REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CONSOLIDATED ORIENT LEASING
and FINANCE CORPORATION,
Petitioner,

-versus -

C.T.A. CASE NO. 4508

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - - x

7/6/93

D E C I S I O N

This case involves the following internal revenue tax assessments:

Deficiency Gross Receipts Tax (GRT) as of September 30, 1981 (Assessment Notice No. FAS-4-81-86-006426 dated March 31, 1986)

Tax due	P16,873.46
Surcharge	4,218.36
Compromise penalty	300.00
Total	P21,291.82

Penalties for late payment of GRT for the quarter ended September 30, 1981 (Assessment Notice No. FAS-4-81-86-006427 dated March 31, 1986)

Tax due on 10/20/81 but paid on 11/20/81	P637,067.20
Surcharge 25%	159,269.05
Compromise penalty	300.00
Total amount due	P159,569.05

Penalties for late payment of gross receipt tax for the quarter ended September 30, 1982 (FAS-4-82-86-007152 dated May 23, 1986)

Tax due on October 10, 1982 but paid on November 22, 1982	P430,280.46
25% surcharge	107,570.11
Compromise penalty	300.00
	P107,870.11

Petitioner protested the above assessments through its External Auditor, SGV & CO., in its letter dated April 30, 1986 covering the 1981 assessment and letter dated June 23, 1986 covering the 1982 assessment. Both protests were denied by the Respondent with finality in a letter dated July 9, 1990 received by Petitioner on October 10, 1990. However, Petitioner, through SGV & Co., in its letters dated August 20, 1990 and October 16, 1990 offered to settle by compromise the above assessment by paying fifty percent (50%) of the 1981 GRT tax assessment or P8,436.73. Although the Chief of the Litigation Division accepted Petitioner's compromise offer and allowed Petitioner to pay the said amount on March 20, 1991, the Respondent's Assistant Commissioner for Legal Services is of the opinion that "Petitioner's availment of Revenue Memorandum Order No. 29-90 and its payment of P8,436.73 did not *ipso facto* cancel the incremental surcharge for late payment on the ground that said incremental assessment are separate and distinct from the basic gross receipts tax which was the one administratively settled. In other words, only the assessments for deficiency basic gross receipts is settled pursuant to RMO 29-90 and those for the incremental assessments which no payment was made, subsist and remain enforceable. Petitioner believes, otherwise, and invoked that in line with the spirit and intent of RMO No. 1-88, as amended by RMO 29-90 a taxpayer who has paid 50% of basic tax liabilities for 1985 and 100% of basic tax for 1986 and 1987 should no longer be assessed for penalties and increments thereon. Petitioner believes that inasmuch as the basic taxes on the incremental charges have already been paid voluntarily, it should be treated in the same way as a taxpayer who has directly availed of the compromise settlement. Otherwise, this will give rise to a legal inequity wherein a taxpayer who has paid the basic tax voluntarily, would be placed at a disadvantage against a taxpayer who has not paid the basic tax at all but is allowed to pay only the compromise amount consisting of the basic tax assessed with the incidental surcharge and compromise penalty waived.

Therefore, the issue raised for the resolution of this court is whether or not the availment of the Petitioner of RMO 29-90 by paying 50% of the basic tax assessed for 1981 and the voluntary payment in November 1982 of the basic taxes due for the quarter ended September 30, 1981 and September 30, 1982 extinguishes the incremental surcharge and penalty assessed.

We find for the Respondent.

Revenue Memorandum Order No. 1-88 as amended by RMO 29-90 was issued pursuant to Section 204 of the Tax Code. A reading of the said RMO's will show that only the surcharge and penalty for the deficiency gross receipt tax as of September 30, 1981 in the total amount of P21,291.82 may qualify under the said compromise settlement. The assessment covering late payments will not be covered by the said memorandum order.

Under paragraph (1) of RMO 1-88 the coverage of this order are taxpayers with deliquent accounts for all taxable years on assessments issued on or before December 31, 1986 which have become "final and executory" and under paragraph (3) these taxpayers may settle their accounts through compromise by paying an amount equal to 50% of the basic tax assessed. Under the amendatory order RMO 29-90 the above paragraph (3) was amended by limiting the 50% payment of basic tax assessed to deliquent account covering taxable year 1985 and prior years and for taxable years 1986 and 1987 by paying 100% of the basic tax assessed. The offer to compromise may be accepted by the Commissioner of Internal Revenue or his duly authorized representatives on the following grounds: (paragraph 4 RMO 1-88)

(a) A reasonable doubt as to validity of the claim against the taxpayer exists;

(b) The financial position of the taxpayer demonstrates a clear inability to pay;

(c) The tax or any portion thereof appears to be unjustly and excessively assessed.

Clearly, under said memorandum order the following requisites must be present to obtain a valid administrative compromise settlement:

(1) There must be a deliquent account covering assessment issued on or before December 31, 1986;

(2) The assessment is final and executory as of January 4, 1988, the date of the issuance of RMO 1-88;

(3) Acceptance of the offer of compromise by the Commissioner or his duly authorized representative based on the grounds enumerated on paragraph (4) of the RMO;

(4) Payment of 50% or 100% of the basic tax assessed.

If we will strictly apply the aforementioned requisites not one of the three assessments issued will qualify for a valid compromise settlement. The records will show that Petitioner through its external auditor SGV & Co., applied for a compromise settlement covering the first deliquent account only. Paid 50% of the basic tax of P16,873.46 or P8,436.73. The Chief of the Litigation Division recommended its acceptance and the amount of P8,436.73 was paid by the Petitioner. Consequently, the corresponding surcharge in the amount of P4,218.36 and compromise penalty of P300.00 were likewise considered settled as part of the compromise settlement. The fact of acceptance by the Respondent is likewise admitted in paragraph (7) of the Answer. This settlement complied with all the above requisites except that Respondent in accepting the offer failed to state the ground or basis. However, in view of the minimal amount involved, a fourth ground enumerated on paragraph (2)(b) of Section 204 of the Tax Code should apply. That is "The administration and collection costs involved do not justify the collection of the amount due". Although this ground is not stated in the Memorandum Order, nevertheless the same is a statutory provision which should be applied whenever applicable.

The two other incremental assessments could not qualify because there was no acceptance of the offer to compromise. An essential element for a compromise settlement. It will not qualify under any of the grounds stated in the RMO nor in the law itself before this court could state that the Commissioner abuses his discretion in not accepting the offer. In fact, the contrary appears from the record. The taxpayer is clearly liable to the incremental assessments. There is no showing of financial inability of the Petitioner to pay its tax obligations, nor does it appear that the tax assessment is unjustly and excessively assessed.

Definitely the amount is not minimal so as not to justify the collection cost which the Respondent may incur.

Failing to comply with the above statutory requirements is fatal to the claim of Petitioner.

WHEREFORE, in view of all the foregoing only the deficiency gross receipt tax as of September 30, 1981 in the total amount of P21,291.82 is cancelled. The penalty assessments for late payment of GRT for the quarter ended September 30, 1981 and September 30, 1982 in the total amount of P159,569.05 and P107,870.11, respectively, is upheld. Without pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, July 6, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

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