REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TIRSO B. SAVELLANO,
Petitioner,

- versus - C.T.A. CASE NO. 4249

THE COMMISSIONER OF INTERNAL REVENUE, PHILIPPINE NATIONAL OIL CO. and PHILIPPINE NATIONAL BANK,
Respondents.

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5/28/92

D E C I S I O N

The origin of this case goes back to June 23, 1986, when petitioner informed the Bureau of Internal Revenue (hereinafter referred to as BIR), of the alleged violations by respondent Philippine National Bank (hereinafter referred to as PNB) and the Philippine National Oil Company (hereinafter referred to as PNOC) of Presidential Decree (P.D.) No. 1931 of June 11, 1984 which withdrew all exemptions from taxes of government-owned or controlled corporations and their subsidiaries.

In a letter dated August 8, 1986, the BIR had requested PNOC to settle its tax liability for withholding taxes on the interests earned by PNOC's money market placements with the PNB (Exh. "L"; Exh. "3" Exh. "4", PNOC, CTA Rec.). PNOC, in answer to said letter wrote to the BIR on September 25, 1986, received on October 2, 1986, proposing an amicable settlement of its tax liability which PNOC had estimated at the time to be P304,419,396.83 for the period August 1, 1984 to July 31, 1986. It requested that it be assessed and required to pay only the said amount and that it be permitted to set-off its liability against the tax refund/credit claims of the National Power Corporation.

On October 8, 1986, the BIR sent a letter of demand to PNB, as withholding agent, for the payment of P376,301,133.33 as final deficiency withholding tax on interest earnings or yield on money placements by PNOC with the PNB covering the period October 15, 1984 to October 15, 1986 (Exh. "B", p. 249, CTA Rec.).

On even date, the BIR had also sent a letter to PNOC informing it of the letter of demand sent to PNB (Exh. "B"). PNOC replied on October 14, 1986 by reiterating its proposal to settle the tax liability being demanded from PNB through the offsetting against PNOC's liability of a pending claim for refund/credit of the National Power Corporation. In response to PNOC's letter the BIR noted in its letter dated November 11, 1986 that the proposal for off-setting is at the time premature and so PNOC was requested to settle its tax liability in the amount of P385,961,580.82, made up of P303,343,765.32 as withholding final tax, plus interest computed until November 15, 1986 in the amount of P82,617,815.50.

Subsequently tax payments arising out of a compromise agreement were received from PNB by the BIR and petitioner, pursuant to Section 281 of the National Internal Revenue Code (NIRC), was paid by the BIR in four (4) installments (the last on December 1, 1987), the amount P14,093,321.89 representing informer's reward computed at 15% of P93,955,479.12, broken down as follows:

P91,003,129.89	-	payment made by PNB under June 22, 1987 tax compromise agreement with BIR pursuant to E.O. No. 44
+ 3,952,249.23	-	advance payment made by PNB
P93,955,479.12	-	total payment made by PNB

In a letter dated January 7, 1988, petitioner, through his legal counsel, promptly wrote the BIR demanding payment of the balance of his informer's reward, computed as follows:

P385,961,580.82	-	BIR deficiency withholding tax assessment
X .15	-	statutory %
P 57,894,237.12	-	total tax informer's reward due
- 14,093,321.89	-	payment received by petitioner to date
P 43,800,915.25	-	outstanding balance

(Exh. "V", CTA Rec.)

Commissioner Tan, through his letter of March 8, 1988, replied by pointing out that the reward due has been fully paid as he had "accepted the offer of the taxpayer to pay a compromise of 30% of the deficiency basic tax of P303,343,766.29 plus the initial payment of P2,952,349.23 during the tax investigation of the case, or P91,003,129.89". The acceptance of the compromise was said to be "in line with the provisions of Executive Order No. 44, RMO No. 39-86, and RMO No. 4-87." Petitioner sought the reconsideration of this aforesaid action of Commissioner Tan through letter dated March 24, 1988.

On April 8, 1988 even as the aforesaid motion for reconsideration was pending in the BIR, petitioner filed a Petition for Review **ad cautelam** with the Court of Tax Appeals in pursuance of his claim that "the Commissioner of Internal Revenue acted with grave abuse of discretion and/or whimsical exercise of jurisdiction" in entering into a compromise agreement resulting in "a gross and unconscionable diminution" of his entitlement to the informer's reward. <u>Petitioner prayed for the enforcement and collection of the tax against liable parties PNB and/or PNOC, and the payment to him by respondent Commissioner of the 15%</u>

informer's reward on the total tax liability collected.

An Answer with Counterclaim was filed by the Commissioner of Internal Revenue on June 15, 1988 refuting the allegations in the Petition for Review on the main ground that there is no cause of action against him, and that petitioner has been sufficiently if not more than paid for what is due him. The petition was alleged to be baseless and malicious so that the Commissioner of Internal Revenue claimed for exemplary damages against petitioner.

Subsequently, a Motion for Leave to Admit Amended Petition for Review was filed by petitioner impleading PNB and PNOC, as necessary and indispensable parties, for being part of the compromise agreement.

On September 23, 1988 and September 30, 1988, PNB and PNOC, respectively, filed separate motions to dismiss the case on similar allegations of lack of jurisdiction by the Court to decide the case, PNB arguing that the authority of the Commissioner to enter into compromise agreements is purely discretionary and cannot be interfered with by the courts; and PNOC that this case does not fall within the provision of Republic Act No. 1125 outlining the scope of jurisdiction of the Court of

Tax Appeals. PNB also argued that petitioner cannot assail the legality or validity of the tax compromise. PNOC alleged also that petitioner has no cause of action against it absent the factual showing that it actively participated in, and/or had duly influenced the execution of the compromise agreement.

