REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1943 (CTA Case No. 8945)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
UNITED COCONUT PLANTERS BANK, *Respondent.*	Promulgated: OCT 22 2019 11:43 a.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision on January 24, 2019, of this Court *En Banc,* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended*, seeking the reversal of the Decision dated March 20, 2018[2] and the Resolution dated September

---

[1] Rule 8, Sec 3. *Who May Appeal; Period To File Petition.- X X X*

> (B) A Party Adversely Affected By A Decision Or Resolution Of A Division Of The Court On A Motion For Reconsideration Or New Trial May Appeal To The Court By Filing Before It A Petition For Review Within Fifteen Days From Receipt Of A Copy Of The Questioned Decision Or Resolution. Upon Proper Motion And The Payment Of The Full Amount Of The Docket And Other Lawful Fees And Deposit For Costs Before The Expiration Of The Reglementary Period Herein Fixed, The Court May Grant An Additional Period Not Exceeding Fifteen Days From The Expiration Of The Original Period Within Which To File The Petition For Review. (Rules Of Court, Rule 42, Sec. 1a)
>
> x x x x x x x x x

[2] Penned By Associate Justice Ma. Belen M. Ringpis-Liban, Concurred In By Associate Justice Esperanza R. Fabon-Victorino, En Banc Docket, pp. 30-49.

h

10, 2018[3] rendered by the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated March 20, 2018:

"**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Notice of Denial dated October 29, 2014 is **CANCELLED** and **SET ASIDE** insofar as petitioner is ordered to pay the aggregate amount of Php132,773,876.27 inclusive of surcharge and legal interest, which corresponds to the total tax deficiencies for 1999 and 2001 gross receipts tax and 2001 final tax on onshore income of Php140,772,691.60, net of the amount of Php7,998,815.33 paid as an offer of compromise for the alleged deficiency taxes for the covered period.

SO ORDERED."

Resolution dated September 10, 2018:

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision dated 20 March 2018** is **DENIED** for lack of merit.

SO ORDERED."

The following facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record[5], read as follows:

"Petitioner (now respondent) is a local banking corporation duly organized and existing under Philippine laws, with principal office address at UCPB Building, 7907 Makati Avenue, Makati City. It is authorized to operate as an expanded commercial bank by the Bangko Sentral ng Pilipinas (BSP).

---

[3] *Id.*, pp. 50-54.
[4] Supra Note 2.
[5] JFSI, Division Docket, (Vol. 5), pp.2316-2327.

h

On the other hand, Respondent (now petitioner) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997 or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner was assessed for various deficiency taxes for the years 1997, 1998, 1999 ,2000 and 2001.[6]

On May 23, 2006, January 26, 2007 and May 17, 2007, petitioner submitted to respondent separate applications/ offer for compromise of its supposed deficiency GRT and FT liabilities for the years 1999, 2000, and 2001 in the total amount of Php264,363,652.44 on the ground of financial incapacity, and offering to pay ten percent (10%) of the assessments against it.

On November 13, 2014, Petitioner received a Notice of Denial[7] dated October 29, 2014 from Respondent, stating that the application/ offer for compromise settlement for the years 1999, 2000, and 2001 in relation to its deficiency GRT and FT liabilities in the total amount of Php264,363,652.44, has been disapproved for lack of factual basis by the National Evaluation Board (NEB), which was chaired by Respondent.

On November 27, 2014, Petitioner filed with Respondent a Request for Reconsideration of the Notice of Denial dated October 29, 2014, reiterating its financial incapacity that was prevailing at the time the two applications for compromise settlement were filed in 2007, and even at present.

---

[6] Division Docket, (Vol. V), P. 2317
[7] Exhibit "P-2", Division Docket, (Vol. V), P.2494

Due to Respondent's inaction on its Request for Reconsideration, petitioner filed the instant Petition for Review (with Motion/Prayer for Suspension of Collection of Tax) on December 15, 2014.

