REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LBC EXPRESS, INC., Petitioner,	**CTA CASE NO. 8309** For: Assessment
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 02 2015 ; 11:37 a.m.

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RESOLUTION

MINDARO-GRULLA, *J*.:

For resolution is respondent's **Motion for Reconsideration**, filed through registered mail on May 25, 2015 and received by the Court on June 4, 2015, with petitioner's **Comment/Opposition [Re: Motion for Reconsideration (Re: Decision dated 30 April 2015) dated 22 May 2015]**, filed on July 2, 2015.

Respondent seeks reconsideration of the Decision dated April 30, 2015, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice (FAN) and Final Decision of the Commissioner of Internal Revenue for the payment of compromise penalties in the amount of ₱7,512,051.94, are hereby **CANCELLED** and **SET ASIDE**.

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SO ORDERED."[1]

In the aforesaid motion, respondent raised the following grounds, *viz*:

1. Well-settled jurisprudence stressed that the imposition of civil penalties for unpaid taxes, such as interests and surcharges, are mandatory and cannot be condoned lightly;[2] and

2. Even assuming for the sake of argument that the amount ₱7,512,051.94 represents compromise penalties, petitioner consented to the same when it paid the basic deficiency taxes and filed an application for abatement of the civil penalties (surcharge and interest) for the approval of the respondent.[3]

On the other hand, petitioner opposes respondent's motion on the grounds that:

1. The compromise penalties in the amount of ₱7,512,051.94 ("Penalties") imposed by respondent for the fiscal year ending 30 November 1998 ("FY 1998") should be cancelled in view of LBC's availment of the Tax Amnesty under Republic Act No. 9480 ("RA 9480");[4]

2. Assuming *arguendo* that the penalties are not covered by the Tax Amnesty under RA 9480, this Honorable Court correctly cancelled the compromise penalties;[5]

3. LBC did not consent to the imposition of compromise penalties for its tax liabilities for FY 1998;[6] and

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[1] Docket, p. 395.
[2] Docket, p. 397.
[3] *Ibid.*
[4] Docket, p. 404.
[5] Docket, p. 406.
[6] Docket, p. 408.

4. Even assuming the imposition of the penalties was proper, respondent's right to assess and collect the penalties has prescribed.[7]

Respondent contends that the assailed Decision is contrary to the applicable law, rules and regulations because the amount of ₱7,512,051.94 includes not only compromise penalties, but also surcharges and interests. Respondent points out that in numerous cases, the Supreme Court held that the imposition of the civil penalties for unpaid taxes, such as interest and surcharge, are mandatory and cannot be condoned lightly.

According to respondent, the Court recognized the amount of ₱7,512,051.94 as surcharge, interest, and compromise penalty arising from late filing of return/payment of tax. As such, the Court allegedly erred in cancelling the amount.

However, petitioner points out that in respondent's Answer, CIR admitted that the amount totaling ₱7,512,051.94 represents compromise penalties. Petitioner further avers that the Court has already ruled that the said amount pertains to unpaid compromise penalties.

Respondent's motion is bereft of merit.

It has been categorically ruled in the assailed Decision that the disputed amount of ₱7,512,051.94 represents solely the unpaid balance of compromise penalties, *exclusive of interest and surcharge*. Inasmuch as no compromise agreement was reached between the parties, respondent cannot collect the compromise penalty. Respondent's allegation that the said amount includes surcharge and interest was belied by her very own Assessment Notices where the same amount was taken, to wit:

Exhibit	Assessment Notice	Suggested Compromise Penalties
C; C-1[8]	Withholding Tax on Compensation	₱ 1,366,170.53
D; D-1[9]	Expanded	

[7] Docket, p. 409.
[8] Docket, p. 210.
[9] Docket, p. 211.

