REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

ROXAS HOLDINGS, INC., *Petitioner*,	**CTA *EB* NO. 2672** (CTA Case No. 10321)
-versus-	Present: **DEL ROSARIO, P.J.,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 15 2024 4:30 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

At bar is a Petition for Review,[1] pursuant to ***Section 2(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] in relation to ***Section 3(b), Rule 8*** of the same Rules, seeking to reverse and set aside the Judgment by Compromise Agreement, dated 30 March 2022 ("Assailed Judgment"),[3] insofar as it denied the compromise of withholding taxes ("WHT"), particularly the withholding tax on compensation ("WTC"), expanded withholding tax ("EWT") and final withholding tax ("FWT'), as well as the Resolution dated 9 August 2022 ("Assailed Resolution"),[4] which likewise declined the petitioner's Motion for Reconsideration, both issued by the Court's First Division ("Court in Division").[5]

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1 See Petition for Review, *Rollo,* pp. 8-32.
2 A.M. No. 05-11-07-CTA, 22 November 2005.
3 See Judgment on Compromise Agreement dated 30 March 2022, *Rollo.,* pp. 40-62, with the Dissenting Opinion of Presiding Justice Roman G. Del Rosario.
4 See Resolution dated 9 August 2022, *id.,* pp. 63-66.
5 See Prayer, Petition for Review, *id.,* p. 31.

The Parties

Roxas Holdings, Inc. ("petitioner" or "RHI") is a corporation organized and existing under the laws of the Philippines doing business under the name and style of CADP GROUP (formerly Central Azucarera Don Pedro, Inc.).[6] It is primarily engaged to purchase, hold, pledge, transfer, sell, or otherwise dispose of or deal in shares of capital stocks, bonds, debentures, notes, or other securities or evidence of indebtedness or any such securities held by it and to do any and all acts and things lending to increase the value of the corporation.[7]

Respondent, on the other hand, is the Commissioner of Internal Revenue ("respondent" or "CIR") who is the head of the Bureau of Internal Revenue ("BIR"), the government agency tasked to, among others, assess and collect all national internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

The Facts

On 4 January 2011, petitioner received Letter of Authority No. 121-2010-00000116, dated 3 January 2011, authorizing Revenue Officers ("RO") Jose Turbolencia, Reynaldo Calo, Agnes Sision, Ofelia Gratuito, and Group Supervisor ("GS") Armie Buena of the Large Taxpayers Excise Audit Division I ("ELTAD I") to examine petitioner's books of accounts and other accounting records for the fiscal year ending 30 June 2010 ("FY2010").[9] Petitioner was thereafter informed of the replacement of the revenue officers by ROs Myrna F. Ramirez, Malik D. Dimakuta, Alfred D. Manodon, and Teodor R. Matibag, under the direct supervision of GS Monica L. Zamora, through a letter, dated 4 March 2013, signed by Alfredo V. Misajon, OIC – Assistant Commissioner of the Large Taxpayers Services.[10] For purposes of implementing the replacement of the originally assigned ROs, a Memorandum of Assignment was also issued by the BIR on 28 February 2013, signed by Sarah B. Mopia, Chief of ELTAD I.[11]

On 16 June 2014, petitioner received an undated Preliminary Assessment Notice ("PAN")[12] informing it of the alleged deficiency income tax ("IT"), value-added tax ("VAT"), documentary stamp tax ("DST"), WTC, EWT, and FWT amounting to Php145,220,031.33, inclusive of interest and compromise penalty.

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6 See Par. 1, Parties, Petition for Review, *Rollo*, p. 8; See also Certificate of Filing Amended Articles of Incorporation with attached Amended Articles of Incorporation, Exhibit "P-1", Division Docket, Vol. 1, pp. 175-200.

7 See Amended Articles of Incorporation, Exhibit "P-1", Division Docket, Vol. 1, p. 176.

8 See Par. 2 Parties, Petition for Review, *Rollo*, p. 8.

9 See Letter of Authority dated 3 January 2011, Exhibit "P-10", Division Docket, Vol. 1, p. 312.

10 See Letter dated 4 March 2013, Exhibit "P-13", Division Docket, Vol. 1, p. 319.

11 See BIR Records, p. 390.

12 Exhibit "P-17", *id.*, pp. 326-332.

Before petitioner was able to file its reply to PAN[13] on 30 June 2014, the BIR served an undated Formal Letter of Demand ("FLD") and Final Assessment Notice ("FAN"), dated 25 June 2014, on 26 June 2014.[14] On 25 July 2014, petitioner protested the FLD/FAN,[15] with the corresponding supporting documents subsequently submitted on 22 September 2014.[16]

The BIR served its Final Decision on Disputed Assessment ("FDDA")[17] to petitioner on 1 July 2016. As per the FDDA, petitioner was allegedly liable for an increased aggregate amount of Php163,036,238.70, inclusive of interest and compromise penalty. In response, petitioner filed a request for reconsideration[18] with respondent on 29 July 2016. The same was denied on 1 July 2020. [19]

Hence, on 3 August 2020, petitioner filed a Petition for Review,[20] docketed as CTA Case No. 10321 and raffled to the Court in Division.

On 6 September 2021, the parties filed a Joint Manifestation with Motion for Approval of Compromise Agreement[21] manifesting that a compromise agreement had been executed by the parties and a compromise amount has been paid.

The Court in Division partially granted the Motion for Approval of Compromise through the Assailed Judgment, the dispositive portion of which states:

> "**WHEREFORE**, in light of the foregoing, the parties' *Motion for Approval of Compromise Agreement* is hereby **PARTIALLY GRANTED**.
>
> Accordingly, the **Compromise Agreement** dated July 13, 2021 entered into by the parties, as far as the IT, VAT, and DST assessments are concerned, is hereby **APPROVED**. The parties are hereby enjoined to faithfully comply with all the terms and conditions of the aforesaid Compromise Agreement.
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> As regards the amount of Php1,695,925.86 that has been paid by the petitioner for the WTC, EWT, and FWT assessments, the same can be credited against the subsisting WHT assessments in the amount of Three Million Nine Hundred Forty-Six Thousand One Hundred Twenty-Eight Pesos and 51/100 (Php3,946,128.51), computed as follows:
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> x x x
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> This computation is without prejudice to any adjustment by respondent of any deficiency interest pursuant to Section 249 (B) of the 1997 NIRC, as amended."

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13 Exhibit "P-18", *id.*, pp. 333.
14 Exhibit "P-19", *id.*, pp. 334-346.
15 See Request for Reinvestigation, Exhibit "P-20", *id.*, pp. 347-358.
16 See Transmittal Letter stamped received on 22 September 2014, Exhibit "P-21", *id.*, p. 359.
17 Exhibit "P-22", *id.*, pp. 360-369.
18 Exhibit "P-23", *id.*, pp. 370-381.
19 See Letter dated 1 July 2020, *id.*, p. 382.
20 See Petition for Review, CTA Case No. 10321, Division Docket, Vol. 1, 6-65.
21 See Joint Manifestation with Motion for Approval of Compromise Agreement, Division Docket, Vol. 2, *id.*, pp. 728-731.

In the Assailed Judgment, the Court in Division discussed that Section 2 of ***Revenue Regulations No. 30-2002***[22] provides that withholding tax cases are exempted from the cases which may be compromised unless the taxpayer invokes provisions of law that cast doubt on its obligation to withhold. However, the Court in Division found that the petitioner merely argued that it properly withheld taxes and that the same were remitted to the BIR. Therefore, according to the Court in Division, petitioner merely raised factual defenses and not a legal defense required by the regulations, which led to the Court in Division denying the approval of the compromise settlement on WTC, EWT and FWT.

A Motion for Reconsideration[23] was thereafter filed by the petitioner on 22 April 2022. However, the same was denied in the Assailed Resolution.

Aggrieved, petitioner elevated its appeal to the Court *En Banc* through the instant Petition for Review filed on 15 September 2022.

After noting the respondent's Comment filed on 3 November 2022, the present case was submitted for decision on 15 December 2022.

The Issues[24]

I. WHETHER PETITIONER RAISED PROVISIONS OF LAW WHICH CAST DOUBT ON ITS OBLIGATION TO WITHHOLD TAXES RENDERING THE DEFICIENCY WITHHOLDING TAX ASSESSMENT IN THE INSTANT CASE PROPER SUBJECT OF COMPROMISE SETTLEMENT; AND

II. WHETHER RESPONDENT EFFECTIVELY ABATED OR CANCELLED THE INTEREST, PENALTIES AND SURCHARGE ARISING FROM THE WTC, EWT AND FWT ASSESSMENTS.