The subject matter of the instant petition is limited to the said notice of denial of the offer of compromise of Petitioner's alleged deficiency GRT in 1999 and 2001 and deficiency FT on onshore income in 2001, in the aggregate amount of Php140,772,691.60, less payments made on the compromise in the amount of Php7,998,815.33, details of which are shown below:

TAX TYPE/YEAR	AMOUNT			
	BASIC	**INTEREST**	**TOTAL**	**OFFER OF COMPROMISE (10% of BASIC TAX)**
Gross Receipts- 1999	64,010,540.40	44,940,072.20	108,950,612.60	6,401,054.04
Gross Receipt- 2001	2,170,564.47	2,152,476.43	4,323,040.90	217,056.45
Final Tax- Onshore Income -2001	13,807,048.42	13,691,989.68	27,499,038.10	1,380,704.84
TOTAL	**79,988,153.29**	**60,784,538.31**	**140,772,691.60**	**7,998,815.33**

On February 11, 2015, Respondent filed a Motion for Leave to Admit Attached Comment with Motion to Dismiss. This was granted by the Court during the hearing on February 16, 2015. Petitioner's Motion/Prayer for Suspension of Collection of Tax was then deemed submitted for resolution.

Within the extended time granted by the Court, Respondent filed his Answer through registered mail on February 23, 2015 and received by the Court on March 2, 2015. Respondent interposed the following special and affirmative defenses:"

'SPECIAL AND AFFIRMATIVE DEFENSES'

xxx xxx xxx

4. Respondent hereby reiterates and re-pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.

L

THE PETITION STATES NO CAUSE OF ACTION

5. The petition states no cause of action. As Petitioner admits in paragraph 20 of the petition as well as in its verification, within fifteen (15) days from receipt of the Notice of Denial, it filed a Motion for Reconsideration with the Office of the Commissioner. This motion is allegedly still pending resolution. Hence, the cause of action has not accrued.

6. Also, it is apparent that Petitioner seeks the overturn of the denial of its compromise offer of unprotested assessments and that its payment of Php7,998,815.33 be deemed full payment of its liability for deficiency GRT in 1999 and 2001, and deficiency Final Tax- Onshore Income in 2001. Simply stated, it is seeking a judicial order that would compel Respondent to enter into a compromise agreement with Petitioner.

7. Respondent avers that there is no act or omission that gives right to a cause of action in a person's refusal to enter into a compromise agreement. As held by the Supreme Court:

> 'A compromise is contractual in nature and a party's consent or refusal to give such is entirely discretionary. And it is perfectly within its exclusive right to accept or reject the same.'

As can be seen, there is nothing wrong or right in entering or refusing to enter into a compromise agreement. Any which way one chooses, that person would still be in the correct exercise of his or her rights. Hence, there can never be a cause of action.

L

8. A person who refuses to enter into a compromise agreement cannot be compelled or coerced to do so. Article 2028 of the New Civil Code characterizes a compromise agreement as a contract stating:

> 'Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.'

9. It must be emphasized that, an essential requisite of contract is consent. To be valid, such consent must be voluntary and not coerced by court action. As held by the Honorable Supreme Court:

> 'Consent is an essential requisite of contracts as it pertains to the meeting of the offer and the acceptance upon the thing and the cause which constitute the contract. To create a valid contract, the meeting of the minds must be free, voluntary, willful and with a reasonable understanding of the various obligations the parties assumed for themselves.'

Since a judicially coerced consent is actually the opposite of true consent, then it is actually impossible to attain this essential voluntary contractual requisite by forcing such via court action. This suffers from the same ridiculous infirmity of suing a person to enter into a marriage contract.

10. Again, there is no actionable wrong in this case. Respondent cannot be forced to enter into a compromise agreement with Petitioner.

THE HONORABLE COURT HAS NO

h

JURISDICTION OVER THE SUBJECT MATTER

11. In City of Dumaguete vs. Philippine Ports Authority, G.R. No. 168973, August 24, 2011, the Highest Court has stressed:

> 'What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.'

12. Here, Petitioner claims in paragraph 1 of its petition, this is a Petition for Review pursuant to Section 7 of Republic Act (R.A.) No. 1125. It includes a motion for prohibition and/or the suspension of collection of taxes. Verily, the subject matter of the main action is stated in paragraph 7.2 of the petition as follows:

> '7.2 The subject matter of the instant petition will be limited to the notice of denial of the offer of compromise of alleged deficiency GRT in 1999 and 2001, and deficiency Final Tax- Onshore Income in 2001 due from Petitioner, in the aggregate amount of Php140,772,691.60 less payments made on the compromise in the amount of Php7,998,815.33.'

