REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE MINING DEVELOPMENT CORPORATION, *Petitioner,*	**CTA Case No. 9292**
	Members:
-versus-	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE and THE OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, in their official capacities as officers of the Bureau of Internal Revenue, *Respondents.*	Promulgated: MAY 08 2025 4:00 p.m.

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DECISION

MANAHAN, *J.*:

THE CASE

This is a remanded case by the Supreme Court pursuant to the Minute Resolution dated October 6, 2021 in G.R. No. 250748,[1] entitled *"Philippine Mining Development Corporation, petitioner v. The Commissioner of Internal Revenue and the Officer-In-Charge-Assistant Commissioner, Large Taxpayers Service, in their official capacities as officers of the Bureau of Internal Revenue, respondents."*

THE FACTS

On March 14, 2016, petitioner filed the *Petition for Review* with this Court,[2] praying that respondent's assessment for taxable year 2006, assessing petitioner of deficiency income tax, the August 17, 2011 *Warrant of Distraint and/or Levy* (WDL), and the Decision of the

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[1] Docket – Vol. II, pp. 760 to 777.
[2] Docket – Vol. I, pp. 10 to 29.

respondent to petitioner's Motion for Reinvestigation, be set aside and declared null and void.[3]

After trial, on April 6, 2018, this Court, through its former Second Division, promulgated its Decision,[4] dismissing petitioner's *Petition for Review*, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> Let a copy of this Decision be furnished to the Secretary of Justice.
>
> **SO ORDERED**."

On April 26, 2018, petitioner filed its *Motion for Reconsideration*,[5] to which respondent Commissioner of Internal Revenue (CIR) filed his *Opposition (Re: Motion for Reconsideration)* on May 21, 2018.[6] The Court denied the said *Motion* in the Resolution dated July 5, 2018.[7]

Consequently, petitioner posted with the Court *En Banc* its *Petition for Review* on July 25, 2018.[8] On September 10, 2018, respondent CIR filed his *Comment (Re: Petition for Review)*.[9] In the Resolution dated October 4, 2018,[10] the Court *En Banc* gave due course to the *Petition for Review*, and directed the parties to submit their respective memoranda within thirty (30) days from receipt thereof.

Respondent CIR's *Manifestation* was filed on October 19, 2018,[11] while petitioner's *Memorandum* was submitted on November 21, 2018.[12]

On October 16, 2019, the Court *En Banc* rendered its Decision,[13] the dispositive portion of which reads:

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[3] Summary of the Case, Pre-Trial Order dated June 27, 2016, Docket – Vol. I, p. 131.
[4] Docket – Vol. II, pp. 342 to 355.
[5] Docket – Vol. II, pp. 356 to 375.
[6] Docket – Vol. II, pp. 378 to 381.
[7] Docket – Vol. II, pp. 384 to 389.
[8] Docket – Vol. II, pp. 390 to 414.
[9] Docket – Vol. II, pp. 462 to 465.
[10] Docket – Vol. II, pp. 468 to 469.
[11] Docket – Vol. II, pp. 470 to 472.
[12] Docket – Vol. II, pp. 475 to 496.
[13] Docket – Vol. II, pp. 526 to 544.

> "**WHEREFORE**, premises considered, the Petition for Review docketed as CTA EB No. 1900 is **DENIED** for lack of merit. Accordingly, the Decision dated April 6, 2018, rendered by the Second Division of this Court in CTA Case No. 9292, and its Resolution dated July 5, 2018 are **AFFIRMED**. No pronouncement as to costs.
>
> **SO ORDERED**."

Petitioner's *Motion Reconsideration* was filed on November 4, 2019.[14] However, the Court *En Banc* denied the same in its Resolution dated December 6, 2019.[15]

On December 26, 2019, petitioner posted its *Motion for Extension to File Petition for Review on Certiorari*,[16] which was granted by the Supreme Court's Third Division in its Notice dated February 5, 2020.[17]

On January 14, 2020, petitioner posted its *Petition for Review* before the Supreme Court entitled *"Philippine Mining Development Corporation, petitioner v. The Commissioner of Internal Revenue and the Officer-In-Charge-Assistant Commissioner, Large Taxpayers Service, in their official capacities as officers of the Bureau of Internal Revenue, respondents"*,[18] and was docketed as G.R. No 250748.