The Arguments

In its Petition for Review, petitioner argues that it raised provisions of law that would invalidate the entire assessment.[25] It also emphasized that it was able to raise provisions of law that cast doubt on its obligation to withhold the assessed WTC, EWT, and FWT.[26]

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22 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 7-20 dated 16 December 2002.

23 Division Docket Vol 2., pp. 871-886.

24 See Petition for Review, *Rollo*, p. 16.

25 See Petition for Review, *Rollo*, pp. 17-20.

26 *Id.*, pp. 21-27.

Finally, petitioner posits that by issuing the certificate of availment, respondent effectively abated or cancelled the interest, penalties, and surcharge arising from the withholding tax assessments. Thus, there is no need to raise a provision of law that casts doubt on petitioner's obligation to withhold.[27]

Meanwhile, respondent supported petitioner's position by raising that there is legal basis to conclude that reasonable doubt on the validity of the assessments exists,[28] and that the Court in Division erred in partially denying the compromise agreement entered into by the parties.[29]

The Ruling of the Court

The instant Petition for Review was timely filed before the Court *En Banc*

Before delving into the merits of the case, We shall first look into the timeliness of the filing of the Petition for Review before the Court *En Banc*.

Under ***Sections 3 (b), Rule 8 of the RRCTA***, a party adversely affected by a decision or resolution of a Division of the CTA on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a petition for review within fifteen (15) days from receipt of the assailed decision or resolution.

The subject Assailed Resolution herein was received by the petitioner on 16 August 2022.[30] Applying the 15-day reglementary period, petitioner had until 31 August 2022 within which to file an appeal. However, considering the Court *En Banc's* granting of a fifteen (15)-day extension,[31] the instant Petition for Review was timely filed on 15 September 2022.

We shall now proceed to determine the merits of the instant case.

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27 *Id.*, pp. 27-30.
28 See Comment (on Petition for Review filed on 15 September 2022), *Rollo*, pp. 284-285.
29 *Id.*, pp. 285-290.
30 See Notice of Resolution stamped "Received" by the petitioner's counsel, Baniqued & Bello on 16 August 2022, Division Docket, Vol. 2, p. 896.
31 See Resolution dated 1 September 2022.

A valid authority to conduct audit investigation was issued by the respondent's duly authorized representative; thus, the assessment cannot be claimed invalid on such ground.

Elementary is the rule that revenue officers conducting an examination of a taxpayer for purposes of determining the correct amount of taxes due must be armed with a valid LOA. This sets, guarantees, and limits the authority given to the tax officers in the course of their investigation and is intended to afford due process protection to taxpayers.

Section 13 of the Tax Code clearly mandates the issuance of a valid LOA before a tax audit may be performed by a revenue officer, *viz.*:

> "SEC. 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due **in the same manner that the said acts could have been performed by the Revenue Regional Director himself**." (Emphasis supplied.)

The importance of identifying the authorized revenue officer who will conduct the investigation was elucidated by the Supreme Court in the case of ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*** ("***McDonald's Case***"),[32] as cited in the case of ***Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)***,[33] to wit:

> "**To comply with due process in the audit or investigation by the BIR**, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. **The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA.** If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, **identifying**

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[32] G.R. No. 242670, 10 May 2021.
[33] G.R. No. 255473, 13 February 2023.

> **the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**"
> (Emphasis and underscoring supplied.)

To be effective, a LOA must be issued by either respondent himself or by his duly authorized representative. While under ***Section 13 of the Tax Code*** as cited above, the duly authorized representative is the Revenue Regional Director, the list was expanded in ***Section D (4) of Revenue Memorandum Order ("RMO") No. 43-90.***[34] The list of officers who may issue Letters of Authority are as follows:

1. Regional Directors;
2. Deputy Commissioners;
3. Commissioner; and
4. Other officials that may be authorized by the Commissioner for the exigencies of services.

Moreover, under ***RMO No. 29-07***,[35] all LOAs shall be issued and approved by the Assistant CIR/Head Revenue Executive Assistants as the same positions are equivalent to a Revenue Regional Director.

Guided by the foregoing, a referral letter or MOA may be considered as a valid and effective LOA provided that it was issued by any of the persons enumerated above.

In the instant petition, the subject MOA issued on 28 February 2013, was signed by the Chief of ELTAD I; hence, it cannot be considered a valid LOA. However, upon perusal of the referral letter dated 4 March 2013, the Court observes that the same was issued and signed by the **OIC-Assistant Commissioner** under the Large Taxpayers Service who is one of the duly authorized representatives of the respondent.