13. And as a factual background for the subject matter, it states in paragraphs 3, 4, and 5 of the petition, as follows:

> '3. Petitioner UCPB was assessed for various deficiency taxes for the years, 1997, 1998, 1999, 2000, and 2001.

ℒ

> 4. On various dates, Petitioner, submitted to Respondent applications/ offer for compromise of its supposed deficiency gross receipts and final tax liabilities for the years 1999, 2000, and 2001 in the total amount of Php264,363,652.44 on the ground of financial incapacity and offering to pay 10% of the assessments against.
>
> 5. On 13 November 2014, United Coconut Planters Bank ("UCPB") received a Notice of Denial dated 29 October 2014 declaring that the application/ offer for compromise settlement of UCPB for the years 1999, 2000, and 2001 in relation to its deficiency gross receipts and final tax liabilities in the total amount of Php264,263,652.44 on the ground of financial incapacity has been disapproved by the National Evaluation Board ("NEB") chaired by Respondent CIR, upon the recommendation of the Technical Working Group ("TWG") of the BIR for lack of factual basis

14. Specifically, Petitioner seeks to nullify the refusal of Respondent to accept its offer of compromise on the ground of financial incapacity. This is plainly stated in paragraphs 42 and 43 of the petition as follows:

> '42. It should be noted that despite the change in auditors throughout the years, the qualified opinions issued by UCPB's different auditors are substantially the same in stating that had UCPB booked its assets, liabilities, gains and losses in accordance with PFRS, its networth

L

> would have been substantially decreased by said liabilities and losses.
>
> 43. From the foregoing, it is obvious that Respondent CIR committed a grave error, actually a grave abuse of discretion, in denying Petitioner's application/ offer of compromise settlement of tax liabilities.'

15. Nullifying Respondent's refusal to accept its offer of compromise is parenthetically obliging Respondent to accept its offer of compromise. With all due respect, this Honorable Court has no jurisdiction to determine whether offers to compromise tax liabilities are acceptable to the State.

16. The authority of the Commissioner of Internal Revenue to enter into compromise agreements is enshrined in Section 204 of the National Internal Revenue Code of 1997, as amended, which states:

> 'SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes
>
> (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:

h

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 (Php1,000,000) 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.

xxx xxx xxx

The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: Provided, That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to

h

determine that said powers are reasonably exercised and that the government is not unduly deprived of revenues.' (Emphasis Supplied)

17. Now, in consonance with her power to enter into compromise agreements is her duty to render a report to the Chairmen of the Committee on Ways and Means of both Senate and House of Representative every six (6) months.

18. The said Committee determines whether the Commissioner in the exercise of her power to enter into compromise agreements reasonably exercised her duty and that the government is not unduly deprived of revenues.

19. The exercise by the Commissioner of her power to enter into compromise agreements is final and subject only to the oversight of the Committee on Ways and Means.

20. The above quoted provision clearly shows that the power to compromise tax liabilities is a purely executive function delegated by the legislature and cannot in any way be appealed to the Honorable Court. It is an act of mercy extended by way of extreme exception by the legislature. Compassion cannot be obtained by suit. This is not a justiciable issue and clearly outside the jurisdiction of the Honorable Court.

JURISDICTION OF THE COURT OVER THE SUBJECT MATTER OF THE ACTION IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT AND THE CHARACTER OF THE

h

RELIEF SOUGHT

21. In pleadings filed in courts of special jurisdiction, the special facts giving the court jurisdiction must be specially alleged and set out.

