Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

## ***FIRST DIVISION***

**LBC EXPRESS, INC.,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 8309**
For: Assessment

Members:

**DEL ROSARIO, *Chairperson***
**UY, and**
**MINDARO-GRULLA, JJ.**

Promulgated:

APR 30 2015 ; 3:45 p.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# DECISION

***MINDARO-GRULLA, J.:***

This resolves the Petition For Review filed by LBC Express, Inc., as petitioner, against the Commissioner of Internal Revenue (CIR), as respondent, with the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA).[2]

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
x x x x x x

2 Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

Petitioner seeks the cancellation and declaration of nullity of the Final Assessment Notice (FAN) and Final Decision of the Commissioner of Internal Revenue for payment of penalties for late filing of returns and payment of value-added tax (VAT), expanded withholding tax (EWT), and creditable withholding tax (CWT) in the aggregate amount of ₱7,512,051.94 for fiscal year (FY) ending November 30, 1998.[3]

Petitioner LBC Express, Inc. is a corporation duly organized and existing under Philippine Laws, with principal address at General Aviation Center, Domestic Airport Compound, Domestic Road, Pasay City.[4]

On the other hand, respondent Commissioner of Internal Revenue is the chief of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties, and fines connected with such taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

---

> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Statement of the Case, Pre-Trial Order, Docket, p. 281.
[4] Par. 1, Relevant Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 59.

Petitioner filed with the BIR the required returns and declarations on the following dates:[5]

| Monthly VAT Declarations for FY ending November 30, 1998 | |
|---|---|
| **Month** | **Date of Filing of VAT Declarations** |
| February 1998 | March 31, 1998 |
| March 1998 | April 29, 1998 |
| April 1998 | June 4, 1998 |
| May 1998 | June 29, 1998 |
| June 1998 | August 4, 1998 |
| August 1998 | October 20, 1998 |
| September 1998 | November 17, 1998 |
| October 1998 | December 15, 1998 |
| November 1998 | January 26, 1999 |
| December 1998 | February 10, 1999 |

| Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for FY ending November 30, 1998 | |
|---|---|
| **Month** | **Date of Filing of Monthly Remittance Return-Expanded** |
| January 1998 | March 17, 1998 |
| February 1998 | April 29, 1998 |
| February 1998 | April 7, 1998 |
| March 1998 | July 23, 1998 |
| April 1998 | July 23, 1998 |
| April 1998 | October 26, 1998 |
| May 1998 | July 7, 1998 |
| June 1998 | August 25, 1998 |
| July 1998 | September 21, 1998 |
| August 1998 | October 15, 1998 |
| September 1998 | December 3, 1998 |
| October 1998 | February 1, 1999 |
| November 1998 | February 1, 1999 |
| December 1998 | April 12, 1999 |

| Monthly Remittance Return of Income Taxes Withheld on Compensation for FY ending November 30, 1998 | |
|---|---|
| **Month** | **Date of Filing of Monthly Remittance Return-Compensation** |
| January 1998 | March 25, 1998 |
| February 1998 | July 22, 1998 |
| March 1998 | August 25, 1998 |
| March 1998 | September 2, 1998 |

On December 13, 2002, petitioner received from respondent a Preliminary Assessment Notice (PAN) dated

[5] Joint Motion to Approve Additional Stipulation of Facts, Docket, pp. 188 to 189.

December 4, 2002 for, among others, penalties for its alleged late filing of VAT Returns, Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded), and Monthly Remittance Return of Income Taxes Withheld on Compensation for fiscal year ending November 30, 1998.[6]

On February 25, 2003, petitioner received from respondent the Formal Assessment Notices[7] all dated February 12, 2003, assessing it for, among others, penalties for purported late filing of returns for VAT, EWT, and CWT for fiscal year ending November 30, 1998.[8]

The FAN likewise required petitioner to pay the following penalties:[9]

1. ₱5,619,984.27[10] - penalty for VAT;
2. ₱1,120,813.49[11] - penalty for EWT; and
3. ₱1,366,170.53[12] - penalty for CWT.