Answer to the Amended Petition for Review was submitted by the Commissioner on November 18, 1988 substantially reiterating his position against the claim of petitioner.

Upon the other hand, in reply to the motions of PNB and PNOC to dismiss the case, petitioner invoked the principle against multiplicity of suits and pressed his case against the alleged arbitrary exercise by the Commissioner of his power to compromise.

In its Resolution of November 28, 1988 the Court of Tax Appeals resolved that the question of lack of jurisdiction and/or cause of action which are the bases for respondents PNB and PNOC's motions to dismiss do not appear to be indubitable. Consequently, PNOC filed its Answer on February 14, 1989 and PNB on April 5, 1989. Respondent PNOC substantially contends that:

a) Petitioner Savellano has no cause of action against it;

b) It has no relation or privity with petitioner, an alleged tax informer;

c) The exercise by the Commissioner of its discretion to compromise the tax liability of PNOC at 30% of the deficiency basic tax has legal basis under Executive Order No. 44, and RMO Nos. 39-86 and 4-87;

d) It cannot be argued that the compromise was not fair and rational to the Government, since respondent PNOC is a wholly-owned and controlled government corporation and the compromise payment merely involved a transfer of public funds from PNOC to the BIR (citing **Millares v. Ortiz**, G.R. No. L-49561, June 15, 1979);

e) The alleged right of petitioner to the informer's reward does not arise from the annulment of the compromise agreement but rather from the fact of actual payment by the taxpayer; and

f) The Court of Tax Appeals has no jurisdiction to settle or resolve the case as against PNOC.

For respondent PNB, it substantially contends that:

a) The Court has no authority to try and decide the Petition for Review for want of jurisdiction;

b) In instances in which the Commissioner is vested with authority to compromise, such power is discretionary and once exercised by him cannot be reviewed or interfered with by the courts; and

c) The petition for review should be dismissed on the ground of prescription.

Subsequently, PNB and PNOC filed their respective Amended Answer incorporating an opinion of the Commission of Audit that "payment of the herein claim for informer's reward to Mr. Tirso B. Savellano cannot be allowed in audit."

Evidence of the parties were ordered to be submitted to be followed by their respective memorandum, after which the case will be deemed submitted for decision (See Minutes of the Session, April 20, 1990, p. 253 Rec.).

In the meantime, petitioner filed a Manifestation with Motion for Suspension of Proceeding adverting to his pending motion for reconsideration with the Commissioner that may soon be resolved, and so the need for the Commissioner to be given time to act on said unresolved motion. Opposition to the Manifestation of petitioner was submitted by PNOC and PNB.

On February 22, 1991, petitioner filed an Omnibus Motion, moving to withdraw the abovementioned motion for the suspension of proceeding for the reason that the cause for suspension has become **functus officio** with the resolution by the Commissioner of the previously pending motion for reconsideration, and submitting by way of supplemental offer of evidence the a) letter of the Commissioner of Internal Revenue dated January 16, 1991 demanding from respondent PNB, as withholding agent, the payment of the balance of respondent taxpayer PNOC's deficiency tax in the sum of P294,958,450.73; b) the letter dated February 13, 1991 informing petitioner Savellano of the Commissioner's action on the motion for reconsideration.

PNB and PNOC filed their respective Opposition, PNOC adopting the position of PNB that the move of petitioner is contrary to Section 35, Rule 132 of the Rules of Court. Petitioner countered that the action of the Commissioner is subject to judicial notice and the submission and marking of the supplementary evidence was made merely to serve the convenience of the Court to speedily dispose of the instant case. The Solicitor General, as counsel for respondent Commissioner, manifested that the Commissioner's stance, as per its letter to the Office Solicitor General dated March 11, 1991, considering this recent development, was stated in this wise:

> "The issue posed before the Tax Court for resolution in the aforesaid case is whether the availment under E.O. No. 44 of the (compromise of the) withholding taxes of P385,961,580.82 assessment on the interest earnings on the money market placement of PNOC with PNB is in accordance with law.
>
> This Bureau has arrived at the conclusion that such availment is without legal basis which decision was relayed to PNB in a letter dated January 16, 1991 (Annex "A") demanding for payment of P294,958,450.93 (balance) withholding taxes.
>
> As the Omnibus Motion, containing as it does a prayer in accord with the posture of this Bureau, i.e., immediate payment of withholding taxes, we therefore interpose no objection thereto."

The Court on May 2, 1991, acting on petitioner's Omnibus Motion, resolved to grant the motion to withdraw the motion for suspension and to admit the supplementary evidence being offered for admission.

On May 29, 1991, petitioner Savellano filed a Motion for Prompt Resolution considering that the memoranda of the parties are already with the Court. On June 3, 1991 the Court considered the case submitted for decision as of June 4, 1991.

On June 14, 1991, PNB filed Motion to Suspend Proceeding for the reason that it has "elevated the matter of the new assessment dated January 16, 1991 of the Commissioner of Internal Revenue against it in the amount of P294,958,450.73 before the

Department of Justice (hereinafter referred to as DOJ) pursuant to the provisions of P.D. No. 242 prescribing the procedure for the administrative settlement of disputes between government offices, agencies and instrumentalities including government-owned or controlled corporations." Petitioner on June 28, 1991 signified his opposition on the motion of PNB to suspend the proceedings citing the principle that jurisdiction once acquired remains with the Court until the case is finally terminated; and noting that PNB's Petition for Review filed with the DOJ amounts to forum-shopping.

On July 4, 1991, a Motion for Reconsideration (Re: Order dated June 3, 1991 submitting the case for decision as of June 4, 1991) was filed by PNB praying that the Court hold the decision in this case in view of the Petition for Review it has filed with the DOJ.

