REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PACIFIC PLANS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7537

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

FEB 0 9 2009
3:00 p.m.

x --- x

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Pacific Plans, Inc. (hereafter "petitioner") praying that judgment be rendered declaring null and void the Assessment Notices against petitioner in the amounts of P275,964.35 and P259,138.13, representing surcharge, interest and compromise penalty for late payment of withholding taxes for the months of March and April 2005, respectively.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 2nd Floor, Grepalife Building, 221 Sen. G. Puyat Avenue, Makati City. Petitioner is a duly registered withholding agent of the Bureau of Internal Revenue ("BIR").

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, who is duly empowered to perform the duties of her office, including the duty to resolve disputed assessments, refunds of international revenue taxes, fees and charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code ("NIRC"), or other laws administered by the BIR, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts, as stipulated upon by the parties, are as follows:

> "3. The due date for the remittance of withholding taxes for the month of March 2005 was on 15 April 2005. This was paid by PPI on 18 May 2005.
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> 4. Petitioner PPI sent a letter dated 15 April 2005 to the BIR Large Taxpayers Service, duly stamped received by the BIR on 18 April 2005, informing the latter of, among other things, the Stay Order dated 12 April 2005 issued in connection with the case entitled "***In the Matter of Petition for Corporate Rehabilitation with Prayer for Suspension of***

ON

Payments, Pacific Plans, Inc.", docketed as SP Proc. M-6059 with the Regional Trial Court of Makati City, Branch 61 (the "Rehabilitation Proceedings").

5. Petitioner PPI received a Collection Letter dated 03 May 2005 from the BIR for unsettled withholding tax due for the month of March 2005 in the aggregate amount of P1,237,300.64, inclusive of surcharge, interest and compromise penalty.

> 5.1. The Collection Letter dated 03 May 2005 issued by the BIR was received by petitioner PPI on 10 May 2005.
>
> 5.2. Genuineness and due execution of the Collection Letter dated 03 May 2005.

6. In response to the Collection Letter dated 03 May 2005, petitioner PPI filed a letter dated 16 May 2005, duly stamped received by the BIR on 18 May 2005, explaining that petitioner PPI is in the process of getting clearance from the court-appointed rehabilitation receiver for the payment of the withholding tax due for the months of March and April 2005. The said letter dated 16 May 2005 also requested for the waiver of surcharges and interest on the withholding tax due.

7. The due date for the remittance of withholding taxes for the month of April 2005 was on 16 May 2005. This was paid by PPI on 18 May 2005.

8. On 18 May 2005, petitioner PPI immediately paid the withholding taxes due for the months of March and April 2005.

> 8.1. Based on petitioner PPI's BIR Form No. 1601-E or the Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded), the amount of basic withholding taxes due for the month of March 2005 is Nine

Hundred Fifty Four Thousand Seven Hundred Ninety Eight and 02/100 Pesos (P954,798.02).

8.2. Based on petitioner PPI's BIR Form No. 1601-E or the Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded), the amount of basic withholding taxes due for the month of April 2005 is Nine Hundred Fifty Two Thousand Three Hundred Seventy Seven and 71/100 Pesos (952,377.71).

9. The BIR sent a Final Notice Before Seizure dated 16 June 2005, which was received by petitioner PPI on 19 July 2005, imposing surcharge, interest and compromise penalty in the aggregate amount of P282,502.62 for the late payment of withholding taxes by PPI for the month of March 2005.

9.1. Genuineness and due execution of the Final Notice Before Seizure dated 16 June 2005.

10. In response to the Final Notice dated 16 June 2005, petitioner PPI submitted a letter dated 29 July 2005, duly stamped received by the BIR on even date, requesting the latter to reconsider the imposition of surcharge, interest and compromise penalty.

11. BIR sent a Collection Letter dated 20 September 2005, which was received by petitioner PPI on 10 October 2005, imposing surcharge, interest and compromise penalty in the aggregate amount of P259,665.85 for the late payment of withholding tax for the month of April 2005.