As a result, petitioner filed its written protest to the FAN on March 25, 2003.[13]

Subsequently, petitioner applied for the abatement of the penalties on May 12, 2004,[14] pursuant to Revenue Regulations (RR) No. 13-2001 and offered to pay the portion of the penalties, as follows:[15]

| TYPE | OFFER OF PAYMENT |
|---|---|
| Penalties for VAT | ₱ 186,986.99 |
| Penalties for CWT | 259,854.78 |
| Penalties for EWT | 148,074.58 |
| **TOTAL** | **₱594,916.35** |

[6] Par. 3, Relevant Stipulated Facts, JSFI, Docket, p. 60.
[7] Exhibits "C", "D", and "E", Docket, pp. 210 to 212.
[8] Par. 4, Relevant Stipulated Facts, JSFI, Docket, p. 60.
[9] Par. 5, Relevant Stipulated Facts, JSFI, Docket, p. 60.
[10] Exhibit "E-1", Docket, p. 212.
[11] Exhibit "D-1", Docket, p. 211.
[12] Exhibit "C-1", Docket, p. 210.
[13] Par. 6, Relevant Stipulated Facts, JSFI, Docket, p. 60.
[14] Exhibits "F", "G", and "H"; Exhibits "3", "4", and "5", Docket, pp. 213 to 215.
[15] Par. 7, Relevant Stipulated Facts, JSFI, Docket, p. 61.

Petitioner paid the penalties[16] in the amount of ₱594,916.35 on May 31, 2004.[17]

Respondent, through Acting Regional Director Anselmo G. Adriano of Revenue Region No. 8-Makati City, issued a letter on January 18, 2006, stating that petitioner's case was considered closed and terminated due to the latter's payment of deficiency income tax, VAT, EWT, and compromise penalty, except for petitioner's application for abatement/cancellation of penalties.[18]

On February 29, 2008, petitioner paid the amnesty tax in the amount of ₱500,000.00 via Land Bank, as shown in the Payment Form[19] and BIR Tax Payment Deposit Slip[20] dated February 29, 2008, which were received by Revenue District Office No. 51 on March 3, 2008.[21]

On March 3, 2008 or within six (6) months from the effectivity of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9480, Revenue District Office No. 51 received the amnesty documents filed by petitioner, consisting of the following: (1) Notice of Availment[22] dated January 18, 2008; (2) Tax Amnesty Return[23] dated January 18, 2008; (3) Statement of Assets, Liabilities and Networth (SALN)[24] as of November 30, 2005; and (4) Payment Form[25] dated January 18, 2008. Accordingly, petitioner validly availed of the tax amnesty pursuant to RA No. 9480 on March 3, 2008 by (1) filing a Notice and Tax Amnesty Return accompanied by a SALN as of December 31, 2005; and (2) paying the amnesty tax.[26]

[16] Exhibits "I", "J", and "K", Docket, pp. 216 to 218.
[17] Par. 8, Relevant Stipulated Facts, JSFI, Docket, p. 61.
[18] Exhibits "M" and "6", Docket, pp. 219 to 224.
[19] Exhibit "P", Docket, p. 226.
[20] Exhibit "O", Docket, p. 225.
[21] Par. 18, Amended Pre-Trial Order, Docket, p. 337.
[22] Exhibit "Q", Docket, p. 227.
[23] Exhibit "R", Docket, p. 228.
[24] Exhibit "S", Docket, pp. 229 to 238.
[25] Pars. 16 and 17, Amended Pre-Trial Order, Docket, p. 337.
[26] Par. 15, Amended Pre-Trial Order, Docket, p. 337.

On June 10, 2011, petitioner received from the BIR the Notice of Denial[27] of its application for abatement dated January 26, 2011.[28]

Petitioner likewise received a Collection Letter[29] dated June 9, 2011 from the BIR on June 10, 2011.[30]

Thus, on July 11, 2011[31], petitioner filed the instant Petition for Review.

Respondent filed her Answer[32] on August 31, 2011, interposing the following special and affirmative defenses:

> "4. Penalties (25% surcharge and 20% interest) for late payments under Sections 248 and 249 of the Tax Code of 1997, as amended are mandatory.
>
> 5. Based on the petitioner's protest letter asking for re-investigation and the submission of additional documents in support thereto, respondent conducted a reinvestigation which resulted to the revision and reduction of deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax and the cancellation of the deficiency Withholding Tax on Compensation.
>
> 6. As a result of the said re-investigation, on May 31, 2004, petitioner paid the aforesaid modified deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax. However, petitioner on May 12, 2004, applied for abatement under Revenue Regulations No. 13-2001 on the ₱8,605,968.29 penalties for its late filing of returns and payment of VAT, EWT and CWT and offered an amount of ₱594,916.35 which was paid on May 31, 2004.