On July 17, 1991 PNB filed a Motion to Suspend Collection of Tax representing that the respondent Commissioner had sent a letter of demand to it for the amount of P294,958,450.73 representing withholding tax due and collectible; that despite a request for reconsideration, the Commissioner reiterated the demand through letter received May 14, 1991 and noted it as his final decision on the matter; and that the Commissioner is set to issue a warrant of distraint and/or levy against PNB's deposits with the Central Bank; and that the levy and distraint of PNB's deposits unless restrained will cause great and irreparable prejudice not only to the government-controlled PNB, but also to the Government itself.

On petitioner's opposition to the motion of PNB to suspend proceedings, PNB replied on July 18, 1991 by citing Secretary of Justice Opinion No. 113 dated June 30, 1990 that even appeals from the decision of the Commissioner of Internal Revenue involving a government-owned or controlled corporation can be taken cognizance of by the DOJ under P.D. No. 242. The principal issue according to PNB involves the determination of the tax due to the Government on the interest income of PNOC but this should be decided only by the DOJ and not this Court as provided by P.D. 242.

In the hearing of July 19, 1992, the Court ordered the parties to submit their respective memorandum regarding PNB's Motion to Suspend Proceedings. The Commissioner of Internal Revenue in his memorandum on the question of suspension of proceeding asserts, among others, that <u>the assessment against PNB has already become final and executory such that the assessment can no longer be</u>

assailed even at the DOJ. He alleges that the assessment dated January 16, 1991 was received by PNB on February 6, 1991 but no protest was filed or received within the following thirty (30) days that a taxpayer is permitted to do so under the law. A letter dated April 11, 1991 serving as a protest was received only on April 12, 1991, more than 30 days from receipt of assessment and beyond the reglementary period.

Petitioner in his Memorandum expressed his belief that this case is not between or among government entities corporations **inter se.** He notes the fact that the petition for review was initiated by a private litigant as petitioner against three government offices as joint respondents. He argues among others that the Petition for Review filed by PNB with the DOJ presents for adjudication the very same matters/ issues which are **sub judice** before this Court, and PNB would only want to abort the Court's exercise of its tax jurisdiction which had attached upon the filing of the instant petition. Furthermore, since the Court has acquired jurisdiction over the case, it should continue to exercise such jurisdiction until complete remedy is granted.

PNB argues in its memorandum that its Petition for Review before the DOJ presents a prejudicial question to the petitioner's claim for informer's reward; and that the Court of Tax Appeals has jurisdiction on the claim for informer's reward but not over the matter of its tax liability. For its part, respondent PNOC essentially maintains that the issuance of the assessment against PNB has given rise to a controversy purely between a government agency and a government owned or controlled corporation.

A Rejoinder by petitioner to PNB's Reply of July 18, 1991 was filed and contends that P.D. 242 is not applicable in this case.

On September 20, 1991 another Omnibus Motion was filed by petitioner calling attention to the fact that a warrant of garnishment against PNB has been issued by the Commissioner of Internal Revenue on August 2, 1991 addressed to the Governor of the Central Bank of the Philippines and received by the same on August 23, 1991; that on the same date August 23, 1991, a debit advice was issued against the demand deposit account of PNB for the amount of P294,958,450.73 and such amount was transferred to demand deposit in trust for the Bureau of Internal Revenue; that the motion to suspend proceedings of PNB has become moot and academic with the enforcement of the final and unappealable assessment through the issuance of a writ of garnishment. Petitioner thus moved for the denial of the said motion to suspend proceedings and for the Bureau of Internal Revenue to be required to deposit with the Court of Tax Appeals the amount of P44,243,767.00, representing the informer's reward still due.

On October 9, 1991 PNOC filed a Manifestation which, aside from reiterating its theory that the controversy falls under the jurisdiction of the DOJ, stated that the DOJ has ordered the Commissioner of Internal Revenue to suspend collection of the assailed tax delinquency in the amount of P294,958,450.73 and to file his answer to the Petition within a period of ten (10) days from receipt hereof.

Respondent PNB's Comment on petitioner's Omnibus Motion followed on October 10, 1991 arguing that in view of the aforequoted DOJ order suspending the collection of the tax, there is no basis for petitioner's motion as the same is premised on the erroneous assumption that the disputed tax has been collected. And, with the denial of the Commissioner of Internal Revenue's Motion to Dismiss and requiring him to answer, the DOJ has unequivocably assumed jurisdiction over PNB's Petition; and that this Court must first suspend the proceedings in the instant case to give the DOJ the opportunity to finally decide the validity and propriety of the tax assessment against PNB.

We therefore have these issues for determination:

1. Whether the Court of Tax Appeals has jurisdiction over the case, and if so, the extent of its jurisdiction;

2. Whether the validity of the assailed compromise agreement can be sustained;

3. Whether, under the facts of the case, relief may be granted petitioner up to the extent that he will be allowed to collect the outstanding balance on the 15% tax informer's reward.

This case was brought by petitioner Savellano against the Commissioner of Internal Revenue **ex abundanti cautelam**, wary only of the start of the tolling of the thirty (30) day period for filing Petition for Review when there is a pending motion for reconsideration with the Commissioner. Respondent PNOC belatedly tried in its memorandum to allege prescription against petitioner. The facts show, however, that the Commissioner's letter of March 8, 1988 was received March 11, 1988 and petitioner filed a motion for reconsideration of the same on March 25, 1988 effectively staying the thirty (30) day prescription period to appeal.

Still, the Petition for Review was filed on April 8, 1988 or within thirty (30) days from March 11, 1988. Notably, respondent PNOC did not raise the issue of prescription in its Answer and is therefore deemed to have waived such defense, consistent with Section 10, Rule 9, and Section 8, Rule 26, Rules of Court.