	Withholding Tax	1,120,813.49
E; E-1[10]	Value-added Tax	5,619,984.27
Total		₱ 8,106,968.29
Less:		594,916.35[11]
Unpaid Compromise Penalties		**₱ 7,512,051.94**

When the Court mentioned in the assailed Decision that "the subject Notice of Denial involves the surcharge, interest, and compromise penalty arising from late filing of return/payment of tax in the amount of ₱7,512,051.94", it referred to the contents of the Notice of Denial issued by respondent. The Notice of Denial states:

> "This is to notify that the application for abatement of **LBC EXPRESS, INC.** of **General Aviation Center, Domestic Airport Compound, Pasay City** with Taxpayer Identification Number **000-782-140** under the provisions of Revenue Regulations No. 13-2001 for the cancellation of **Surcharge, Interest and Compromise Penalty** arising from **late filing of return/payment of tax** in the total amount of **₱7,512,051.94** covering fiscal year ended **November, 1998** has been denied for lack of legal basis."[12]

It was after the evaluation of records and documents that the Court found that the disputed amount actually represents the unpaid compromise penalties as explained in the assailed Decision, to wit:

> "A perusal of the Formal Assessment Notices issued by respondent against petitioner, shows that the latter was assessed of deficiency withholding tax on compensation in the amount of ₱7,831,120.61, expanded withholding tax in the amount of ₱2,199,938.90, and value-added tax in the amount of ₱41,339,432.66 or a total of ₱51,370,492.17 for fiscal year ended November 30, 1998, broken down as follows:

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[10]Docket, p. 212.
[11]Partial payment of the compromise penalties for deficiency WTC, EWT and VAT in the respective amounts of ₱259,854.78 (Exhibit "I"), ₱148,074.58 (Exhibit "J") and ₱186,986.99 (Exhibit "K") totaling ₱594,916.35.
[12] Exhibit "B", Docket, p. 209.

Deficiency Tax	Withholding Tax on Compensation (WTC)	Expanded Withholding Tax (EWT)	Value-Added Tax (VAT)	Grand Total
	Exhibit "C"	*Exhibit "D"*	*Exhibit "E"*	
Tax Due	₱ 3,539,914.16	₱ 590,880.25	₱ 19,558,353.83	₱ 23,689,148.24
Surcharge	-	-	-	-
Interest	2,925,035.92	488,245.16	16,161,094.56	19,574,375.64
Suggested Comp. Pen.	**1,366,170.53**	**1,120,813.49**	**5,619,984.27**	**8,106,968.29**
Total	₱ 7,831,120.61	₱ 2,199,938.90	₱ 41,339,432.66	₱ 51,370,492.17

> Notice that the above assessments for deficiency WTC, EWT and VAT included suggested compromise penalties in the respective amounts of ₱1,366,170.53, ₱1,120,813.49 and ₱5,619,984.27 totaling ₱8,106,968.29.
>
> Petitioner partially paid the suggested compromise penalties for deficiency WTC, EWT and VAT in the respective amounts of ₱259,854.78, ₱148,074.58 and ₱186,986.99 totaling ₱594,916.35, thus leaving an unpaid balance of suggested compromise penalties in the amount of ₱7,512,051.94, which is the subject of the instant Petition for Review."[13]

As regards the other ground, respondent insists that petitioner consented to the imposition of compromise penalty when it paid the basic deficiency taxes and filed an application for abatement of the civil penalties (surcharge and interest). On the other hand, petitioner claims that when it filed this Petition for Review, it did not consent to the imposition of compromise penalties.

The Court has already ruled that there is nothing on record that will show the parties have reached a mutual agreement on the imposition of compromise penalty, hence, it should be cancelled and set aside. In the case of *Dr. Felisa L. Vda. De San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin v. Commissioner of Internal Revenue,*[14] the Supreme Court held:

> The Court of Tax Appeals correctly held that the compromise penalty of P20,000.00 could not be imposed

[13] Decision, Docket, p. 393.
[14] G.R. No. 138485, September 10, 2001.

on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties.

Accordingly, the amount of ₱7,512,051.94 is a compromise penalty which cannot be imposed to a taxpayer without its conformity, and the collection of the same cannot be enforced.

WHEREFORE, in view of the foregoing, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice