
[26] Docket, pp. 54-56.

## THE RULING OF THE COURT

The propriety and timeliness of the filing of the instant Petition for Review shall first be determined before proceeding to the merits of the claim.

Sections 204(C) and 229 of the NIRC of 1997, as amended, pertinently provide:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected*. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. *(Emphasis supplied)*

Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 particularly applies to administrative claims for refund filed with respondent, while Section 229 refers to judicial claims for refund filed with this Court. However, both must be filed within two (2) years from the date of payment of the tax or penalty. Section 229 further requires that an administrative claim for refund must first be filed before the taxpayer may seek judicial intervention.[27]

Evidence show petitioner paid the penalties imposed against it on May 30, 2014.[28] Thus, petitioner had two (2) years from the said date or until May 30, 2016, to file both its administrative and the judicial claims for refund.

Petitioner filed its administrative claim[29] with respondent on May 3, 2016, while its judicial claim[30] was filed before the Court on May 27, 2016. Evidently, the Petition for Review was seasonably instituted, hence, the Court has jurisdiction to determine the same.

On the merits of the claim, petitioner invokes deprivation of due process to invalidate the collection of the amount paid since it was not allegedly sufficiently informed in writing of the basis of the penalties imposed against it,

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[27] CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015 and Commissioner of Internal Revenue, vs. CBK Power Company Limited, G.R. Nos. 193407-08, January 14, 2015.
[28] Exhibits "P-2" and "P-3", docket, pp. 83-84.
[29] Exhibit "P-4", docket, pp. 85-90.
[30] Petition for Review, docket, pp. 10-27.

pursuant to Section 228 of the NIRC, as amended, which provides, as follows:

> 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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> > (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> >
> > (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> >
> > (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
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> > (d) When the excise tax due on excisable articles has not been paid; or
> >
> > (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> 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.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Section 228 of the Tax Code succinctly provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void.[31]

It must be pointed out however, that the stringent requirement that an assessment notice be satisfactorily proven to have been issued and released or, if receipt thereof is denied, that said assessment notice have been served on the taxpayer, applies only to formal assessments prescribed under Section 228 of the National Internal Revenue Code x x.[32]

The term "assessment" refers to the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers to

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[31] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014.
[32] Commissioner of Internal Revenue vs. Dominador Menguito, G.R. No. 167560, September 17, 2008.

the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997.[33]

These national internal revenue taxes include (a) income tax; (b) VAT; (c) estate tax; (d) excise tax; (e) donor's tax; (f) documentary stamp tax; (g) capital gains tax; and (h) other percentage taxes.[34]

Thus, due process through the issuance of a formal assessment notice informing the taxpayer of the law and the facts upon which the assessment is based, as provided under Section 228 of the NIRC, as amended, applies only when internal revenue taxes are the ones being collected, to wit, income tax, VAT, estate tax, excise tax, donor's tax, documentary stamp tax, capital gains tax, and other percentage taxes. In other words, if what is being collected is not in the enumeration, then such is not an internal revenue tax which requires strict compliance with the due process requirement of issuance of formal assessment notices.

In the instant case, the record reveals that the investigation done was for the verification of petitioner's BIR registration and compliance with bookkeeping under the new invoicing requirements, and the validation of its permit to use CRM and/or POS machines pursuant to Revenue Regulations (RR) No. 11-2004 dated December 15, 2004, otherwise known as the Rules and Regulations on the Accreditation, Registration and Use of Cash Register Machines (CRM), Point-of-Sale Machines and/or Business Machines Generating Receipt/Invoices.

Note that BIR Form No. 0605 was issued directing petitioner to pay penalties in the total amount of ₱11,000,000.00 for the following alleged violations: (1) no books; (2) no official receipts; (3) no backend report; and (4) unaccounted POS.

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[33] SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue, G.R. No. 175410, November 12, 2014.
[34] CS Garment, Inc. vs. Commissioner of Internal Revenue, G.R. No. 182399, March 12, 2014.

Thus, the imposition of penalties was not the aftermath of a regular examination of petitioner for possible internal revenue tax liabilities, but the result of the inspection made by respondent's authorized representatives regarding petitioner's compliance with the administrative provisions of the Tax Code, pertaining to keeping of books of accounts, official receipts, and related financial records.

Considering that the payment made in this case was not for internal revenue taxes but for the imposition of penalties, the latter not being the result of the usual audit and examination of the taxpayer's books and financial record for determination of internal revenue taxes due, hence, Section 228 of the Tax Code does not apply.

Thus, to ascertain if petitioner is entitled to the refund sought, it must be determined if the penalties imposed in the total amount of ₱11,000,000.00 have factual and legal bases.

It is undisputed that respondent, pursuant to Section 235(e)[35] of the Tax Code, conducted an inspection in connection with petitioner's compliance with keeping of books of accounts, official receipts, and related financial records. Thereafter, respondent's authorized representatives issued to petitioner BIR Form No. 0605, directing petitioner to pay penalties in the total amount of ₱11,000,000.00 for the following alleged violations: (1) no books; (2) no official receipts; (3) no back- end report; and (4) unaccounted POS. These alleged violations are factual findings of BIR personnel after doing their official duty, therefore deemed conclusive, unless refuted.

As a general rule, official acts of authorized official enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary. When

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[35] SEC. 235 Preservation of Books of Accounts and Other Accounting Records. x x x (e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. x x x x x x

an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly.[36]

Verily, the factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence.[37] In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality by the courts.[38]

While the factual findings by respondent through his representatives may be rebutted by contrary evidence, petitioner failed in this regard.

Instead of presenting evidence that it did not commit any of the alleged infractions, petitioner merely denied committing any of them and simply alleged that it maintained its books of accounts, official receipts, and registered all its POS machines sans any proof to substantiate such claim. Basic is the rule that mere allegations are not evidence and are not equivalent to proof.[39]

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[36] Reyes, Jr. vs. Belisario, G.R. No. 154652, August 14, 2009

[37] *NGEI Multi-Purpose Cooperative Inc., et al. vs. Filipinas Palmoil Plantation Inc., et al.*, G.R. No. 184950, October 11, 2012.

[38] *Jimmy T. Go a.k.a. Jaime T. Gaisano vs. Bureau of Immigration and Deportation, et al.,* G.R. No. 191810, June 22, 2015.

[39] Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Commissioner of Internal Revenue and the Head Revenue Executive Assistant, Large Taxpayer Service, in their official capacities as Officers of the Bureau of Internal Revenue, G.R. Nos. 210689-90, November 22, 2017; Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR), G.R. Nos. 210704 & 210725.

In the absence of evidence that petitioner maintained its books of accounts, official receipts, and registered all its POS machines, and with the presumption of regularity in favor of the factual findings of respondent's representatives, the finding of violations with regard to the keeping of books of accounts, official receipts, and related financial records, must be upheld.

While the finding of violations is upheld, nonetheless the correctness of the amount of the penalties imposed is a different matter the legality of which will be determined by the Court.

The applicable rule is RMO No. 19-2007 dated August 8, 2007 or "The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code."

Item III Nos. 1, 3, 6, and 7 of RMO No. 19-2007 provide the following guidelines and instructions to all concerned Revenue Officers:

III. *Guidelines and Instructions:*

1. The internal revenue officers concerned shall apply the Revised Schedule of Compromise Penalties embodied in Annex 'A' to ensure uniformity of action.

xxx xxx xxx

3. **In no case shall the compromise penalty differ in amount from those specified in the aforementioned Schedule**, except when duly approved by the Commissioner or concerned Deputy Commissioner, or in proper cases, by the Regional Directors.

xxx xxx xxx

6. The schedule of compromise penalties herein prescribed shall not prevent the Commissioner

or his duly authorized representative from accepting a compromise amount higher than what is provided hereof. A compromise offer lower than the prescribed amount may be accepted after approval by the Commissioner of Internal Revenue or the concerned Deputy Commissioner/Assistant Commissioner/Regional Director.

xxx xxx xxx

7. In cases were Apprehension Slips were issued, all offers of compromise shall be made by accomplishing the form as shown in Annex 'B'." *(Emphasis supplied)*

Per the foregoing provision, the penalties that must be imposed should be based on Annex A of RMO No. 19-2007, to wit:

| **CODE SEC** | **NATURE OF VIOLATION** | **CRIMINAL PENALTY IMPOSED** | **AMOUNT OF COMPROMISE** | | |
|---|---|---|---|---|---|
| | | | If gross annual sales, earnings or receipts; or gross estate or gift | | |
| | | | Exceeds | But does not exceed | Compromise is |
| 232/ 235 | Failure to keep/ preserve records required by law or regulations | xxx | ₱ xxx<br>50,000,000 | xxx | ₱ 200<br>xxx<br>50,000 |

Based on Annex A of RMO No. 19-2007, the penalty for each of the findings should be computed at the maximum amount of compromise. Hence, the following penalties should be imposed on petitioner:

| **BIR Findings** | **Maximum Penalty per Annex A of RMO No. 19-2007** |
|---|---|
| No Books | ₱ 50,000.00 |
| No Official Receipt | 50,000.00 |

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| | |
|---|---|
| Unaccounted POS | 50,000.00 |
| **Total** | **₱150,000.00** |

It is therefore plain that the penalties imposed and paid by petitioner were excessive and not based on the pertinent regulation.

RMO No. 19-2007 requires strict adherence to the schedule of penalties listed in Annex A appended thereto. Item III No. 3 of said RMO categorically states that in no case shall the compromise penalty differ in amount from those specified in the afore-mentioned Schedule, except when duly approved by the Commissioner or concerned Deputy Commissioner, or in proper cases, by the Regional Directors.

Thus, *sans* any indication in the record that the Commissioner or his duly authorized representatives approved the penalty as indicated in BIR Form No. 0605, as obtaining in this case, the penalties already imposed should be set aside for not being in accordance with RMO No. 19-2007.

Further, the Court agrees with petitioner that there is no legal or factual basis for requiring the maintenance and submission of a backend report to the BIR. The nearest requirement for such kind of report is under Item No. 5.1.3 of RR No. 11-2004, which requires that CRM/POS machines being used by the taxpayer must be able to generate a report showing the reading of daily sales and the accumulated grand total recorded therein. However, nowhere in the said rules and regulations does it explicitly mention that such report refers to a backend report that must be submitted to the BIR.

Finally, in view of the finding of the Court that petitioner is only liable for penalties in the amount of ₱150,000.00, the excess beyond said amount paid by petitioner should be refunded (₱11,000,000.00 minus ₱150,000.00 equals ₱10,850,000.00).

**WHEREFORE**, the Petition for Review dated May 27, 2016 filed by petitioner Wholesome Foods, Inc. is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱10,850,000.00**, representing excessive and illegally collected penalties.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

*I Concur:*

Ma. Belen S

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

## ATTESTATION

I attest 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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

## CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Acting Division Chairperson's Attestation, 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