On October 6, 2021, the Supreme Court First Division rendered its Decision,[19] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the petition is **GRANTED**. The Petition for Review of petitioner Philippine Mining Development Corporation in CTA Case No. 9292 is **REINSTATED** and the Court of Tax Appeals is **DIRECTED** to resolve the case with dispatch.
>
> **SO ORDERED**."

Thereafter, this Court issued the Resolution dated June 15, 2022,[20] ordering the parties to file a manifestation as to any development which may impact or impede the resolution of the present case, within five (5) days from receipt thereof.

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[14] Docket – Vol. II, pp. 549 to 564.
[15] Docket – Vol. II, pp. 672 to 674.
[16] Docket – Vol. II, pp. 677 to 680.
[17] Docket – Vol. II, p. 714.
[18] Docket – Vol. II, pp. 683 to 710.
[19] Docket – Vol. II, pp. 760 to 777.
[20] Docket – Vol. II, pp. 781 to 782.

In compliance thereto, petitioner posted its *Manifestation* on June 28, 2022,[21] stating that respondents have filed a *Motion for Reconsideration* of the Supreme Court's Resolution dated October 6, 2021 in G.R. No. 250748, which was noted by this Court's First Division in its Resolution dated August 16, 2022.[22] On the other hand, no manifestation was filed by respondents.[23]

In the Resolution dated March 1, 2024,[24] this Court held in abeyance the resolution of this case in view of the pendency of the case before the Supreme Court.

Subsequently, on March 21, 2024, the Supreme Court posted its Notice dated August 30, 2023 relative to G.R. No. 250748,[25] denying reconsideration of the case with finality.

Hence, in the Minute Resolution dated May 8, 2024,[26] this Court submitted the present case anew for decision.

THE COURT'S RULING

The present *Petition for Review* must be denied.

This Court has jurisdiction to review respondent's Notice of Denial of petitioner's application for compromise settlement.

Respondent argues that the decision contemplated by law that is appealable to this Court is a decision on disputed assessment and not a decision denying the application for compromise.

We disagree.

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[21] Docket – Vol. II, pp. 783 to 785.
[22] Docket – Vol. II, p. 794.
[23] Records Verification Report dated February 12, 2024 issued by the Judicial Records Division of this Court, Docket - Vol. II, p. 797.
[24] Docket – Vol. II, pp. 799 to 800.
[25] Notice of Resolution dated August 30, 2023, issued by the Supreme Court, Docket – Vol. II, p. 801.
[26] Docket – Vol. II, p. 804.

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125,[27] as amended by RA No. 9282,[28] provides as follows, to wit:

> "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 **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases and underscoring added)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue** xxx **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> xxx xxx xxx." *(Emphases added)*

Based on the foregoing Section 7(a)(1), the appellate jurisdiction of this Court is *not* limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the BIR.[29] The wording of the provision is clear and simple.[30]

Relative thereto, one of the many cases that may arise out of the NIRC of 1997 is a decision of respondent pertaining to the exercise of his power to compromise the payment of any internal revenue tax, pursuant to Section 204(A) thereof, to wit:

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[27] AN ACT CREATING THE COURT OF TAX APPEALS.

[28] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[29] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[30] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* –

The Commissioner may –

(A) Compromise the payment of any internal revenue tax, when:

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

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

The compromise settlement of any tax liability shall be subject to the following minimum amounts:

For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and

For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

Where the basic tax involved exceeds One million pesos (P1,000,000.00) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners."

Moreover, *We* do not subscribe to respondent Commissioner of Internal Revenue (CIR)'s contention that his discretion to refuse to enter into a compromise settlement cannot be the subject of judicial determination.

In *Philippine National Oil Company vs. The Hon. Court of Appeals, et al., et seq.*,[31] the Supreme Court held as follows:

"**It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is <u>tainted by a failure to abide by the command of the law</u>, then it is incumbent on the courts to set matters right,** with this Court having the last say on the matter.

The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of grave abuse of discretion and/or whimsical exercise of jurisdiction. **The**

[31] G.R. Nos. 109976 and 112800, April 26, 2005.

discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.