[27] Exhibits "B" and "B-1"; Exhibit "2", Docket, p. 209.
[28] Par. 10, Relevant Stipulated Facts, JSFI, Docket, p. 61.
[29] Exhibits "A", "A-1", and "A-2"; Exhibits "1", Docket, p. 208.
[30] Par. 9, Relevant Stipulated Facts, JSFI, Docket, p. 61.
[31] Docket, p. 6.
[32] Docket, pp. 46 to 49.

7. Petitioner's contention that the assessment has no factual and legal basis is bereft of merit. Petitioner fully understood the basis of the assessments. Petitioner's payments of the modified/amended deficiency income tax, value-added tax and expanded withholding tax on May 31, 2004 were the result of respondent's reinvestigation of the Formal Assessment Notice dated February 12, 2003, after taking into consideration all the documents and explanation proffered by petitioner and the evidence on record.

It must be emphasized that if respondent did not have factual basis of the assessments, then petitioner should not have agreed to and eventually paid the modified/amended deficiency tax assessments.

8. The said application for abatement was forwarded to the Technical Working Committee on Abatement at the BIR National Office, however, the same was denied for failure of the petitioner to submit justification letter and documents justifying the ground for abatement indicated in its application in spite of several requests from the respondent.

9. The Honorable Court of Tax Appeals has no jurisdiction on the instant petition for review, hence should be dismissed.

The Collection Letter dated June 9, 2011 is clearly not a 'decision' on the petitioner's protest against the deficiency tax assessment. The same was merely notifying the petitioner that its request for abatement was denied and in view of the denial of its request for abatement, respondent requested the petitioner to settle the amount of ₱7,512,051.91 as the balance of the penalties.

There is no disputed assessment to talk about in the present case. Petitioner, as early as May 31, 2004, by paying the deficiency tax assessments including portion of the penalties, already yielded and agreed to the assessments.

Respondent's denial of taxpayer's application for abatement/compromise on the penalties is a management prerogative and not the 'decision' contemplated under Section 7 of Republic Act No. 1125, as amended that is appealable to the Honorable Court of Tax Appeals.

It has long been settled that the word '*decision*' in paragraph 1, Section 7 of Republic Act No. 1125, (as amended by Republic Act No. 9282) refers to the decision of the Commissioner on the protest of the taxpayer against the assessments. And definitely, said word does not signify the assessment itself; or on the decision/denial of the taxpayer's application for abatement/compromise.

Applicable is ***Commissioner of Internal Revenue vs. Villa, 22 SCRA 3,*** where the Supreme Court explained that since the taxpayer appealed from the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and thus the Court of Tax Appeals had no jurisdiction to entertain said appeal. For under this provision (Sec. 7(a)(1) of R.A. 1125, as amended by RA 9282), the jurisdiction of the CTA is to review decisions of the Commissioner of Internal Revenue on disputed assessments. The CTA is a court of special jurisdiction and as such it can take cognizance only of such matters as are clearly within its jurisdiction.

In other words, the CTA only has jurisdiction over (the decision or non-action of the Commissioner) on disputed assessment."

On September 16, 2011, petitioner filed its Reply[33] to the afore-mentioned Answer.

[33] Docket, pp. 31 to 37.

Petitioner's Pre-Trial Brief[34] was filed on September 26, 2011; while Respondent's Pre-Trial Brief[35] was filed on November 10, 2011.

The parties submitted their Joint Stipulation of Facts and Issues[36] on January 9, 2012, which the Court approved via Resolution[37] dated January 12, 2012. In the same Resolution, the Court terminated the pre-trial.

During trial, petitioner presented Claribel Lincod, Ma. Evelyn Gomez, and Ms. Sumelda P. De Luna as its witnesses.

On June 4, 2012, petitioner filed a Motion for Leave to Amend and to Admit Amended Petition for Review.[38] The Court granted the motion and admitted the Amended Petition for Review on July 10, 2012.[39]

Since respondent failed to file an Amended Answer, the Answer earlier filed was considered as the Answer to the Amended Petition for Review, pursuant to Section 3 of Rule 11 of the 1997 Rules of Civil Procedure.[40]

On January 31, 2013, the parties submitted a Joint Motion to Approve Additional Stipulation of Facts[41]; which the Court granted on February 1, 2013.[42]

Petitioner formally offered its documentary and testimonial evidence, consisting of Exhibits "A" to "K" and

---

[34] Docket, pp. 38 to 44.
[35] Docket, pp. 50 to 53.
[36] Docket, pp. 59 to 63.
[37] Resolution, Docket, p. 65.
[38] Docket, pp. 107 to 139.
[39] Resolution, Docket, pp. 154 to 157.
[40] Resolutions dated July 10, 2012 and August 16, 2012, Docket, pp. 154 to 157 and p. 160, respectively.
[41] Docket, pp. 188 to 191.
[42] Resolution, Docket, p. 193.

"M" to "U", inclusive of submarkings[43]; which the Court admitted via Resolution[44] dated June 6, 2013.

The documentary evidence offered by petitioner are as follows:

| Exhibit | Description |
|---|---|
| A | Collection Letter dated 9 June 2011 issued by Corazon M. Montes, OIC-Revenue District Officer of Revenue District No. 51 ("Collection Letter") |
| A-1 | Signature on lower right portion of the Collection Letter |
| A-2 | Handwritten notation and date: "recv'd 6/10/11" on lower right portion of the Collection Letter |
| B | Notice of Denial dated 26 January 2011 issued by Elvira R. Vera, Assistant Commissioner of Collection and Head of Technical Working Committee on Abatement ("Notice of Denial") |
| B-1 | Handwritten notation and date of receipt on lower right portion of the Notice of Denial |
| C | Assessment Notice ("FAN") dated 12 February 2003 for withholding tax on compensation ("CWT") covering fiscal year ending 30 November 1998 ("FY 1998") |
| C-1 | CWT penalties in the amount of Php1,366,170.53 |
| D | FAN dated 12 February 2003 for expanded withholding tax ("EWT") covering FY 1998 |
| D-1 | EWT penalties in the amount of Php1,120,813.49 |
| E | FAN dated 12 February 2003 for value-added tax ("VAT") |
| E-1 | VAT penalties in the amount of Php5,619,984.27 |
| F | LBC's Application for Abatement under Revenue Regulations No. 13-2001 (BIR Form 2110) dated |

[43] Docket, pp. 196 to 207.
[44] Docket, pp. 262 to 263.

| | |
|---|---|
| | 12 May 2004 covering penalties for CWT for FY 1998 |
| G | LBC's BIR Form 2110 dated 12 May 2004 covering penalties for EWT for FY 1998 |
| H | LBC's BIR Form 2110 dated 12 May 2004 covering penalties for VAT for FY ending 30 November 1998 |
| I | LBC's Payment Form ("BIR Form 0605") for payment of Php259,854.78 covering a portion of penalties for CWT |
| J | LBC's BIR Form 0605 for payment of Php148,074.58 covering a portion of penalties for EWT |
| K | LBC's BIR Form 0605 for payment of Php186,986.99 covering a portion of penalties for VAT |
| M | Letter dated 18 January 2006 issued by Acting Regional Director Anselmo G. Adriano and addressed to LBC regarding LBC's protest |
| N | Judicial Affidavit of Ms. Claribel L.Lincod dated 9 February 2012 (CTA Docket, pp. 74-78) |
| N-1 | Signature above the name Claribel Lincod |
| O | Land Bank of the Philippines BIR Tax Payment Deposit Slip dated 29 February 2008 |
| P | Tax Amnesty Payment Form (Acceptance of Payment Form) for Taxable Year 2005 and Prior Years Pursuant to Republic Act No. 9480 dated 18 January 2008 ("BIR Form 0617") |
| Q | Notice of Availment of Tax Amnesty under Republic Act No. 9480 dated 18 January 2008 ("Notice of Availment") |
| R | Tax Amnesty Return - BIR Form 2116 for Taxable Year 2005 and Prior Years Pursuant to Republic Act No. 9480 dated January 28, 2008 ("BIR Form 2116") |

| | |
|---|---|
| S | LBC's Statement of Assets, Liabilities and Net Worth as of November 30, 2005 ("SALN") |
| T | Judicial Affidavit of Ma. Evelyn Gomez dated 22 May 2012 |
| T-1 | Signature above the name Ma. Evelyn Gomez |
| U | Judicial Affidavit of Sumelda P. De Luna dated 25 October 2012 |
| U-1 | Signature above the name Sumelda P. De Luna |

On July 25, 2013, respondent's counsel manifested that he will not present any testimonial evidence, but will be offering documentary evidence stipulated upon by the parties.[45]

The Court issued the Pre-Trial Order[46] on August 23, 2013 and subsequently issued an Amended Pre-Trial Order[47] on February 27, 2014.

Respondent filed her Formal Offer of Evidence through registered mail on September 5, 2013 and received by this Court on September 10, 2013, consisting of Exhibits "1" to "6"; which the Court admitted in the Resolution[48] dated April 29, 2014.

Respondent's documentary exhibits are as follows:

| Exhibit | Description |
|---|---|
| 1 | Collection Letter dated 9 June 2011 issued by Corazon M. Montes, OIC-Revenue District Officer of Revenue District No. 51 ("Collection Letter") |
| 2 | Notice of Denial dated 26 January 2011 issued by Elvira R. Vera, Assistant Commissioner of |

[45] Minutes of the Hearing, Docket, pp. 264 to 265.
[46] Docket, pp. 281 to 289.
[47] Docket, pp. 333 to 342.
[48] Docket, p. 346.

| | |
|---|---|
| | Collection and Head of Technical Working Committee on Abatement ("Notice of Denial") |
| 3 | LBC's Application for Abatement under Revenue Regulations No. 13-2001 dated 12 May 2004 covering penalties for Withholding Tax on Wages for FY 1998 |
| 4 | LBC's Application for Abatement under Revenue Regulations No. 13-2001 dated 12 May 2004 covering penalties for Expanded Withholding Tax for FY 1998 |
| 5 | LBC's Application for Abatement under Revenue Regulations No. 13-2001 dated 12 May 2004 covering penalties for Value-Added Tax for FY 1998 |
| 6 | Letter dated 18 January 2006, issued by Acting Regional Director Anselmo G. Adriano |

The case was submitted for decision on June 19, 2014,[49] after petitioner filed its Memorandum[50] on June 6, 2014, *sans* respondent's Memorandum despite the opportunity granted to file the same as per Records Verification[51] dated June 16, 2014.

The parties presented the following issues[52] to be resolved by this Court:

1. Whether the FAN was issued within the three (3)-year period prescribed by the National Internal Revenue Code (NIRC) of 1997, as amended;

2. Whether respondent's right to collect the penalties has prescribed;

[49] Resolution, Docket, p. 374.
[50] Docket, pp. 347 to 371.
[51] Docket, p. 372.
[52] Stipulated Issues, JSFI, Docket, p. 62.

3. Whether petitioner was informed of the facts and the law upon which the amount of penalties was based;

4. Whether the Court has jurisdiction over the present Petition for Review;

5. Whether the denial of petitioner's application for abatement of penalties is appealable to this Court; and

6. Whether or not petitioner is immune from the payment of the penalties under RA No. 9480.[53]

The Court shall resolve the fourth and fifth issues simultaneously as the same pertain to the jurisdiction of this Court.

Petitioner contends that the Court has jurisdiction over the instant Petition for Review on the ground that the subject of this case is the Collection Letter ordering it to pay the balance of the penalties from late filing of return or payment of tax covering FY ending November 30, 1998. Petitioner posits that the Collection Letter should be treated as respondent's denial of petitioner's protest insofar as the abatement of the penalties is concerned; thus, the Collection Letter is the final decision subject of this petition.

Petitioner likewise states that assuming the Collection Letter is not the decision on its protest insofar as the penalties are concerned, the jurisdiction of this Court is based on the phrase "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue" under Section 7 of the Court of Tax Appeals Law. Petitioner alleges that the Supreme Court has interpreted the subject phrase as to

---

[53] Amended Pre-Trial Order, Docket, p. 338.

include the issue of whether the right of respondent to collect taxes has already prescribed, the validity of the assessment being a separate and distinct matter. Petitioner also insists that since the issue involved in this case refers to the right of respondent to collect the penalties, the Court has jurisdiction.

Respondent counter-argues that the Collection Letter is not a decision on petitioner's protest against the deficiency tax assessment.

Respondent asserts that the said letter merely notified the petitioner that its request for abatement was denied and in view thereof, respondent requested petitioner to settle the amount of ₱7,512,051.91, representing the balance of the penalties.

Section 7(a)(1) of RA No. 1125, as amended by RA Nos. 9282 and 9503, states that:

> "SEC. 7. *Jurisdiction*. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.**" *(Emphasis supplied)*

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division*. – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.**" *(Emphasis supplied)*

Relative thereto is Section 204(B) of the NIRC of 1997, as amended, which is quoted hereunder for easy reference:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (B) Abate or cancel a tax liability, xxx"

Further, Section 11 of RA No. 1125, as amended by RA Nos. 9282 and 9503, provides that any party adversely affected by a decision or ruling of the Commissioner of Internal Revenue may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.

Records show that it is the Notice of Denial of petitioner's application for tax abatement on the balance of the penalties that is being appealed to this Court. Considering that such denial of petitioner's application for tax abatement involves the interpretation and application of Section 204(B) of the NIRC of 1997, as amended, it falls within the coverage of the phrase "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue", pursuant to Section 7(a)(1) of RA No. 1125, as amended by RA Nos. 9282 and 9503.

Petitioner received the Notice of Denial[54] of its application for abatement on June 10, 2011. From the said date, petitioner had thirty (30) days or until July 10, 2011 within which to appeal the said denial.

Since July 10, 2011 fell on a Sunday, petitioner filed the Petition for Review on the next working day, which was on July 11, 2011.[55] Thus, the Court has jurisdiction over the instant Petition for Review.

Before proceeding to the other issues, the Court deems it best to scrutinize the pertinent circumstances that precipitated the issuance of the Notice of Denial and the Collection Letter.

Petitioner applied for the abatement of the penalties on May 12, 2004[56], pursuant to RR No. 13-2001.[57]

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.

Respondent issued the Collection Letter[58] dated June 9, 2011, demanding from petitioner the payment of the amount of ₱7,512,051.94 as balance of penalties covering fiscal year ended November 1998 plus increments due to delinquency.

---

[54] Exhibits "B", "B-1", and "2", Docket, p. 209.
[55] Docket, p. 6.
[56] Exhibits "F", "G", and "H"; Exhibits "3", "$", and "5", Docket, pp. 213 to 215.
[57] Par. 7, Relevant Stipulated Facts, JSFI, Docket, p. 61.
[58] Exhibit "A", Docket, p. 33.

It is apparent from the foregoing that the amount in petitioner's application for abatement of penalties refers to the unpaid compromise penalties.

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:

| **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[59], ₱148,074.58[60] and ₱186,986.99[61] 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.

Under Revenue Memorandum Order No. 01-90, compromise penalties are only amounts suggested in

[59] Exhibit "I", Docket, p. 216.
[60] Exhibit "J", Docket, p. 217.
[61] Exhibit "K", Docket, p. 218.

settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Clearly, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the Commissioner of Internal Revenue, on the other.

Here, the Court cannot find any proof establishing that petitioner and respondent have reached a mutual agreement in order for the latter to collect the unpaid balance of suggested compromise penalties in the amount of ₱7,512,051.94.

In the case of *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals*[62], the Supreme Court held:

> "As to the 'compromise penalty' of P300.00 also sought to be imposed, there is no basis therefor, and, as the Court of Tax Appeals finally declares, **'the imposition of the same without the conformity of the taxpayer is illegal and unauthorized** (Coll. v. U.S.T., 104 Phil. 1062; Phil. Int. Fair v. Coll., G.R. Nos. L-12928 & L-12932, March 31, 1962).' "

Petitioner's application[63] for abatement of the unpaid compromise penalties of ₱7,512,051.94 could only signify that petitioner did not agree to settle the same. Inasmuch as no compromise agreement was reached between the parties, respondent has no right to collect the compromise penalties of ₱7,512,051.94. The imposition of the same without petitioner's conformity is illegal and unauthorized.

Since the amount of ₱7,512,051.94 wholly refers to the unpaid suggested compromise penalties, the same cannot be imposed on petitioner without its conformity and consequently, its collection cannot be enforced.

---

[62] G.R. No. L-35266, January 21, 1991.
[63] Exhibits "F", "G", and "H", Docket, pp. 213 to 215.

**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**.

**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

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

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, 1st Division