The Petition for Review was amended to implead PNB and PNOC as respondents for they are rightly parties in interest in this case. Under the standard of determining real parties in interest, which is that person who has the right to control and receive the fruits of the action (**PLDT v. Commissioner of Internal Revenue,** C.T.A. Case No. 4375, January 7, 1992), the said respondents qualify as parties in interest. They have a substantial stake in the action as they may potentially be benefited or prejudiced by the result of this action; they have interests adverse to the petitioner, as they stand for the validity of the compromise agreement; and their participation in this case, being parties to such agreement, is necessary for a complete determination of the questions involved. Having been impleaded as parties in this case and having filed their Answer to the Petition for Review, PNB and PNOC necessarily submitted themselves to the jurisdiction of this Court and should therefore be prepared to be bound by the Court's ruling.

Petitioner seeks to invalidate the compromise agreement. The power to compromise is discretionary and is ordinarily free from interference from the courts. However, in case of arbitrary or capricious exercise by the Commissioner or if the proceedings were fatally defective, the compromise can be attacked and reversed through the judicial process (**Meralco Securities Corporation v. Savellano,** 117 SCRA 805, 812, p. 812 [1982]; **Sarah E. Ramsay et. al. v. U.S.** 21 Ct. Cl. 443, aff'd 120 U.S. 214, 30 L. Ed. 582; **Tyson v. U.S.** 32 F Supp. 135). Is it then this Court that has the power to review the compromise agreement in this controversy?

We are well aware that the rule on compromise settlements adheres closely to the law of contracts, as a compromise of taxes is a contract. It also follows that contracts are subject to construction by a court as to its meaning and validity (**Mertens, Law of Federal Income Taxation,** Vol. 9, 1977, Chapter. 52.19, p. 33 citing **Big Diamond Mills Co. v. U.S.** 21 F2d 721 and other cases). A mistake of law may also suffice to destroy a compromise agreement (**Cloister Printing v. U.S.,** 100 F 2d 355). Like other contracts it requires, **inter alia**, parties capable of making and authorized to make the contract, a subject matter, and a consideration.

The Civil Code provides that "A compromise has upon the parties the effect and authority of **res judicata**" (Article 2037). **Res judicata** applied to compromise settlements gives the accord reached, therefore, the force and effect of a definitive and final judgment. Stated in another way, compromise connotes judgment, or decisions, the last two words being synonymous.

This relation just defined is relevant, for in outlining the jurisdiction of the Court of Tax Appeals, its charter, Republic Act (R.A.) 1125 in Section 7 thereof speaks of "decisions" of the Commissioner of Internal Revenue on "disputed assessments" or "other matters arising under the National Internal Revenue Code that may be reviewed on appeal". It has been previously interpreted that a "disputed assessment" arises where a taxpayer questions an assessment and asks for reconsideration or cancellation of the same (**Commissioner of Internal Revenue v. Villa**, 22 SCRA 3, 6 [1968]).

It may seem that the assessments issued by the Commissioner against PNOC and PNB were not disputed as PNOC offered to compromise the tax liability soon after receipt of the demand for the tax. But a compromise implies a dispute. The alternatives in a tax controversy are to settle or to litigate in those cases in which there are doubtful questions which neither side is willing to yield on completely. Settlement is "simply the employment in the field of tax administration of sound and valuable businesslike methods for the adjustment of disputes" (Mertens, **supra**, Chapter 52.01, p.2).

A compromise then necessarily involves its own method of adjudication of the case. To say that compromise is **res judicata** means that it is an adjudication on the merits.

In a case (Meralco Securities Corp. v. Savellano, **supra**) with resembling circumstances as the case on hand, an informant had given confidential denunciations in the hope of being rewarded on the tax collected. The Commissioner failed to determine any assessible tax against the object of the denunciations and the informant did not agree with this ruling. He sought the issuance of an assessment and collection of the tax against the party involved but erroneously went to the then Court of First Instance for relief. Under these conditions, the Supreme Court ruled that the court of First Instance has no jurisdiction over the case and also found occasion to elucidate on the jurisdiction of the Court of Tax Appeals, analyzing that:

> "The question whether or not to impose a deficiency tax assessment on Meralco Securities Corp. undoubtedly comes within the purview of the words "disputed assessments" or of "other matters arising under the National Internal Revenue Code."

Of course, the cited case does not involve a compromise agreement. But it may not also be incorrect to say, drawing a parallel from the inference of the Supreme Court in said case, that the question on the validity of a compromise agreement entered into by the Commissioner of Internal Revenue is within the context of "disputed assessments" or of a "other matters arising under the National Internal Revenue Code". For if in reviewing a compromise agreement, such agreement is found to be characterized with abuse of discretion, it follows that the Court will also have to make a determination of the propriety and legality of imposing a deficiency tax assessment. As well in the **Meralco Securities Corp.** Case, the Supreme Court had perceived of the possibility that informer's rights may be the subject of adjudication by this Court. The Supreme Court, speaking through then Justice Claudio Teehankee opined:

> "Thus even assuming arguendo that the right granted the taxpayers affected

> to question and appeal disputed assessments, under Section 7 of R.A. 1125, may be availed of by strangers or informers like the late Maniago, the most that he could have done was to appeal to the Court of Tax Appeals the ruling of the Commissioner of Internal Revenue within thirty days from receipt pursuant to Section 11 of Republic Act No. 1125.

In Section 11 of R.A. 1125, therefore, reference to any person, adversely affected by a decision or ruling of the Commissioner who may file an appeal to this Court may be interpreted to include an informer adversely affected by a decision of the Commissioner of Internal Revenue.