<u>The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained</u>. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246[32] of the NIRC of 1977, as amended, <u>can only be exercised under certain circumstances specifically identified in said statutes</u>. The BIR Commissioner would have to exercise his discretion <u>within the parameters set by the law</u>, and in case he abuses his discretion, <u>the CTA may correct such abuse if the matter is appealed to them</u>." *(Emphases and underscoring added)*

Also, in the recent case of *Commissioner of Internal Revenue vs. Pacific Hub Corporation*,[33] the Supreme Court ruled as follows:

"While the courts may generally not interfere in an administrative agency's exercise of a purely administrative or discretionary power, this rule admits of exceptions such as when 'the issuing authority has gone beyond its statutory authority, has exercised unconstitutional powers or has clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion.'

xxx xxx xxx

Invariably, it is this very same rationale which the Court applied in *PNOC v. Court of Appeals* to hold that the exercise of the CIR's discretionary power to enter into a compromise is subject to the CTA's power of judicial review. The Court pronounced that the '[CIR] would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them.'"

Such being the case, since what is being appealed to this Court is the denial of petitioner's application for compromise settlement, as embodied in the *Notice of Denial* dated January 28, 2016,[34] this Court is undoubtedly vested with jurisdiction to entertain the present *Petition for Review*.

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[32] Now Section 204(A) of the NIRC of 1997.
[33] G.R. No. 252944, November 27, 2024.
[34] Exhibit "P-20", Docket – Vol. I, p. 285.

And considering that the said *Petition for Review* was filed before this Court on March 14, 2016,[35] or within thirty (30) days from receipt of the said *Notice of Denial* on February 11, 2016,[36] the present appeal was timely made, pursuant to the aforequoted Section 11 of RA No. 1125, as amended by RA No. 9282.

This Court finds no "reasonable doubt" as to the validity of the subject income tax assessment.

To reiterate, based on the aforequoted Section 204(A) of the NIRC of 1997, the payment of any internal revenue tax may be compromised by respondent on either of two (2) instances, namely: (1) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax. In the latter case, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax must be paid; while in all other cases, the minimum compromise rate is forty percent (40%) of the basic assessed tax.

Furthermore, in case the basic tax exceeds ₱1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the Evaluation Board, which is composed of respondent and the four (4) Deputy Commissioners of the BIR.

Moreover, relative to Section 204(A) of the NIRC of 1997, Section 6 of Revenue Regulations (RR) No. 30-2002,[37] as amended by RR No. 9-2013,[38] provides:

> "**SEC. 6. APPROVAL OF OFFER OF COMPROMISE.** – Except for offers of compromise where the approval is delegated to the REB pursuant to the succeeding paragraph, all compromise settlements within the jurisdiction of the National Office (NO) shall be approved by **a majority of all the members of the** NEB composed of the Commissioner and the four (4) Deputy Commissioners. All decisions of the NEB, **granting the request**

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[35] Docket – Vol. I, pp. 10 to 29. March 12, 2016 (the 30th day) fell on a Saturday.

[36] Par. 27, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, pp. 15 and 84, respectively; Exhibit "P-20", Docket – Vol. I, p. 285.

[37] SUBJECT: Revenue Regulations Implementing Sections 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001.

[38] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 30-2002.

of the taxpayer or favorable **to the taxpayer**, shall have the concurrence of the Commissioner.

Offers of compromise of assessments issued by the Regional Offices involving basic deficiency taxes of Five Hundred Thousand Pesos (P500,000) or less and for minor criminal violations discovered by the Regional and District Offices, shall be subject to the approval by the Regional Evaluation Board (REB), comprised of the following Officers of the Region:

Regional Director – Chairman
Members:

- Assistant Regional Director
- Chief, Legal Division
- Chief, Assessment Division
- Chief, Collection Division
- Revenue District Officer having jurisdiction over the taxpayer-applicant

Provided, however, that if the offer of compromise is less than the prescribed rates set forth in Sec. 4 hereof, the same shall always be subject to the approval of the NEB.