22. Verily the causal factor of Petitioner's action is Respondent's refusal to enter into a compromise agreement. Hence, there is no appealable decision to annul collection or a decision on disputed assessment that will give jurisdiction to this Honorable Court to decide the case. As admitted by Petitioner –

> '7.2 The subject matter of the instant petition will be limited to the notice of denial of the offer of compromise of alleged deficiency GRT in 1999 and 2001, and deficiency Final Tax- Onshore Income in 2001 due from Petitioner, in the aggregate amount ofPhp140,772,691.60 less payments made on the compromise in the amount of Php7,998,815.33.' (Emphasis supplied)

And as one of its petitory reliefs:

> 'Upon due consideration, the Notice of Denial dated 29 October 2014 issued against UCPB insofar as it orders UCPB to pay the aggregate amount of ONE HUNDRED THIRTY TWO MILLION SEVEN HUNDRED SEVENTY THREE THOUSAND EIGHT HUNDRED SEVENTY SIX AND 27/100 PESOS (Php132,773,876.27) xxx be ANNULED and SET ASIDE.'

23. Also, at the point of being repetitive, there is lack of cause of action here. As Petitioner admits in paragraph 20 of the petition as well as in its verification, within fifteen (15) days from receipt of the Notice of

> Denial, it filed a Motion for Reconsideration with the Office of the Commissioner. This motion is allegedly still pending resolution. There exists that vice of prematurity.
>
> 24. In Zamora vs. CA, 183 SCRA 279, 285, March 19, 1990, the Highest Tribunal ruled that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action."

After trial on the merits, the CIR filed a Manifestation stating that, in lieu of filing a Memorandum, he is adopting his Answer to the Petition for Review dated February 18,2015 as his Memorandum. On the other hand, UCPB filed its Memorandum by registered mail on March 8, 2017, Thereafter, in a Resolution dated March 22, 2017, the case was submitted for decision.

On March 20, 2018, the Court in Division rendered the assailed Decision which cancelled and set aside the Notice of Denial dated October 29, 2014 corresponding to the total tax deficiencies for 1999 and 2001 Gross Receipts Tax and Final Tax on onshore income paid as an offer of compromise.

Aggrieved, on April 18, 2018, the CIR filed, by registered mail, a Motion for Reconsideration Re: Decision dated 20 March 2018, but the same was denied in a Resolution dated September 10, 2018.

Hence, this Petition for Review was filed by the CIR.

The crux of the issue boils down as to whether the CTA has jurisdiction to rule on the CIR's denial of UCPB's offer of compromise. In the case at bar, the CIR insists that such matter does not fall under the phrase "other matters" arising from the NIRC of 1997, as amended. Corollary to the foregoing is whether the CIR's right to collect deficiency taxes for the years 1999 and 2001 had already prescribed.

We rule to **DENY** the Petition for Review. The arguments presented are bereft of merit and deserve scant consideration.

L

At the outset, the CIR's discretionary authority to enter into a compromise agreement is not absolute.

A compromise agreement is a contract whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced. It is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.[8]

Indeed, the CIR is empowered to compromise the payment of internal revenue taxes, under certain conditions, pursuant to Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, to wit:

> "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) or where the settlement

---

[8] California Manufacturing Company, Inc. vs. The City of Las Piflas and the Han. Rizal Y Del Rosario, City Treasurer, G.R. No. 178461, June 22, 2009.

L

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."

Relative to Section 204(A) of the NIRC of 1997, Sections 2, and 3 of Revenue Regulations (RR) No. 30-2002,[9] as amended by RR Nos. 8-2004 and 9-2013, provide:

"*SEC.2. CASES WHICH MAY BE COMPROMISED*.

- The following cases may, upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations, be the subject matter of compromise settlement, *viz*:

1.Delinquent accounts;

2.Cases under administrative protest after issuance of Final Assessment Notice to the taxpayer which are still pending in the Regional Offices, Revenue District Offices, Legal Service, Large Taxpayer Service (LTS), Collection Service, Enforcement Service and other offices in the National Office;

3.Civil tax cases being disputed before the courts;

4.Collection cases filed in courts;

5.Criminal violations, other than those already filed in court or those involving criminal tax fraud.

SEC.3. BASIS FOR ACCEPTANCE OF COMPROMISE SETTLEMENT.

-The Commissioner may compromise the payment of any internal revenue tax on the following grounds:

---

[9] 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.

L

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 (For this purpose, jeopardy assessment' shall refer to a tax assessment which was assessed without the benefit of complete or partial audit by an authorized revenue officer, who has reason to believe that the assessment and collection of a deficiency tax will be jeopardized by delay because of the taxpayer's failure to comply with the audit and investigation requirements to present his books of accounts and/or pertinent records, or to substantiate all or any of the deductions, exemptions, or credits claimed in his return); 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 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.

2. *Financial incapacity*. - The offer to compromise based on financial incapacity may be accepted upon showing that:

(a)The corporation ceased operation or is already dissolved. Provided, that tax liabilities corresponding to the Subscription Receivable or Assets distributed/distributable to the stockholders representing return of capital at the time of cessation of operation or

L

dissolution of business shall not be considered for compromise; or

(b) The taxpayer, as reflected in its latest Balance Sheet supposed to be filed with the Bureau of Internal Revenue, is suffering from surplus or earnings deficit resulting to impairment in the original capital by at least 50%, provided that amounts payable or due to stockholders other than business-related transactions which are properly includible in the regular 'accounts payable' are by fiction of law considered as part of capital and not liability, and provided further that the taxpayer has no sufficient liquid asset to satisfy the tax liability; or

(c)The taxpayer is suffering from a networth deficit (total liabilities exceed total assets) computed by deducting total liabilities (net of deferred credits and amounts payable to stockholders/owners reflected as liabilities, except business-related transactions) from total assets (net of prepaid expenses, deferred charges, pre-operating expenses, as well as appraisal increases in fixed assets), taken from the latest audited financial statements, provided that in the case of an individual taxpayer, he has no other leviable properties under the law other than his family home; or

(d) The taxpayer is a compensation income earner with no other source of income and the family's gross monthly compensation income does not exceed the levels of compensation income provided for under Sec. 4.1.1 of these Regulations, and it appears that the taxpayer possesses no other leviable or distrainable assets, other than his family home; or

(e) The taxpayer has been declared by any competent tribunal/body/government agency as bankrupt or insolvent."

On the other hand, the jurisdiction of this Court is conferred by Republic Act (RA) No. 1125, as amended by RA No. 9282. The pertinent provision is quoted hereunder for ready reference:

"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 or other laws administered by the Bureau of Internal Revenue**; (Emphasis supplied)

Likewise, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals, as amended, 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.)

Notably, the jurisdiction of the CTA over the decision of the CIR to enter into a compromise agreement with the

L

taxpayer was upheld in the consolidated cases of *Philippine National Oil Company vs. Court of Appeals, et al.* and *Philippine National Bank vs. Court of Appeals, et. al.,*[10] wherein the Supreme Court ruled in this wise:

> 'B. The CTA correctly retained jurisdiction over CTA Case No. 4249 by virtue of Republic Act No. 1125.
>
> xxx xxx xxx
>
> The CTA assumed jurisdiction over the Petition for Review filed by private respondent Savellano based on the following provision of Rep. Act. No. 1125, the Act creating the Court of Tax Appeals:
>
>> SEC. 7. Jurisdiction. - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue**; (Underscoring ours.)
>
> In his Petition before the CTA, private respondent Savellano requested a review of the decisions of then BIR Commissioner Tan to enter into a compromise agreement with PNOC and to reject his claim for additional informer's reward. He submitted before the CTA questions of law involving the interpretation and application of (1) E.O. No. 44, and its implementing rules and regulations, which authorized the BIR Commissioner to compromise delinquent accounts and disputed assessments pending as of 31 December 1985; and

[10] Philippine National Oil Company vs. Court of Appeals, et al. and Philippine National Bank vs. Court of Appeals, et. al., G.R. NO. 109976, April 26, 2005.

L

(2) Section 316(1) of the National Internal Revenue Code of 1977 (NIRC of 1977), as amended, which granted to the informer a reward equivalent to 15% of the actual amount recovered or collected by the BIR. **These should undoubtedly be considered as matters arising from the NIRC and other laws being administered by the BIR, thus, appealable to the CTA under Section 7(1) of Rep. Act No. 1125.'** (Emphasis supplied.)