Our belief that it is this Court that has jurisdiction over this case has been reinforced by the finding that the resolution of the validity or illegality of the compromise agreement necessitates the application of tax principles, this case being pervaded with tax connotations. It is not too much to say that with the recognized expertise of this Court in tax cases, it is most competent to adjudicate these issues. This Court holds that it exercises exclusive appellate jurisdiction over the case at bar, to the exclusion of the DOJ - such jurisdiction extends not only to a determination of the validity of the compromise agreement in question, but also up to the priority and legality of the issuance of an assessment against the concerned taxpayer/s.

The question of jurisdiction settled, we also believe that the Department of Justice cannot intervene in this case and deprive this Court of jurisdiction. The jurisdiction of the court once acquired, is exclusive, and continues until the end of the litigation or until the case is finally terminated (**Lat v. Philippine Long Distance Telephone Company, Inc.**, 67 SCRA 425, 434 [1975] citing cases; **Evangelista v. Court of Agrarian Relations,** 109 Phil 957, [1960]). As earlier pronounced by the Supreme Court in a case:

> "Jurisdiction over remedies of the same nature arising from the same cause of action is indivisible. It is the policy of the courts to determine the entire controversy between litigants. Accordingly, jurisdiction carries with it the power to hear and determine every issue or question properly arising in the case, to do any and all things with reference thereto authorized by law, and to grant full and complete relief (**Iburan v. Labes,** 87 Phil. 234, 238 [1950] citing 21 C.J.S., 135, 136).

This case has evolved from one orginally between an informer, who is a private person, and a government bureau and government-owned or controlled corporations as respondents, to a case between the same private litigant as plaintiff and PNB and PNOC as those remaining on the defense. Presidential Decree (P.D.) No. 242 meant to subject to adjudication by a proper government body only those disputes or controversies solely among or between government offices, agencies and instrumentalities. This is not one such case.

We do not think that the case of **Development Bank of the Phils. v. Court of Appeals** (180 SCRA 609 [1989]) has application here. This is a case initiated by a private litigant and up to its submission for complete resolution continued to involve the interest of the private litigant since one of the reliefs prayed for from the very start is for respondent Commissioner of Internal Revenue to enforce and collect and respondents PNB and PNOC to pay the total tax liability estimated at P387,987,785.73. Distinctively, the **Development Bank of the Phils.** case started as one solely between a government agency and a government corporation.

Here, even if the BIR subsequently arrived at the conclusion that the availment of E.O. No. 44 by the PNOC was without legal basis and it has to change its original stance, the same will merely form part of the incidents of this case and may not deprive this Court of jurisdiction if one has legally been acquired in the first place. This is but compatible with the principle against multiplicity of suits which looks to a final determination in a single action of the whole controversy (Section 6 and 7, Rule 3, Section 14, Rule 6 in relation to Section 2, Rule 1, Rules of Court).

Respondents PNB and PNOC do not deny that this Court has acquired jurisdiction over the subject matter and over the persons of PNB and PNOC. In their memoranda, after the case has been deemed submitted for decision on June 4, 1991, it appears that PNB and PNOC has bowed to the jurisdiction of this Court to adjudicate the question in this petition. In their oral arguments counsels for PNB and PNOC also maintained that this Court has jurisdiction over the petition filed by Savellano, thus:

> "JUDGE ROAQUIN
>
> What I believe is that once a court acquires jurisdiction, we can not release that unless we know that we do not have jurisdiction over the matter. But in this particular case it seems that we still have jurisdiction.
>
> ATTY. MAGLAYAN
>
> Yes, Your Honor please. By clarification, we do not question the jurisdiction of this Honorable Court over this case. This case filed by petitioner is a case for the recovery of informer's reward. So that is ...
>
> JUDGE ROAQUIN
>
> That is purely incidental to the matter, that is only incidental. (Underscoring mine)
>
> xxx xxx xxx

JUDGE ROAQUIN

The 15% should be based on the new ruling of the BIR.

JUDGE ACOSTA

That is why he is trying to raise that issue before this court because the issue of what is the rightful tax that is due from the companies. So I think the rightful thing that you (should) have done is if you do not agree with the allegation of the respondent, you should have filed you reply or answer to their denial.

ATTY. MAGLAYAN

We protested ...

JUDGE ACOSTA

Before this court, not before the Department of Justice.

JUDGE ROAQUIN

You had the wrong venue; you proceeded with the wrong forum. (Underscoring mine)

xxx xxx xxx

JUDGE ACOSTA

On the issue of jurisdiction, what is your position which is being questioned by PNB?

xxx xxx xxx

ATTY. MAALIHAN

We maintain that this court has jurisdiction over the petition of the Savellano which is between Savellano and PNB.

xxx xxx xxx

ATTY. DAVID

> We maintain that Department of Justice has no more jurisdiction, You Honor, on the ground that this incident has become final.
>
> xxx xxx xxx."

And yet apparently, after having submitted their cause, when PNB and PNOC sensed of an impending adverse decision on the merits, they make a deliberate effort to evade the jurisdiction of this Court by going to the Secretary of Justice for relief. This is not permissible for in the leading case of **Tejam v. Sibonghanoy** (23 SCRA 29), reiterated in **Phil. National Bank v. IAC** (143 ACRA 299) and **Meram v. Edralin** (154 SCRA 238), the Supreme Court ruled:

> "xxx a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction."

In the recent case of **Tejones v. Gironella** (159 SCRA 100, 104 [1988]), the Supreme Court held that when a party had voluntarily submitted himself to the jurisdiction of the Court, he is estopped from later on assailing its jurisdiction.