In this regard, the Court *En Banc* finds no merit on petitioner's contention that the entire assessment is void as the ROs who conducted the audit investigation lack the proper authority.

Nevertheless, We still rule on the violation of RHI's right to due process brought about by the BIR's disregard of procedural mandates of its own regulations, as discussed in the succeeding section.

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[34] Subject: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, dated 20 September 1990.

[35] Subject: Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service, dated 26 September 2007.

The issuance of the FAN prior to the lapse of the 15-day period within which the taxpayer may submit its reply to PAN is a violation of the right to due process

The BIR is mandated, under ***Section 228 the National Internal Revenue Code, as amended*** ("Tax Code"), to inform the taxpayer in writing of the law and the facts on which the assessment against it is made; otherwise, the assessment is void.

To implement the same, ***Section 3 of RR No. 12-99,[36] as amended by RR No. 18-2013,***[37] states:

> "Sec. 3. Due Process Requirement in the Issuance of a Deficiency Assessment. —
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> x x x
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> 3.1.1 **Preliminary Assessment Notice (PAN).** — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).
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> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an **FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**"
> (Emphasis supplied.)

The regulations categorically direct that a taxpayer shall be issued a PAN upon determination of deficiency taxes. Thereafter, it has fifteen (15) days from the receipt thereof within which to submit a response raising its explanations and defenses. Only after receiving the taxpayer's reply or the lapse of the 15-day period to file the same can the BIR issue the FLD/FAN.

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[36] Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated 6 September 1999.

[37] Subject: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, dated 28 November 2013.

The Supreme Court, in the case of ***Commissioner of Internal Revenue vs. Metro Star Superama Inc. ("Metro Star case")***,[38] emphasized the importance of a PAN and declared that the issuance of the same is a substantive, not merely a formal, requirement, to wit:

> "Indeed, Section 228 of the Tax Code clearly requires that the taxpayer **must first be informed that he is liable for deficiency taxes through the sending of a PAN**. He must be informed of the facts and the law upon which the assessment is made. **The law imposes a substantive, not merely a formal, requirement**. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
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> x x x
>
> From the provision quoted above, it is clear that the **sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities**. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.** Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void."
> (Emphasis supplied; citations omitted.)

Consistent with the due process considerations discussed in the ***Metro Star case***, it was held in the case of ***Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue***,[39] citing the case of ***Commissioner of Internal Revenue vs. Yumex Philippines Corporation***,[40] that the 15-day period given to taxpayer within which to submit its reply to the PAN should be strictly observed by the BIR. There is a violation of the due process rights when the 15-day period is disregarded by issuing the FAN before a reply is submitted or the lapse of the reglementary period, to wit:

> "The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.
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> In the very recent case of Commissioner of Internal Revenue v. Yumex Philippines Corp., the Court had occasion to state that the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that '**[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.**'

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[38] G.R. No. 185371, 8 December 8, 2010.
[39] G.R. No. 249153, 12 September 2022.
[40] G.R. No. 222476, 5 May 2021.

> While Yumex rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. There can be **no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.**"
> (Emphasis supplied; citations omitted.)

In the case at hand, the PAN was received by the petitioner on 16 June 2014 as evidenced by the copy of notice stamped received on even date.[41] Counting 15 days therefrom, petitioner had until 1 July 2014 within which to respond to said PAN. However, the six (6) FANs clearly indicate that these were issued on 25 June 2014[42] which is undeniably before the lapse of the 15-day period and the actual submission of the petitioner's reply to PAN on 30 June 2014.[43]

Accordingly, the Court holds that RHI's right to due process was not faithfully observed by the BIR. Thus, the subsequent issuances of the FLD/FAN and FDDA are deemed invalid.

The rules on abatement and cancellation of assessed liability, as per *Section 204(B) of the Tax Code*, is applicable to the instant case; the invalidity of the assessment is considered a "meritorious circumstance".

In its Petition, RHI adopted the Dissenting Opinion of Presiding Justice Roman del Rosario to the Assailed Judgment, and raised that the rules on abatement may be applied on the cancellation of the assessed interest and surcharge on withholding taxes, in the instant case.

A perusal of the records shows that petitioner paid 100% of the basic deficiency WTC, EWT, and FWT. The application for compromise was thereafter approved by the National Evaluation Board ("NEB").

As reflected in the Compromise Agreement, the parties applied ***Section 204(A) of the Tax Code*** in settling the present tax controversy, including the assessed withholding taxes. The pertinent provision of the ***Tax Code*** states:

> "SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
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> **(A) Compromise the payment of any internal revenue tax, when:**

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41 See PAN stamped received on 16 June 2014, Division Docket, Vol. I, pp. 326-332.
42 See FAN issued on 25 June 2014, *id.*, pp. 341-346.
43 See Letter to BIR stamped received on 30 June 2014, *id.*, p. 333.

(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 (₱1,000.000) 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." (Emphasis supplied)

Notably, while ***Section 204(A)*** requires a minimum payment of ten percent (10%) or forty percent (40%) of the basic assessed tax, the case herein involves the payment of the basic withholding taxes in full. It is for such reason, together with the surrounding circumstances of the BIR's assessment as discussed in the preceding section, that the Court believes that ***Section 204(B) of the Tax Code*** is applicable here, with regard to abatement or cancellation of the tax liability. ***Section 204(B)*** provides:

"SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

x x x

(B) Abate or cancel a tax liability, when:

(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

(2) The administration and collection costs involved do not justify the collection of the amount due.

All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud."

To implement the above provision of the ***Tax Code***, the BIR issued ***Revenue Regulations No. 13-01***.[44] ***Sections 3 and 4*** thereof states that surcharges, penalties and/or interest may be abated by the CIR on **meritorious cases**, to wit:

[44] Subject: Implementing Section 204(B), in Relation to Section 290 of the Tax Code of 1997, Regarding Abatement or Cancellation of Internal Revenue Tax Liabilities, dated 27 September 2001.

"SECTION 3. Instances When The Tax Liabilities, Penalties And/Or Interest Imposed On Taxpayer May Be Abated Or Cancelled On The Ground That The Administration And Collection Costs Are More Than The Amount Sought To Be Collected. — When the administrative and collection costs, including cost of litigation, are much more than the amount that may be collected from the taxpayer, the assessment may be reduced through abatement, or entirely cancelled pursuant to Section 204(B) of the Code. The instances that may fall under this category are the following:

3.1 Abatement of penalties on assessment confirmed by lower court but appealed by the taxpayer to a higher court;

3.2 **Abatement of penalties on withholding tax assessment under meritorious circumstances**;

3.3 Abatement of penalties on delayed installment payment under meritorious circumstances;

3.4 Abatement of penalties on assessment reduced after reinvestigation but taxpayer is still contesting reduced assessment; and

3.5 Such other instances which the Commissioner may deem analogous to the enumeration above.

For items 3.1 to 3.4 above, the abatement of the surcharge and compromise penalty shall be allowed only upon written application by the taxpayer signifying his willingness to pay the basic tax and interest or basic tax only, whichever is applicable under the prevailing circumstance.

SECTION 4. The Commissioner Has The Sole Authority To Abate Or Cancel Tax, Penalties And/Or Interest. — The Commissioner has the sole authority to abate or cancel internal revenue taxes, penalties and/or interest pursuant to Section 204(B), in relation to Section 7(c), both of the Code. **This authority is generally applicable to surcharge and compromise penalties only, however, in meritorious instances, the Commissioner may likewise abate the interest** as well as basic tax assessed, provided, however, that cases for abatement or cancellation of tax, penalties and/or interest by the Commissioner shall be coursed through the following officials:

4.1 The Deputy Commissioner (Operations Group), who shall constitute a Technical Working Committee (TWC) for the evaluation and review of any application for abatement or cancellation of tax, penalties and/or interest processed by the Revenue District Office (RDO) as reviewed by the Regional Office (RO), or by the Large Taxpayers' Service's Collection or Audit Division and Large Taxpayers District Office (LTDO) as reviewed by the Large Taxpayers Service (LTS), or by Collection Enforcement Division/Withholding Agent and Monitoring Division as reviewed by the Collection Service, or by the Legal Service, or any other office that has jurisdiction over the case; and

4.2 The Deputy Commissioner (Legal and Inspection Group), who shall evaluate the legal issue involved in the case."
(Emphasis and underscoring supplied.)

Here in RHI's case, the Court *En Banc* opines that the deemed doubtful validity of the assessment due to the violation of the taxpayer's right to due process constitutes a circumstance under which the rules of abatement may apply.

Based on the foregoing, and with the settlement of 100% of the basic WTC, EWT, and FWT duly approved by the respondent and the NEB, the surcharge, penalties, and interests arising from these taxes were effectively abated.

Accordingly, applying the rules on abatement, petitioner should not be required to raise provisions of the law which cast doubt on its obligation to withhold taxes. Such requirement is applicable to cases of compromise settlement of withholding taxes but not to the abatement or cancellation of surcharge, penalties, or interest.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Judgment by Compromise Agreement, dated 30 March 2022, and the Resolution, dated 9 August 2022, of the Court's First Division are hereby **REVERSED AND SET ASIDE**. The Motion for Approval of Compromise Agreement is hereby **GRANTED**, and the Compromise Agreement is hereby **APPROVED** in its entirety.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Dissenting Opinion.)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ROXAS HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2672
(CTA Case No. 10321)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JAN 15 2024 4:30pm

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DISSENTING OPINION

MANAHAN, *J.*:

With due respect to my esteemed colleague, Justice Maria Rowena Modesto-San Pedro, I maintain my original Division Decision dated August 9, 2022 to only partially grant the petition and approve the Judgment by Compromise Agreement for failure to fully comply with the legal requisites attendant to such offer.

Section 204(A) of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> 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 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.

Implementing the foregoing sections of the NIRC, **Revenue Regulations (RR) No. 30-2002** dated December 16, 2002, as amended by **RR No. 8-2004**, or the "**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**," provides for those cases that can be compromised or not, to wit:

> 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 the 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.

EXCEPTIONS:

1. Withholding tax cases, **unless the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold**;

xxx xxx xxx (*Emphasis supplied*)

Section 2 of RR No. 30-2002 provides that withholding tax cases are exempted from the cases which may be compromised unless the applicant-taxpayer invokes provisions of law that cast doubt on its obligation to withhold.

In the case at hand, the following taxes were subject of the compromise offer, to wit:

Type of Tax	**Compromise Amount**
Income Tax[1]	Php 18,009,080.40
Value-Added Tax[2]	3,692,601.92
Withholding Tax on Compensation[3]	744,813.88
Expanded Withholding Tax[4]	148,813.81
Final Withholding Tax[5]	802,298.17
Documentary Stamp Tax[6]	6,029,518.40
Total	**Php 29,427,126.58**

Based on the records of the case, petitioner did not raise any legal defense as to its withholding tax obligation but it merely argued that it properly withheld taxes on compensation and that there is no underpayment of Expanded Withholding Tax, which is a partial defense. It also insisted that it has properly applied the applicable Final Withholding Tax for dividend payments to stockholders during the fiscal period ending June 30, 2010 and the same was remitted to the Bureau of Internal Revenue.

These are factual defenses and not a legal defense which invokes a provision of law that casts doubt on its obligation to withhold. Thus, failing to substantiate that it falls under the

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[1] 40% of the basic tax of Php45,022,701.00.
[2] 40% of the basic tax of Php9,231,504.80.
[3] 100% of the basic tax.
[4] 100% of the basic tax.
[5] 100% of the basic tax.
[6] 40% of the basic tax of Php15,073,796.00.

exception under Section 2 of RR No. 30-2002, the compromise of the withholding taxes must be excluded and denied.

In *Philippine National Oil Company v. The Honorable Court of Appeals et al.*[7], the Supreme Court ruled that this Court has the jurisdiction to inquire whether the compromise agreement, being in the form of a contract, is in accordance with law, morals, good customs, public order, or public policy. In *Strategic Alliance Development Corporation v. Radstock Securities Limited et al.*[8], the Court likewise stated that:

> "This Court is not, and should never be, a rubber stamp for litigants hankering to pocket public funds for their selfish private gain. This Court is the ultimate guardian of the public interest, the last bulwark against those who seek to plunder the public coffers. This Court cannot, and must never, bring itself down to the level of legitimizer of violations of the Constitution, existing laws or public policy."

WHEREFORE, I vote to **DENY** petitioner's *Petition for Review* and to **AFFIRM** the Court in Division's Assailed Judgment by Compromise Agreement.

CATHERINE T. MANAHAN
Associate Justice

[7] G.R. Nos. 109976 and 112800, April 26, 2005.
[8] G.R. Nos. 178158 and 180428, December 04, 2009