Based on the foregoing, while the CIR's power to compromise is sanctioned under the NIRC of 1997, the exercise thereof is subject to the determination of this Court, whether the same is "within the parameters set by the law". Such parameters are clearly delineated under the afore-quoted Section 204(A) NIRC of 1997, and Sections 2 and 3 of RR No. 30-2002, as amended by RR Nos. 8-2004 and 9-2013, to wit:

1) The compromise was granted by the respondent because one of the following reasons exists: (a) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (b) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax. In other words, the taxpayer must have complied with the basis set forth under Section 3 of RR No. 30-2002, as amended by RR Nos. 8-2004 and 9-2013;

2) In case the basic tax exceeds Php1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must have been approved by a majority of all the members of National Evaluation Board (NEB), with the concurrence of respondent; and

3) The taxpayer must fully settle the prescribed compromise amount or rate, *i.e., 10% of the basic tax assessed in case of financial incapacity, or 40% of the same basic tax assessed in all other cases.*

While it is generally true that purely administrative and discretionary functions may not be interfered with by the court, nonetheless, when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with the Supreme Court having the last say on the matter.[11]

Similarly, the allegations in the instant Petition for Review clearly show that UCPB is disputing the decision of the CIR in denying the former's offer of compromise of its tax assessment.

Therefore, applying the ruling of the Supreme Court in the above cited case, the allegations in the instant Petition for Review are considered as other matters arising from the NIRC of 1997, as amended and other laws being administered by the BIR. Being so, it is appealable to this Court, pursuant to Section 7(a)(1) of RA No. 1125, as amended by RA Nos. 9282 and 9503 and Section 3 (a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals.

Based on the foregoing, it is clear that the discretionary authority to compromise granted to the CIR is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government. 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.

Furthermore, let the BIR be reminded of the crux of compromise settlement, that is, any program of the government which can provide a reasonable relief on the taxpayer's burden should always be earnestly deliberated upon.

Anent the right of the CIR to collect UCPB's alleged tax deficiencies for GRT and FT for taxable years 1999 and 2001, this Court agrees with the Court in Division. The period for collection of such taxes has prescribed.

We reiterate the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue,*[12] wherein the Supreme Court held that the period for collection of the assessed tax begins to run on the date the assessment

[11] Alfredo Leongson, Pia Bautista and Martin Kisel vs. The Court Of Appeals and Demetrio P. Santiago, G.R. No. L-32255, January 30, 1973.
[12] Bank of the Philippine Islands vs. Commissioner of Internal Revenue, G.R. No. 139736, October 17, 2005.

L

notice has been released, mailed or sent. The relevant portion of the decision is quoted as follows:

> "x x x when the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another three years [now five years] after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/ or court proceeding. **The assessment of the tax is deemed made and the three-year period [now five-year period] for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.**
>
> In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. While Assessment No. FAS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by Petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. **Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to Petitioner BPI was on the same date they were received by the latter**, on 20 October 1989. Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST." (Emphasis supplied)

In the case at bar, the CIR's right to collect the alleged deficiency taxes has already been ruled upon by the Court in Division, the pertinent portion of which is quoted below:

> "During trial, it was not established when Respondent released or sent the Formal Letters of Demand (FLDs) and Final Assessment Notices

L

(FANs) upon which the above-mentioned deficiency tax assessments were based. However, records show that the subject FLDs and FANs were received by Petitioner on the following dates:

TAX TYPE/ YEAR	BASIC	INTEREST	TOTAL	DATE OF RECEIPT OF FLD AND FAN
Gross Receipts- 1999	64,010,540.40	44,940,072.20	108,950,612.60	August 5, 2003
Gross Receipts- 2001	2,170,564.47	2,152,476.43	4,323,040.90	January 2, 2007
Final Tax- Onshore Income -2001	13,807,048.42	13,691,989.68	27,499,038.10	January 2, 2007
TOTAL	**79,988,153.29**	**60,784,538.31**	**140,772,691.60**	

Applying the ruling in the *BPI case*, the five-year (5) prescriptive period for collection of taxes is deemed to have begun to run on August 5, 2003 for the GRT assessment for taxable year 1999, and on January 2, 2007 for the GRT and FT assessment for taxable year 2001. Thus, Respondent had until August 5, 2008 and January 2, 2012, respectively, within which to collect the balance of the deficiency taxes.

However, it was only on November 13, 2014 when Petitioner received the Notice of Denial dated October 29, 2014. Respondent failed to act in promptly resolving and denying the application/ offer of compromise filed by Petitioner and in enforcing collection on the assessment. Evidently, Respondent's right to collect Petitioner's total tax deficiencies for 1999 and 2001 GRT and 2001 FT on onshore income had already prescribed.

It must be emphasized that said application/ offer for compromise did not have the effect of temporarily staying the hands of Respondent. **An application for compromise does not impede nor delay or postpone collection. Under the NIRC of 1997, an application for compromise does not affect the power of the BIR to collect.Further, nowhere in Revenue Regulations No. 30-2002, as amended, is collection suspended or disallowed by the mere filing of an application for compromise**." (Emphasis ours)

L

In the case of *Republic of the Philippines vs. Ablaza,*[13] the Supreme Court explained the essence of the statute of limitations of actions for the collection of taxes, to wit:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law."

Under the premises, it bears emphasis that the intention of the law is clear, it was legislated based on valid reasons. Taxpayers should not be left to lose their hope that this compromise settlement is a remedy that they can turn to in cases of clear financial incapacity or doubtful validity of the assessment.

Although taxes are the lifeblood of the government, their assessment and collection should be made in accordance with law, rules and regulations as any arbitrariness will defeat the very purpose of the government itself. This Court cannot condone errant or enterprising tax officials, as they are expected to be vigilant and law-abiding as well.

Finding the ruling of the Court in Division, within the ambit of what law and jurisprudence provide, the same must

[13] Republic of the Philippines vs. Ablaza, G.R. No. L-14519, July 26, 1960.

be sustained and not be disturbed.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated March 20, 2018, and the Resolution dated September 10, 2018 rendered by the Third Division of this Court are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(with Separate Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

UNITED COCONUT PLANTERS BANK,
Respondent.

CTA *EB* NO. 1943
(CTA Case No. 8945)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 22 2019 11:43 a.m.

x- x

SEPARATE CONCURRING OPINION

MANAHAN, J.:

I agree with the result that the Commissioner of Internal Revenue (CIR) can no longer collect on the deficiency gross receipts tax (GRT) for taxable year 1999 and deficiency GRT and final tax on onshore income for taxable year 2001, due to prescription of the CIR's right to collect thereon.

As exhaustively discussed in the main Decision, the right of the CIR to collect the subject deficiency taxes has prescribed.

However, I hesitate to give my full assent to the affirmation of the Court in Division's Decision[1] dated March 20, 2018. The Court in Division cancelled and set aside the Notice of Denial "insofar as petitioner [UCPB] is ordered to pay the aggregate amount of Php132,773,876.27 inclusive of surcharge and legal interest, which corresponds to the total

[1] *Rollo*, pp. 30-49.

tax deficiencies for 1999 and 2001 gross receipts tax and 2001 final tax on onshore income of Php140,772,691.60, net of the amount of Php7,998,815.33 paid as an offer of compromise for the alleged deficiency taxes for the covered period."[2]

It is established that the Court of Tax Appeals has jurisdiction, under the "other matters" clause, to look into the CIR's exercise of his power to compromise and to determine whether the same is within the parameters set by the law.[3] However, the main Decision, and the Division Decision, made no categorical ruling on the validity or invalidity of the subject Notice of Denial. In fact, the Court in Division, after finding that the right to collect has already prescribed, stated that "there is no more need for this Court to make a determination on the validity and correctness of the denial of petitioner's offer of compromise."[4]

Based on the foregoing, I submit that the dispositive portion of the Division Decision need not state that "the Notice of Denial is CANCELLED and SET ASIDE insofar as petitioner is ordered to pay ...", rather, the Petition for Review should have been granted on the ground that the CIR's right to collect on the subject deficiency taxes has prescribed.

All told, I concur in the result.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

---

[2] *Rollo*, Division Decision dated March 20, 2018, p. 48.
[3] Decision, p. 20.
[4] *Rollo*, Division Decision dated March 20, 2018, p. 47.