We find truth and reason in the observation of petitioner that if this case is transferred to the jurisdiction of the Secretary of Justice, the very same matters/issues already adjudicated or **sub**

judice before this Court, that is, whether PNB and/or PNOC are liable for any tax deficiency in the light of the tax compromise, will be taken for re-adjudication. Surely, this goes against the settled principle frowning on multiplicity of suits. This belief is supported by the Supreme Court decision in **Ramos v. Central Bank of the Philippines** (41 SCRA 572, 583 [1971] citing **People v. Pegarum**) saying:

> "... the jurisdiction of a court depends upon the state of facts existing at the time it is invoked, and is the jurisdiction once attaches to the person and the subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached." (Underscoring Ours)

More, the evils attending split jurisdictions have long been recognized in **Bay View Hotel, Inc. v. Manila Hotel Workers' Union** (18 SCRA 946, 953), and in the **Ramos Case** the Supreme Court spoke this teaching again:

> "To draw a tenuous jurisdictional line is to undermine stability in ... litigations. A piece meal resort to one Court and another gives rise to multiplicity of suits ... The time to be lost, effort wasted, anxiety augmented, additional expense incurred - these are considerations which weigh heavily against split jurisdiction. Indeed it is more in keeping with orderly administration of justice that all the causes of action here be cognizable and heard by only one Court ..."

<u>The Order of September 2, 1991 of the Secretary of Justice proceeding from the erroneous belief of jurisdiction over this case thus suspending the collection of the assailed tax delinquency in the amount of P294,958,450.73 and commanding the Commissioner of Internal Revenue to file his answer within 10 days is therefore of doubtful validity.</u>

Going into the compromise agreement, the present Commissioner of Internal Revenue, in the middle of these proceedings had changed its stance by reversing the previous position of his predecessor on the ground that the availment of the compromise under E.O. No. 44 was without legal basis. In effect, therefore, the Government has reopened the case and seeks relief from its fulfillment on the basis of mistake of law. In its letter to PNB demanding payment of the amount of P294,958,450.93, the Commissioner laid its reasons why it is avoiding the contract, thus:

> "xxx xxx xxx
>
> After a circumspect study of the case, this Office has arrived at the conclusion that the compromise settlement is without legal basis considering that E.O. 44 contemplates disputed or delinquent taxes. The withholding taxes are actually not tax but penalty for your failure to withhold the same from PNOC (National Development Corp. vs. Comm. of Internal Revenue, G.R. No. 539611, June 30, 1987). Moreover, the obligation to withhold the tax is your personal

liability as withholding agent (Comm. of Internal Revenue vs. Malayan Insurance Co., G.R. No. L-21913, Nov. 18, 1967.) Such liability is imposed under Section 51(e) of the Tax Code.

Accordingly, there is still due from you the amount of P294,958,450.93 arrived at as follows:

Withholding tax plus interest under letter of demand dated Nov. 11, 1986	P385,961,580.82
Less: Amount paid under E.O. 44	91,003,129.89
Amount still due and collectible	P294,958,450.73

xxx xxx xxx"

(page 456, CTA Rec.)

The law pertaining to compromises permits the voiding of the contract of compromise where consent is given through mistake (Articles 2038 in relation to Art. 1330 of the Civil Code). Article 1331 of the Civil Code further provides that "In order that mistake may invalidate consent it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract." Mistake of law like mistake of fact should refer to the substance of the contract to invalidate consent. It has been ruled in an American case that mistake of law as to whether the subject matter of the assessment is itself properly taxable may invalidate the compromise agreement (Cloister Printing Corp. v. U.S., **supra**). In that case the mistake of law was confirmed by a decision of the U.S. Supreme Court reversing the decision erroneously used as basis for the compromise agreement. In our case, therefore, it must be shown that the Commissioner had committed mistake of law in relying on E.O. No. 44 for the compromise settlement. We find that the consent of the parties to the compromise agreement is vitiated by mistake of law. It is also a requirement in contracts that the parties who enter into contracts are capable of making and authorized to make the contract. The circumstances of this case show that the previous Commissioner of Internal Revenue in several ways acted beyond the scope of his authority through the issuance of implementing rules that violated the intent of the basic law, E.O. No. 44, and the arbitrary accommodation of the case of private respondents which is not one of those cases within the contemplation of said basic law.

The compromise agreement is chiefly the product of reliance by the parties on Executive Order No. 44 titled "Authorizing the Bureau of Internal Revenue to <u>Accept Compromise Payments on Delinquent Accounts and Disputed Assessments</u>

Pending As of December 31, 1985" (Underscoring supplied). Done on September 4, 1986, it was to remain effective until March 31, 1987. In turn, the Commissioner "accepted the offer of the taxpayer to pay a compromise of 30%" on June 22, 1987 (Exh. "W", Exh. "6" PNB, Exh. "7" PNOC, p. 22 CTA Rec.). The compromise settlement therefore was effectively contracted on June 22, 1987, which was after the effectivity of Executive Order No. 44 on March 31, 1987 (Underlining supplied). Worse, this compromised amount "was paid in 3 installments" completed much later.

Compromises are a statutory matter and have their legal consequences by virtue of the statute which created them. Having been conceived as a unique method for certain tax cases, the compromise procedure outlined by the statute is exclusive and requires strict adherence. The regular machinery for compromising a tax specified in Section 246 of the National Internal Revenue Code considers only two conditions where the power to compromise may be exercised: When -

> "a) A reasonable doubt as to the validity of the claim against a taxpayer exists; or
>
> b) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax."

Executive Order No. 44, in Section 4 thereof, suspended Section 246 of the NIRC for the duration of its effectivity thus giving the Commissioner the power to compromise, subject only to the provisions and intent of E.O. No. 44. Section 1 of E.O. No. 44 provides:

> "SECTION 1. The Commissioner of Internal Revenue or his duly authorized representatives may compromise any disputed assessment or delinquent account as of December 31, 1985, upon the payment of an amount equal to this by (30%) percent of the basic tax assessed. In such cases, the Commissioner of Internal Revenue or his duly authorized representatives shall condone the corresponding interests and penalties."