The compromise offer shall be paid by the taxpayer upon filing of the application for compromise settlement. No application for compromise settlement shall be processed without the full settlement of the offered amount. In case of disapproval of the application for compromise settlement, the amount paid upon filing of the aforesaid application shall be deducted from the total outstanding tax liabilities." *(Emphasis added)*

In connection with the power of compromise by respondent, Section 7(c) of the NIRC of 1997 provides as follows:

"SEC. 7. *Authority of the Commissioner to Delegate Power.* – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however*, That the following powers of the Commissioner shall not be delegated:

xxx xxx xxx

(c) The power to compromise or abate, under Section 204(A) and (B) of this Code, any tax liability: *Provided, however*, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (₱500,000) or

> less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members;"

Based on the foregoing provisions, the legal requirements for a valid exercise of respondent CIR's power to compromise a tax liability are as follows:

1) There exists a reasonable doubt as to the validity of the claim against the concerned taxpayer, or the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax;

2) The taxpayer has paid the minimum compromise rate, which is either forty percent (40%) or ten percent (10%) of the basic assessed tax or taxes, depending on the ground being relied upon. The compromise offer must have been paid and fully settled by the concerned taxpayer upon filing of the application for compromise settlement; and

3) In case the basic tax exceeds ₱1,000,000.00, the application for compromise settlement has been approved by the National Evaluation Board (NEB), with the concurrence of respondent; and in case the basic tax is ₱500,000.00 or less, the said application was approved by the concerned Regional Evaluation Board (REB).

Records show that the application for compromise settlement for the subject deficiency income tax for taxable year 2006, the basic tax of which exceeds ₱1,000,000.00,[39] was disapproved by the NEB.

For easy reference, the *Notice of Denial* dated January 28, 2016[40] issued by Assistant Commissioner, Collection Service, Head, Technical Working Group on Compromise Elvira R. Vera, reads as follows:

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[39] Refer to Exhibit "P-9", Docket – Vol. I, p. 272; Exhibit "P-14", BIR Records p. 148, which shows the basic income tax deficiency.

[40] Exhibit "P-20", Docket – Vol. I, p. 285.

"**NOTICE OF DENIAL**

January 28, 2016

PHILIPPINE MINING DEVELOPMENT CORP.
PSE Center, Exchange Rd., Ortigas Center, Pasig City
TIN: 225-860-806-000

Gentlemen:

This refers to the application for compromise settlement of your **2006** deficiency Income tax liability involving the total amount of **Php 8,177,213.21** on the ground of **doubtful validity of assessment** pursuant to the provisions of Section **204** of the National Internal Revenue Code of **1997**, as amended, as implemented under Revenue Regulations No. **30-2002**.

Please be informed that after careful review and evaluation of your application, the same has been **disapproved** by the National Evaluation Board of this Bureau.

In view thereof, you are hereby requested to pay the amount of **Php 6,594,526.78 net of Php 1,582,686.43** which was previously paid, **plus all the increments incident to delinquency** with any authorized agent banks within fifteen (15) days from receipt hereof. Otherwise, we will be constrained, much to our regret, to enforce the collection thereof thru the administrative summary remedies provided by law without any further notice.

For your information and guidance.

Very truly yours,

(signed)
ELVIRA R. VERA
Assistant Commissioner, Collection Service
Head, Technical Working Group on Compromise"

It is clear that it was the NEB which "disapproved" petitioner's application for compromise settlement, in compliance with Section 204(A) of the NIRC of 1997, and Section 6 of RR No. 30-2002, as amended by RR No. 9-2013.

As can be gleaned from the *Notice of Denial*, the application for compromise settlement was grounded on the doubtful validity of assessment. Petitioner then contends that since the Final Assessment

Notice (FAN) was not properly served, the proceedings emanating from the alleged issuance of the FAN were also void, and any order arising from it could never attain finality.

Section 3(1) of RR No. 30-2002, as amended by RR No. 8-2004,[41] enumerates the instances when the respondent CIR may accept a compromise relative to the ground of reasonable doubt as to the validity of the claim against the taxpayer or "doubtful validity of assessment". It reads:

> "**SEC. 3. BASIS FOR ACCEPTANCE OF COMPROMISE SETTLEMENT.** – The Commissioner may compromise the payment of any internal revenue tax on the following grounds:
>
> 1. **Doubtful validity of the assessment.** – The offer to compromise a delinquent account or disputed assessment under these Regulations on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:
>
>   (a) The delinquent account or disputed assessment is one resulting from a jeopardy assessment xxx; or
>   (b) The assessment seems to be arbitrary in nature, appearing to be based on presumptions and there is reason to believe that it is lacking in legal and/or factual basis; or
>   (c) **The taxpayer failed to file an administrative protest on account of the alleged failure to receive notice of assessment and there is reason to believe that the assessment is lacking in legal and/or factual basis; or**
>   (d) **The taxpayer failed to file a request for reinvestigation/reconsideration within 30 days from receipt of final assessment notice and there is reason to believe that the assessment is lacking in legal and/or factual basis;** or
>   (e) The taxpayer failed to elevate to the Court of Tax Appeals (CTA) an adverse decision of the Commissioner, or his authorized representative, in some cases, within 30 days from receipt thereof and there is reason to believe that the assessment is lacking in legal and/or factual basis; or
>   (f) The assessments were issued on or after January 1, 1998, where the demand notice allegedly failed to