11.1. Genuineness and due execution of the Collection Letter dated 20 September 2005.

12. In response to the Collection Letter dated 20 September 2005, petitioner PPI submitted a letter dated 25 October 2005, duly stamped received by the BIR on 26

October 2005, requesting for a waiver for the said civil penalties.

13. On 06 October 2005, petitioner PPI filed an Application for Abatement of Tax/Penalties for late payment of withholding tax for March 2005.

14. On 28 December 2005, petitioner PPI also filed an Application for Abatement of Tax/Penalties for late payment of withholding tax for the month of April 2005.

15. The Tax Code, under Title X thereof, and its implementing revenue regulations provide for the payment of increments in case of late remittance.

16. The existence of the following provisions of law, rules and regulations:

16.1. Sections 248 and 249 of the Tax Code;

16.2. Revenue Memorandum Order No. 1-90; and

16.3. Revenue Regulations No. 12-2001."

On March 17, 2006, pending the decision of the BIR regarding petitioner PPI's Application for Abatement, petitioner received Assessment Notices Nos. QA-06-000122 and QA-06-000123, both issued on January 20, 2006, imposing surcharge, interest and penalties in the amounts of P275,964.35 and P259,138.13 for late payment of the creditable withholding taxes for the months of March and April 2005, respectively.

On April 4, 2006, petitioner filed a letter dated March 29, 2006, protesting the assessment of surcharge, interest and compromise penalties for the late payment of creditable withholding taxes for the months of March and April 2005.

Respondent having failed to act on the letter protest, on October 30, 2006, petitioner filed the instant Petition for Review.

In her "Answer" filed on January 5, 2007, respondent, by way of special and affirmative defenses, averred that petitioner did not make a timely judicial appeal, hence, the instant petition should be dismissed; petitioner failed to allege the date of the Stay Order dated 12 April 2005, failed to execute affidavit showing compliance with the publication requirements as mandated in the Order and failed to allege the date of receipt of the Order; hence, said Order finds no application to the instant case; petitioner as a withholding agent is under obligation to remit to the government money it holds in trust, or the taxes withheld; money held in trust is not petitioner's money, it holds the fund in a fiduciary capacity, thus, said money never redounded to petitioner's general fund, therefore it is not covered by the Stay Order; the liability of petitioner as a withholding agent is separate and distinct from its liability to its regular suppliers, stockholders, and other business-related creditors; the alleged

Stay Order issued by the Regional Trial Court containing the provision that "petitioner is prohibited from making any payment of its liabilities as of the filing of the petition for corporate rehabilitation" does not apply to withheld taxes by withholding agents of the government; hence, petitioner was not legally prevented from paying the withholding taxes due for March and April 2005 by said Order; and petitioner belatedly remitted the basic withheld taxes and thus should be made liable to pay the legal increment.

Respondent also counters that petitioner's contention that the provision on what liabilities or claims may be considered covered by the Stay Order is a difficult question of law is untenable. Any withholding agent knows that the money it withheld is merely entrusted to it and it is under obligation to remit the same to the BIR on the due dates prescribed for its remittance; the non-remittance of withheld taxes, or late remittance for that matter already deprived the government of funds to which petitioner never had a right, thus, making petitioner liable for increments.

Respondent further argues that petitioner's act of making it appear that it acted in good faith when it immediately paid the withholding taxes on May 18, 2005 upon allegedly obtaining the approval of the court-appointed rehabilitation receiver is untenable as: (1) there was no documentary evidence that would show that petitioner sought the approval of the court prior to its payment; (2) even for the sake of argument that petitioner indeed sought the court's approval, it does not change the fact that the court's approval is not necessary before petitioner could remit the withheld taxes to the government; the remittance of withheld taxes by petitioner did not operate to extinguish the increments due to the government for its late remittance; and the Tax Code, as amended, under Title X thereof, and its implementing revenue regulations provide for the payment of increments in case of late remittance.

Petitioner presented Liwayway Gener, Executive Vice President of petitioner, and Mamerto A. Marcelo, Jr., petitioner's Financial Consultant and Certified Public Accountant, as witnesses, and documentary evidence, marked as *Exhibits "A" to "S"*, inclusive of their submarkings, which were all admitted by the Court, in a Resolution dated September 6, 2007, except for *Exhibits "L" to "L-3"*, which were denied admission for failure to present their originals for comparison, even after petitioner filed a Motion for Partial Reconsideration of the Resolution dated September 6, 2007.

On the other hand, at the scheduled hearing on October 1, 2007, counsel for respondent manifested that she will no longer present any evidence and moved that it be granted thirty (30) days from receipt of the Court's Resolution on petitioner's Motion for Partial Reconsideration, within which to file her memorandum. Petitioner was likewise granted 30 days within which to file its memorandum, afterwhich, the case shall be deemed submitted for decision.

Petitioner and respondent having filed their respective memorandum, the case was deemed submitted for decision.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION TO ENTERTAIN THE PETITION FOR REVIEW DATED 26 OCTOBER 2006.

1.1. AS A FACTUAL ISSUE, WHETHER OR NOT THE CIR ISSUED ASSESSMENT NOS. QA-06-000122 AND QA-06-000123 BOTH DATED 20 JANUARY 2006.

II

ASSUMING THE HONORABLE COURT HAS JURISDICTION, WHETHER OR NOT THE TAXES WITHHELD BY PETITIONER PPI IS COVERED BY THE STAY ORDER DATED 12 APRIL 2005 ISSUED IN

CONNECTION WITH THE REHABILITATION PROCEEDINGS.

III

WHETHER OR NOT PETITIONER PPI IS LIABLE FOR SURCHARGES, INTERESTS AND COMPROMISE PENALTIES CORRESPONDING TO THE CREDITABLE WITHHOLDING TAXES DUE FROM TRANSACTIONS IT ENTERED INTO FOR THE MONTHS OF MARCH AND APRIL 2005, AMOUNTING TO TWO HUNDRED SEVENTY FIVE THOUSAND NINE HUNDRED SIXTY FOUR AND 35/100 PESOS (P275,964.35) AND TWO HUNDRED FIFTY NINE THOUSAND ONE HUNDRED THIRTY EIGHT AND 13/100 PESOS (P259,138.13), RESPECTIVELY.

3.1 WHETHER OR NOT THE STAY ORDER DATED 12 APRIL 2005 HAD THE LEGAL EFFECT OF RESTRAINING PETITIONER PPI FROM MAKING ANY DISBURSEMENTS, INCLUDING THE PAYMENT OF THE CREDITABLE WITHHOLDING TAXES DUE FOR THE MONTHS OF MARCH AND APRIL 2005, WITHOUT THE APPROVAL OF THE COURT-APPOINTED REHABILITATION RECEIVER IN CONNECTION WITH THE REHABILITATION PROCEEDINGS.

3.2 WHETHER OR NOT THERE EXISTS JUST AND COMPELLING REASONS TO EXCUSE PETITIONER PPI FROM THE PAYMENT OF SURCHARGES, INTERESTS AND COMPROMISE PENALTIES ALLEGEDLY CORRESPONDING TO THE

WITHHOLDING TAXES DUE FOR THE MONTHS OF MARCH AND APRIL 2005.

THE COURT'S RULING

The petition is meritorious.

First Issue
Jurisdiction

Respondent argues that the Court has no jurisdiction to take cognizance of the instant case considering that petitioner received the Final Notice Before Seizure on July 19, 2005, and following the ruling in *Commissioner of Internal Revenue vs. Isabela Cultural Corporation, 361 SCRA 71* ("Isabela case"), petitioner has 30 days from receipt of said Final Notice Before Seizure, or until July 16, 2005, within which to file the instant petition. However, petitioner filed the instant petition only on October 30, 2006, hence the Court has no jurisdiction to entertain said petition.

Respondent's contention is devoid of merit.

The Isabela case is not applicable to the instant case as the factual scenario in the Isabela case is totally different from the factual setting in the present case. In the Isabela case, the Final Notice Before Seizure was considered by the Supreme Court as the final act of the CIR regarding the taxpayer's request for reconsideration since it was the only response received by the taxpayer after it filed its request for reconsideration. Whereas, in the present case the Final Notice Before Seizure dated June 16, 2005, which was received by petitioner on July 19, 2005, was not the last response received by petitioner from the respondent. After petitioner submitted a letter response to the Final Notice Before Seizure on July 29, 2005, petitioner received on October 10, 2005 a Collection Letter dated September 20, 2005 from the BIR, to which petitioner submitted a letter response to the BIR on October 26, 2005, requesting for a waiver of said civil penalties. Subsequently, pending decision of the BIR on its Application for Abatement, on March 17, 2006, petitioner received Assessment Notices Nos. QA-06-000122 and QA-06-000123, both issued on January 20, 2006, imposing surcharge, interest and penalties in the amounts of P275,964.35 and P259,138.13 for late payment of the creditable withholding taxes for the months of March and April 2005, respectively. The said Assessment Notices state that should petitioner disagree with the assessments, it should submit a letter of protest. Hence, on April 4, 2006, petitioner filed a letter dated March 29, 2006, protesting the assessment contained in Assessment Notices Nos. QA-06-000122 and QA-06-000123, which respondent failed to act.

In the light of the foregoing events obtaining after the issuance of the Final Notice Before Seizure, it is clear that in the instant case, the Final Notice Before Seizure can not be considered the final act of respondent, from which the counting of the statutory period to appeal to this Court must be reckoned. While it is true that as a rule the warrant of distraint and levy is proof of the finality of the assessment and renders hopeless a request for reconsideration, being tantamount to an outright denial thereof and makes the said request deemed rejected, the special circumstance in this case prevents the application of this accepted doctrine *(Commissioner of Internal Revenue vs. Algue, Inc., 158 SCRA 12-13)*. The fact is that, after the taxpayer received the notice of assessment, it filed a letter of protest, which was not apparently taken into account before the warrant of distraint and levy was issued; the warrant therefore, is premature *(Commissioner of Internal Revenue vs. Algue, Inc., supra)*. Similarly, in the present case, the Final Notice Before Seizure dated June 16, 2005, and the Collection Letter dated September 20, 2005 were premature considering that after their issuance, respondent issued Assessment Notices Nos. QA-06-000122 and QA-06-000123, which were being protested by petitioner.

Section 228 of the NIRC of 1997, as amended, in conjunction with *Section 6 of Revenue Regulations 12-85*, classifies protest into two kinds, namely: (1) request for reconsideration; and (2) request for reinvestigation. A request for reconsideration – refers to a plea of re-evaluation of the assessment on the basis of existing records without need of additional evidence, which may involve both a question of fact or of law or both. On the other hand, a request for reinvestigation – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation, which may also involve a question of fact or law or both. A perusal of the protest filed by petitioner shows that the same is a request for reconsideration *(Exhibits "Q" to "Q-7")*. Submission of additional evidence, therefore, is not necessary. Applying the provision of *Section 228 of the NIRC of 1997, as amended*, respondent has 180 days from April 4, 2006, or until October 1, 2006, within which to decide on the protest. Since respondent failed to act on the protest, petitioner has 30 days from October 1, 2006, or until October 31, 2006, within which to appeal to this Court. Considering that the present petition was filed on October 30, 2006, clearly, the petition was filed on time. Thus, the Court has jurisdiction over the present petition.

Second
Coverage of the Stay Order
dated April 12, 2005

As regards the second issue, whether or not the taxes withheld by petitioner is covered by the Stay Order dated April 12, 2005, considering that on May 18, 2005 petitioner paid the withholding taxes due for the months of March and April 2005, the Court finds it no longer necessary to discuss the second issue.

Third Issue
Liability for Surcharge, Interest
and Compromise Penalties

We now proceed to the third issue and sub-issues, which can be summed up into one main issue: whether or not petitioner is liable for the payment of surcharge, interest and compromise penalties corresponding to the creditable withholding taxes due for the months of March and April 2005.

Petitioner's Arguments

Petitioner contends that it was legally enjoined from making any disbursements by virtue of the Stay Order dated April 12, 2005, hence respondent gravely erred in issuing the assessment notices, which imposed surcharge, interest and compromise penalties against petitioner for late remittance of the withholding taxes due for the months of March and April 2005; petitioner acted in good faith when it seeks the approval of the court-appointed rehabilitation receiver before proceeding to pay the creditable withholding taxes for the months of March and April 2005; and immediately after obtaining approval from the court-appointed rehabilitation receiver, petitioner paid the withholding taxes due for the months of March and April 2005.

Respondent's Argument

Respondent counter-argues that the Stay Order dated April 12, 2005 did not have the effect of restraining petitioner from remitting creditable withholding taxes due for the months of March and April 2005; petitioner, as a withholding agent, is under obligation to remit the government money it holds in trust; and said money never redounded to petitioner's general fund; thus, not covered by the Stay Order, as said order covers only funds belonging to petitioner.

We rule for the petitioner.

Section 4 of Revenue Regulations 6-2001 prescribes the due date for payment of creditable withholding taxes paid through electronic filing, to wit:

> "SEC. 4. Time for Filing of Withholding Tax and Value-Added Tax Returns and the Payment of Taxes Due Thereon. – The time for filing of the various tax returns as indicated below and the payment of the taxes due thereon

shall be revised in accordance with the appropriate amendments to the existing regulations, as presented below.

(1) Sections 2.58 (A) (2) and 2.81 of Revenue Regulations No. 2-98, as amended, are hereby further amended to read as follows:

'Sec. 2.58 – Returns and Payment of Taxes Withheld at Source.

(A) Monthly return and payment of taxes

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(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadline set above.

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Pursuant to the foregoing provision, the due date for payment of creditable withholding taxes paid thru electronic filing is on the 15th day of the following month, to which the creditable withholding tax pertains. In this case, the due date for payment of the creditable withholding tax for the month of March was on April 15, 2005, while for the month of April was on May 15, 2005.

Since petitioner failed to pay the creditable withholding taxes for the months of March and April 2005 within their respective due dates, respondent assessed petitioner of surcharge, interest and compromise penalties, in the total amounts of P275,964.35 for the month of March, and P259,138.13 for the month of April, pursuant to *Sections 248 and 249 of the NIRC of 1997, as amended*, and *Revenue Memorandum Order No. 1-90.*

However, record shows that on April 12, 2005, the Regional Trial Court, Makati City, Branch 61, in SP. PROC. NO. M-6059, entitled *"In the Matter of Petition for Corporate Rehabilitation with Prayer for Suspension of Payments"* issued a Stay Order directing petitioner, as follows:

> "a) a stay in the enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the petitioner PPI, its guarantors and sureties not solidarily liable with it;
>
> b) prohibiting PPI from making any payment of its liabilities as of the filing of the instant petition. PPI, however, is allowed to disburse the amount of at least P341

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> Million as tuition fee support to its availing planholders who agree to such support, and provided that such disbursement shall not entail any disposition of the covering assets (NAPOCOR bonds) in the Trust Fund; hence, availing planholders who agree to the proposed tuition fee support are directed to coordinate with PPI;
>
> xxx xxx."

The above Stay Order enjoins the enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise against petitioner; and prohibits petitioner from making any payments of its liabilities as of the filing of the petition, without any distinction. Petitioner having received the Stay Order on April 12, 2005 *(TSN dated April 18, 2007, pp. 12-13)*, and believing in good faith that the Stay Order prohibited it from making payment to the BIR the withholding taxes due for the months of March and April 2005 *(Exhibit "R")*, and considering further that unlike the usual corporate rehabilitation, the creditors of petitioner are individuals numbering in thousands and coupled with the publicity involved in the corporate rehabilitation, petitioner believed that it was all necessary for it to proceed conservatively and treat the withholding taxes as liabilities, which it cannot pay without, at the very least, approval from the court-appointed Rehabilitation Receiver *(Exhibit "R")*. Hence, on April 15, 2005, petitioner wrote a Letter to the BIR, which was received by the latter on April 18, 2005, informing the Bureau, as follows:

> "Dear Deputy Commissioner Henares:
>
> This is to inform that Pacific Plans, Inc. (PPI) filed a petition for corporate rehabilitation at the Makati Regional Trial Court. On April 12, 2005, the Court issued a Stay Order directing PPI to stop from making any payments of its liabilities as of the filing of the petition.
>
> Included in PPI's liabilities as of that date is taxes withheld in the month of March amounting to P954,798.02. PPI recognizes its obligation to remit the said taxes to the BIR but because of the prohibition set by the Court, it can not effect the payment on the due date.
>
> May we therefore request that penalties, interests, and other charges be waived while PPI is prohibited from making payments of liabilities.
>
> The Court has appointed a Receiver for the corporate rehabilitation program filed by PPI. Once the Company secured approval from the Receiver, PPI will remit the said taxes to the BIR.
>
> xxx xxx" *(Exhibit "E")*.

Considering that the Stay Order prohibiting the enforcement of all claims against petitioner and prohibiting petitioner from making any payment of its liabilities, without any distinction, was issued and received by petitioner on April 12, 2005, three days before the due date for payment of its creditable withholding tax liability for the month of March 2005, and thirty three days before the due date for payment of its

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creditable withholding tax for the month of April 2005, petitioner's act of first seeking clearance from the court-appointed rehabilitation receiver, before effecting any payment of said creditable withholding taxes liabilities, was the most prudent thing for petitioner to do. A Stay Order is effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings *(Section 11, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation, and Philippine Airlines vs. Sps. Kurangking, 389 SCRA 592).* Thus, when petitioner did not pay its withholding tax liability for the month of March on April 15, 2005, and its withholding tax liability for the month of April on May 15, 2005, the same were not due to petitioner's mere refusal, but pursuant to the Stay Order issued by the rehabilitation court. The Stay Order, being general in tenor, and does not make any distinction as to the claims enjoined and the liabilities prohibited from payment, in the view of the Court, is a justifiable reason for petitioner not to pay the creditable withholding taxes due on April 15 and May 15, 2005.

In the cases of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue, 138 SCRA 631-632* and *Advertising Associates, Inc. vs. Court of Appeals, 133 SCRA 770*, the Supreme Court ruled that when the assessment is highly controversial as when the taxpayer had reason not to pay the tax, it should be liable only for the tax proper and should not be held liable for the surcharge and interest. Pursuant to the foregoing ruling, considering that there is controversy whether petitioner's obligation to pay the creditable withholding taxes is covered by the phrases: "all claims" and "any of its liabilities" enjoined in the Stay Order, petitioner, therefore, should not be held liable for the surcharge and interest for the months of March and April 2005.

Records further show that after the court-appointed rehabilitation receiver took his oath on April 22, 2005 *(Exhibit "D")*, petitioner requested clearance and approval from him for the payment of petitioner's unsettled withholding taxes for the months of March and April 2005 *(Exhibit "S", TSN dated June 25, 2007, p. 12)*. Immediately after petitioner obtained clearance from the court-appointed rehabilitation receiver, it paid the creditable withholding taxes due for the months of March and April 2005, on May 18, 2005 *(Exhibit "R", Joint Stipulation of Facts and Issues, p. 3)*. For all the foregoing, it is evident that petitioner acted in good faith when it remitted the creditable withholding taxes for the months of March and April 2005 late. Nevertheless, it exerted all means to remit said taxes the soonest possible time after it was granted clearance by the court-appointed rehabilitation receiver. For these reasons, the Court rules that petitioner should not be liable for the surcharge and interest for late payment of its creditable withholding taxes.

Likewise, the Court finds no basis in the imposition of the compromise penalty of P20,000.00 each for the months of March and April 2005. Settled is the rule that compromise penalties cannot be imposed in the absence of showing that petitioner consented thereto. A compromise implies agreement. Such being the case, in the absence of a showing that petitioner consented thereto, the compromise penalties cannot be validly imposed *(Commissioner of Internal Revenue vs. Abad, 23 SCRA 1140)*.

WHEREFORE, premises considered, the present Petition For Review is hereby **GRANTED**. Accordingly, Assessment Notices Nos. QA-06-000122 and QA-06-000123, representing surcharges, interests and compromise penalties for late payment of withholding taxes for the months of March and April 2005, in the total amounts of P275,964.35 and P259,138.13, respectively, are hereby ordered **CANCELLED** and **SET ASIDE**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ERNESTO D. ACOSTA
Presiding Justice