A compromise implies agreement (**Commissioner v. Armando L. Abad,** 23 SCRA 1132, 1140, [1968]). An offer to compromise may have been made but if the offer is not accepted, there is no compromise (Commissioner v. Armando L. Abad, **supra**). A contract is perfected by mere consent; and consent is manifested by the meeting of the offer and acceptance upon the thing and the cause which are to constitute the contract (Arts. 1315, 1319 Civil Code). The acceptance of the compromise payments that will serve to perfect the contract of compromise must therefore be made on or before March 31, 1987 as Section 1 states quite plainly that the Commissioner "may compromise xxx upon the payment of an amount equal to thirty percent (30%)" or, taking it from the Title of the law, "accept compromise payments" only until such date. If E.O. No. 44, for its duration, contemplates less than acceptance of payments or perfection of compromise agreement, meaning mere applications for compromise, it could have easily stated so by provisions in the law or could have referred to "offers in compromise" in its provisions. As it is, the use of the words "may compromise xxx upon the payment of an amount equal to thirty percent (30%)" and "accept compromise payments" presupposes a formal accord or an agreement of compromise entered into between Government and taxpayer on or before March 31, 1987.

Revenue Memorandum Order (RMO) No. 39-86 dated November 18, 1986 provided in its paragraph no. 2 that:

> "2. Period of availment - Filing of application for compromise settlement under the said law shall be effective only until March 31, 1987. Applications filed on or before this date shall be valid even if the payment or payments of the compromise amount shall be made after the said date, subject, however, to the provisions of Executive Order No. 44 and its implementing Revenue Regulations No. 17-86." (Underlining ours.)

RMO No. 39-86 in paragraph 2 thereof contradicted the intent of E.O. No. 44 by unduly expanding its scope through the provision that "acceptance of compromise payments" may mean acceptance of applications until March 31, 1987 and payments even beyond said period. It has always been the rule that implementing rules or orders should be confined only to what the main body of law intends. Rules that conflict with the main law are discarded eventually for being null and void (**Tayug Rural Bank v. Central Bank of the Philippines** 146 SCRA 120 [1986], citing cases). In this aspect, paragraph No. 2 of RMO No. 39-86 is manifestly beyond the confines of E.O. No. 44 and is not binding as we consider it void.

An equally important point in the light of the circumstances of this case is whether the application for compromise falls within the scope of E.O. No. 44 and its implementing regulations, Revenue Regulations No. 17-86 (October 8, 1986), as far as the limitation in the law to make it applicable to disputed assessments or delinquent accounts due as of December 31, 1985 (Sec. 1 of E.O. No. 44 and Sections 2 and 3 of Revenue Regulations No. 17-86). Disputed assessment under Revenue Regulations No. 17-86 refers to a tax assessment disputed or protested on or before December 31, 1985. On the other hand, delinquent account refers to the amount of tax due on or before December 31, 1985 arising from, as may be applicable in our case, "a deficiency assessment issued by the BIR which has become final and executory". At the very least, therefore, the Revenue Regulation speaks of a deficiency assessment of the tax due that has been issued and disputed on or before December 31,1985, or a deficiency assessment that has become final and executory as of that date. The facts of this case show, however, that for PNB, letter of demand for tax due was sent only on October 8, 1986 (Exh. "L", Exh. "3" PNB, Exh. "4" PNOC), while the BIR sent a letter to PNOC informing it of its tax liability and demanding for its settlement only on October 14, 1986. The Commissioner simply acted beyond the scope of his authority under E.O. No. 44 and Revenue Regulations No. 17-86 in accommodating the case of PNB and PNOC for a compromise settlement where their assessments have not been issued as of December 31, 1985 and do not fit the requirements of the implementing regulations.

We see also an abuse of discretion committed by the previous Commissioner of Internal Revenue in another side of this case. The present Commissioner of Internal Revenue, Jose U. Ong, is of the opinion that "xxx the compromise settlement is without legal basis considering that E.O. No. 44 contemplates disputed or delinquent taxes". We agree with this finding of the present Commissioner of Internal Revenue. It is not enough argument for PNOC to say that the compromise agreement must be upheld because it merely involved transfer of funds to the BIR, another government entity. As stated in the whereas clauses of Presidential Decree No. 1931 the imposition of taxes on government-owned or controlled corporations has more significant purposes for revenue generation and the requirements of economic development. These intentions as enumerated in the whereas clauses negate the mere "transfer of funds" theory being invoked by PNOC. We see that what is unsanctionable with the act of the previous Commissioner of Internal Revenue Bienvenido A. Tan, Jr. is that PNOC could not and should not have been allowed to avail of E.O. No. 44 and RMO No. 39-86 since the case against PNOC and PNB involved withholding tax assessment which is actually not a tax but a penalty (**National Development Corp. v. Commissioner,** 151 SCRA 472, 480 [1987]). E.O. No. 44 contemplates the acceptance of compromise payments on delinquent accounts and disputed assessments in reference to taxes due as strictly distinguished from penalty. Penalties could not therefore be the subject of compromise agreements based on E.O. No. 44.

Moreover, the law holds the withholding agent "personally liable" for the payment of withholding taxes. The significance of this personal liability was explained in the case of **Philippine Guaranty**

Co. v. Commissioner of Internal Revenue, (15 SCRA 1, 4, [1965]).

> "The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withdraw the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction."