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[41] SUBJECT: Revenue Regulations Implementing Sections 7(c), 204 (A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 7-2001 and 30-2002.

comply with the formalities prescribed under Sec. 228 of the National Internal Revenue Code of 1997; or

(g) Assessments made based on the 'Best Evidence Obtainable Rule' and there is reason to believe that the same can be disputed by sufficient and competent evidence; or

(h) The assessment was issued within the prescriptive period for assessment as extended by the taxpayer's execution of Waiver of the Statute of Limitations the validity or authenticity of which is being questioned or at issue and there is strong reason to believe and evidence to prove that it is not authentic; or

(i) The assessment is based on an issue where a court of competent jurisdiction made an adverse decision against the Bureau, but for which the Supreme Court has not decided upon with finality." *(Emphases added)*

It appears that the subject compromise is based on paragraph (c) of the foregoing provision, *i.e., "[t]he taxpayer failed to file an administrative protest on account of the alleged failure to receive notice of assessment and there is reason to believe that the assessment is lacking in legal and/or factual basis"*. Correspondingly, there are two (2) requisites before the said instance may be acceptable in an offer of compromise, to wit: (1) there was failure on the part of the taxpayer to file an administrative protest on account of the alleged failure to receive the assessment notice; and (2) there is reason to believe that the assessment is lacking in legal and/or factual basis.

However, a review of the records shows that petitioner received the assessment notice, as per petitioner's letter dated December 1, 2010,[42] showing that petitioner secured a copy of the FAN on November 26, 2010, to wit:

"December 1, 2010

Mr. JAIME B. SANTIAGO
Regional Director,
Bureau of Internal Revenue (BIR)
Revenue Region No. 08, Revenue District no. 050
South Makati

Attention: Ricardo B. Espiritu
Revenue District Officer

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[42] Exhibit "P-4", Docket – Vol. I, pp. 264 to 265.

Dear RDO Santiago:

We write to acknowledge the receipt of RDO 050 preliminary collection letter dated October 27, 2010 for total VAT and Income Tax assessments of P11.8 million which was only received last November 22, 2010. The Philippine Mining Development Corporation (PMDC), a GOCC serving the National Government (NG) as its mining arm for idled mining assets, wishes to place forth certain facts for the Bureau's consideration.

1. BIR LN Task Force unit's Final Assessment Notice (FAN) dated January 22, 2010 was somehow delivered to PMDC's original business address. The current address of PMDC is noted below in this letter and was also properly communicated to the BIR per the acknowledged BIR form 1905 (change of business address) last September 26, 2008. **Further, our staff was only able to secure a copy of said FAN through the BIR's account officer's assistance when she visited last November 26, 2010 (through Philip Viduya).**

xxx xxx xxx." *(Emphasis added)*

Thus, petitioner has, in effect, admitted that it was able to secure the FAN through its staff. It cannot then assert that it failed to file an administrative protest on account of non-receipt of the FAN.

In any event, petitioner's application for compromise settlement may instead fall under paragraph (d) of Section 3(1) of RR No. 30-2002, as amended by RR No. 8-2004, which requires that: (1) the taxpayer failed to file a request for reinvestigation/reconsideration within thirty (30) days from receipt of the FAN; and (2) there is reason to believe that the assessment is lacking in legal and/or factual basis.

As a corollary to the finding that petitioner was able to receive the FAN, it was also unable to file a request for reinvestigation/reconsideration within thirty (30) days from receipt thereof.

Having determined that petitioner complied with the first requirement of said paragraph (d), We now determine whether petitioner complied with the other requirement that there is reason to believe that the assessment is lacking in legal and/or factual basis.

Relative thereto, petitioner alleges that in its Audited Financial Statements for calendar year 2006,[43] the Commission on Audit (COA) reported that it incurred a net loss of ₱49,069,487.00, thus, the imposition of any deficiency income tax, inclusive of surcharge and interests, amounting to ₱8,177,213.21, is bereft of any factual and legal bases.

On the other hand, respondents aver that the assessments against petitioner have bases both in fact and law. Respondents claim that upon verification, the following discrepancy resulted from the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching – BOC Data Program as declared in petitioner's tax returns, hence, assessed in accordance with Sections 31, 32, 106 and 108 of the NIRC of 1997, as amended, and Revenue Memorandum Order (RMO) No. 32-2007:

LOCAL PURCHASES:	
Per Summary List of Sales by Petitioner's Customers	P13,525,234.06
Input Tax on Importations per VAT Returns Filed	2,220,331.00
Under-declaration of Local Purchases	P11,304,903.00

We agree with respondent.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[44] the Supreme Court held as follows:

> "RMO No. 30-2003 was supplemented by RMO No. 42-2003, which laid down the ***'no-contact-audit approach'*** in the CIR's exercise of its power to authorize any examination of taxpayer and the assessment of the correct amount of tax. The *no-contact-audit* approach includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayers under the RELIEF System pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002. **This may also include the matching of data from other information or returns filed by the taxpayers with the BIR** such as Alphalist of Payees subject to Final or Creditable Withholding Taxes." *(Emphases added)*

[43] Exhibit "P-25", Docket – Vol. I, pp. 292 to 333.
[44] G.R. No. 222743, April 5, 2017.

Furthermore, RMO No. 32-2007 dated October 8, 2007,[45] provides:

> "8. The deficiency income and value added taxes shall be computed using the formulas prescribed in the attached Computation Sheets for Discrepancy on Sales and/or Purchases [Local and/or Imported] (Annexes 'C', 'C-1', or 'C2') and the corresponding payment shall be made using BIR Form No. 0611-A. This is in compliance with the 'no-contact-audit approach' policy laid down under RMO No. 42-2003, as amended by RMO No. 46-2004, where the concerned RO has no opportunity to examine the records of the taxpayer for purposes of determining his true tax liabilities, but his deficiency tax liabilities are determined using information from third party sources."

Under the "no-contact-audit approach," the deficiency income tax shall be computed using the formulas prescribed in the attached Computation Sheets for Discrepancy on Sales and/or Purchases [Local and/or Imported]. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

From the reading of the attachment to the Letter Notice No. 050-AS-06-00-00119 dated October 30, 2007,[46] it appears that a computerized matching was conducted by the respondent on information/data provided by third party sources against petitioner's declarations per VAT returns for the calendar year ended 2006. This is in compliance with the 'no-contact-audit approach' policy laid down under RMO No. 32-2007.

Suffice it to say that acts of public officers enjoy the presumption of regularity.[47] Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. **All presumptions are in favor of the correctness of tax assessments**.[48]

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[45] SUBJECT: Prescribing Guidelines and Procedures in Handling 2006 Letter of Notices Generated Thru Reconciliation of Listing for Enforcement System (RELIEF) and Third Party Matching-Bureau of Customs (TPM-BOC) Data Program.
[46] Exhibit "R-2-A", BIR Records, p. 3.
[47] *People of the Philippines vs. Erwin Batino y Evangelista*, G.R. No. 254035, November 15, 2021.
[48] *Commissioner of Internal Revenue vs. Bank of Philippine Islands*, G.R. No. 134062, April 17, 2007.

In this case, petitioner did not present evidence to overcome the said presumption or to show that the information/data provided by third party sources against petitioner's declarations are erroneous. Thus, petitioner failed to prove that there is a reason to believe that the assessment is lacking in legal and/or factual basis.

Correspondingly, the Court finds no *"reasonable doubt"* as to the validity of the subject income tax assessment. As such, respondent exercised his discretion within the parameters set by the law in denying petitioner's application for compromise settlement. Thus, there was no grave abuse of discretion when respondent issued the *Notice of Denial*.

WHEREFORE, the present *Petition for Review* is **DENIED**, for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo
(With Concurrence)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE MINING DEVELOPMENT CORPORATION, *Petitioner,*	**CTA Case No. 9292**
	Members:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE and THE OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, in their official capacities as officers of the Bureau of Internal Revenue, *Respondents.*	Promulgated: MAY 08 2025 4:00 p.m.

x - x

CONCURRENCE

REYES-FAJARDO, *J.*:

I agree with the *ponencia's* finding that the Petition is lacking in merit, albeit, for a *different* reason.

To recall, petitioner counted the period to appeal before the Court, from its receipt of the Bureau of Internal Revenue (BIR)'s Notice of Denial on February 11, 2016.[1] Also, denial of an application for compromise falls under "other matters" arising from the National Internal Revenue Code (NIRC), as amended. Yet, the Petition for Review in CTA Case No. 9292 does *not* question said Notice of Denial; rather, what was being assailed therein is the deficiency internal revenue tax found by the BIR against petitioner for 2006 and the collection measures anchored thereon. Consider:

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[1] Par. 5, Petition for Review. Docket (CTA Case No. 9292), p. 11.

First. The Petition's prayer states that petitioner mainly seeks to nullify the deficiency internal revenue tax assessment against petitioner for 2006, as well as the collection measure pivoted thereon. The BIR's Notice of Denial was not even mentioned therein. Thus:

> **ACCORDINGLY,** [petitioner] respectfully asks the Honorable Court that the Assessment for an alleged deficiency income tax [issued against petitioner] for 2006, the 17 August 2011 Warrant of Distraint and/or Levy, the decision of the BIR denying [petitioner]'s Motion for Reinvestigation be **SET ASIDE** and declared **NULL AND VOID**[,] for lack of factual and legal bases.[2]

Second. The Petition, too, advanced three (3) issues, namely: (A) whether petitioner is precluded from availing of the remedy of protesting the final assessment notice; (B) whether the BIR's deficiency income tax assessment against petitioner, despite petitioner incurring a net loss, as shown in its audited financial statements, is with factual and legal bases; and (C) whether petitioner will sustain grave prejudice if the warrant of distraint and/or levy is enforced and shall be enough basis for the issuance of a temporary restraining order and/or writ of preliminary injunction.[3] Conspicuously, none of these issues pertain to the BIR's Notice of Denial of petitioner's application for compromise.

Third. The Discussion[4] portion of the Petition did not even bother to point out the flaw in the BIR's denial of petitioner's application for compromise settlement.

As it is, this case orbits around the propriety of the deficiency internal revenue tax assessment for 2006, slapped by the BIR against petitioner, along with its corresponding collection measures, and *not* the correctness of the BIR's notice of denial on its application for compromise. In any event, the *ponencia* is correct in finding the Petition wanting in merit. Section 228 of the NIRC, as amended, reads:

> **SEC. 228.** ***Protesting of Assessment.*** –...
>
> ...

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2 RELIEF, Petition for Review. *Id.* at p. 24.
3 See THE ISSUES, Petition for Review. *Id.* at p. 16.
4 Pars. 28-44, Petition for Review. *Id.* at pp. 16-20.

> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.** Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.[5]

Section 228 of the NIRC, as amended, is plain and unambiguous – the taxpayer aggrieved by the BIR's final assessment, must file a valid administrative protest thereon, within 30 days from receipt thereof, lest the final assessment be declared conclusive upon it. *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[6] expounded that the requirement to timely file an administrative protest on a final assessment must be met, *even if the final assessment was secured by the taxpayer from the BIR through its own volition.*

In its Letter dated December 1, 2010 addressed to Regional Director Jaime B. Santiago, petitioner confessed that its staff secured a copy of the Final Assessment Notice (FAN) from the BIR on November 26, 2010.[7] Counting 30 days from November 26, 2010, petitioner had until December 27, 2010[8] to file a valid administrative protest thereon. No such administrative protest was lodged by petitioner. Therefore, the deficiency tax assessment embedded on said FAN attained finality, and is conclusive upon the latter. For this reason, said FAN, and the Warrant of Distraint and/or Levy dated August 17, 2011 based thereon, should both be sustained.

All said, I **VOTE** to **DENY** the Petition for Review in CTA Case No. 9292.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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5 Boldfacing mine.
6 G.R. No. 221780, March 25, 2019.
7 Exhibit "P-4." Docket, pp. 264-265. See also par. 14, Petition, *id.* at p. 13.
8 The 30th day, *i.e.*, December 26, 2010, for petitioner to file an administrative protest fell on a Sunday.