In the light of the unequivocal withdrawal of tax exemptions of government-owned or controlled corporations, first by Presidential Decree No. 1177 (July 30, 1977), and later Presidential Decree No. 1931 (June 11, 1984), except upon its restoration by the Fiscal Incentives Review Board, the liability of PNB is established. To further exemplify the stringency of the standard set in the Philippine Guaranty Case, an honest belief that the income paid may not be subject to withholding does not exempt a withholding agent from liability. Thus, in the foregoing case the Supreme Court set this rule:

> "In case of doubt, a withholding agent may always protect himself by withholding the tax due, and promptly causing a query to be addressed to the Commissioner of Internal Revenue for the determination of whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding the withholding agent may thereupon remit the amount of tax withheld." (Section 200, Income Tax Regulations, also cited in

National Development Company v. Commissioner of Internal Revenue, **supra**)

In accommodating PNOC through E.O. No. 44 and its implementing regulations, the Commissioner, in effect, made an undue amendment of the authority to compromise by the expansion of the authority. As also said in the Tayug Rural Bank Case, **supra:**

> "A public official must locate in the statute relied upon a grant of power before he can exercise it. Department zeal may not be permitted to outrun the authority conferred by statute."

In fine, the compromise agreement entered into by the parties is not only permeated with mistake on the substantive aspects of the contract but, more importantly, lack of authority from the basic law characterizing the actions of the previous Commissioner of Internal Revenue. Enough reasons exist therefore to justify the invalidation of the compromise agreement. It is the rule that the Government is not estopped from correcting the mistakes and errors of its agents (**British Trader's Insurance Co., Ltd. v. Commissioner of Internal Revenue,** 13 SCRA, 719, 726 citing **Hilado v. Collector of Internal Revenue,** 52 O.G. 2481 and other cases). So is the Commissioner not bound by the erroneous ruling of his predecessor as he has the power to rectify the error (Phil. Guaranty Co., Inc. v. Commissioner of Internal Revenue, **supra**).

Ordinarily, if the compromise agreement has been invalidated, judgment may be rendered ordering the Commissioner to issue assessment if no assessment has yet been made. It may be opined that the case has become moot and academic with the change of stance by the Commissioner against PNB and PNOC. But we should not stop here, lest, as already said, we split jurisdictions; and equally important, considering that the Commissioner has already issued the assessment, we may leave hanging the question of the validity of the assessment in the midst of circumstances as related below which compel a ruling on the assessment. We will rule on whether the assessment should be upheld in view of the conditions prevailing in this case. This has support in the words of Justice Roberto Concepcion, in this wise: "Moreover, this jurisdiction to decide all cases involving disputed assessments xxx necessarily implies the power to authorize and sanction the collection of the taxes xxx involved in such assessments as may be upheld by the Court of Tax Appeals" (**Gancayco v. Collector of Internal Revenue**, 1 SCRA 980, 885 [1961]).

The record shows that letter of demand dated January 16, 1991 for the amount of P294,958,450.73 was received by PNB on February 6, 1991. The Commissioner alleges that no protest from PNB was filed or received within the following thirty (30) days that a taxpayer is permitted to do so under the law. A letter dated April 11, 1991 serving as a protest was received only on April 12, 1991, more than thirty (30) days from receipt of assessment and beyond the reglementary period. The Commissioner thus concludes that the assessment has already become final and executory. Against this, PNB could only argue that the tax notice was improperly sent, allegedly having been received by the Bank's general mailing services instead of its Financial Management Department. Nonetheless, PNB would also depend on its theory that since it is the DOJ which has jurisdiction over this case, there is no thirty (30) day period to be reckoned with as P.D. 242 has no such rule.

We think that PNB has committed a fatal omission in not protesting the case on time. Notice of the assessment was validly made where it is the PNB's general mailing services that received it. The service of process made by the Commissioner substantially complies with the standard set in **Villa Rey Transit, Inc. et. al. v. Far East Motor Corporation Case** that "service must be made on a representative so integrated with the corporation" (81 SCRA 298, 303 [1978]). The name of the PNB office that received the assessment speaks for our purpose.

And so when a warrant of garnishment was issued against PNB addressed to the Governor of the Central Bank of the Philippines, the Commissioner was merely enforcing collection of an assessment which has become final and unappealable. If not for the order to suspend collection by the DOJ, collection would have already been effected since a debit advice had already been issued by the Central Bank against the demand deposit account of PNB for the amount P294,958,450.73 and such amount transferred in trust for the Bureau of Internal Revenue. The action by the Central Bank is but consistent with Section 208 of the National Internal Revenue Code on the mode of procedure for collection.

The National Internal Revenue Code is definite in imposing the obligation upon the Commissioner to pay a specific sum to informants giving information leading to the discovery of frauds or violations of any of its provisions. The right of the petitioner to his proper share on the revenue or penalty he seeks to be collected is an essential issue presented from the very start of this case. Since We have found for petitioner, and consistent with the duty of this Court to grant full and complete relief, payment of petitioner's reward should be in order from whatever additional taxes are collected from the taxpayers in this case.

WHEREFORE, judgment is rendered declaring the **COMPROMISE AGREEMENT** between the Bureau of Internal Revenue, on the one hand, and the Philippine National Oil Company and Philippine National Bank on the other, as **WITHOUT FORCE AND EFFECT;**

The Commissioner of Internal Revenue is hereby ordered to **ENFORCE** the **ASSESSMENT** of January 16, 1991 against Philippine National Bank which has become final and unappealable by collecting from Philippine National Bank the deficiency withholding tax, plus interest totalling P294,958,450.73;

Petitioner may be paid, upon collection of the deficiency withholding tax, the balance of his entitlement to informer's reward based on fifteen percent (15%) of the deficiency withholding total tax collected in this case or P44,243,767.00 subject to existing rules and regulations governing payment of reward to informers.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, May 28, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals